

**DISTRICT OF COLUMBIA COURTS  
SOLICITATION, OFFER AND AWARD  
FOR SUPPLIES, OR SERVICES**

**ISSUED BY:** DISTRICT OF COLUMBIA COURTS  
CAPITAL PROJECTS AND FACILITIES  
MANAGEMENT DIVISION  
616 H STREET, N.W., 6<sup>TH</sup> FLOOR  
WASHINGTON, D.C. 20001

**DATE ISSUED:** September 6, 2016  
**OPENING DATE:** N/A  
**OPENING TIME:** N/A

**SOLICITATION NUMBER** CPFMD-16-0906

**CLOSING DATE** September 21, 2016  
**CLOSING TIME** 3:00 PM

**OFFER/BID FOR:** Replacement of Motor Control Centers –  
H. C. Moultrie Courthouse Building (HCMCB) at 500 Indiana Avenue, NW  
And 510 4<sup>th</sup> Street, NW, Washington, DC 20001

**MARKET TYPE:** OPEN

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**OFFER (TO BE COMPLETED BY OFFEROR) Note: In sealed bid solicitations "Offer and Offeror" mean "Bid and Bidder".**

The undersigned offers and agrees that, with respect to all terms and conditions accepted by the Courts under "AWARD" below, this offer and the provisions of the RFP/IFB will constitute a Formal Contract.

<p style="text-align: center;"><b>OFFEROR</b></p> <p>Name: Street: City, State: Zip Code:</p> <p>Area Code &amp; Telephone Number:</p>	<p>Name and title of Person Authorized to Sign Offer: (Type or Print)</p> <hr/> <p>Signature _____ Date: _____</p> <p style="text-align: right;">(Seal)</p> <hr/> <p>Impress Corporate Seal</p> <p style="text-align: right;">Corporate (Seal) (Secretary) _____ (Attest)</p>
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**AWARD (To be completed by the District of Columbia Courts)**

CONTRACT NO. \_\_\_\_\_  
AWARD AMOUNT \$ \_\_\_\_\_

ACCEPTED AS TO THE FOLLOWING ITEMS:

DISTRICT OF COLUMBIA COURTS

BY: \_\_\_\_\_  
CONTRACTING OFFICER

CONTRACT PERIOD: \_\_\_\_\_

AWARD DATE \_\_\_\_\_

# AIA<sup>®</sup> Document A101<sup>™</sup> - 1997

*Standard Form of Agreement Between Owner and Contractor  
where the basis of payment is a STIPULATED SUM*

**AGREEMENT** made as of the \_\_\_ day of \_\_\_\_\_ in the year 2016.  
*(In words, indicate day, month and year)*

**BETWEEN** the Owner:

Capital Projects and Facilities Management Division  
District of Columbia Courts  
616 H Street, NW, 6<sup>th</sup> Floor  
Washington, DC 20001

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

The Project is:

Replacement of Motor Control Centers –  
H. C. Moultrie Courthouse Building (*HCMCB*) at  
500 Indiana Avenue, NW  
And  
510 4<sup>th</sup> Street, NW  
Washington, DC 20001  
**CPMFD-16-0906**

The Architect represented by:

Loring Consulting Engineers  
1130 Connecticut Ave, NW, Suite 750  
Washington DC 20006

The Owner and Contractor agree as follows:

## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the District of Columbia Courts Solicitation, Offer, and Award form, this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Amendments issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

**The commencement date will be fixed in a notice to proceed.**

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

Not Applicable

**§ 3.2** The Contract Time shall be measured from the date of commencement.

**§ 3.3** The Contractor shall achieve Substantial Completion of the entire Work not later than 45 days from the date of commencement, or as follows:

Subject to adjustments of this Contract Time as provided in the Contract Documents.

In the event the Work is not substantially completed by the Contractual Date of Substantial Completion, which is defined as the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can fully, safely, and securely commence their Work in the Project Area, the Contractor, its agents and subcontractors shall be liable to the Owner for liquidated damages for each calendar day thereafter until the Contractor reaches Substantial Completion as specified, according to the following schedule:

- .1 \$1,000.00 per calendar day for each day up to thirty (30) days; thereafter,
- .2 \$2,000.00 per calendar day for each day in excess of thirty (30) days up to sixty (60) days; and for each day thereafter,
- .3 \$5,000.00 per calendar day for each day in excess of sixty (60) days until Substantial Completion.

Furthermore, Substantial Completion is defined as the date when work per the Contract Documents is complete to the point where the DC Courts can fully, safely, and securely commence work in the Project Area. The cabling, security, furniture installations are complete, and the other DC Court vendors (i.e. IT and Telecom) can deliver and install their respective equipment and furnishings to bring this project to a final point where it is ready for full Occupancy.

Ready For Owner Occupancy is defined as the date when the DC Courts vendors are complete (i.e. IT and Telecom) and the Project Area is ready for full Occupancy to meet the necessary DC Court functions.

Final Project Completion is defined as the date when all punch list corrections, project paperwork and close out documentation has been submitted for review, approved, and accepted by the DC Courts.

The Contractor, its agent and subcontractors shall be liable for liquidated damages for each day of delay in achieving Substantial Completion and Final Project Completion as detailed in Section 9.11 of the General Conditions (A201).

**§ 3.4** Notwithstanding any contrary provisions in the Contract Documents, the term "Substantial Completion" relating to the completion of the Work shall mean the date certified by the Architect when (i) construction of all of the Work is sufficiently complete in accordance with the Contract Documents, so that the Owner can fully, safely, and securely commence Work in the Project Area. (ii) the Architect has prepared a punch list of Work remaining to be performed and has established a reserve equal to 200% of the value attributed to punch list work, or Fifty thousand dollars (\$50,000), whichever is greater, (iii) all required governmental inspections applicable to the satisfactory completion of Contractor's Work only have been conducted and all final approvals required for beneficial occupancy have been obtained from public and quasi-public authorities with jurisdiction over the Project, including a Certificate of Occupancy or Non-Residential Use Permit, if required, issued by appropriate authorities, and (iv) all other conditions precedent to Substantial Completion as set forth in the Contract Documents have been satisfied. The Date of Substantial Completion shall be reflected in each copy of the Contractor's Construction Schedule, prepared pursuant to Section 3.10.1 of the General Conditions (A201).

#### **ARTICLE 4 CONTRACT SUM**

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be \_\_\_\_\_ (\$ \_\_\_\_\_), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2** The Contract Sum is based upon the fact that this contract is a Firm-Fixed Priced contractual agreement (FFP).

**§ 4.3** Unit prices, if any, are to be fully incorporated into the Offer Breakdown Sheet (Attachment K).

**§ 4.4** The Contracting Officer, or any of its duly authorized representatives shall, until (3) three years after final payment, have the right to examine any directly pertinent books, documents, papers and record of the Contractor involving transactions related to the contract.

**§ 4.5** The Contractor shall be expected to maintain complete and accurate records justifying all actual and accrued expenditures. The Contractor's records shall be subject to periodic audit by the Owner.

#### **ARTICLE 5 PAYMENTS**

##### **§ 5.1 PROGRESS PAYMENTS FAR 52.232-5 - Payments under Fixed-Price Construction Contracts (Sept 2002)**

**§ 5.1.1** Based upon Applications for Payment submitted to the Owner by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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

**§ 5.1.3** Notwithstanding any other payment terms in this contract, the Owner will make invoice payments under the terms and conditions specified in FAR 52.232-27 Prompt Payment for Construction Contracts (July 2013). The Owner shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, based on percentages of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

- (1) The Contractor's request for progress payments shall include the following substantiation:
  - (i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.
  - (ii) A listing of the amount included for work performed by each subcontractor under the contract.
  - (iii) A listing of the total amount of each subcontract under the contract.
  - (iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer 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 also may be taken into consideration if --

- (i) Consideration is specifically authorized by this contract; and
- (ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(3) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (See Appendix 10).

**§ 5.1.4** Each Application for Payment shall be based on the most recent cost loaded schedule submitted by the Contractor in accordance with the Contract Documents. The cost loaded schedule shall allocate the entire Contract Sum among the various portions of the Work. The cost loaded schedule shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require to perform an earned value management analysis. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. See Appendix 10; Section 01-2900 Payment Procedures.

**§ 5.1.5** Applications for Payment shall indicate the percentage of completion of each portion of the work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of **Ten percent (10.00%)** to be modified as described in Section 5.1.8. Pending final determination of cost to the Contracting Officer of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of **Ten percent (10.00%)**;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of attached AIA Document A201-1997.

**§ 5.1.7** The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner and Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-1997.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

Until the contract completion exceeds fifty percent (50.00%), the retainage will be held at ten percent (10.00%) of the value of the work completed to date. For each Application for Payment after fifty percent (50.00%) completion is achieved, the contracting officer may change the retainage to be equal to five percent (5.00%) of the current total contract amount, regardless of the actual current percentage of completion. The Contractor must request this change formally in writing to the Contracting Officer.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment, which have not been delivered and stored at the site.

## § 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued to the Owner.
- .3 a final Certificate for Payment has been issued to the Owner.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than thirty (30) days after the issuance of the Owner's final Certificate for Payment.

## ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-1997.

§ 6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997.

## ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

Interest will be paid per the Federal Prompt Payment Act.

§ 7.3 The Contracting Officer (CO): The DC Courts' Court Contracting Officer who has the appropriate contracting authority is the only DC Courts official authorized to contractually bind the DC Courts through signing contract documents. The Contracting Officer shall be:

Dr. Cheryl Bailey  
District of Columbia Courts  
Capital Projects and Facilities Management Division  
616 H St., NW, Suite 622  
Washington, DC 20001  
Email: [Cheryl.Bailey@dcsc.gov](mailto:Cheryl.Bailey@dcsc.gov)

The Contracting Officer's Technical Representative (COTR): The COTR is responsible for general administration of the contract and advising the Contracting Officer as to the Bidder's performance or non-performance of the contract requirements. In addition, the COTR is responsible for the day-to-day monitoring and supervision of the contract. The Contracting Officer's Technical Representative shall be:

Mr. Charles Bicht  
District of Columbia Courts  
Capital Projects and Facilities Management Division  
616 H St., NW, Suite 622  
Washington, DC 20001  
Telephone Number: (202) 879-5541  
Facsimile Number: (202) 879-4222  
Email: [Charles.Bicht@dcsc.gov](mailto:Charles.Bicht@dcsc.gov)

Contract Administrator: Oversees the preparation of proposals, bids, and other exhibits that may be required with solicitations; processes requests for amendments / modifications to contracts; advises project managers on contractual rights and obligations; and may collaborate with the COTR, construction managers, and vendors regarding contract modifications, extensions, and contract closeout documents. The Contract Administrator shall be:

Monica I. Wilkerson, Esq.  
District of Columbia Courts  
Capital Projects and Facilities Management Division  
616 H Street, NW, Suite 622  
Washington, D.C. 20001  
Telephone Number: (202) 879-7576  
Facsimile Number: (202) 879-4222  
Email: [Monica.Wilkerson@dcsc.gov](mailto:Monica.Wilkerson@dcsc.gov)

§ 7.4 The Contractor's representative is:  
(Name, address and other information)

§ 7.5 Neither the Contracting Officer nor the Contractor's representative shall be changed without ten (10) days written notice to the other party.

§ 7.6 Other provisions:

§ 7.6.1 No legal liability on the part of the Owner for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

§ 7.6.2 The Contractor hereby agrees that the Owner may use all or any portion of any consideration or refund due Contractor under this contract to satisfy in whole or part, any debt due to the Owner.

## ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

§ 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A101-1997.

§ 8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

**§ 8.1.3** The other Conditions of the Contract are those contained in the Solicitation Package dated **Tuesday, September 6, 2016** and are as follows:

Document	Title
AIA 701	Instruction to Offerors
AIA 101	Agreement between Owner and Contractor
AIA 201	General Conditions of the Contract for Construction
Appendix 1	Listing of Drawings
Appendix 2	Camera Form
Appendix 3	Security Form
Appendix 4	Davis Bacon Act and Wage Rate Decision
Appendix 5	Tax Regulations
Appendix 6	DC Court Tax Exemption
Appendix 7	DC Court General Contract Provisions
Appendix 8	Contract Work Hours Act and Safety Standards Act
Appendix 9	DC Court Sexual Harassment Policy
Appendix 10	Pay Application
Attachment A	Anti-Collusion Statement
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Attachment E	Release of Claims
Attachment F	Payment to Subcontractors and Suppliers Certificate
Attachment G	Ethics in Public Contracting
Attachment H	Non-Discriminating
Attachment I	N/A for this Solicitation
Attachment J	Bid/Offer Form
Attachment K	Bid/Offer Breakdown Sheet
Attachment L&L1	Payment Bond and Performance Bond

**§ 8.1.4** The Project Specifications as shown in the Project Drawings dated **September 15, 2015**.

**§ 8.1.5** The Project Drawings are as follows, and are dated **September 15, 2015** unless a different date is shown below:

Title of Drawings: Refer to Appendix 1 – List of Project Drawings

**§ 8.1.6** The Amendments, if any, will be provided under separate cover and once the agreement is drafted and signed it will then become apart if the contract documents herein.

