

## **GENERAL TERMS AND CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

### **ARTICLE 1 GENERAL PROVISIONS**

#### **1.1 BASIC DEFINITIONS**

##### **1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of the DC Courts Solicitation which includes all applicable Attachments found in “Section J: Attachments. 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 DC Courts and a Subcontractor or Sub-subcontractor except as set forth in paragraphs 5.3 and 5.4, (3) between the DC Courts and Architect or (4) between any persons or entities other than the DC Courts 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 DC Courts 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 specifications to be issued under the terms of this contract which are included as Appendix 9 of this solicitation.

**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 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.

### **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.

## **1.5 EXECUTION OF CONTRACT DOCUMENTS**

**1.5.1** The Contract Documents shall be signed by the DC Courts 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 DC Courts 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 DC Courts 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 DC COURTS 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 DC Courts 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 DC Courts. 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 DC Courts 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 DC Courts 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 DC COURTS**

### **2.1 GENERAL**

### **2.2 INFORMATION AND SERVICES REQUIRED OF THE DC COURTS**

**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 DC Courts 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 DC Courts by the Contract Documents shall be furnished by the DC Courts with reasonable promptness. Any other information or services relevant to the Contractor's performance of the work under the DC Courts' control shall be furnished by the DC Courts 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 DC COURTS' 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 DC Courts 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 DC Courts to stop the work shall not give rise to a duty on the part of the DC Courts 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 DC Courts may terminate the right of the Contractor to proceed.

## **2.4 DC COURTS'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 DC Courts to commence and continue correction of such default or neglect with diligence and promptness, the DC Courts may, without prejudice to other remedies the DC Courts 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 DC Courts expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the DC Courts 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 DC Courts.

## **2.5 DC COURTS'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 DC Courts (i) granted in the Contract Documents, (ii) at law or (iii) in equity.

**2.5.2** In no event shall the DC Courts 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 DC Courts 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 DC Courts, 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 DC Courts 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 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 DC Courts and Construction Manager as a request for information in such form as the DC Courts 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 DC Courts.

**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 DC Courts.

**3.2.2** Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the DC Courts 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 DC Courts.

**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 DC Courts as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the DC Courts 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 DC Courts 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 DC Courts 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 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 DC Courts, 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 DC Courts 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 DC Courts of all materials furnished by the DC Courts 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 DC Courts 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 DC Courts 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 final acceptance by the DC Courts, any repairs, replacements or adjustments made necessary because of such defects will be made promptly without cost to and to the satisfaction of the DC Courts.

**3.5.3** The Contractor agrees to assign to the DC Courts 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.

**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 DC Courts 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 DC Courts requires that the Contractor follows the regulations set in the Title 9. Taxation: Chapter 4 - Sales and Use Taxes. See Attachment J.17 (Tax Regulations).

**3.6.5** The District of Columbia Courts provide a Tax Exemption Certificate for use by the Contractor. See Attachment J.18 (DC Courts Tax Exemption Certificate).

### **3.7 PERMITS, FEES AND NOTICES**

**3.7.1** The Contractor shall, without additional expense to the DC Courts, 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 DC Courts 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 DC Courts 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 DC Courts.

**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 DC Courts 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 DC Courts, 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 DC Courts may direct, 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 DC Courts 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 DC Courts 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 DC Courts. However, the Contractor will promptly remove from the project any of the Contractor's staff to whom the DC Courts 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 DC Courts 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 Specifications found in Attachment J.23.

**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 DC Courts and Architect.

### **3.11 DOCUMENTS AND SAMPLES AT THE SITE**

**3.11.1** The Contractor shall maintain at the site for the DC Courts 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 and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the DC Courts 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 DC Courts 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.

**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 DC Courts 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 DC Courts 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 DC Courts, 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 DC Courts, 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 DC Courts or a separate contractor except with written consent of the DC Courts and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the DC Courts 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 DC Courts 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 DC Courts, Construction Manager, DC Courts Representative, and Architect access to the work in preparation and progress wherever located.

