Attachment L

CONSTRUCTION AGREEMENT

FOR
INSTALLATION OF IT, AUDIO VISUAL & BROADCAST SYSTEMS FOR THE OFFICE OF CABLE TELEVISION HEADQUARTERS

BY AND BETWEEN

THE DEPARTMENT OF GENERAL SERVICES

AND

TBD

DCAM-13-CS-0171

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CONSTRUCTION AGREEMENT
INTALLATIONOF IT, AUDIO VISUAL & BROADCAST SYSTEMS FOR THE OFFICE OF CABLE TELEVISION HEADQUARTERS
DCAM-13-CS-0171

THIS AGREEMENT ("Agreement") is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the "Department" or "DGS") and _____, duly organized under the laws of the **DISTRICT OF COLUMBIA**, and with a place of business at _____ (the "Contractor").

WITNESSETH:

WHEREAS, the Department requires installation of IT, Telecom, Lighting, Audio Visual and Broadcast Systems for the Office of Cable Television Headquarters located at 1899 9th Street , NE, Washington, DC 20018 (the "Project");

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

WHEREAS, the Department requires that the Project be completed no later than one hundred fifty (150) calendar days from the date specified in the written Notice to Proceed (the "Substantial Completion Date").

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

ARTICLE 1
GENERAL PROVISIONS

Section 1.1 **Relationship of Parties.** The Contractor accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Contractor's reasonable skill and judgment and to cooperate with the Project Manager (PM) in furthering the interests of the Department. The Contractor shall use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Department. The Department shall endeavor to promote harmony and cooperation among the Department, Contractor, PM, and other persons or entities employed by the Department for the Project. In performing its duties under this Contract, the Contractor shall at all times use the standard of care used by Contractors that renovate or construct facilities such as the Project in large, urban areas. Whenever the term "competent" is used herein to describe the Contractor's actions or duties, that term shall refer to the level of competence customarily possessed by those Contractors that renovate or construct facilities such as the Project in large, urban areas.

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Section 1.2 **Project Description.** **Exhibit A** ("the Work") provides a general description of the Project. The Project consists of installation of IT, Telecom, Lighting, Audio Visual and Broadcast Systems for the Office of Cable Television Headquarters located at 1899 9th Street, NE, Washington, DC.

Section 1.3 **PM.** The PM shall provide certain program management functions. The PM shall, at all times, act solely for the benefit of the Department, not the Contractor. The Contractor acknowledges that the PM is not authorized to modify any of the rights or obligations of the Department or the Contractor pursuant to this Contract, or to issue Change Orders or Change Directives.

Section 1.4 **General Description of Contractor's Duties.** The Contractor shall perform the services described in Articles 3 and 4. The Contractor shall supply and furnish at the location where the Work is to be performed all labor, materials, equipment, tools, services, and supervision, and shall bear all items of expense, necessary to complete and satisfactorily perform this Contract, except such items that the Department, in this Contract, specifically agrees to supply or furnish to or for the use of Contractor. Any labor, materials, equipment, tools, services or supervision not specifically described in this Contract, but which may be fairly implied as required thereby or necessary to properly complete the Contract Work, shall be deemed within the scope of the Contract Work and shall be provided by Contractor at Contractor's sole expense.

ARTICLE 2
(Intentionally Omitted)

ARTICLE 3
LUMP SUM PRICE

Section 3.1 **Lump Sum Price.** The Contractor shall be paid a lump sum price of _____dollars **($_____)** (such amount, the "Lump Sum Price") to Fully Complete the Project.

Section 3.2 **Certain Work Included in the Lump Sum Price.** The Contractor acknowledges and understands that the Lump Sum Price is based on the Drawings & Specifications listed in **Exhibit A**. It is understood and agreed that the Lump Sum Price represents the Contractor's offer to Fully Complete the Project. The parties acknowledge and agree that it is their intent to have the Contractor to construct and deliver a fully functional facility as contemplated in the Bid Set for the Lump Sum Price and consistent with the Project Schedule. In furtherance of such intent, the Contractor hereby assumes the risks associated with and shall be responsible for (i) any changes in market conditions that affect the cost of labor or materials; (ii) coordination issues between the drawings; (iii) elements of work not shown on the Bid Set, but which are reasonably inferable from the Bid Set; (iv) cost associated with acceleration of the work and expediting of materials necessary to meet the Project Schedule which are the result of anything other than an Excusable Delay; and (v) the risk of subcontractor default or non-performance. It is understood and agreed by the parties that items (i) through (v)

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listed in the preceding sentence are not intended to be an exclusive list of the risks assumed by the Contractor and that such items represent a partial list of the risks assumed by the Contractor.