**§ 8.1.7** Under the terms of this agreement the contract is regarded as binding with regard to all terms & intent.

**§ 8.1.8** Other documents, if any, forming part of the Contract Documents are as follows:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that offering requirements such as advertisement or invitation to Offer, Instructions to Offerors, sample forms and the Contractor's Offer are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

This Agreement is entered into as of the day and year first written above and is executed in at least three (3) original copies, of which one is to be delivered to the Contractor, and the remainder to the Owner.

**See the District of Columbia Courts Solicitation, Offer and Award Form, attached to the front of this document, for signatures.**

# AIA<sup>®</sup> Document A201<sup>™</sup> - 1997

## *General Conditions of the Contract for Construction*

### for the following PROJECT:

Replacement of Motor Control Centers –  
H. C. Moultrie Courthouse Building (HCMCB) at  
500 Indiana Avenue, NW  
And  
510 4<sup>th</sup> Street, NW  
Washington, DC 20001  
**CPMFD-16-0906**

### THE OWNER:

District of Columbia Courts  
616 H Street NW, 6<sup>th</sup> Floor  
Washington, DC 20001

### THE ARCHITECT Represented by:

Loring Consulting Engineers  
1130 Connecticut Ave, NW, Suite 750  
Washington DC 20006

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### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 BASIC DEFINITIONS

##### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Amendments issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

##### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor except as set forth in paragraphs 5.3 and 5.4, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

##### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

##### § 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

##### § 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

##### § 1.1.6 THE SPECIFICATIONS

There are no specifications to be issued under the terms of this contract, with the exception of those notes included on the project drawings.

§ 1.1.7 The terms "knowledge," "recognize," "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

#### § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within, between or among parts of the Contract Documents, or

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between the Contract Documents and applicable standards, codes, and ordinances, the Contractor shall (i) provide the better quality and/or greater quantity of Work or (ii) comply with the more stringent requirement; either or both shall be done in accordance with the Architect's interpretation. The terms and conditions of this Subparagraph 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Subparagraphs 3.2 and 3.7.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings in the District of Columbia.

§ 1.2.4 The Contractor shall keep on the work site a copy of Contract Drawings and Specifications and shall at all times give the Contracting Officer or authorized individuals access thereto. Anything mentioned in the Specifications but not shown on the Contract Drawings, or shown on the Contract Drawings but not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both.

§ 1.2.4.1 All Contract requirements are equally binding. Each Contract requirement, whether or not omitted elsewhere in the document, is binding as though occurring in any or all parts of the Contract.

§ 1.2.4.2 In case of discrepancy:

- .1 The Contracting Officer shall be promptly notified in writing of any error, discrepancy or omission, apparent or otherwise.
- .2 Applicable Federal and D.C. Code requirements have priority over the Contract Form, General Provisions, Labor Provisions, Change Orders, Amendments, Contract Drawings, Special Provisions and Specifications.
- .3 The Contract Form, General Provisions and Labor Provisions have priority over: Change Orders, Amendments, Contract Drawings, Special Provisions and Specifications.
- .4 Change Orders have priority over: Exhibits, Contract Drawings and Specifications.
- .5 Amendments to the contract and change orders have priority over Contract Drawings, Special Provisions and Specifications. A later dated Amendment has priority over earlier dated Amendments.
- .6 Special Provisions have priority over: Contract Drawings and Specifications.
- .7 Shown and indicated dimensions have priority over scaled dimensions.
- .8 Original scale drawings and details have priority over scaled dimensions.
- .9 Large scale drawings and details have priority over small scale drawings and details.
- .10 Specifications have priority over Drawings.
- .11 Schedules have priority over Specifications.

§ 1.2.4.3 Any adjustment(s) by the Contractor without a prior determination by the Contracting Officer shall be at his own risk and expense.

## **§ 1.3 CAPITALIZATION**

§ 1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects (AIA).

## **§ 1.4 INTERPRETATION**

§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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### § 1.5 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor.

§ 1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, (v) the planned and actual procedures and processes of the local approval and inspection authorities, and (vi) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Paragraph 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Subparagraph 1.5.2.

### § 1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared on behalf of the Owner by the Architect or the Architect's consultants, and unless otherwise indicated, the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared on behalf of the Owner by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared on the behalf of the Owner by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. The term "Court" shall, depending on how that term is defined elsewhere in this contract, mean the Superior Court of the District of Columbia, the District of Columbia Court of

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Appeals, or the District of Columbia Court System. The term "District of Columbia government" shall mean all the branches of the government of the District of Columbia, including the District of Columbia Courts.

§ 2.1.2 Contracting Officer, Contracting Officer's Technical Representative, and Contract Administrator are defined as:

§ 2.1.2.1 Contracting Officer: The DC Courts' Court Contracting Officer who has the appropriate contracting authority is the only DC Courts official authorized to contractually bind the DC Courts through signing contract documents.

§ 2.1.2.2 Contracting Officer's Technical Representative (COTR): The COTR is responsible for general administration of the contract and advising the Contracting Officer as to the Offerer's performance or non-performance of the contract requirements. In addition, the COTR is responsible for the day-to-day monitoring and supervision of the contract.

§ 2.1.2.3 Contract Administrator: Oversees the preparation of proposals, bids, and other exhibits that may be required with solicitations; processes requests for amendments / modifications to contracts; advises project managers on contractual rights and obligations; and may collaborate with the COTR, construction managers, and vendors regarding contract modifications, extensions, and contract closeout documents.

§ 2.1.2.4 The COTR will have the responsibility of ensuring that the work conforms to the requirements of the Contract and such other responsibilities and authorities as may be specified in this Contract. It is understood and agreed that the Contracting Officer is the only entity with authority to authorize changes in the scope or terms and conditions of the Contract. **THE CONTRACTOR IS HEREBY FOREWARNED THAT ABSENT THE OFFICIAL APPROVAL OF THE CONTRACTING OFFICER, CONTRACTOR MAY BE HELD FULLY RESPONSIBLE FOR ANY CHANGES NOT AUTHORIZED IN ADVANCE, IN WRITING, BY THE CONTRACTING OFFICER. UNAUTHORIZED CHANGES SHALL RESULT IN DENIAL OF COMPENSATION OR OTHER RELIEF FOR ANY ADDITIONAL WORK PERFORMED AND CONTRACTOR MAY ALSO BE REQUIRED, AT NO ADDITIONAL COST TO THE OWNER, TO TAKE ALL CORRECTIVE ACTION NECESSITATED BY REASON OF THE UNAUTHORIZED CHANGES.**

## § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.2 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

§ 2.2.3 The Contractor will be furnished a means of obtaining, at the Contractor's expense, copies of Drawings and Project Manuals.

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

§ 2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a

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duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.3.2 If the Contractor fails to abide by any or all of the provisions of the Contract, the Contracting Officer reserves the right to stop all work or any portion thereof affected by the Contractor's failure to comply with the Contract requirements. This stoppage will remain in effect until the Contractor has taken action to meet the contract requirements. If the Contractor fails or refuses to meet all the provisions of the contract or any separable part thereof after written notification and work stoppage, the Owner may terminate the right of the Contractor to proceed.

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

§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### § 2.5 OWNER'S ROLE

§ 2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law or (iii) in equity.

§ 2.5.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative. If the Contractor is an individual, the term "Contractor" shall mean the Contractor, his or her heir(s), executors and administrators. If the Contractor is a corporation, the "Contractor" shall mean the Contractor and its successor.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner, Architect, or Construction Manager in the administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

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

§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of

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discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Owner and Construction Manager as a request for information in such form as the Owner may require.

§ 3.2.1.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner.

§ 3.2.1.2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all grades, elevations, dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Owner and Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Owner.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

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facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts and individuals associated with the Project. The Contractor shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

§ 3.4.4 No materials furnished by the Owner 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 Owner of all materials furnished by the Owner 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 moneys 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 Owner 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.

### § 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The Contractor shall warrant that the work performed to be free from all defects and agrees that for a period of one (1) year from date of acceptance by the Owner, any repairs, replacements or adjustments made necessary because of such defects will be made promptly without cost to and to the satisfaction of the Owner.

§ 3.5.3 The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such manufacturer's warranties.

### § 3.6 TAXES

§ 3.6.1 Except as provided in Section 3.6.2, the Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when Offers are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.2 Materials which are physically incorporated as a permanent part of real property are not subject to District of Columbia and 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 supplier has already paid the Sales and Use Tax on materials, as prescribed above, the Sales and Use Tax Regulations of the District of Columbia permit the Contractor, subcontractor, or material supplier to deduct the sales or use tax on the purchase price of the same on his next monthly return as an adjustment.

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§ 3.6.3 District of Columbia Sales and Use Tax shall be paid on any materials and supplies which do not become a physical part of (and remain in) the finished project. The Owner is exempt from and will not pay Federal Excise Tax, Transportation Tax, and the District of Columbia Sales and Use Taxes which do become a physical part of (and remain in) the finished project.

§ 3.6.4 The Owner requires that the Contractor follows the regulations set in the Title 9. Taxation: Chapter 4 - Sales and Use Taxes. See Appendix 1 (Tax Regulations).

§ 3.6.5 The District of Columbia Courts provide a Tax Exemption Certificate for use by the Contractor. See Appendix 2 (DC Courts Tax Exemption Certificate).

### § 3.7 PERMITS, FEES AND NOTICES

§ 3.7.1 The Contractor shall, without additional expense to the Owner, be responsible for obtaining any necessary licenses, trade permits, and public space permits for complying with any federal, state and municipal laws, codes and regulations applicable to performance of the work. The Owner is responsible for obtaining the building permit required to complete the Work.

§ 3.7.1.1 The Contractor shall apply and pay for all required permits well in advance of the time that they are needed.

§ 3.7.1.2 If the Contractor is unable to obtain a permit, then Contractor shall so notify the Contracting Officer's Technical Representative (COTR). The COTR shall have no obligation to assist Contractor in obtaining permits, or liability of any kind if assistance is or is not provided Contractor.

§ 3.7.1.3 Work requiring permits and licenses will not be allowed to proceed until evidence has been produced showing that such permits and licenses have been procured. Permits will be issued only to persons duly licensed for work in the District of Columbia, except as follows:

- .1 Where electrical, plumbing and refrigeration contractors and their craft persons perform work under contract with the Owner and the work is physically located in areas outside the District of Columbia, it shall be sufficient if any such contractor and the contractor's craft persons are licensed either by the District of Columbia or by any governmental agency having jurisdiction over the area adjoining the site on which the work is performed.
- .2 The Contractor shall prominently display all permits within the confines of the construction site.
- .3 Permits, licenses and certificates which may be required must be arranged by the Contractor at no extra cost to the Owner.

§ 3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

§ 3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct,

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but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, CSO allowances, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Contractor is required to provide the supervisory and project management staff as indicated in the proposal presented for this Project. Failure to provide those staff members, without prior approval of the Contracting Officer will be considered a material breach of the Contract.

§ 3.9.2 The Owner has the right to approve the Contractor's primary supervisory and project management staff. The Contractor may not remove any primary supervisory or project management staff without written approval of the Owner. However, the Contractor will promptly remove from the project any of the Contractor's staff to whom the Owner has a reasonable objection.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall comply with the scheduling requirements set forth in this RFP.

§ 3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Amendments, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples

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and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Construction Manager for distribution to the applicable members of the project team including but not limited to the Architect, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop

Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Construction Manager and Architect in writing of such deviation at the time of submittal and (1) the Construction Manager and Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Construction Manager and Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such written notice the Construction Manager and Architect's approval of a resubmission shall not apply to such revisions.

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§ 3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Construction Manager will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, who shall comply with reasonable requirements of the Owner regarding qualifications and insurance and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Construction Manager and Architect. The Owner, Construction Manager, and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals. Pursuant to this Section 3.12.10, the Construction Manager and Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

### § 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 CUTTING AND PATCHING

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work, fully or partially completed construction of the Owner, or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### § 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

### § 3.16 ACCESS TO WORK

§ 3.16.1 The Contractor shall provide the Owner, Construction Manager, Owner's Representative, and Architect access to the Work in preparation and progress wherever located.

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### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

§ 3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner, Construction Manager or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Construction Manager and Architect. Contractor will not knowingly include any work copyrighted by others in any material prepared under this Agreement unless it obtained either prior permission from the Owner or an irrevocable royalty free license for the Owner in such work.

§ 3.17.2 The Contractor shall not make application for a patent or copyright on any invention, item or process produced under this contract except with the written permission of the Owner. The Owner shall have an irrevocable nonexclusive royalty free license with the right to sublicense in any invention conceived or first actually reduced to practice in the course of or under this contract or any subcontract thereunder. All reports, programs, manuals, discs, tapes, card desks, listing, and other materials prepared by or worked upon by the Contractor's employees under this Agreement shall belong exclusively to the Owner. Contractor agrees not to publish or disclose any material first prepared under this Agreement without prior permission of the Owner.

§ 3.17.3 Contractor agrees to give the Owner all assistance reasonably required to protect the rights defined in these provisions.