### **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 DC Courts, 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 DC Courts, 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 DC Courts or an irrevocable royalty free license for the DC Courts 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 DC Courts. The DC Courts 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 there under. All reports, programs, manuals, discs, tapes, card decks, listing, and other materials prepared by or worked upon by the Contractor's

employees under this Agreement shall belong exclusively to the DC Courts. Contractor agrees not to publish or disclose any material first prepared under this Agreement without prior permission of the DC Courts.

**3.17.3** Contractor agrees to give the DC Courts 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 DC Courts, DC Courts 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 DC Courts 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 DC Courts.

**3.18.2.2** The Contractor shall indemnify and save harmless the DC Courts 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 DC Courts 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 DC COURTS'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. The Construction Manager acts as an extension of staff to the DC Courts.

**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 Manager" 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 DC Courts.

**4.1.1.4** If the employment of the Construction Manager is terminated, the DC Courts 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 DC Courts, Contractor and Architect. Consent shall not be unreasonably withheld.

**4.1.2.3** If the employment of the Architect is terminated, the DC Courts 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 (if applicable) shall be representatives of and shall advise and consult with the DC Courts 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 DC Courts, shall visit the site at intervals appropriate to the stage of the Contractor's operations to:

1. keep the DC Courts informed of the progress and quality of the work completed;
2. guard the DC Courts against defects and deficiencies in the Work; and;
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 DC Courts 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 DC Courts 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 DC Courts

**4.2.5** The Construction Manager, with the recommendation of the Architect (if applicable), 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 DC Courts, 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 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 DC Courts 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 DC Courts will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

**4.2.9** If the DC Courts 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 DC Courts 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 DC Courts. 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 DC Courts 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 DC Courts 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 30 days after occurrence of the event giving rise to such Claim or within 30 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 DC Courts or DC Courts 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 DC Courts shall continue to make payments in accordance with the Contract Documents.

**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 DC Courts 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 DC Courts 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 DC Courts Representative shall so notify the DC Courts and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the DC Courts 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 DC Courts 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 inherent in the nature of the work 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 DC Courts 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 DC Courts, (5) termination of the Contract by the DC Courts, (6) DC Courts 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 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 DC Courts 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.

**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 DC Courts 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 DC Courts 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 DC Courts for loss of use of the work due to delay. These liquidated damages are only to compensate the DC Courts for damages for loss of use of the work due to delay in completion of the work, and do not bar the DC Courts 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 DC Courts 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 DC Courts actual losses, that they are unreasonable, or otherwise.
2. without waiving any of its rights to liquidated damages, the DC Courts 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 DC Courts.

**4.3.11.1** Limitation on Damages for Delays. The DC Courts 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 DC Courts, its agents, and employees and is solely due to causes within their control (“DC Courts-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.

**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 (Attachment J.2).

### **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 DC Courts. 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 DC Courts 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 DC Courts 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 DC Courts, the Contractor shall remain liable to the DC Courts 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 DC Courts employees or agents. The Contractor and its employees shall be considered in an independent contract relationship with the DC Courts 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 DC Courts 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 DC Courts or the Architect and Construction Manager, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the DC Courts 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 DC Courts, 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 DC Courts has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the DC Courts 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 DC Courts 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 DC Courts, Construction Manager, and Architect. Each subcontract agreement shall preserve and protect the rights of the DC Courts, 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 DC Courts. 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 DC Courts provided that:

1. assignments are effective only after termination of the Contract by the DC Courts for cause pursuant to Section 14.2 and only for those subcontract agreements which the DC Courts 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 DC Courts shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the DC Courts exercise of any rights under this conditional assignment.

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

**5.5.1** The DC Courts requires that the Contractor follows the labor standards set in the Davis-Bacon Act (40 U.S.C. § 3142 et seq.) The DC Courts requires that the Contractor use the current attached Davis-Bacon Labor Rates for the duration of the project. See Attachment J.19 (Davis-Bacon Labor Rates).

**5.5.2** The DC Courts requires that the Contractor follows the standards set the Contract Work Hours and Safety Standards Act – Overtime Compensation (40 USC § 3701 et seq). See Attachment J.20 (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 DC COURTS OR BY SEPARATE CONTRACTORS**

### **6.1 DC COURTS'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**6.1.1** The DC Courts reserves the right to perform construction or operations related to the Project with the DC Courts 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 DC Courts, 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 DC Courts-Contractor Agreement.