Section 3.3 **Review of Lump Sum Drawings & Specifications.** The Department has selected the Contractor because of its special expertise in constructing similar projects. Before agreeing to the Lump Sum Price, the Contractor reviewed the Bid Set for accuracy, constructability and completeness and was required to bring such deficiencies to the attention of the Department and its Architect/Engineer to address any such deficiencies. To the extent that any such deficiencies in the Lump Sum Drawings & Specifications could have been identified by such review by a competent Contractor, such deficiencies shall not be the basis for a change in the Lump Sum Price or delaying the Project Schedule.

Section 3.3.1 During the course of the Work, should any errors, omissions, ambiguities or discrepancies be found on the Lump Sum Drawings or in the Specifications, or should there be found any discrepancies between the Drawings and the Specifications to which Contractor has failed to call attention before agreeing to the Lump Sum Price, the Contractor shall bring any such errors, omissions, ambiguities or discrepancies to the attention of Department, and the Department will interpret the intent of the Drawings and Specifications. Contractor hereby agrees to abide by and to carry out the Work in accordance with the decision of the Department. Wherever the intent of the Drawings or Specifications is not indicated clearly or there is a conflict between the Drawings and Specifications, Contractor will be held to have included in the Lump Sum Price the more expensive material or method of construction and the quantity of material.

Section 3.3.2 If any item or material shown on the Drawings is omitted from the Specifications, or vice versa (except when the Drawings and Specifications clearly exclude such omitted item), and such item or material is required to complete the detail shown or specified, and if additional details or instructions are required to complete the Work, then the Contractor is deemed to have made an allowance in the Lump Sum Price for the completion of the Work, consistent with adjoining or similar details and the best accepted practices of the trade for projects of this type and quality, whichever is more expensive, unless such additional information was not reasonably inferable from the Contract Documents. Without limiting the Contractor's other duties, in the case of a difference among the Contract Documents as to the Contractor's obligations, or an inconsistency in the Contract Documents, the Department will decide which requirement governs; however, the Contractor shall assume that the more expensive material or method of construction and the quantity of material shall be required without a change to the Lump Sum Price.

Section 3.3.3 Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly examined all Contract Documents, including all details, plans, elevations, sections, schedules and diagrams, has visited the site, has become familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has satisfied himself before executing the Contract as to all matters that can affect the Work and its cost, including: (1) the nature of the land and subsoil; (2) the form and nature of the site and surrounding areas; (3) details and levels

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of existing pipe lines, conduits, sewers, drains, cables or other existing services; (4) the quantities, nature and availability of the materials, tools, equipment and labor necessary for the completion of the Work; (5) the means of access to the site and any accommodation he may require; (6) uncertainties of weather and physical conditions at the site; and in general to have himself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect his performance of the Work. The Contractor waives any and all claims against the Department arising from or relating to such contingencies and conditions that are reasonably inferable from the Contract Documents, in light of the required preconstruction review and inspection and the Contractor's expertise in the field of construction.

Section 3.4 **Basis of Lump Sum Price.** The Lump Sum Price is based on the following documents:

Section 3.4.1 **Exhibit A**: List of Drawings, Specifications and other documents on which the Lump Sum Price is based.

Section 3.4.2 **Exhibit B**: Form of Offer Letter

Section 3.4.3 **Exhibit C**: Davis Bacon Wage Rates

Section 3.4.4 **Exhibit D**: Subcontracting Plan

Section 3.4.5 **Exhibit E:** Solicitation Number DCAM-13-CS-0171

Section 3.5 **Tax Exempt Status.** The Department expects that the Project will qualify as tax-exempt under the applicable laws, and such tax exemption shall be reflected in the Lump Sum Price.

Section 3.6 **Unsafe Materials and Hazardous Materials**

Section 3.6.1 The Contractor shall not bring, spill or release onto the site asbestos, PCBs, or any other Hazardous Material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department's attention any specification of such Hazardous Materials in the design documents. If the Contractor believes that anything in the Contract Documents would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding. The Department shall not be responsible under this Section 3.6 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Department shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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Section 3.6.2 The Department shall not be responsible under this Section 3.6 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Department shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. The Contractor shall indemnify the Department for the cost and expense the Department incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under this Section 3.6.