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Owner's Consultants, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, expenses and judgments, at law and in equity, including but not limited to attorneys' fees, arising out of or in any way relating to Contractor's performance of the Work, provided that such claim, damage, loss, expense or judgment is attributable to bodily injury, sickness, disease or death, or to injury or damage to or destruction of tangible property, including the Work itself, but only to the extent caused by the acts or omissions of Contractor, a subcontractor or supplier to Contractor, or anyone directly or indirectly employed by any of them or any one for whose acts they may be liable, regardless whether such claim, damage, loss, expense or judgment is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person in this Section 3.18. It is agreed that the indemnification rights and obligations of this Section 3.18 shall not apply to any claim, damage, loss, expense or judgment caused solely by a party or parties otherwise indemnified hereunder.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of

damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.2.1 The Contractor shall indemnify and save harmless the Owner and its officers, agents and employees against any and all claims or liability arising from or based on, or as a consequence of or result of, any act, omission or default of the Contractor, its employees, or its subcontractor, in the performance of this Contract, regardless of whether or not any damage resulting from the Contractor's act, omission or default is caused in part by the Owner.

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§ 3.18.2.2 The Contractor shall indemnify and save harmless the Owner and its officers, agents and employees against any claim arising out of the use of any patented or unpatented invention, item or process in the performance of this Contract.

§ 3.18.2.3 The Contractor shall indemnify and save harmless the Owner and its officers, agents and employees against any claim for copyright infringement relating to any work produced, used or delivered under this Contract.

§ 3.18.3 The Contractor's indemnity obligations under this Paragraph 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnities from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnities in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

## **ARTICLE 4 ADMINISTRATION OF THE CONTRACT**

### **§ 4.1 OWNER'S CONSULTANT'S**

#### **§4.1.1 CONSTRUCTION MANAGER**

§ 4.1.1.1 Construction Manager: Responsible for the overall planning, coordination, and control of a project from beginning to completion for the purpose of achieving project objectives including the management of cost, time and scope. Acts as an extension of staff to the Owner.

§ 4.1.1.2 The Construction Manager is the person identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Construction Manger" means the Construction Manager or the Construction Manager's authorized representative.

§ 4.1.1.3 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner.

§ 4.1.1.4 If the employment of the Construction Manager is terminated, the Owner shall employ a new Construction Manager against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Construction Manager.

#### **§ 4.1.2 ARCHITECT**

§ 4.1.2.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ 4.1.2.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

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§ 4.1.2.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Construction Manager and the Architect shall be representatives of and shall advise and consult with the Owner during the administration of the Contract for Construction. Notwithstanding any terms that may be to the contrary in this Contract, the Construction Manager's, the Architect's and the Architect's design consultants' directions, instructions and determinations shall constitute recommendations only and shall be subject to the authority, directions, instructions and determinations of the Contracting Officer and the Contracting Officer's Technical Representative either of whom may adopt, override, reject or modify any recommendation(s) of the Construction Manager, Architect, and the Architect's consultants.

§ 4.2.2 The Construction Manager and Architect, as representatives of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations to:

- .1 keep the Owner informed of the progress and quality of the work completed.
- .2 guard the Owner against defects and deficiencies in the Work.
- .3 determine if the Work is being performed in a manner indicating that the Work will be in accordance with the Contract Documents.

§ 4.2.3 The Construction Manager and Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager and/or Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.3.1 The Construction Manager and/or Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor.

§ 4.2.4 **Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Construction Manager about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect via the Construction Manager. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner

§ 4.2.5 The Construction Manager, with the recommendation of the Architect, will have authority to reject Work that does not conform to the Contract Documents. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Construction Manager nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.6 The Construction Manager and Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall perform up to two (2) reviews of any item as part of these Services. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Construction Manager's and Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating

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instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager's and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Construction Manager's and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Construction Manager's and Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.7 The Architect and Construction Manager may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.8 The Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive written warranties and related documents required by the Contract and assembled by the Contractor. The Owner will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

§ 4.2.9 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.10 Except as otherwise provided in the Contract, any dispute concerning a question of fact arising under the Contract which is not disposed of by agreement shall be decided in accordance with the claims procedures of Sections 4.3 and 4.4.

§ 4.2.11 The Owner's decisions, upon consultation with the Construction Manager and Architect, on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

### § 4.3 CLAIMS AND DISPUTES

§ 4.3.1 Claims under this Contract are governed by applicable procurement laws, regulations and guidelines and the terms of this Contract and the attached District of Columbia Courts' General Contract Provisions. Therefore, this contract requires the Contractor to give timely notice of claims and to resort to specified procedures to make a claim, but do not impose these same requirements on the Owner. A "Claim" is a demand or assertion by the Contractor, seeking as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. "Claim" may also include other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims by the Contractor must be initiated by timely written notice provided both to the Owner and the Architect. The written notice must clearly indicate that it is a Notice of Claim by having as its reference or subject line, "Notice of Claim", or by clearly and conspicuously stating in its text, "This is a Notice of Claim." The Notice of Claim shall include such substantiation as is reasonably available. The responsibility to substantiate a Claim shall rest with the party making the Claim. Submitting a timely written Notice of Claim that strictly conforms in all respects to the requirements of the Guidelines and this Contract is a condition precedent to the consideration and validity of a Claim.

§ 4.3.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Owner or Owner's representative and the other party.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

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§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. The Owner's Representative will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner's Representative determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner's Representative shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Owner Representative has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Construction Manager for determination, subject to further proceedings pursuant to Section 4.4.

§ 4.3.4.1 The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of:

- .1 Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, and
- .2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered or indicated in the Contract and generally recognized as inhering in Work of the character provided for in the Contract.

§ 4.3.4.2 The Contracting Officer will promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work under the Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.

§ 4.3.4.3 No claim of Contractor under this Article will be allowed unless the Contractor has given the notice required.

§ 4.3.4.4 No claim by the Contractor for an equitable adjustment hereunder will be allowed if asserted after final payment under the Contract.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.1.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

### § 4.3.7 Claims for Additional Time

§ 4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary. Without prior written approval

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from the Contracting Officer, the Contractor may not reserve for assessment at a later time its estimate of cost and probable effect of delay on progress of the Work.

§ 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Any claim for extension of Contract Time based on delays caused by abnormal weather, as defined in 4.3.7.5, shall be substantiated by the following:

§ 4.3.7.2.1 Record of "normal weather conditions" established from historical weather data determined from climatological data sheets obtained from the (U.S. Department of Commerce) National Oceanic and Atmospheric Administration ("NOAA") National Weather Service Station for the locality closest to the project site for a five-year period preceding the date of the Contract. The Contractor shall provide the monthly NOAA data sheets, which indicate daily weather data. The annual summary data sheets, which do not include daily weather data, are not acceptable.

§ 4.3.7.2.2 Weather data from National Weather Service for the time period cited in the claim for extension.

§ 4.3.7.3 The determination of the ability to file for a claim for an increase in the Contract Time shall be made in accordance with the provisions of subparagraphs 4.3.7.4 through 4.3.7.8.

§ 4.3.7.4 The Contractor agrees that it shall not be entitled to a time extension for normal inclement weather which can be expected at the Project locale due to precipitation or temperature, based upon actual data from the NOAA for the locality closest to the project site for a five-year period preceding the date of the Contract. The Contractor acknowledges and warrants that in making its proposal or Offer and Construction Schedule for the Work, it gave due care and consideration to this expected number of calendar days of inclement weather for the locale of the Project and allowed for the impact of inclement weather on subsequent work. During the time of performance, should the expected number of calendar days of inclement weather for the locale of the Project be less than originally anticipated by the Contractor, those days not so affected by inclement weather shall be considered float time in the Construction Schedule.

§ 4.3.7.5 The Contractor agrees that the measure of abnormal inclement weather due to precipitation or temperature during the period covered by this Contract shall be the number of days in excess of those shown in the weather data referenced in subparagraph 4.3.7.4 hereof, in which precipitation exceeds 0.50 inch (or in the case of snow or ice pellets, 1 inch or more), or in which the highest temperature was 32 degrees Fahrenheit or below or the lowest temperature was 95 degrees Fahrenheit or above.

§ 4.3.7.6 Extensions of time will be made only for days in which abnormal inclement weather criteria cited in subparagraph 4.3.7.5 occur. Subsequent days for drying out of rain-soaked soil may not be claimed.

§ 4.3.7.7 If the total calendar days lost due to inclement weather, from the start of the Work at the Project site by the Contractor until the principal portions of the Work are enclosed, exceeds the total number of days to be expected to be lost for the same time period, a time extension, if granted, shall only be the number of calendar days needed to equal the excess number of calendar days lost to such abnormal inclement weather. Time extensions from weather delays do not entitle the Contractor to "extended overhead" recovery.

§ 4.3.7.8 Submit claims for additional time related to inclement weather in order to maintain schedule. The Owner's on-site representative will determine within two working days of occurrence (and only after receipt from the Contractor, in writing, that a claim will be made for the day(s) in question), whether or not inclement weather caused loss of a work day. Said determination shall prevail should a dispute arise due to differing conditions between the project site weather and the NWS/NOAA weather service station identified in paragraph 4.3.7.2.1.

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§ 4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 4.3.10 Waiver of Certain Remedies and Consequential Damages; Liquidated Damages.

§ 4.3.10.1 The Contractor's damages for any alleged breach of the Contract or any termination of the Contract shall be limited to those expressly allowed by the terms of the Contract Documents. The Contractor waives any claims for consequential damages arising out of or relating to this Contract, including, without limitation, any damages for losses of financing, business or reputation, or for lost profits except as to profit arising out of or relating to this Contract; including, without limitation, any damages for losses of financing, business, or reputation, or for lost profits except as to profit arising directly from the Work when such profit is expressly made recoverable under the Changes, Claims, or Termination for Convenience provisions of this Contract.

§ 4.3.10.2 Because damages to the Owner from delay in completion of the Work are uncertain and difficult to ascertain with exactness, the Contract provides for liquidated damages as a reasonable way to compensate the Owner for loss of use of the work due to delay. These liquidated damages are only to compensate the Owner for damages for loss of use of the Work due to delay in completion of the Work, and do not bar the Owner from also claiming and recovering damages separately for defective work, for added architectural, engineering, or administrative expenses, for costs to complete unfinished work, or for any other damages besides those arising from loss of use due to delay. Article 9.11 provides when the Contractor may be liable to the Owner for liquidated damages for loss of use due to delay:

- .1 by entering into the Contract, the Contractor agrees that the liquidated damages specified herein are reasonable and are not a penalty, and the Contractor waives any right to challenge such liquidated damages, whether by a claim that they are a penalty, that they are out of proportion to the Owner's actual losses, that they are unreasonable, or otherwise.
- .2 without waiving any of its rights to liquidated damages, the Owner may, in its discretion, (1) withhold accrued liquidated damages or a portion thereof from progress payments, (2) wait to withhold liquidated damages or a portion thereof until the final payment, or (3) assert a right to liquidated damages subsequent to final payment by way of set off, recoupment, counterclaim, or cross-claim in a subsequent lawsuit.

§ 4.3.11 The Contractor agrees that any claims by it due to weather shall be limited to claims for an increase in the Contract Time due to abnormal inclement weather. The Contractor shall not be entitled to any increase in Contract Sum due to weather delays, and all increases to Contract Time due to weather shall be at no cost to the Owner.

§ 4.3.11.1 Limitation on Damages for Delays. The Owner shall not be liable for any damages arising out of or relating to any delay in performance of the Contract unless (1) the delay is caused solely by acts or omissions of the Owner, its agents, and employees and is solely due to causes within their control ("Owner-caused delay"); (2) the

Contractor has fully and strictly complied with all provisions of the Contract, including without limitation, those relating to timely notice, timely presentation of information, and timely presentation of claims; and (3) the delay is unreasonable.

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§ 4.3.11.2 In no event shall the Contractor be entitled to recover for any home office overhead or profit based upon delay of performance of the Contract unless such recovery is expressly allowed by this Contract.

### § 4.4 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.4.1 Except as supplemented and modified by this Agreement, claims and disputes arising under or relating to this Agreement shall be resolved in accordance with applicable procurement laws, regulations and guidelines and the terms of this Contract and the attached District of Columbia Courts' General Contract Provisions. See Appendix 3 (District of Columbia Courts General Contract Provisions).

§ 4.4.2 It is agreed that following issuance of the Contracting Officer's Final Decision, if the Contractor's claim or dispute is not resolved to the satisfaction of the Contractor and Contractor timely files a request for mediation of the claim or dispute, then Owner and Contractor shall undertake non-binding mediation of the claim or dispute in accordance with the Construction Industry Mediation Rules of the American Arbitration Association subject to the following terms and conditions:

- .1 The request for mediation shall be filed in writing by the Contractor with the American Arbitration Association and the Owner. The request for mediation must be received by the Owner within thirty (30) days of Contractor's receipt of the Contracting Officer's Final Decision. If the request for mediation is not received by the Owner within thirty (30) days of Contractor's receipt of the Contracting Officer's Final Decision, then that Final Decision is conclusive and binding on all parties and any right to challenge or appeal the Final Decision under this Agreement or to any governmental or regulatory agency, government official or court is waived and released. If the thirty (30) days period expires on a Saturday, Sunday or holiday recognized by the District of Columbia, then the first business day thereafter shall be included in the thirty (30) days time to receive the request for mediation.
- .2 Filing fees for mediation shall be the responsibility of the Contractor. The mediator's fees and expenses and any Administration fees and expenses of the American Arbitration Association shall be shared equally between the Contractor and Owner.
- .3 The mediation shall be held in the District of Columbia, unless mutually agreed otherwise.
- .4 Agreements reached in mediation shall be enforceable as binding settlement agreements in any court having jurisdiction thereof.