**6.1.3** The DC Courts shall provide for coordination of the activities of the DC Courts 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 DC Courts 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 DC Courts until subsequently revised.

**6.1.4** Unless otherwise provided in the Contract Documents, when the DC Courts performs construction or operations related to the Project with the DC Courts own forces, the DC Courts 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).

### **6.2 MUTUAL RESPONSIBILITY**

**6.2.1** The Contractor shall afford the DC Courts 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 DC Courts or a separate contractor, the Contractor shall, prior to proceeding with that portion of the work, promptly report to the DC Courts 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 DC Courts 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 DC Courts shall be reimbursed by the Contractor for costs incurred by the DC Courts which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The

DC Courts 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 DC Courts or separate contractors as provided in Section 10.2.5.

**6.2.5** The DC Courts 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 DC COURTS'S RIGHT TO CLEAN UP**

**6.3.1** If a dispute arises among the Contractor, separate contractors and the DC Courts as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the DC Courts 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 DC Courts (with recommendations from the Construction Manager and Architect) and the Contractor; a Construction Change Directive requires agreement by the DC Courts, 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 DC Courts and signed by the DC Courts and Contractor, stating their agreement upon all of the following:

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 made 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 excuses 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 DC Courts, 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 DC Courts.

**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 J.13). The fee percentage shall be based only on the direct costs from the Offer Breakdown (Attachment J.13).

**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 DC Courts 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 DC Courts 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.

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

**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 DC Courts 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 DC Courts 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 DC Courts 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 DC Courts, 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.

**7.3.9** When the DC Courts 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 DC Courts 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 DC Courts.

**8.1.4** The date of Final Completion is the date determined by the DC Courts.

**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 DC Courts 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 DC Courts, the Contractor shall notify the DC Courts 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 DC Courts or DC Courts consultant, or of an employee of either; or of a separate contractor employed by the DC Courts; 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 DC Courts 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.

**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 Contract and, including authorized adjustments, is the total amount payable by the DC Courts 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 DC Courts 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 DC Courts, 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 DC Courts an itemized Application for Payment (Attachment J.22) 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 DC Courts 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 DC Courts, 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 DC Courts to establish the DC Courts title to such materials and equipment or otherwise protect the DC Courts 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 DC Courts 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 DC Courts 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 DC Courts receipt of the Contractor's Application for Payment, the DC Courts will either issue a Certificate for Payment, with a copy to the Contractor, for such amount as the DC Courts determines is 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 DC Courts, based on the DC Courts 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 DC Courts 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 DC Courts, 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 DC Courts, 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 DC Courts 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 DC Courts 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 DC Courts or DC Courts consultant, or of an employee of either, or of a separate contractor employed by the DC Courts, 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 DC Courts 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 DC Courts, 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 DC Courts 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 DC Courts with a release of all claims against the DC Courts 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.

## **9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**9.5.1** The DC Courts may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the DC Courts. If the DC Courts is unable to certify payment in the amount of the Application, the DC Courts will notify the Contractor and DC Courts as provided in Section 9.4.1. If the Contractor and DC Courts cannot agree on a revised amount, the DC Courts will promptly issue a Certificate for Payment for the amount for which the Construction Manager is able to make such representations. The DC Courts 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 DC Courts opinion to protect the DC Courts 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 DC Courts 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 DC Courts 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 anticipated delays; 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 DC Courts has issued a Certificate for Payment, the DC Courts 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 J.8], upon receipt of payment from the DC Courts, 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 DC Courts 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 DC Courts on account of portions of the work done by such Subcontractor.

**9.6.4** Neither the DC Courts, Construction Manager, nor Architect shall have an obligation to pay nor 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 DC Courts shall not constitute acceptance of work not in accordance with the Contract Documents.