ARTICLE 4
CONSTRUCTION

Section 4.1 **General.** Construction shall commence when this Agreement is executed by both the Department and the Contractor and the Department issues a Notice to Proceed for Construction Services. The Contractor shall, through Subcontractors or its own forces, perform all of the Work necessary to construct the Project so that it is complete, safe, and properly built in strict accordance with the Contract Documents. Without limitation, the Contractor shall provide all of the labor, materials, tools, equipment, temporary services, and facilities necessary to complete the construction and installation of the Project. The Work shall be carried out in a good and workmanlike, first-class manner, and in timely fashion. All materials and equipment to be incorporated into the Project shall be new and previously unused, unless otherwise specified, and shall be free of manufacturing or other defects. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Department, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

Section 4.1.1 **Consultation and Analysis.** The parties acknowledge that the Contractor was engaged through a competitive procurement process based on a set of bid documents that are intended to represent a complete set of construction documents (the "Bid Set"). Notwithstanding the characterization of the Bid Set as a complete set of documents, both parties to this Agreement acknowledge and agree that the Bid Set is likely to contain errors, omissions, ambiguities and discrepancies that are typically found in documents of this nature, and it is the intent of the Agreement to transfer the risk associated with such errors, omissions, ambiguities and discrepancies to the Contractor. Based on the preconstruction review of the Bid Set, the Contractor has confirmed the Lump Sum Price set forth herein, and the parties have agreed to liquidated damages if the Substantial Completion Date is not met.

Section 4.1.2 **Project Schedule.** The Project Schedule shall be based on a critical path method of scheduling and includes various activities, the duration of each, and the logical relationships between such activities. All parties to this Agreement understand and agree that the Project Schedule has been agreed to is not a contract document and rather is intended to serve as a management tool. All parties further acknowledge and agree that adjustments will be required

SAMPLE

to activities, their duration and sequencing in order to accomplish the Project's objectives and end-dates. In furtherance of the foregoing, the Contractor further understands and agrees that it shall only be entitled to an adjustment to the Substantial Completion Date if an Excusable Delay, as such term is defined below, occurs and such delay is promptly brought to DGS' attention. The Contractor further understands and agrees that this Agreement has a "no damages for delay" clause and that the Contractor shall only be entitled to compensation for Excusable Delay as set forth in Article 6 of this Agreement. The Project Schedule shall be maintained and updated during Construction not less frequently than monthly.

Section 4.1.3 **Review of Means and Methods.** If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor has evaluated the jobsite safety thereof during the preconstruction phase 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 Department during Construction and shall not proceed with that portion of the Work without further written instructions from the Department. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Department shall be solely responsible for any loss or damage arising solely from those Department-required means, methods, techniques, sequences or procedures.

Section 4.1.4 **Field Measurements.** Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to Department in writing prior to the performance of the work. Once work is started, Contractor assumes the responsibility and costs for the work and the cost of correcting work previously installed.

Section 4.2 **Subcontracting and Administration**

Section 4.2.1 It is understood that the Contractor may, subject to the term of this Agreement, subcontract a portion of the work to a Subcontractor pursuant to written contract with the Contractor; provided, however, that the Contractor shall not be permitted to subcontract all or substantially all of the Work to a single Subcontractor.

Section 4.2.2 The Department may at any time direct the Contractor to terminate any Subcontractor or supplier performing services on the job.

Section 4.2.3 The Department may elect to review the form of any such subcontract or agreement with a material supplier to insure that such contract incorporates the contractual provisions required by this Agreement.

Section 4.2.4 The Contractor shall contract for provision of all services and materials for the Project over $25,000 (other than Self-Performed Work) via written subcontracts or, for

contracts requiring provision of materials or equipment only, and not labor, via written supply agreements. All subcontracts and supply agreements shall include the following provisions:

Section 4.2.4.1 that, to the extent of the Work or supply within the agreement's scope, the Subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Contract;

Section 4.2.4.2 that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;

Section 4.2.4.3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;

Section 4.2.4.4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;

Section 4.2.4.5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;

Section 4.2.4.6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;

Section 4.2.4.7 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (This provision is not applicable to supply agreements.);

Section 4.2.4.8 that, if the Department terminates the Contract for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions of this Agreement;

Section 4.2.4.9 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;

Section 4.2.4.10 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;

SAMPLE

Section 4.2.4.11 a provision requiring that Subcontractors and suppliers promptly pay Subcontractors and suppliers at lower tiers, imposing upon the Subcontractors and suppliers a duty to pay interest on late payments, and barring reimbursement for interest paid to lower tier Subcontractors or suppliers due to a Subcontractor's or supplier's failure to pay them in timely fashion;

Section 4.2.4.12 a provision requiring that all Subcontractors at all tiers comply with the provisions of Article 11 (Economic Inclusion Goals); provided, however, that the Contractor may, in its reasonable discretion impose a different LSDBE subcontracting goal on some or all of its Subcontractors; provided, further, however, that nothing in this provision shall be deemed to excuse the Contractor from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;

Section 4.2.4.13 a provision which allows the Contractor to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;

Section 4.2.4.14 lien and claim release and waiver provisions substantially identical to those in this Agreement.