§ 4.4.3 If the parties have undertaken mediation of the Contracting Officer's Final Decision, and the parties do not settle the dispute or claim by mediation as evidenced by either the mediator issuing a written declaration to the Owner and Contractor to the effect that further efforts at mediation are no longer worthwhile, or by Owner and Contractor agreeing in writing that the mediation proceedings are terminated, then the Final Decision of the Contracting Officer that has been the subject of the mediation shall be deemed conclusive and binding on all parties and not subject to further challenge or appeal under this Agreement or to any governmental or regulatory agency, government official or court, except solely as follows:

- .1 within thirty (30) days of the date of receipt of the mediator's written declaration that further efforts at mediation are no longer worthwhile, or the date that Owner and Contractor agree in writing that the mediation proceedings are terminated, whichever occurs first in time, Contractor shall provide to the Owner a written notice of appeal and request for review of the Contracting Officer's Final Decision. Contractor shall identify and attach a copy of the Final Decision to the notice. Failure to provide notice of appeal and request for review within the thirty (30) days shall waive and release any right of appeal and review or challenge. If the thirty (30) days period expires on a Saturday, Sunday or holiday recognized by the District of Columbia, then the first business day thereafter shall be included in the thirty (30) days time to provide the notice of appeal and request for review.
- .2 within thirty (30) days of timely notice of appeal and request for review, the parties shall meet and agree upon a mutually acceptable retired Judge of the District of Columbia Courts who will conduct

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the appeal and review, and issue a written decision on the Final Decision of the Contracting Officer. It is understood and agreed that the appeal and review of the Final Decision of the Contracting Officer is limited to the question of whether the Contracting Officer's Final Decision is arbitrary, capricious or lacks a rational basis. No evidence or information shall be introduced or relied upon in such proceeding which has not been previously presented to the Contracting Officer.

- .3 The decision on appeal and review shall be final and conclusive and any other right of appeal, challenge or review that might otherwise exist is waived and released. Upon filing in any court having jurisdiction, judgment may be entered upon the decision.
- .4 The location of the appeal hearing shall be in the District of Columbia. The parties shall bear their own fees and costs associated with the appeal. Fees and expenses of the agreed upon Judge and any administrative costs shall be borne equally by the Owner and Contractor.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 DEFINITIONS**

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.1.3 Nothing contained in the contract documents shall be construed as creating any contractual relationship between any subcontractor and the Owner. The divisions or sections of the specifications are intended to control the Contractor in dividing the work among the subcontractors or to limit the work performed by any trade. The Contractor shall be as fully responsible to the Owner for the acts and omissions of subcontractors, and of persons employed by them as he is for the acts and omissions of persons directly employed by him. The Contractor shall be responsible for the coordination of the trades, subcontractors, materials, and persons engaged upon his work. The Owner will not undertake to settle any differences between the Contractor and his subcontractors or between subcontractors.

§ 5.1.4 None of the Contractor's work or services hereunder may be subcontracted by the Contractor to any subcontractor without the prior, written consent of the Contracting Officer; approval will not be unreasonably withheld. Notwithstanding any such subcontractor approved by the Owner, the Contractor shall remain liable to the Owner for all subcontractors' work and services required hereunder.

§ 5.1.5 It is expressly understood and agreed that the professional technical personnel assigned by the Contractor to work under this Agreement are the Contractor's employees or agents. Under no circumstances are such individuals to be considered Owner's employees or agents. The Contractor and its employees shall be considered in an independent contract relationship with the Owner at all times.

### **§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

§ 5.2.1 Unless otherwise stated in the Contract Documents or the Offering requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect and Construction Manager the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect and Construction Manager will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect and Construction

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Manager, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitute.

### § 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager, and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager, and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- .1 assignments are effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignments are subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

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### **§ 5.5 FEDERAL LABOR STANDARDS APPLICABLE TO CONTRACT**

§ 5.5.1 The Owner requires that the Contractor follows the labor standards set in the Davis-Bacon Act (40 U.S.C. § 3142 et seq.) The Owner requires that the Contractor use the current attached Davis-Bacon Labor Rates for the duration of the project. See Appendix 4 (Davis-Bacon Labor Rates).

§ 5.5.2 The Owner requires that the Contractor follows the standards set the Contract Work Hours and Safety Standards Act – Overtime Compensation (40 USC § 3701 et seq.). See Appendix 5 (Contract Work Hours and Safety Standards Act).

§ 5.5.3 All new employment resulting from this contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, shall include the following basic goals and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

- .1 At least fifty-one (51) percent of all jobs created are to be performed by employees who are residents of the District of Columbia.
- .2 At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council. The Contractor shall negotiate an Employment Agreement with the District of Columbia Department of Employment Services for jobs created as a result of this contract. The Department of Employment Services shall be the Contractor's first source of referral for qualified applicants, trainees and other workers in the implementation of employment goals contained in this clause.

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, excluding Section 3.18 (relating to indemnification) and Article 11 (relating to insurance and bonds).

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### § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damages to the Work or defective construction of a separate contractor.

§ 6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner (with recommendations from the Construction Manager and Architect) and the Contractor; a Construction Change Directive requires agreement by the Owner, Construction Manager, and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Construction Manager and Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS

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

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

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.2.3 The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes in this contract within the general scope thereof. If such a change causes an increase or decrease in the cost of performance of this contract, or in the time required for performance, an equitable adjustment shall be made. Any notice of claim for adjustment under this paragraph must be asserted within ten (10) days from the date the Contractor is aware of a change to the contract, provided however, that the Contracting Officer may in his or her discretion receive, consider and accept or reject any such notice of claim asserted at any time prior to the final settlement of the contract. Any monetary claim for adjustment under this paragraph must be asserted within twenty-one (21) days from the date of the notice of claim, provided however, that the Contracting Officer may in his or her discretion receive, consider and adjust or reject any such claim asserted at any time prior to the final settlement of the contract. Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

§ 7.2.3.1 Failure on the part of Contractor to comply with the time for notice under this Article or the time for submission of the written statement setting forth the general nature and monetary extent of a claim under this Article shall be a waiver by the Contractor of that claim for Change.

§ 7.2.3.2 If the Change is a deduction of Work or the net value of a Change results in a credit to the Owner, the deduction or credit amount shall be the sum of the reasonable costs if the Work had been performed plus overhead and profit thereon which together shall be the Credit amount to the Owner.

§ 7.2.3.3 The Contractor's mark-ups for Change Orders will be limited to the actual increase in Contractor's General Conditions costs attributable directly to the Change, overhead equal to the overhead percentage on the net increase of direct costs that can be calculated from the Offer Breakdown, and a fee on the net increase of direct costs equal to the fee percentage that can be calculated from the Offer Breakdown. The overhead percentage shall be based only on the direct costs from the Offer Breakdown (Attachment K). The fee percentage shall be based only on the direct costs from the Offer Breakdown (Attachment K).

§ 7.2.3.4 Cumulative Mark-ups at the Subcontractor level and below will be limited to a total of twenty percent (20%) for both overhead and profit.

§ 7.2.3.5 The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification. The price breakdown—

- .1 Must include sufficient detail to permit an analysis of profit, and of all costs for Material, Labor, Equipment, Subcontracts, and Overhead.
- .2 Must cover all work involved in the modification, whether the work was deleted, added, or changed.

Additionally, the Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts; and, the Contractor's proposal shall include a justification for any time extension proposed.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section 7.3.6.

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.6 If the Contractor, and all sub tiers at all levels (to include any and all sub tiers) does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

- .1 costs of labor rates for all levels of Subcontractors, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

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§ 7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

### § 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 The Construction Manager will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

## ARTICLE 8 TIME

### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Owner.

§ 8.1.4 The date of Final Completion is the date determined by the Owner.

§ 8.1.5 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or owner consultant, or of an employee of either, or of a separate contractor employed by the Owner, or

by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Construction Manager determines may justify delay, then the Contract Time shall be extended by Change Order but only to the extent that the delay will prevent the Contractor from achieving Substantial Completion within the Contract Time as the Contracting Officer may determine

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§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

### ARTICLE 9 PAYMENTS AND COMPLETION

#### § 9.1 CONTRACT SUM

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

#### § 9.2 SCHEDULE OF VALUES

§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

#### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least thirty (30) days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment (AIA G702 and G703) for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by Change Orders.

§ 9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 Within seven (7) days after the Owner's receipt of the Contractor's Application for Payment, the Owner will either issue a Certificate for Payment, with a copy to the Contractor, for such amount as the Owner determines is

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properly due, or will notify the Contractor in writing of the reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Owner, based on the Owner's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Owner's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Owner, Construction Manager, or Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Owner, Construction Manager, and Architect have (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 The Owner 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;
- .3 If the Contractor furnishes to the Contracting Officer an itemized list; and
- .4 If the Contractor provides the Contracting Officer a certificate of insurance specifically for the stored materials at the storage location.

§ 9.4.4 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or owner consultant, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Construction Manager determines may justify delay, then the Contract Time shall be extended by Change Order but only to the extent that the delay will prevent the Contractor from achieving Substantial Completion within the Contract Time as the Contracting Officer may determine.

§ 9.4.5 All material and work covered by progress payments made shall thereupon become the sole property of the Owner, 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 Owner to require the fulfillment of all of the terms of the Contract.

§ 9.4.6 Upon completion and acceptance of all work, the amount due the Contractor under the Contract shall be paid upon presentation of a properly executed Application for Payment and after the Contractor shall have furnished the Owner with a release of all claims against the Owner 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.

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### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Construction Manager is able to make such representations. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 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 or liquidated damages for the anticipated delay;  
or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.
- .8 Outstanding Non-Compliance Notices (NCN's).

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

§ 9.6.2 The Contractor shall promptly pay each Subcontractor [See Attachment F], upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Construction Manager and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 Neither the Owner, Construction Manager, nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by

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the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

### **§ 9.7 FAILURE OF PAYMENT**

**§ 9.7.1** If the Owner does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents the amount certified by the Owner or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

### **§ 9.8 SUBSTANTIAL COMPLETION**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can fully, safely, and securely commence their work in the Project Area. The cabling, security, and furniture installations are complete. The Owner's IT and Telecom vendors can deliver and install their respective equipment and furnishings to bring this project to a final point where it is ready for full Occupancy.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and Construction Manager a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Owner and Construction Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner and Construction Manager's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Contractor shall then submit a request for another inspection by the Owner and Construction Manager to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Construction Manager and Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

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### **§ 9.9 PARTIAL OCCUPANCY OR USE**

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Owner and Construction Manager as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Construction Manager shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### **§ 9.10 FINAL PROJECT COMPLETION AND FINAL PAYMENT**

§ 9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and Construction Manager will promptly make such inspection and, when the Owner and Construction Manager finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will promptly issue a final Certificate for Payment, stating that to the best of the Construction Manager's knowledge, information and belief, and on the basis of the Construction Manager's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Owner's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final project completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Owner so confirms, the Owner shall, upon application by the Contractor and certification by the Owner, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that

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portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

### §9.11 LIQUIDATED DAMAGES

§9.11.1 The Contractor, and the Contractor's surety, if any, shall be liable for and shall pay the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay after the date established for Substantial Completion in the Contract Documents until the Work is substantially complete. The Contractor, and the Contractor's surety, if any, shall be liable for and shall pay the Owner the sums hereinafter stipulated for each calendar day of delay after the date established for Final Completion in the Contract Documents until the Work is finally completed.

§9.11.2 No extension beyond the time of completion fixed by the terms of the contract shall be effective unless authorized in writing by the Owner. Such extension of Contract Time for the Work shall be for such time and upon such terms and conditions as shall be fixed by the Owner, which shall include a charge for inspection expense actually incurred upon the works. Notice of application for such extension shall be filed in accordance with the Contract Documents.

§9.11.3 In the event the Work is not substantially completed by the Contractual Date of Substantial Completion, which is defined as the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can fully, safely, and securely commence their Work in the Project Area, the Contractor, its agents and subcontractors shall be liable to the Owner for liquidated damages for each calendar day thereafter until the Contractor reaches Substantial Completion as specified, according to the following schedule:

- .1 \$1,000.00 per calendar day for each day up to thirty (30) days; thereafter,
- .2 \$2,000.00 per calendar day for each day in excess of thirty (30) days up to sixty (60) days; and for each day thereafter,
- .3 \$5,000.00 per calendar day for each day in excess of sixty (60) days until Substantial Completion.

Furthermore, Substantial Completion is defined as the date when work per the Contract Documents is complete to the point where the DC Courts can fully, safely, and securely commence work in the Project Area. The cabling, security, and furniture installations are complete, and the other DC Court vendors (i.e. IT and Telecom) can deliver and install their respective equipment and furnishings to bring this project to a final point where it is ready for full Occupancy.

Ready For Owner Occupancy is defined as the date when the DC Courts vendors are complete (i.e. IT and Telecom) and the Project Area is ready for full Occupancy to meet the necessary DC Court functions.

Final Project Completion is defined as the date when all punch list corrections, project paperwork and close out documentation has been submitted for review, approved, and accepted by the DC Courts.

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The Contractor, its agent and subcontractors shall be liable for liquidated damages for each day of delay in achieving Substantial Completion and Final Project Completion as detailed in Article 9.11 of the General Conditions (A201).