**9.6.7** Unless the Contractor provides the DC Courts 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 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 DC Courts. 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 DC Courts 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 DC Courts does not pay the Contractor within seven (7) days after the date established in the Contract Documents the amount certified by the DC Courts or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the DC Courts, 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 DC Courts can fully, safely, and securely commence their work in the Project Area. The cabling, security, and furniture installations are complete. The DC Courts 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 DC Courts agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the DC Courts 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 DC Courts, Architect, and Construction Manager will make an inspection to determine whether the work or designated portion thereof is substantially complete. If the DC Courts, Architect, 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 DC Courts 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 DC Courts. In such case, the Contractor shall then submit a request for another inspection by the DC Courts, Architect 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 DC Courts 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 DC Courts and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the DC Courts 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.

## **9.9 PARTIAL OCCUPANCY OR USE**

**9.9.1** The DC Courts 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 DC Courts 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 DC Courts 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 DC Courts and Contractor.

**9.9.2** Immediately prior to such partial occupancy or use, the DC Courts, 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 DC Courts and Construction Manager will promptly make such inspection and, when the DC Courts and Construction Manager finds the work acceptable under the Contract Documents and the Contract fully performed, the DC Courts 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 DC Courts 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 DC Courts (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the DC Courts or the DC Courts property might be responsible or encumbered (less amounts withheld by DC Courts) 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 DC Courts, (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 DC Courts, 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 DC Courts. If a Subcontractor refuses to furnish a release or waiver required by the DC Courts, the Contractor may furnish a bond satisfactory to the DC Courts to indemnify the DC Courts against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the DC Courts all money that the DC Courts 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 DC Courts so confirms, the DC Courts shall, upon application by the Contractor and certification by the DC Courts, 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 portion of the work fully completed and accepted shall be submitted by the Contractor to the DC Courts 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 DC Courts 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 DC Courts 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 DC Courts 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 DC Courts. 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 DC Courts, 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 DC Courts can fully, safely, and securely commence their Work in the Project Area, the Contractor, its agents and subcontractors shall be liable to the DC Courts 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 DC Courts 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 Article 9.11 of the General Conditions (Attachment J.2).

**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 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 DC Courts for liquidated damages in the amount of \$2,000.00 per day in excess of 45calendar 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 DC Courts; 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 DC Courts shall grant a further period of time prior to the expiration of such twenty-one (21) days, notify the DC Courts, in writing, of the causes of the delays. The DC Courts 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 DC Courts.

**9.11.8** In addition to Liquidated Damages, the Contractor shall pay to the DC Courts 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.

**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 DC Courts review.

**10.1.7** Special precautions shall be exercised to prevent use of, or access to, Contractors 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 DC Courts 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 DC Courts, 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 DC Courts 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.

## **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 DC Courts. 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 DC Courts shall meet to identify the entirety of the affected area and review

containment and remedial action. It is understood that DC Courts 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 DC Courts 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 DC Courts 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 DC Courtship, 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.

**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 DC Courts. All insurance shall set forth the DC Courts as an additional insured. The policies of Insurance shall provide for at least thirty (30) day written notice to the DC Courts 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 DC Courts shall be filed with the DC Courts 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 DC Courts. 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 DC Courts may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the DC Courts, Contractor's and Construction Manager's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the DC Courts 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 DC Courts. 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 DC Courts, 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 DC Courts shall not require the Contractor to include the DC Courts, Construction Manager or other persons or entities as additional insured on the Contractor's Liability Insurance coverage under Section 11.1.

## **11.3 PERFORMANCE BOND AND PAYMENT BOND**

**11.3.1** The DC Courts 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 DC Courts request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the DC Courts, be uncovered for the DC Courts 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 DC Courts has not specifically requested to examine prior to it being covered, the DC Courts 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 DC Courts 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 DC Courts or a separate contractor in which event the DC Courts 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 DC Courts 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 DC Courts 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 DC Courts during the Contract performance and for as long as the Contract requires.

**12.2.1.3** The DC Courts 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 DC Courts shall perform inspections and test in a manner that will not unduly delay the work.

**12.2.1.4** If the DC Courts 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 DC Courts may require the Contractor to perform the services again in conformity with the contract requirements, at no increase in the Contract Amount. When the defects in services cannot be corrected by re-performance, the DC Courts 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 DC Courts may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the DC Courts that is directly related to the performance of such service or (2) terminate the contract for default.