Section 4.2.5 Within seven (7) days of receiving any payment from the Department including amounts attributable to Work performed, or materials or equipment supplied, by a Subcontractor or supplier, the Contractor shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Contractor for the Subcontractor's or supplier's Work or materials or equipment, or notify the Department and the Subcontractor or supplier, in writing, of the Contractor's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Contractor under the Contract shall be used first to pay amounts due to Subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be retained by the Contractor. Monies paid by joint check shall be deemed to have been paid fully to the Subcontractor or supplier named as a joint payee, unless the Department agrees otherwise in writing. Any interest paid to Subcontractors or suppliers because the Contractor has failed to pay them in timely fashion shall not entitle the Contractor to a Change Order.

Section 4.2.6 The Contractor shall not substitute or replace any Subcontractor or supplier certified by the District of Columbia Department of Small and Local Business Development without the Department's prior written consent.

Section 4.2.7 The Department has the right to contact Subcontractors or suppliers at all tiers or material or equipment suppliers directly to confirm amounts due and owing to them or amounts paid to them for Work on the Project, and to ascertain from the Subcontractors or suppliers at all tiers their projections of the cost to complete their Work or to supply their material or equipment, or the existence of any claims or disputes. In doing so the Department shall not issue any directions to Subcontractors or Suppliers at any tier.

SAMPLE

Section 4.3 **Progress Meetings.** The Contractor shall schedule and conduct, at a minimum, bi-weekly progress meetings at which the Department, the PM, the Contractor and appropriate Subcontractors can discuss the status of the Work. The Contractor shall prepare and promptly distribute meeting minutes.

Section 4.4 **Written Reports.** The Contractor shall provide written reports to the PM on the progress of the entire Work in accordance at least every other week. The Contractor shall also maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as the Department may reasonably require. The log shall be available to the Department, and the PM. The Contractor and its subcontractors and subconsultants shall be required to use Primavera 6 Prolog as a document management tool for this Project.

Section 4.5 **Cost Control System.** The Contractor shall maintain accurate records of the Cost of the Work. Where Work is being performed on a time and materials bases or to be funding through an allowance in the Lump Sum Price, the Contractor shall identify variances between actual and estimated costs and report the variances to the Department and the PM at regular intervals.

Section 4.6 **Key Personnel.** Contractor's key personnel shall include (i) the Project Executive; (ii) the Field Superintendent and (iii) the Project Manager. The Contractor's obligation to provide adequate staffing is not limited to providing the key personnel, but is determined by the needs of the Project. The Contractor shall not replace any of the key personnel without the Department's prior written approval, which shall not be unreasonably withheld. If any of the key personnel become unavailable to perform services in connection with the Contract due to death, illness, discharge or resignation, then the Contractor shall promptly appoint a replacement acceptable to the Department. The Department shall be entitled to complete information on each such replacement, including a current resume of his or her qualifications and experience.

Section 4.7 **Qualified Personnel/Cooperation.** The Contractor shall employ on the Project only those employees and Subcontractors who will work together in harmony and who will cooperate with one another on the Project. The Contractor shall enforce strict discipline, good order and harmony among its employees and its Subcontractors and shall remove from the site any person who is unfit for the work or fails to conduct himself in a proper and cooperative manner. If the Department requests removal of any person as unfit or as having behaved inappropriately, the Contractor shall promptly comply.

Section 4.8 **Work by Separate Contractors.**

Section 4.8.1 The Department reserves the right to perform construction or operations related to the Project with Department's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

SAMPLE

Section 4.8.2 Contractor shall afford Department and separate contractor's reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate Contractor's construction and operations with theirs as Department may reasonably require.

Section 4.8.3 The Contractor shall coordinate its Work with work performed by the Department's own forces or separate contractors. The Contractor shall participate with other separate contractors and the Department in reviewing their construction schedules. 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 Department until subsequently revised.

Section 4.8.4 If part of the Work depends for proper execution or results upon construction or operations by the Department or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Department 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 Department's or separate contractors completed or partially completed construction is fit and proper to receive the Work, except as to defects not then reasonably discoverable.