**§9.11.3.4** Once Substantial Completion is reached the monetary cost per day is as outlined in Subsection 9.11.4 until Final Project Completion is achieved as described in the Contract Documents. The Contractor acknowledges and agrees that these damages are conclusively reasonable and are not in any way punitive. The contractor further acknowledges that they then have 30 days from the final project completion date for final project closeout.

**§9.11.4** In the event the Final Project Completion of the Work is not achieved after 45 calendar days of actual Substantial Completion, the Contractor and its surety shall be liable to the Owner for liquidated damages in the amount of \$2,000.00 per day in excess of 45[*Reference AIA 101 Section 3.3*] calendar days following actual Substantial Completion until Final Completion is achieved as described in the Contract Documents. The Contractor acknowledges and agrees that these damages are conclusively reasonable and are not in any way punitive.

**§9.11.5** Further, the above stipulated damages for the Work, shall be charged and payable by the Contractor to the Owner; and the Contractor and his surety shall be liable for the amount thereof, provided that the right of the Contractor to proceed shall not be terminated or the Contractor charged with Liquidated Damages because of any delays in the completion of the work due to some unforeseeable cause(s) beyond the control, and without the fault or negligence of the Contractor, including, but not restricted to acts of God or public enemy, acts of government, fires, floods, epidemics, quarantines, restrictions, strikes, freight embargoes and/or delays of subcontractors due to such causes. The Contractor shall within twenty-one (21) days, from the beginning of such delay, unless the Owner shall grant a further period of time prior to the expiration of such twenty-one (21) days, notify the Owner, in writing, of the causes of the delays. The Owner shall ascertain the facts and extent of the delays and may extend the time for the completion of the work if, and when, in its judgment, the findings of fact justify such extension.

**§9.11.6** With regard to the above stated Liquidated Damages, in no case shall the total assessed damages be limited to any specific fixed sum.

**§9.11.7** Where work is stopped by the Contracting Officer, for any cause not due to the fault or negligence of the Contractor, Liquidated Damages shall be waived for that period until the work is again resumed by written order of the Owner.

**§9.11.8** In addition to Liquidated Damages, the Contractor shall pay to the Owner the cost of extended architectural (including Architect's on-site representative(s), if any, on-site) services and construction management services for services rendered beginning at ninety (90) days from the date of Substantial Completion required by the Contract, as adjusted if applicable, and continuously until Final Completion is achieved.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

**§ 10.1.2** The Contractor shall perform all site, plant and construction work in accordance with the Safety Standards of the District of Columbia and the Occupational Safety and Health Act of 1970. The Contractor or his representative shall be thoroughly familiar with these standards and have copies of the same available at the project site at all times.

**§ 10.1.3 Operators** of explosive-actuated tools shall have a training certificate, as required by the Safety Code in their possession.

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§ 10.1.4 The Contractor shall be responsible for providing and installing adequate temporary shoring and/or bracing for all walls, slabs and like constructions if needed to perform the task.

§ 10.1.5 The Government, its officers, agents, servants and employees shall not be held liable for any property damages or physical harm resulting from inadequate protection.

§ 10.1.6 Prior to execution of shoring and/or bracing the Contractor shall submit details and calculations for shoring and/or bracing designs for the Owner's review.

§ 10.1.7 Special precautions shall be exercised to prevent use of, or access to, Contractor's materials, equipment or tools by occupants or entry by occupants into Contractor's work areas.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work, materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner, Construction Manager, or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Construction Manager.

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

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### § 10.3 HAZARDOUS MATERIALS

§10.3.1 The Contractor shall not use asbestos-containing construction materials, fill or other building components that contain or have absorbed hazardous materials, as that term is defined in 42 U.S.C.A. § 9601(14). In addition, if hazardous materials are encountered at the site of the Work or in the performance of the Work, Contractor shall stop work in the area of hazardous materials and immediately notify the Owner. Contractor shall bar all persons from entering the affected area and take all necessary steps to minimize the risks to employees and others from such hazardous materials. Contractor and Owner shall meet to identify the entirety of the affected area and review containment and remedial action. It is understood that Owner may employ Contractor or separate contractor(s) to remove, remediate or render harmless hazardous materials encountered at the site or in the performance of the Work.

§10.3.2 In the event Owner and Contractor agree that Contractor shall perform the removal, remediation or render harmless the hazardous materials, then such work shall be performed at such additional price and performance time as determined pursuant to this Agreement. Contractor shall secure all licenses and permits required for the performance of such work.

§10.3.3 Contractor agrees to indemnify, hold harmless and defend Owner from claims, damages, losses, costs, expenses, and liabilities arising out of or resulting from the presence, uncovering or release of suspected or confirmed hazardous materials to the extent caused by the negligence of, or failure to comply with, the terms and conditions of the contract documents by the Contractor or anyone for whom the Contractor is responsible.

### § 10.4 EMERGENCIES

§ 10.4.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

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§ 11.1.2 Prior to execution of the contract, the Contractor shall obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the insurance specified below with an insurance company licensed or qualified to do business with the Owner. All insurance shall set forth the Owner as an additional insured. The policies of Insurance shall provide for at least thirty (30) day written notice to the Owner prior to their termination or material alteration. The Contractor must submit to the Contracting Officer a certificate of insurance as evidence of compliance within ten (10) calendar days after request.

§ 11.1.2.1 Comprehensive General Liability: Insurance against liability for bodily injury insurance coverage in the amount of at least \$2,500,000.00 per occurrence.

§ 11.1.2.2 Workers' Compensation: The Contractor shall carry Workers' compensation insurance covering all of its employees employed upon the premises and in connection with its other operations pertaining to this agreement and the Contractor agrees to comply at all times with the provisions of the Workers compensation laws of the District.

§ 11.1.2.3 Comprehensive Automobile Liability Insurance (applicable to owned, non-owned and hired vehicles): The Contractor shall carry comprehensive automobile liability insurance applicable to owned, non-owned, and hired vehicles against liability for bodily injury and property damage in an amount not less than that required by law of the District's Compulsory/No-Fault Vehicle Insurance Act of 1982, as amended. Coverage shall be at least \$2,500,000.00 per person, \$2,500,000.00 per occurrence for bodily injury and \$2,500,000.00 per occurrence for property damage.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. If any of the foregoing insurance coverage are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

### § 11.2 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

§ 11.2.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Construction Manager's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.8.

§ 11.2.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor, Construction Manager, and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§ 11.2.3 The Owner shall not require the Contractor to include the Owner, Construction Manager or other persons or entities as additional insured on the Contractor's Liability Insurance coverage under Section 11.1.

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### § 11.3 PERFORMANCE BOND AND PAYMENT BOND

§ 11.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising there under as stipulated in Offering requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, be uncovered for the Owner's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to it being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

### § 12.2 CORRECTION OF WORK

#### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether fabricated or not, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.1.2 The Contractor shall provide and maintain an inspection system acceptable to the Owner covering the services furnished under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Owner during the Contract performance and for as long as the Contract requires.

§ 12.2.1.3 The Owner has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Owner shall perform inspections and test in a manner that will not unduly delay the work.

§ 12.2.1.4 If the Owner performs inspections or tests on the premises of the Contractor or subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in the Contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

§ 12.2.1.5 If any of the services do not conform with the contract requirements, the Owner may require the Contractor to perform the services again in conformity with the contract requirements, at no increase in the Contract

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amount When the defects in services cannot be corrected by re-performance, the Owner may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

§ 12.2.1.6 If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity with the contract requirements, the Owner may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Owner that is directly related to the performance of such service or (2) terminate the contract for default.

### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. Upon completion of any Work under or pursuant to this Paragraph 12.2, the one (1)-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Paragraph 12.2 shall cover any repairs to and replacement of any part of the Work or other property that is damaged by the defective Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

§ 12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

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### ARTICLE 13 MISCELLANEOUS PROVISIONS

#### § 13.1 GOVERNING LAW

§ 13.1.1 The Contract shall be governed by the law of the place where the Project is located. All applicable laws, rules and regulations shall apply to the contract throughout, and they will be considered to be included in the contract the same though herein written out in full.

#### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other parties in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

#### § 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice to the Contractor shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice. Written notice to the Owner shall be delivered in person or sent by registered or certified mail to the Contracting Officer.

#### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereby shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect, Construction Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereby, except as may be specifically agreed in writing.

#### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner and Architect timely notice of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after Offers are received or negotiations concluded.

§ 13.5.2 If the Construction Manager, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Construction Manager will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner and Construction Manager of when and where tests and inspections are to be made so that the Owner and Construction Manager may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

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§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Construction Manager's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner and Architect.

§ 13.5.5 If the Owner and Architect is to observe tests, inspections or approvals required by the Contract Documents, the Owner and Construction Manager will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.6 INTEREST

§ 13.6.1 The Federal Acquisition Regulation 52.232-27 (Prompt payment for construction projects) is incorporated in this contract by reference.

### §13.7 NON-DISCRIMINATION

§13.7. 1 The Contractor agrees that it will comply with the nondiscrimination requirements set forth in the District of Columbia Code, Section 2-1402.11 (Supp. 2004) which will be incorporated into any contract awarded. The Contractor agrees to comply with requests from the Owner to support the Contractors adherence to this section.

§ 13.7.2 The Owner requires that the Contractor follows the policies set forth in the District of Columbia Courts Non-Discrimination document. See Attachment H (District of Columbia Non-Discrimination).

### §13.8 SEXUAL HARASSMENT

§13.8. 1 The Owner requires that the Contractor follows the policies set forth in the District of Columbia Courts Sexual Harassment Policy. See Appendix 6 (District of Columbia Courts Sexual Harassment Policy).

### §13.9 ETHICS IN PUBLIC CONTRACTING

§13.9.1 The Owner requires that the Contractor follows the policies set forth in the District of Columbia Courts Ethics in Public Contracting document. See Attachment G (District of Columbia Courts Ethics in Public Contracting).

### § 13.10 APPOINTMENT OF ATTORNEY

§ 13.10.1 The Offeror or Contractor (whichever the case may be) does hereby irrevocably designate and appoint the Clerk of the District of Columbia Superior Court and his or her Successor 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 of Columbia, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to this contractor the work required or performed hereunder.

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

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### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 because the Construction Manager has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Construction Manager, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .4 is guilty of substantial breach of a provision of the Contract Documents; or
- .5 If the Contractor fails to comply with any of the provisions of this contract including, but not limited to, failure to perform the services within the time specified herein or any extension thereof.

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§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Construction Manager that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 takes possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finishes the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 Cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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## *General Conditions of the Contract for Construction*

### ARTICLE 15 DISCLOSURE OF INFORMATION

§ 15.1 Any information made available by the Owner shall be used only for the purposes of carrying out the provisions of this contract, and shall not be divulged nor made known in any manner to any person except as may be necessary in the performance of the contract.

§ 15.2 In performance of this Contract, the Contractor agrees to assume responsibility for protection of the confidentiality of the Owner's records and that all work shall be performed under the supervision of the Contractor or the Contractor's responsible employees.

§ 15.3 Each officer or employee of the Contractor to whom information may be available or disclosed shall be notified in writing by the Contractor that information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that other disclosure of any such information, by any means, for a purpose or to an extent unauthorized herein, may subject the offender to criminal sanctions.

§ 15.4 No information regarding the Contractor's performance of the contract shall be disclosed by the Contractor to anyone other than the Owner's officials unless written approval is obtained in advance from the Contracting Officer.

§ 15.5 The Contractor agrees that its employees shall treat as strictly confidential, all information received as a result of the performance of this Contract. Such information will not, except as required by law, be disclosed to anyone outside of the Owner's organization during the period of this Contract or thereafter.

### ARTICLE 16 COVENANT AGAINST CONTINGENT FEES

§ 16.1 The Contractor warrants that no person or 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 a bona fide employee or agency maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Owner shall have the right to terminate this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.

§ 16.2 No member of or delegate to Congress or officer or employee of the District of Columbia government shall be admitted to any share or part of this contract or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

### ARTICLE 17 OFFICIALS NOT TO BENEFIT

§ 17.1 Unless a determination is made as provided herein, no officer or employee of the District of Columbia government shall be admitted to any share or part of this contract or to any benefit arising there from, and any contract made by the Contracting Officer or any Owner employee authorized to execute contracts in which they or an employee of the Owner will be personally interested shall be void, and no payment shall be made thereon by the Owner or any officer thereof, but this provision shall not be construed to extend to this contract to the extent that this contract is made with a corporation for the corporation's general benefit. A District employee shall not be a party to a contract with the Owner 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 Owner that there is a compelling reason for contracting with the employee, such as when the Owner's needs cannot reasonably otherwise be met.

### ARTICLE 18 PRIVATE WORK

§ 18.1 Except as specifically authorized by the Contracting Officer, the Contractor shall not perform any private work abutting Owner projects with any labor, materials, tools, equipment, supplies or supervision scheduled for the

# AIA<sup>®</sup> Document A201<sup>™</sup> - 1997

## *General Conditions of the Contract for Construction*

Contract until all work under the Contract has been completed. Contract materials used for any unauthorized purpose shall be subtracted from Contract amount.

### **ARTICLE 19 BUY AMERICAN AND DOMESTIC COMPONENT**

§ 19.1 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 1962 (3 CFR, 1059-63 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 nondomestic material listed in the Contract.

§ 19.2 "Construction material" means any article, material 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 United States, exceeds fifty percent (50%) of the cost of all its components.