### **2.2.2 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 DC Courts to do so unless the DC Courts has previously given the Contractor a written acceptance of such condition. The DC Courts shall give such notice promptly after discovery of the condition. During the one-year period for correction of work, if the DC Courts fails to notify the Contractor and give the Contractor an opportunity to make the correction, the DC Courts 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 DC Courts or Architect, the DC Courts 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 DC Courts.

**12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the DC Courts 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 DC Courts prefers to accept work which is not in accordance with the requirements of the Contract Documents, the DC Courts 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.

## **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 DC Courts 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 DC Courts 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 DC Courts, 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 DC Courts, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the DC Courts and Architect timely notice of when and where tests and inspections are to be made so that the DC Courts and Architect may be present for such procedures. The DC Courts 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, DC Courts 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 DC Courts, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the DC Courts, and the Contractor shall give timely notice to the DC Courts and Construction Manager of when and where tests and inspections are to be made so that the DC Courts and Construction Manager may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the DC Courts expense.

**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 DC Courts and Architect.

**13.5.5** If the DC Courts and Architect is to observe tests, inspections or approvals required by the Contract Documents, the DC Courts 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.

### **3.7 NON-DISCRIMINATION**

**3.7.1** 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 DC Courts to support the Contractors adherence to this section.

**13.7.2** The DC Courts requires that the Contractor follows the policies set forth in the District of Columbia Courts Non-Discrimination document. See Attachment J.10 (District of Columbia Non-Discrimination).

### **13.8 SEXUAL HARASSMENT**

**13.8.1** The DC Courts requires that the Contractor follows the policies set forth in the District of Columbia Courts Sexual Harassment Policy. See Attachment J.21 (District of Columbia Courts Sexual Harassment Policy).

### **13.9 ETHICS IN PUBLIC CONTRACTING**

**13.9.1** The DC Courts requires that the Contractor follows the policies set forth in the District of Columbia Courts Ethics in Public Contracting document. See Attachment J.9 (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.

## **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 DC Courts has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
4. The DC Courts 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 DC Courts 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 DC Courts and Construction Manager, terminate the Contract and recover from the DC Courts 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 DC Courts has persistently failed to fulfill the DC Courts 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 DC Courts, terminate the Contract and recover from the DC Courts as provided in Section 14.1.3.

## **14.2 TERMINATION BY THE DC COURTS FOR CAUSE**

**14.2.1** The DC Courts 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.

**14.2.2** When any of the above reasons exist, the DC Courts, 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 DC Courts 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 DC Courts may deem expedient. Upon request of the Contractor, the DC Courts shall furnish to the Contractor a detailed accounting of the costs incurred by the DC Courts in finishing the work.

**14.2.3** When the DC Courts 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 DC Courts 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 DC Courts. The amount to be paid to the Contractor or DC Courts, 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 DC COURTS FOR CONVENIENCE**

**14.3.1** The DC Courts 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 DC Courts 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 DC COURTS FOR CONVENIENCE**

**14.4.1** The DC Courts may, at any time, terminate the Contract for the DC Courts convenience and without cause.

**14.4.2** Upon receipt of written notice from the DC Courts of such termination for the DC Courts convenience, the Contractor shall:

1. Cease operations as directed by the DC Courts in the notice;
2. take actions necessary, or that the DC Courts 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 DC Courts 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.

## **ARTICLE 15 DISCLOSURE OF INFORMATION**

**15.1** Any information made available by the DC Courts 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 DC Courts 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 DC Courts 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 DC Courts 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 DC Courts 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 therefrom, and any contract made by the Contracting Officer or any DC Courts employee authorized to execute contracts in which they or an employee of the DC Courts will be personally interested shall be void, and no payment shall be made thereon.

by the DC Courts 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 DC Courts 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 DC Courts that there is a compelling reason for contracting with the employee, such as when the DC Courts 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 DC Courts projects with any labor, materials, tools, equipment, supplies or supervision scheduled for the Contract until all work under the Contract has been completed. Contract materials used for any unauthorized purpose shall be subtracted from Contract amount.

## **ARTICLE 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 DC Courts 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 DC Courts 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.