Section 4.8.5 The Contractor shall reimburse the Department for costs the Department incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Department shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

Section 4.8.6 If a dispute arises among the Contractor and separate contractors as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Department may clean up and allocate the cost among those responsible.

Section 4.9 <u>Cutting and Patching.</u> The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Department 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 Department or a separate contractor except with written consent of the Department and of such separate contractor; such consent shall not be unreasonably withheld.

Section 4.10 <u>Site Safety and Clean-Up.</u>

Section 4.10.1 The Contractor will be required to provide a safe and efficient site, with controlled access.

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Section 4.10.2 The Contractor shall be responsible for site security and shall employ if necessary, at its own expense, watchpersons to safeguard the site.

Section 4.10.3 The Contractor shall be responsible for the cost of temporary power used during the construction of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required to bring power to the site. The Contractor shall also be responsible for the cost of all temporary construction necessary on the site.

Section 4.10.4 Illumination of the worksite during non-daylight hours is required of the Contractor at the Contractor's expense. The Contractor shall ensure that the extent and intensity of lighting match or exceed existing lighting conditions.

Section 4.11 <u>Close-out.</u>

Section 4.11.1 The Contractor shall be required to prepare and submit at close-out a complete set of product manuals, warranties, etc. The Contractor shall also provide the Department with a complete set of its Project files, including, but not limited to, shop drawings, etc. at close out so as to assist the Department in operating the building.

Section 4.12 <u>Partial Use or Occupancy.</u>

Section 4.12.1 The Department 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 consented to by the and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Department 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 PM 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 Department and Contractor or, if no agreement is reached, by decision of the PM.

Section 4.12.2 Immediately prior to such partial occupancy or use, the Department, Contractor and PM 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.

Section 4.12.3 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.

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Section 4.13 **Correction of Work.**

Section 4.13.1 The Department shall be at liberty to object and to require the Contractor to remove forthwith from the Project site and the Work and to promptly replace the Superintendent, any foreman, technical assistant, laborer, agent, representative, or other person used by the Contractor in or about the execution or maintenance of the Work, who in the sole opinion of the Department is misconducting himself, or is incompetent or negligent in the proper performance of his duties, or whose performance in the Work is otherwise considered by the Department to be undesirable or unsatisfactory, and such person shall not be again employed upon the Project without the written permission of the Department.

Section 4.13.2 The Contractor shall promptly correct Work rejected by the Department for failing to conform to the requirements of the Contract Documents or applicable law or regulations whether observed before or after Final Completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements of the Contract Documents within a period of one (1) year from the date of Final Completion or by terms of an applicable special warranty required by the Contract Documents. The provisions of this Section 4.13 apply to Work done by Subcontractors as well as to Work done by direct employees of Contractor. Contractor shall bear costs of correcting such Work, including additional testing and inspections and compensation for Department's services and expenses made necessary thereby.

Section 4.13.3 The Department shall have the right, in lieu of terminating this Agreement, to take over a part or all of the Work and complete the Work. For work that is deleted, Contractor shall provide a credit to the Department for work deleted plus its profit for work not performed. However, for any work that is rejected by the Department or PM, in writing, the Contractor shall have three (3) days from the date of the letter ("Cure Notice") to state whether it intends to cure the work and provide a plan and schedule for correction. If the Contractor agrees to cure the work that is the subject of the cure notice, then it will have five (5) days within which to submit a plan and schedule for the approval of the Department. In the event that the Contractor refuses to respond or the Department rejects the plan, then the Department may take over and complete the Work and all costs plus twenty percent (20%) shall be deducted from any amounts due to the Contractor. If the Department is determined to have wrongfully exercised this right to carry out the Work, the Contractor's sole remedy shall be compensation as provided under Section 14.4.3 of this Agreement for termination by the Department for convenience. If Contractor fails to comply with written directive from the Department, the failure shall be a material default of this Agreement and the Department's right to complete all or a portion of the Work does not waive this right.

Section 4.13.4 Nothing contained in this Article 4 shall be construed to establish a period of limitation with respect to obligations which Contractor might otherwise have under the Contract Documents or under law.