"Component" means any article, material or supply directly incorporated in a construction material.

§19.3 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 which 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 reasonably available commercial quantities and of a satisfactory quality.

### **ARTICLE 20 ETHICAL OBLIGATIONS**

§20.1 Contractor acknowledges that Owner is committed to having the Work performed in accordance with the highest ethical standards applicable to, or governing, the conduct of construction practices. In furtherance thereof, Contractor hereby agrees to comply with and observe all Applicable Laws, trade standards and ethical guidelines governing performance of the Work.

### **ARTICLE 21 EQUAL OPPORTUNITY**

§21.1 Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, marital status, sex, disability, sexual preference or age. Contractor shall take such actions as are reasonably necessary to ensure that employees and applicants for employment are treated without regard to their race, creed, color, national origin, marital status, sex, sexual preference or age. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

§21.2 Contractor shall furnish all information and reports required by Governmental Authorities to determine Contractor's compliance with the provisions of this Section 22 and Applicable Laws, and shall permit access to its books and records by Owner and/or any such Governmental Authority during regular business hours for purposes of investigation to ascertain compliance with this Section.

### **ARTICLE 22 ENFORCEABILITY**

§22.1 The Contract is regarded as binding with consideration to all terms & intent under this agreement.

# AIA Document A701™ - 1997

## *Instructions to Offerors*

### **PROJECT:**

Replacement of Motor Control Centers –  
H. C. Moultrie Courthouse Building (HCMCB) at  
500 Indiana Avenue, NW  
And  
510 4<sup>th</sup> Street, NW  
Washington, DC 20001  
**CPMFD-16-0906**

### **THE OWNER:**

District of Columbia Courts  
Capital Projects and Facilities Management Division  
616 H Street, NW, 6<sup>th</sup> Floor  
Washington, DC 20001

### **THE ARCHITECT Represented by:**

Loring Consulting Engineers  
1130 Connecticut Ave, NW, Suite 750  
Washington DC 20006

### **TABLE OF ARTICLES**

- 1        DEFINITIONS**
- 2        OFFEROR'S REPRESENTATIONS**
- 3        OFFERING DOCUMENTS**
- 4        OFFERING PROCEDURES**
- 5        CONSIDERATION OF OFFERS**
- 6        POST-OFFER INFORMATION**
- 7        PERFORMANCE BOND AND PAYMENT BOND**
- 8        FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**
- 9        SPECIAL INSTRUCTIONS AND REQUIREMENTS**
- 10      ENFORCEABILITY**

## ARTICLE 1 DEFINITIONS

§ 1.1 Offering Documents include the Offering Requirements and the proposed Contract Documents. The Offering Requirements consist of the Advertisement or Invitation to Offer, Instructions to Offerors, the Offer form, and other sample Offering and Contract forms. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, and other Conditions), Drawings, Specifications and all Amendments issued prior to execution of the Contract.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201, or in other Contract Documents are applicable to the Offering Documents.

§ 1.3 Written Amendments and or graphic instruments are issued by the Contracting Officer prior to the execution of the Contract that modify or interpret the Offering Documents by additions, deletions, clarifications or corrections.

§ 1.4 An Offer is a complete and fully executed proposal that explains Work to be performed for the sums stipulated therein, submitted in accordance with the Offering Documents.

§ 1.5 The Base Offer is the stated sum in the Offer, for which the Offeror agrees to perform the Work described in the Offering Documents as the Base; still, Work may be added and/or deleted for sums stated within the Alternate Offers.

§ 1.6 An Alternate Offer (or Alternate) is an amount stated in the Offer to be added to or deducted from the amount of the Base Offer if the corresponding change in the Work, as described in the Offering Documents, is accepted.

§ 1.7 An Option Offer is an option to the contract that may be exercised as presented, negotiated, or declined by and at the sole discretion of the Owner. The Owner will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

§ 1.8 A Unit Price is an amount stated in the Offer as a price per unit of measurement for materials, equipment and/or services, or a portion of the Work as described in the Offering Documents.

§ 1.9 An Offeror is a person or entity who submits an Offer and meets the requirements set forth in the Offering Documents.

§ 1.10 A Sub-offeror is a person or entity who submits an Offer to an Offeror for materials, equipment and/or labor for a portion of the Work.

### § 1.11 SCOPE OF WORK

#### § 1.11.1 SCOPE OF WORK FOR BASE CONTRACT

§ 1.11.1.1 The Scope of Work for the project is defined by the Contract Documents titled "Replacement of Motor Control Centers (MCC) H. C. Moultrie Courthouse Building and 510 4<sup>th</sup> Street". The project involves removal and replacement of five (5) motor control centers within the Moultrie Courthouse and one (1) motor control center within 510 4<sup>th</sup> Street NW.

### § 1.12 ADDITIONAL PRICING INCLUSIONS

§ 1.12.1 The Contractor shall provide fulltime dedicated Project Management and Project Manager throughout the duration of the project for such items including, but not limited to, daily site walkthroughs and weekly progress meetings.

§ 1.12.2 The Contractor shall provide a fulltime dedicated project Superintendent throughout the duration of the project.

§ 1.12.3 The Owner will contract directly with a 3<sup>rd</sup> Party Code Inspection Agency to provide the necessary DCRA required code inspections. The Contractor will be responsible for all required coordination and inspection scheduling with the 3<sup>rd</sup> Party Code Inspection Agency.

§ 1.12.4 The Owner will contract directly with a 3<sup>rd</sup> Party Code Compliance Agency and Material Testing Agency to provide the necessary DCRA required code inspections. The Contractor will be responsible for all required coordination and inspection scheduling with the 3<sup>rd</sup> Party Code Compliance Agency and Material Testing Agency.

§ 1.12.5 The Offeror shall include allowances in the Offer to cover the use of Courts Security Officers (CSOs) during the construction portion of each phase of the project. The Offeror shall be required to provide monthly invoices and detailed explanations in order to support the use of the CSOs. The assumed CSO company rate is \$49.71 per hour and the CSO allowance schedule is as follows:

1. CSO Support, Replace Motor Control Centers: \$10,000.00

## ARTICLE 2 OFFEROR'S REPRESENTATIONS

§ 2.1 The Offeror by making an Offer represents that:

§ 2.1.1 The Offeror has read and understands the Offering Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Offer is submitted, and for other portions of the Project, if any, being offered concurrently or presently under construction. Offerors are expected to examine the Statement of Work and all instructions and attachments in this solicitation. Failure to do so will be at the Offeror's risk.

§ 2.1.2 The Offer is made in compliance with the Offering Documents.

§ 2.1.3 The Offeror has visited the site, become familiar with local conditions under which the Work is to be performed, and has correlated the Offeror's personal observations with the requirements of the proposed Contract Documents.

§ 2.1.4 The Offer is based upon the materials, equipment and systems required for the Work as stated in the Offering Documents without exception.

### § 2.2 Penalties for Misrepresentations

Any material misrepresentation on the sworn notarized self-certification form could result in termination of the contract; in accordance with District of Columbia law, Contractor's liability for civil and criminal action indicates possible sanctions.

### § 2.3 Standards of Responsibility

The prospective Contractor must demonstrate to the satisfaction of the Owner, the capability in all respects to perform fully the contract requirements; therefore, the prospective Contractor must submit with its Offer the document listed below in 2.3.1 and 2.3.2:

§ 2.3.1 Furnish evidence of adequate financial resources, credit, and/or the ability to obtain such resources as required during the performance of the contract. (See Section 4.1.14.3.1 Volume I Technical Information Tab B Corporate Capabilities)

§ 2.3.2 Furnish evidence of the ability to comply with the required and/or proposed delivery or performance schedule, taking into consideration all existing commercial and government business commitments. (See Section 4.1.14.3.1 Volume I Technical Information Tab B)

## ARTICLE 3 OFFERING DOCUMENTS

### § 3.1 COPIES

§ 3.1.1 Offerors will receive one (1) set of the complete Offering Documents.

§ 3.1.2 Offering Documents will not be issued directly to Sub-offerors unless specifically offered in the Advertisement or Invitation to Offer.

§ 3.1.3 Offerors shall use complete sets of Offering Documents in preparing Offers; neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Offering Documents.

§ 3.1.4 The Owner may make copies of the Offering Documents available for the purpose of obtaining Offers on the Work. No license or grant of use is conferred by the issuance of copies of the Offering Documents.

### § 3.2 INTERPRETATIONS OR CORRECTIONS OF OFFERING DOCUMENTS

§ 3.2.1 The Offeror shall carefully study and compare each of the Offering Documents with one another, and with other Work being offered concurrently or presently under construction to the extent that it relates to the Work for which the Offer is submitted; the Offeror shall also examine the site and local conditions, and at once, report to the Owner any errors, inconsistencies or ambiguities discovered.

§ 3.2.2 Questions concerning this Solicitation must be directed, in writing to:

Monica I. Wilkerson, Esq.  
District of Columbia Courts  
Capital Projects and Facilities Management Division  
616 H St., NW, Suite 622  
Washington, DC 20001  
E-mail address: [Monica.Wilkerson@dcsc.gov](mailto:Monica.Wilkerson@dcsc.gov)  
Telephone Number: (202) 879-7576

§ 3.2.3 Any prospective Offeror desiring an explanation or Interpretation of this Solicitation must request it in writing by **Wednesday, September 14, 2016, no later than 3:00 pm**. Requests should be directed to the Contract Administrator (as defined in Article 7 of the AIA 101 included in this solicitation) via the email address listed above. Any substantive information given to a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors. **Oral explanations and/or instructions given before the award of the contract will not be binding.**

§ 3.2.4 The terms and conditions of the Offering Documents may only be modified by written Amendments issued by the Contracting Officer; set apart from any oral representations to the contrary.

### § 3.3 SUBSTITUTIONS

§ 3.3.1 The materials, products and equipment(s) described in the Offering Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

§ 3.3.2 No substitutions will be considered prior to receipt of Offers unless written request for approval has been received by the Contracting Officer at least ten (10) days prior to the date for receipt of Offers. Such requests shall include the name of the material and/or equipment for which it is to be substituted, and also, a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. If any further changes in other materials, equipment(s) or other portions of the Work to include but not limited to changes in the work of other contracts, that incorporation of the proposed substitution would require a written request. The burden of proof of the proposed substitution is upon the merit of the proposer. The Owner's decision of approval or disapproval of a proposed substitution shall be final.

§ 3.3.3 If the Owner approves a proposed substitution prior to receipt of Offers, such approval will be set forth in an Amendment. Offerors shall not rely upon approvals made in any other manner.

§ 3.3.4 No substitutions will be considered after the Contract is awarded unless specifically stated in the Contract Documents.

### § 3.4 AMENDMENTS

§ 3.4.1 Amendments will be transmitted by the issuing office to all who are known to have initially received a complete set of the Offering Documents.

§ 3.4.2 Copies of Amendments will be made available for inspection wherever Offering Documents are on file for clarification.

§ 3.4.3 Amendments will be issued no later than three (3) days prior to the date of receipt of the Offers unless an Amendment withdrawing the request for Offers or one which includes postponement of the date for receipt of Offers.

§ 3.4.4 Prior to submitting an Offer, each Offeror shall ascertain all Amendments issued, and acknowledge their receipt in the Offer.

## ARTICLE 4 OFFERING PROCEDURES

### § 4.1 PREPARATION OF OFFERS

§ 4.1.1 Offers shall be submitted on the forms included with the Offering Documents. The Owner will not accept a facsimile copy of a proposal as an original unless specifically authorized in the Solicitation. The Owner shall not accept telegraphic offers.

§ 4.1.2 All blanks on the Offer form shall be legibly executed in a non-erasable medium.

§ 4.1.3 Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

§ 4.1.4 Interlineations, alterations and erasures must be initialed by the signer of the Offer.

§ 4.1.5 All requested Alternates shall be offered under a competitive price exercise. If no change in the Base Offer is required, enter "No Change."

§ 4.1.6 Where two (2) or more Offers for designated portions of the Work have been requested, the Offeror may, without forfeiture of the Offer security, state the Offeror's refusal to accept award of less than the combination of Offers stipulated by the Offeror. The Offeror shall make no additional stipulations on the Offer form nor qualify the Offer in any other manner.

§ 4.1.7 Each copy of the Offer shall state the legal name of the Offeror and the nature of legal form of the Offeror. The Offeror shall provide evidence of legal authority to perform within the jurisdiction of the Work. Each copy shall be signed by the person or persons legally authorized to bind the Offeror to a contract. An Offer by a corporation shall further give the state of incorporation and have the corporate seal affixed. An Offer submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Offer..

#### § 4.1.8 Confidentiality of Submitted Information

Data within the proposal that Offerors *do not* want disclosed to the public or used by the Owner except for use in the procurement process shall mark the title page of the proposal document with the following legend: "This proposal includes data that shall not be disclosed outside the District of Columbia Courts and shall not be duplicated, used or disclosed in whole or in part for any purpose except for use in the procurement process."

§ 4.1.8.1 The specific information within the proposal in which the Offeror addresses disclosure restriction(s) as stated above, shall not be limited to the title page, but shall also be noted on the individual pages within the document. The Offeror shall mark each page containing confidential information or data it wishes to restrict with the following text: "Use or disclosure of data contained on this page is subject to the restriction(s) set forth on the title page of this proposal."