Section 4.13.5 If during the guarantee or warranty period, any material, equipment or system requires corrective Work because of defects in materials or workmanship, Contractor

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shall commence corrective Work within forty-eight (48) hours after receiving the notice and work diligently until corrective Work is completed; provided, however, if such notice is received on the day before a weekend or a holiday, Contractor will commence corrective Work on the next business day. If Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective Work within forty-eight (48) hours or if Contractor commences such Work but does not pursue it in an expeditious manner, Department may either notify the bonding company (if any) to have such Work and/or obligations performed at no additional cost to Department or may perform such Work and/or obligations and charge the costs thereof to Contractor. The Contractor shall correct any defects noted by Department. The obligations of Contractor or any Subcontractor under the terms and provisions of the Contract Documents shall not be limited to the payments made by the surety (if any) under the provisions of this Agreement. Ten (10) months following Substantial Completion, Contractor shall accompany Department on an inspection of the Project, and Contractor shall promptly correct any defective Work or non-conforming Work.

Section 4.14 <u>Manufacturers' Warranties.</u>

Section 4.14.1 Contractor warrants that all manufacturers' or other warranties on all labor, materials and equipment furnished by Contractor or a Subcontractor or supplier shall run directly to or will be specifically assigned to Department on demand or upon Final Completion of the Project without demand. In the event any issue or defect which would be covered by any warranty arises but is not addressed by the grantor of the warranty, the Contractor shall be required to act as the guarantor of the obligations under the warranty and to perform under the terms of the warranty.

Section 4.14.2 Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications and Legal Requirements, as applicable, and that the materials and equipment shall function as required by the Contract Documents and be suitable for their intended purpose. Prior to Final Completion, Contractor shall obtain a statement from the manufacturers of the roofing system and major mechanical equipment, systems and/or components approving Contractor's installation of all such equipment, systems and/or components. If the Department seeks to enforce a claim based upon a manufacturer's warranty and such manufacturer asserts a claim of defective installation by Contractor, Department shall be entitled to assert a claim for defective installation against Contractor regardless of any limitations on time.

Section 4.14.3 If the Contractor fails to commence the cure of any breach of this warranty within after the time specified in a written cure notice that Work is defective or not conforming to the Contract Documents, and if the Contractor fails to provide a written plan and schedule to cure within the time specified in a written notice tor requesting a cure plan, and if the Contractor fails to initiate the cure within the time specified in the Department's approval of the plan and schedule to cure, and if the Contractor fails to continue with and complete the cure within the approved schedule (or such longer time as may be mutually agreed in writing and such shorter time as Department may direct in case of emergency), then the Department may, without prejudice to other remedies the Department may have, cure such breach of warranty. In such case

SAMPLE

an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of curing such breach, including compensation for the PM's additional services and expenses made necessary by such failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, then the Contractor or its surety shall pay the difference to the Department, subject to the right to appeal and obtain a refund from the Department.

Section 4.14.4 Modifications, extensions, attachments to, completion of or repair to systems in the Work by or on behalf of the Department, including without limitation the electrical, HVAC, plumbing, security and sprinkler systems, shall not void the Contractor's warranty so long as the same are done in accordance with the original design and installation standards.

Section 4.14.5 The Contractor assigns, with effect not later than the date of final acceptance of the Work by the Department, all manufacturers' warranties relating to materials and labor used in the Work.

ARTICLE 5
DEPARTMENT'S RESPONSIBILITIES

Section 5.1 Information and Services

Section 5.1.1 The Department shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Department's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

Section 5.2 Department's Designated Representatives

Section 5.2.1 Chief Contracting Officer (CCO) In accordance with 27 DCMR, Chapter 47, Section 4704 contracts may be entered into and signed on behalf of the District Government only by CCO. The address and telephone number of the CCO is:

Brian J. Hanlon
Director
Department of General Services
2000 14th Street, N.W. – 8th Floor
Washington, D.C. 20009
Telephone: (202) 727-2800
E-mail:brian.hanlon@dc.gov

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Section 5.2.2 Authorized Changes by the CCO

Section 5.2.2.1 In accordance with Article 3 of the General Provisions of the Standard Contract Provisions For Use With Specifications for District of Columbia Construction Projects Revised March 2011, the CCO is the only person authorized to approve changes to any of the requirements of the contract.

Section 5.2.2.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CCO.

Section 5.2.2.3 In the event the Contractor effects any change at the instruction or request of any person other than the CCO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

Section 5.2.3 Project Manager (PM)

Section 5.2.3.1 The PM is responsible for general administration of the contract and advising the CCO as to the Contractor's compliance or noncompliance with the contract. The PM has the responsibility for the day-to-day monitoring and supervision of the contract, of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in writing by the CCO and/or in the contract. These include:

Section 5.2.3.1.1 Keeping the CCO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CCO of any potential problem areas under the contract;

Section 5.2.3.1.2 Coordinating site entry for Contractor personnel, if applicable;