§ 4.1.9 Note that the Owner shall have the right to duplicate, use, or disclose the data to the extent consistent with the Owner's internal needs in the procurement process. The Owner may, without permission of the Offeror, use, without restriction, information contained in this proposal package if obtained from another source.

#### § 4.1.10 Pre-Proposal Meeting

A pre-proposal meeting and site investigation will be held on **Friday, September 9, 2016 at 10:00am**. The meeting will be held in Room 617 at Gallery Place, 616 H Street, N.W., Sixth Floor, Washington, D.C. 20001. Offerors' participation is encouraged although attendance is not mandatory. The meeting will provide an opportunity for discussion of the Scope of Work.

§ 4.1.10.1 No oral statement made by an Owner's representative during the pre-proposal conference, nor any written record of such oral statements made and subsequently furnished to the Offeror, will be deemed to have the effect of adding to, modifying, or otherwise varying from the written provisions of the invitation for Offers (including, but not limited to specifications, drawings and written amendments to the solicitation). In the event the discussion or questions raised during the pre-proposal conference indicate a need to modify the invitation for Offers, an Amendment to the Solicitation will be issued in writing; any such amendment to the Solicitation must be acknowledged in the same manner and under the same conditions as all other written amendments to an invitation for Offers.

#### § 4.1.11 Site Investigation Period

Arrangements for additional building and site investigation periods will be established at the pre-proposal meeting. All parties entering the building to perform investigations will be required to go through security. No destructive investigation or testing will be allowed. To arrange for the site visit, contact the following person(s):

Monica I. Wilkerson, Esq.  
District of Columbia Courts  
Capital Projects and Facilities Management Division  
E-mail address: [Monica.Wilkerson@dcsc.gov](mailto:Monica.Wilkerson@dcsc.gov)  
Telephone Number: (202) 879-7576  
Facsimile Number: (202) 879-4222

#### § 4.1.12 Written Question Submittal

All questions regarding clarification of Drawings, Specifications or On-site Conditions must be submitted in writing on or before **Wednesday, September 14, 2016, no later than 3:00 pm** to the following contact:

Ms. Monica Wilkerson  
District of Columbia Courts  
Capital Projects and Facilities Management Division  
616 H Street, N.W., Suite 622  
Washington, D.C. 20001

E-mail Address: [Monica.Wilkerson@dcsc.gov](mailto:Monica.Wilkerson@dcsc.gov)  
Phone: (202) 879-7576  
Fax: (202) 879-4222

#### § 4.1.13 Proposal Format

The proposal shall be prepared in two (2) volumes.

#### § 4.1.14 Proposal Assembly

§ 4.1.14.1 The Offeror shall conspicuously mark on the outside of the Proposal Package the name and address of the Offeror(s) and the following:

Solicitation Number: **CPFMD-16-0906**  
*Project Name: Replacement of Motor Control Centers – H. C. Moultrie Courthouse Building (HCMCB) at 500 Indiana Avenue, NW And 510 4<sup>th</sup> Street, NW Washington, DC 20001*  
Proposal due Date and Time: **Wednesday, September 21, 2016, no later than 3:00 pm.**

§ 4.1.14.2 Provide one (1) original and five (5) copies of each of the two (2) submission volumes described below. The volumes will be submitted in loose-leaf three-ring notebooks. At a minimum, the spine and cover of each volume will contain the volume number, volume title, and copy number. The volumes will be tab separated as indicated below.

#### § 4.1.14.3 Volume 1 – Technical Information

§ 4.1.14.3.1 In the first separately bound and labeled volume, include the following:

##### **No pricing information is to be included in Volume 1.**

##### **Tab A – Basic Corporate Information**

Provide basic information about the Offering firm. At a minimum provide:

1. Entity name, address, and contact information.
2. Name and address of Parent Company, if applicable.
3. Type of Entity.
4. DUNS Number.
5. Copy of current license, permit, or registration to transact business (in the District of Columbia) for self-performed scope (if applicable)
6. Statement of percentage of Ownership by Foreign Corporation with interest exceeding five (5) percent.
7. Statement of Authorized Negotiators per Section 6.1 Authorized Negotiators.
8. Explanation and organizational structure of Joint Venture (if applicable).

##### **Tab B – Quality**

**Quality Assurance Program:** Provide a quality assurance program that addresses the issues **specifically related to this project.** Address the submittal process, mock-ups, inspections, pre-installation meetings, etc.

**Quality Control Program:** Provide a project **specific quality control plan for this project.** Address on site inspections, deficiency responses, etc.

**Management and Communication Approach:** Provide a management plan that addresses the issues **specifically related to this project.** Address project communication and implementation, and provide a detailed proposed organizational chart for this project including the roles and responsibilities of each member of the project team down to the Foreman/Superintendent (or equivalent) level. Describe the importance of communication and coordination with the other trades involved with this project.

**Corporate Capabilities:** Provide sufficient information to clearly indicate that your company has the corporate capability and financial resources to staff this project with required materials and skilled labor for the full duration. Reference Section 2.3.1 and 2.3.2.

##### **Tab C – Experience**

**Corporate Project Experience:** Provide historical information on projects located in the DC metro area completed by the firm within the past 10 years, which are similar in size, scope, and value. Address at a minimum, the project description, size, value, delivery date, and contact information for each project.

**Professional References:** Provide three (3) written references from previous customers regarding the performance of the firm on projects of similar size, scope, and value.

**Proposed Project Staff:** Provide information pertaining to proposed Project Managers, Project Engineers, Superintendents, each member listed in the staff organizational chart as needed in Section 4.1.14.3.1 Volume 1 Tab B and other staff members who will have regular interaction with the Owner's management and field personnel on this project. Provide at a minimum, resumes, references, certifications, education, relevant experience (highlight similar projects completed by individual team members), and history with company (if any), etc.

## Tab D – Project Understanding

Restate the project in your own words to include at a minimum, the scope of work, interaction with other contractors, phasing, staging and security considerations. Identify at least two (2) potential risks or issues regarding the success of the project and provide an explanation of a plan to mitigate the risk resulting from each risk or issue, etc.

Identify any other issues (not necessarily phasing related) that are of concern per your review of the contract documents. Provide an explanation of the issues and a plan to mitigate the resulting risk from each. The Owner may have many variables that may affect campus work as described in the project manual. Provide at a minimum, an explanation of your company's plan to deal with: coordination with other contractors, public and political interaction, security, ongoing Owner operations, occasional contractor work hour adjustments, etc.

## Tab E – Schedule

Provide a legible Critical Path Method (CPM) schedule for the project showing a well-developed critical path (with logic indicated) for the completion of the project. The project schedule must include all project activities (not to exceed 14 days on any given activity), show coordination with all major actions, and must indicate the date of Substantial Completion, a date of Ready For Owner Occupancy, and a date of Final Project Completion (as defined below). In addition, provide a written narrative of the schedule.

Substantial Completion is defined as the date when work per the Contract Documents is complete to the point where the DC Courts can fully, safely, and securely commence work in the Project Area. For scheduling purposes the cabling, security, and furniture installations are complete, and the other DC Court vendors (i.e. IT and Telecom) can deliver and install their respective equipment and furnishings to bring this project to a final point where it is ready for full Occupancy.

Ready For Owner Occupancy is defined as the date when the DC Courts vendors are complete (i.e. IT and Telecom) and the Project Area is ready for full Occupancy to meet the necessary DC Court functions.

Final Project Completion is defined as the date when all punch list corrections, project paperwork and close out documentation has been submitted for review, approved, and accepted by the DC Courts.

The Owner will procure a building permit to transfer to the selected Offeror.

In addition, assume the duration between the Substantial Completion date and the Final Project Completion date is no more than 45 calendar days.

Provide at a minimum, a preliminary project site utilization plan and indicate how the plan will change over time as the project progresses.

Provide a copy of the firm's cost control systems and programs.

## Tab F – Scope Clarifications and Exclusions

Provide a list of any Offer or scope clarifications and qualifications that are a part of your offer. (A duplicate copy will be required in Volume 2 – Tab B.)

As stated in Section 1.11.3 of this document, the Owner will be contracting directly with a 3<sup>rd</sup> Party Code Inspection Agency to provide the necessary DCRA required code inspections.

In addition to the list of scope clarifications and qualifications, provide an estimate for the following:

- .1 Proposed number of 3<sup>rd</sup> Party Code (i.e. DCRA) inspections required (if applicable) to complete the project (include all estimated inspections throughout the life-cycle of the project)

Provide a confirmation in the scope clarifications and qualifications that the Contractor will coordinate with the 3<sup>rd</sup> Party Code Inspection Agency.

#### **Tab G – Forms**

Provide executed copies of the following solicitation attachments:

- Attachment A – Anti-Collusion Statement
- Attachment B – Certification of Eligibility
- Attachment C – Certification Regarding A Drug-Free Workplace
- Attachment D – Tax Certification Affidavit
- Attachment E – Release of Claims
- Attachment F – Payment to Subcontractors and Suppliers Certificate
- Attachment G – Ethics in Public Contracting
- Attachment H – Non-Discrimination

#### **§ 4.1.14.4 Volume 2 – Pricing Information**

§ 4.1.14.4.1 In a second separately bound and labeled volume, include the following:

##### **Tab A**

Provide executed copies of the following solicitation attachments:

- Solicitation / Offer / Award Form For Supplies or Services
- Attachment J – Bid/Offer Form

##### **Tab B**

Provide executed copies of the following solicitation attachments:

Attachment K – Bid/Offer Breakdown Sheet (Hard Copy). Provide one separate Attachment K for each of the following item listed below:

- .1 Entire Scope of Work

In addition, provide the following:

1. An electronic copy (in MS Excel) of the completed Bid/Offer Breakdown Sheet, submitted on a Data Compact Disc (Data CD) within this tab section. The following documents described below are to be submitted as separate electronic files on the Data CD.
2. A separate listing of any Allowance items and their values carried within the Offer Breakdown Sheet.
3. A list of any Offer or scope clarifications and qualifications that are a part of your offer. (This is a duplicate copy those submitted in Section 4.1.14.3 Volume 1 – Tab F and must meet the same requirements outlined in Section 4.1.14.3 Volume 1 – Tab F.)

The Offeror shall include all required items described in Section 1.11 of this document.

This electronic form is to be completed by inserting values and information into the cells where appropriate. **DO NOT ADD TO, DELETE, OR CHANGE THE LAYOUT AND FORMATTING OF THE BID/OFFER BREAKDOWN FORM. HOWEVER, OFFERORS ARE RESPONSIBLE FOR CONFIRMING THAT THE FORM ACCURATELY REFLECTS THE OFFEROR'S PROPOSAL AND PRICING.**

##### **Tab C**

Provide executed copies of the following solicitation attachment(s):

Attachment J – Bid/Offer Bond Form

Provide written confirmation that the Offeror is able to complete and execute the following attachments upon award:

Attachment L – Payment Bond Form

Attachment L1 – Performance Bond Form

§ 4.1.15 The Owner reserves the right not to accept any exceptions to this Solicitation.

§ 4.1.16 Proposal Preparation Costs

§ 4.1.16.1 Each Offeror shall bear all costs it incurs in providing responses to this Solicitation and for providing any additional information required by the Owner to facilitate the evaluation process. The successful Offeror shall also bear all costs incurred in conjunction with contract development and negotiation.

§ 4.1.16.2 Each Offeror may propose services that are provided by others, but any service(s) proposed must meet all of the requirements of this Solicitation. If the Offeror's proposal includes services provided by others, the Offeror will be required to act as the prime Contractor for all such items and must assume full responsibility for the procurement, delivery and quality of such services. The Contractor will be considered the sole point of contact with regard to all stipulations, including payment of all charges and the meeting of all requirements of this Solicitation.

§ 4.1.17 Signing Offers and Certifications

Each Offeror must provide a full business address and telephone number of the Offeror and the Offer must BE SIGNED BY THE PERSON OR PERSONS LEGALLY AUTHORIZED TO SIGN CONTRACTS. All correspondence concerning the offer or resulting contract will be mailed to the address referred above on the offer in the absence of written instructions from the Offeror to the contrary. Any offer submitted by a partnership must be signed with the partnership name by a general partner with authority to bind the partnership. Any offer submitted by a corporation, followed by the signature and title of the person having authority to sign for the corporation. Upon request, an Offeror shall provide to the Owner satisfactory evidence of authority of the person signing on behalf of the corporation. If an agent signs an offer, the Offeror shall submit to the Contracting Officer, the agent's authority to bind the Offeror. The Offeror shall complete and sign all Representations and Acknowledgments, as appropriate. Failure to do so may result in the Offer being rejected.

§ 4.2 OFFER SECURITY

§ 4.2.1 Each Offer shall be accompanied by a Surety Offer in amount of 20% of the Offer. The Offeror pledges to enter into a Contract with the Owner on the terms stated in the Offer and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising there under. Should the Offeror refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the Surety Offer shall be forfeited to the Owner as liquidated damages, not as a penalty. The amount of the Surety Offer shall not be forfeited to the Owner in the event the Owner fails to comply with Section 6.2.

§ 4.2.2 The Surety Bond shall be written on the attached Bid/Offer Bond form unless otherwise provided in the Offering Documents. Furthermore, the attorney-in-fact who executes the bond on behalf of the surety shall affix to the Bond a certified and current copy of the power of attorney.