Section 5.2.3.1.3 Reviewing invoices for completed work and recommending approval by the CCO if the Contractor's prices and costs are consistent with the contractual amounts and progress is satisfactory and commensurate with the rate of expenditure;

Section 5.2.3.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

Section 5.2.3.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

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Section 5.2.3.1.6 The address and telephone number of the PM is:

Ageyi Hargrove
Project Manager
Department of General Services
Capital Construction Services
1250 U Street, N.W.
Washington, DC 20009
Telephone: (202) 360-3728
E-mail: ageyi.hargrove@dc.gov

Section 5.2.4 The PM shall NOT have the authority to:

Section 5.2.4.1 Award, agree to, or sign any contract, delivery order or task order. Only the CCO shall make contractual agreements, commitments or modifications;

Section 5.2.4.2 Grant deviations from or waive any of the terms and conditions of the contract;

Section 5.2.4.3 Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,

Section 5.2.4.4 Authorize the expenditure of funds by the Contractor;

Section 5.2.4.5 Change the period of performance; or

Section 5.2.4.6 Authorize the use of District property, except as specified under the contract.

Section 5.2.4.7 Contractor shall be held fully responsible for any changes not authorized in advance, in writing, by the CCO, and may be denied compensation or other relief for any additional work performed that is not authorized by the CCO in writing. In addition, Contractor may also be required at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

ARTICLE 6
CLAIMS FOR ADDITIONAL TIME

Section 6.1 Time is of the essence of this Contract.

Section 6.2 The Contractor will perform the Work so that it shall achieve Substantial Completion by the Substantial Completion Date. Unless the failure to achieve Substantial Completion by the Substantial Completion Date is a result of an Excusable Delay, as defined in Section 6.3, the delay shall be deemed Non-Excusable and the Contractor shall not be entitled to

SAMPLE

an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Contractor to an extension of time:

Section 6.2.1 Delays due to job site labor disputes, work stoppages, or suspensions of work;

Section 6.2.2 Delays due to adverse weather, unless the Contractor establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Contract. For purposes of this clause, weather shall only be deemed "Excusable" if the weather in question was more severe than that encountered at the Project site over the last ten (10) years for the month in question. Such determinations shall be made based on the number of rain/snow days or the cumulative precipitation total for the month in question. Notwithstanding the foregoing, named storms shall conclusively be deemed "Excusable";

Section 6.2.3 Delays due to the failure of the Contractor or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or

Section 6.2.4 Delays due to Site conditions whether known or unknown as of the effective date of the Contract, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to Differing Soils Conditions or Hazardous Materials Remediation shall be deemed an Excusable Delay.

Section 6.3 The Contractor shall be entitled to an adjustment in the Substantial Completion Date due to an Excusable Delay. The term "Excusable Delay" shall mean:

Section 6.3.1 Delays due to adverse weather other than those that are classified as a Non-Excusable delay;

Section 6.3.2 Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Contractor; provided, however, that in no event shall a Non-Excusable delay or the action of the Contractor, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or

Section 6.3.3 Delays caused by Differing Soils Conditions or Hazardous Materials Remediation.

Section 6.4 In addition to the forgoing, a delay shall be deemed to be an Excusable Delay only to the extent that such delay (i) warrants an extension in the Substantial or Final Completion Date; (ii) has not been caused by the Contractor or any of its employees, agents, Subcontractors or material suppliers; (iii) is on Project's critical path; and (iv) is in addition to a time contingency of twenty-one (21) calendar days that is built into the critical path.

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Section 6.5 If the Contractor wishes to make a 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 the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one claim is necessary.

Section 6.6 In no event shall the Contractor be entitled to an increase in the Lump Sum Price a result of either an Excusable or Non-Excusable Delay.

ARTICLE 7
COMPENSATION

Section 7.1 **Compensation.** The Contractor shall be paid its compensation in a series of progress payments and a final payment. Progress payments shall be based on a schedule of values that is agreed upon by the Parties as well as the PM's good faith estimate of the level of completion for each component of the schedule of values.

Section 7.2 **Schedule of Values.** The Contractor shall prepare a Schedule of Values which breaks down the Lump Sum Price for the various parts of the Work. The Schedule of Values shall be maintained in such a manner to provide a breakdown of the Lump Sum Price in enough detail to facilitate continued evaluation of applications for payment and progress reports. Large subcontracts shall be broken into several line items where, in the opinion of the PM, such detail is necessary to properly track the progress of the Work. The proposed schedule of values shall also include separate line items for labor and material for those elements of the Work where, in the opinion of the PM, the cost and materials and labor are experienced are incurred at different points in time during the Project. Such elements of work typically include mechanical systems, vertical transport systems, windows, structural steel. The Contractor and the PM shall meet as necessary to maintain the schedule of values for the Project in a manner acceptable to the PM. No progress payments shall be made unless the then current Schedule of Values is acceptable to the PM.