§ 4.2.3 The Owner will have the right to retain the Surety Offer of Offerors to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Offers may be withdrawn or (c) all Offers have been rejected.

§ 4.3 SUBMISSION OF OFFERS

§ 4.3.1 Proposals shall be hand delivered or mailed to the following address:

Ms. Monica Wilkerson  
District of Columbia Courts

Capital Projects and Facilities Management Division  
616 H Street, N.W., Suite 622  
Washington, D.C. 20001

**§ 4.3.2 Proposal Submission Date and Time, Late Submission, Modifications and Withdrawals**

Proposals shall be submitted no later than **Wednesday, September 21, 2016, no later than 3:00 pm**. Proposals, modifications to proposals, and/or requests for withdrawal that are received in the designated Owner's office after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

- .1 The proposal or modification was sent by registered or certified mail no later than the fifth (5<sup>th</sup>) calendar day before the date specified for receipt of offers;
- .2 The proposal or modification was sent by mail and it is determined by the Contracting Officer that the late receipt at the location specified in the solicitation was caused by mishandling by the Owner after receipt; or
- .3 The proposal is the only proposal received.

**§ 4.3.3** The only acceptable evidence to establish the date of a late offer, late modification or late withdrawal sent either by registered or certified mail shall be a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. mail or Canadian Postal Service. If neither postmark shows a legible date, the proposal, modification or withdrawal shall be deemed to have been mailed late. When the postmark shows the date but not the hour, the time is presumed to be the last minute of the date shown. If no date is shown in the postmark, the proposal shall be considered late unless the Offerer can furnish evidence from the postal authorities of timely mailing.

**§ 4.3.4** A late proposal, late request for modification or late request for withdrawal shall not be considered, except as provided in this section.

**§ 4.3.5** A late modification of a successful proposal which makes its terms more favorable to the Owner shall be considered at any time it is received and may be accepted.

**§ 4.3.6** A late proposal, late modification or late withdrawal of the Offer that is not considered shall be held unopened, unless opened for identification, until after award and then retained with unsuccessful Offers resulting from this Solicitation.

**§ 4.3.7** The Offeror shall assume full responsibility for timely delivery at the location designated for receipt of Offers.

**§ 4.3.8** Oral, telephonic, telegraphic, facsimile or other electronically transmitted Offers will not be considered.

**§ 4.4 MODIFICATION OR WITHDRAWAL OF OFFER**

**§ 4.4.1** An Offer may not be modified, withdrawn or canceled by the Offeror after it has been submitted and each Offeror so agrees in submitting an Offer.

**§ 4.4.2** Prior to the time and date designated for receipt of Offers, an Offer submitted may be modified or withdrawn by notice to the party receiving Offers at the place designated for receipt of Offers. Such notice shall be in writing. Written confirmation by the Offeror shall be received, and date- and time-stamped by the receiving party on or before the date and time set for receipt of Offers. A change shall be so worded as not to reveal the amount of the original Offer.

**§ 4.4.3** Withdrawn Offers may be resubmitted up to the date and time designated for the receipt of Offers provided that they are then fully in conformance with this Solicitation.

**§ 4.4.4** Offer security shall be in an amount sufficient for the Offer as resubmitted.

**ARTICLE 5 CONSIDERATION OF OFFERS**

## § 5.1 OPENING OF OFFERS

Offers will not be publicly opened.

## § 5.2 REJECTION OF OFFERS

The Owner shall have the right to reject any or all Offers. An Offer not accompanied by a required Offer Security or by other data required by the Offering Documents, or an Offer that is in any way incomplete or irregular is subject to rejection.

## § 5.3 ACCEPTANCE OF OFFER (AWARD)

§ 5.3.1 It is the intent of the Owner to award a Contract to the Offeror whose proposal, upon evaluation, provides the best value, provided the Offer has been submitted in accordance with the requirements of the Offering Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in an Offer received and to accept the Offer which, in the Owner's judgment, is in the Owner's own best interests.

§ 5.3.2 The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Offering Documents, and to select the Offeror on the basis of the evaluation criteria provided.

§ 5.3.3 The Owner intends to award a contract for the services required to the Offeror whose proposal is determined to be most advantageous to the Court, taking into consideration the evaluation factor set forth in Section 5.4.

§ 5.3.4 The Owner may award a contract on the basis of initial offers received, without discussion. Therefore, each initial offer should be the Offeror's best terms from a standpoint of price, technical, and other factors.

§ 5.3.5 The Offeror to whom the award is made will be notified by the Contracting Officer at the earliest possible date.

§ 5.3.6 The Offeror to whom the award is made must, when required, enter into a written contract with satisfactory security within the period specified, or if no period is specified, within ten (10) days after the prescribed forms are presented for signature.

## § 5.4 EVALUATION CRITERIA

§ 5.4.1 The following criteria will be used to evaluate the proposals presented by the Offerors. **This is a Best Value Solicitation.**

### § 5.4.1.1 Volume 1 – Technical Information

**Contractor's Quality related to the project requirements** **20 pts**

Quality Assurance Program - project specific: 5 points

Quality Control Program - project specific: 5 points

Management and Communication Approach to the project: 5 points

Corporate Capabilities: 5 points

**Contractor's experience related to the project requirements** **10 pts**

History performing similar projects in scope and value in the DC metro area: 4 points

Firm's professional references: 2 points

Contractor's proposed management team including qualifications and references: 4 points

**Contractors understanding of the project requirements and variables, and coordination efforts:** **30 pts**

Understanding of the scope of the project along with a comprehensive and organized response to the project requirements: 15 points

Detailed description of Contractor's program to assist the Owner in necessary coordination between the project and other related projects, existing conditions, or future conditions; for example, this may include,

but not limited to, the associated coordination efforts of a major change in the project scope of work that directly impacts an existing condition that is not within the project limits: 15 points

**Contractors Proposed Project Schedule**

**10 pts**

Least amount of calendar days to finish logically supported in the CPM schedule and narrative: 6 points

Clarity of the Proposed Phasing and Site Utilization Plans: 3 points

Contractor's Cost Controls: 1 points

**§ 5.4.1.2 Volume 2 – Pricing Information**

**Price**

**30 pts**

Cost of the overall project.

Cost of alternates, if applicable

§ 5.4.1.2.1 The price points will be determined as follows:

Price evaluation will account for up to 30 points of the total score. The Offeror with the lowest complete total price will receive the maximum points. All other proposals will receive a proportionately lower total score.

§ 5.4.1.3 Total points for the technical and price proposals will range from 0 to 100 points.

**§ 5.5 CANCELLATION OF AWARD**

The Owner reserves the right, without liability to the Owner, to cancel the award of any contract at any time prior to the approval of a formal written contract signed by the Contracting Officer of the District of Columbia Courts.

**§ 5.6 OFFICIAL OFFER**

Offers signed by an agent shall be accompanied by evidence of that agent's authority unless that evidence has been previously furnished to the Contracting Officer as defined in 4.1.17.

**§ 5.7 RETENTION OF PROPOSALS**

All Proposal documents shall be the property of the Owner and retained by the Owner, and therefore will not be returned to the Offerors. One (1) copy of each Proposal shall be retained for official files and will become a public record after the award and open to public inspection. It is understood that the proposal will become a part of the official file on this matter without obligation on the part of the Owner except as to the disclosure restrictions contained herein.

**§ 5.8 PUBLIC DISCLOSURE**

Trade secrets or proprietary information submitted by an Offeror in connection with procurement shall not be subject to public disclosure under the District of Columbia Freedom of Information Act (FOIA). This Act is not applicable to the Owner. However, the Offeror must invoke the protection of this section prior to or upon submission of the data or other materials, must identify the specific area or scope of data or other materials to be protected, and state the reasons why protection is necessary. A blanket proscription that the Offeror's entire Proposal is proprietary will have no effect whatsoever.

**§ 5.9 ERRORS IN OFFERS**

Offerors shall fully inform themselves as to all information and requirements contained in the Solicitation. Failure to do so will be at the Offeror's risk, in the event of a discrepancy between the unit price and the extended price, the unit price shall govern.

**§ 5.10 PROTESTS**

§ 5.10.1 Any aggrieved person may protest this Solicitation, Award, or Proposed Contract Award in accordance with Chapter 8 of the Procurement Guidelines of the District of Columbia Courts. Protest shall be filed in writing, within ten (10) working days after the basis of the protest is known (or should have been known); whichever is earlier with the Contracting Officer (as defined in Article 7 of the AIA 101 included in this solicitation) at:

Dr. Cheryl Bailey  
District of Columbia Courts  
Capital Projects and Facilities Management Division  
616 H Street, NW, Suite 622

Washington, D.C. 20001

§ 5.10.2 A protest shall include the following:

1. Name, address and telephone number of the protester;
2. Solicitation (CPFMD) or contract number;
3. Detailed statement of the legal and factual grounds for the protest including copies of relevant documents;
4. Request for a ruling by the Contracting Officer; and
5. Statement as to the form of relief requested.

## ARTICLE 6 POST-OFFER INFORMATION

### § 6.1 AUTHORIZED NEGOTIATORS

The Offeror shall include in its Proposal a statement indicating those persons authorized to negotiate on the Offeror's behalf with the Owner in connection with this Request for Proposals: (list names, titles, and telephone numbers of the authorized negotiators).

### § 6.2 ACCEPTANCE PERIOD

The Offeror agrees, if its Offer is accepted within one hundred and twenty (120) days from the date specified in this Solicitation for the Submission of Proposals, or if its Final Proposal Revision (FPR), if required, is accepted within ninety (90) days from the date specified for submission, to furnish services at the price stated in the Price Proposal delivered or performed at the designated place within the time specified in this Solicitation.

### § 6.3 SUBMITTALS

§ 6.3.1 The Offeror shall, as soon as practicable or as stipulated in the Offering Documents, after notification of selection for the award of a Contract, furnish to the Owner:

§ 6.3.1.1 A designation of the Work to be performed with the Offeror's own forces;

§ 6.3.1.2 Names of the manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the Work;

§ 6.3.1.3 Names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

§ 6.3.2 The Offeror will be required to establish to the satisfaction of the Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Offering Documents.

§ 6.3.3 Prior to the execution of the Contract, the Owner will notify the Offeror in writing if the Owner, after due investigation, has reasonable objection to a person or entity proposed by the Offeror. If the Owner has reasonable objection to a proposed person or entity, the Offeror may, at the Offeror's option, (1) withdraw the Offer or (2) submit an acceptable substitute person or entity with an adjustment in the Base Offer or Alternate Offer to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted Offer price or disqualify the Offeror. In the event of either withdrawal or disqualification, Offer security will not be forfeited.

§ 6.3.4 Persons and entities proposed by the Offeror and to whom the Owner have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner.

## ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

### § 7.1 BOND REQUIREMENTS

§ 7.1.1 If stipulated in the Offering Documents, the Offeror shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising there under. Bonds may be secured through the Offeror's usual sources.

§ 7.1.2 If the furnishing of such bonds is stipulated in the Offering Documents, the cost shall be included in the Offer. If the furnishing of such bonds is required after receipt of Offers and before execution of the Contract, the cost of such bonds shall be added to the Offer in determining the Contract Sum.

§ 7.1.3 If the Owner requires that bonds be secured from other than the Offeror's usual sources, changes in cost will be adjusted as provided in the Contract Documents.

## § 7.2 TIME OF DELIVERY AND FORM OF BONDS

§ 7.2.1 The Offeror shall deliver the required bonds to the Owner not later than three (3) days following the date of execution of the Contract. If the Work is to be commenced prior thereto in response to a letter of intent, the Offeror shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

§ 7.2.2 Unless otherwise provided, the bonds shall be written on the attached Bond Forms. Both bonds shall be written in the amount of the Contract Sum.

§ 7.2.3 The bonds shall be dated on or after the date of the Contract.

§ 7.2.4 The Offeror shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

## ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

§ 8.1 Unless otherwise required in the Offering Documents, the Agreement for the Work will be written on AIA Document A101, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Firm Fixed Price (FFP).

## ARTICLE 9 SPECIAL INSTRUCTIONS AND REQUIREMENTS

§ 9.1 The Owner creates a unique environment for Contractors to perform Work. There are levels of security that can hinder access to all areas of the building, such as, high-traffic public areas, cell blocks, and secure areas for Judges and Jurors. Working in a building that includes many different levels of security can be challenging. The Contractor is required to obtain clearances for their project team and their subcontractors, and obtain permission to work in secure areas. The processes to obtain clearances and permissions takes time, but Contractors are still required to maintain their prescribed schedules. Clearances and background checks can take up to four (4) weeks to process. Due to the DC Court's business operations, workers who have obtained clearances in other government facilities may not be cleared to work in the Courthouse. The requirement for Contractor personnel to obtain a security clearance is mandatory to work on the DC Courts' premise. If the procedures to acquire the security clearance change, the Contracting Officer will notify the Contractor of any new requirements as soon as practicable. The Contractor shall satisfy security clearance requirements as designated by the Contracting Officer. Contractors should understand that some secure areas require work to be performed during off hours or with the accompaniment of Court Security Officers (CSO's). These secure areas include the Clerk of the Court office area, the Executive Office area, Judges' Chambers, and U.S. Marshals Space. The CSO's and U.S. Marshals can be retained for use by the Contractor in these instances.

§ 10.1 Under the terms of this agreement the contract is regarded as binding with regard to all terms & intent.