Section 7.3 **Retention.** The Department shall withhold from each progress payment an amount equal to ten percent (10%) of each progress payment until such time as fifty percent (50%) of the Work has been competed at which point the Department may cease retaining against such item. Once Substantial Completion has occurred, the Department will reduce the retention being withheld to an amount that is equal to Two Hundred percent (200%) of the PM's good faith estimate of the remaining Work.

Section 7.4 **Documents Required with Application for Payment.** Each Application for Payment shall be accompanied by the Contractor's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Contractor shall nevertheless maintain complete documentation of the costs.

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Section 7.5 **Contractor's Certification.** Each Application for Payment shall be accompanied by the Contractor's signed certification that all amounts paid to the Contractor on the previous Application for Payment that were attributable to Subcontractor Work or to materials or equipment being supplied by any supplier has been paid over to the appropriate Subcontractors and suppliers; that all amounts currently sought for Subcontractor Work or supply of materials or equipment are currently due and owing to the Subcontractors and material or equipment suppliers; and that all Work, materials or equipment for which payment is sought is, to the best of the Contractor's knowledge, free from defect and meets all of the Contract requirements. The Contractor shall not include in an Application Payment amounts for Work for which the Contractor does not intend to pay.

Section 7.6 **Lien Waivers.** Each Application for Payment shall be accompanied by written waivers of the right to file a mechanic's lien and all other claims for the Contractor and all Subcontractors and material suppliers at all tiers who have supplied labor or material or both for which payment is requested, subject only to receipt of payment. If the Department so requests, the Contractor shall also submit unconditional waivers of liens for itself and all Subcontractors and material suppliers at all tiers with respect to Work or materials or equipment for which payment has been previously made, and additional forms of waiver acknowledging receipt of final payment under the Contract, and providing final release of such liens.

Section 7.7 **Warranty of Title.** By submitting an Application for Payment, the Contractor warrants to the Department that title to all Work for which payment is sought will pass to the Department, without liens, claims, or other encumbrances, upon the receipt of payment by the Contractor. The Department may require execution of appropriate documents to confirm passage of clear title. Passage of title shall not operate to pass the risk of loss with respect to the Work in question. Risk of loss remains with the Contractor until Substantial Completion, unless otherwise agreed by the Department, in writing.

Section 7.8 **Submission.** On the twenty-fifth (25th) day of each month the Contractor shall submit to the Department (with a copy to the PM) an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted. All amounts formally submitted via Application for Payment and not disputed by the Department shall be due and payable on the last day of the month following submission or, if that is not a business day, on the following business day.

Section 7.9 **Right to Withhold Payments.** The Department will notify the Contractor within fifteen (15) days after receiving any Application for Payment of any defect in the Application for Payment or the Contractor's performance which may result in the Department's declining to pay all or a part of the requested amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:

Section 7.9.1 the Work is defective and such defects have not been remedied; or

Section 7.9.2 the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten (10) calendar days of the

Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or

Section 7.9.3 the Contractor's monthly schedule update reflects that the Contractor has fallen behind the Project Schedule, and the Contractor fails to include, in the same monthly report, a realistic and acceptable plan to recover the delays; or

Section 7.9.4 the Contractor has failed to provide the monthly report in full compliance with Article 7.9 of this Agreement; or

Section 7.9.5 the Contractor has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or

Section 7.9.6 any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Contractor, and the Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or

Section 7.9.7 the Department has reasonable evidence that the Work will not be completed by the Substantial Completion Date, as required, that the unpaid balance of the Lump Sum Price would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or

Section 7.9.8 the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the Lump Sum Price; or

Section 7.9.9 the Contractor is otherwise in substantial breach of this Contract (including, without limitation, failures to comply with CBE Utilization requirements in Article 11).

Section 7.10 **Payment Not Acceptance.** Payment of any progress payment or final payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to the Contract, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

Section 7.11 **Department Not Obligated to Others.** The Department shall have no obligation to pay or be responsible in any way for payments to a consultant or subcontractor performing portions of the Work.

Section 7.12 **Final Payment.** Final payment shall be made by the Department to the Contractor when (i) Final Completion has been achieved; and (ii) certification by the Contractor that except for requested final payment, all subcontractors and suppliers have been paid in full and that appropriate partial lien releases have been obtained from such subcontractors and

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