

**DEVELOPMENT AGREEMENT**

**between**

**DISTRICT OF COLUMBIA**

**and**

**UHS Building Solutions, Inc.**

**Dated as of September 10, 2020**

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## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** is made as of September 10, 2020 (the “**Effective Date**”), by and among the **DISTRICT OF COLUMBIA**, a municipal corporation (hereinafter referred to as the “**District**”), and **UHS Building Solutions, Inc.**, a Delaware corporation (the “**Program Manager**”), a wholly-owned subsidiary of Universal Health Services, Inc. (“**UHS**”) for the project to be known as the GW Health Hospital at St. Elizabeths, which shall be situated on the real property in the District of Columbia hereinafter defined as the Land.

### **RECITALS:**

A. WHEREAS, District is the fee simple owner of the parcel of real property located in the District of Columbia and known for assessment and taxation purposes as Lot 0859, Square 5868-S, and further described in Exhibit A, attached hereto and incorporated herein (the “**Land**”).

B. WHEREAS, simultaneously herewith, District and UHS entered into a Collaboration Agreement (the “**Collaboration Agreement**”) outlining a collaboration between the District, UHS and UHS affiliated entities including the Program Manager to operate the new acute-care community hospital on the St. Elizabeths East Campus (including the inpatient hospital facility (the “**Inpatient Hospital**”) and associated ambulatory pavilion and outpatient facilities (the “**Ambulatory Facility**”) and a multistory parking facility that will primarily serve the Inpatient Hospital, its patients, visitors, and staff, and others with business at the Inpatient Hospital (the “**Parking Facility**”) (collectively the Parking Facility, the Ambulatory Facility and Inpatient Hospital, shall be defined as the “**Hospital**”) that will continue the District’s commitment to reinvesting in its communities, including access to comprehensive and quality health care services is a major goal of the District on the Land, and other related matters.

C. WHEREAS, Program Manager and Program Manager Affiliates have experience developing and managing the construction and development of hospitals similar to the Hospital.

D. WHEREAS, District desires to contract with Program Manager to provide program management services in connection with the design, construction, furnishing, equipping, activation, and Commissioning of the Hospital and supporting facilities, and Program Manager wishes to provide those services on the terms and conditions hereinafter set forth.

E. WHEREAS, District will own the Hospital, and District will pay the Cost of the Project pursuant to the terms of this Agreement.

F. WHEREAS, simultaneously herewith, District and UHS East End Sub, LLC, a wholly-owned subsidiary of UHS as “**Operating Entity**” entered into a Hospital Operations Agreement, pursuant to which the Operating Entity thereunder (“**Operations Agreement**”) agreed to operate the Hospital in accordance with the terms and conditions set forth therein.

G. WHEREAS, simultaneously herewith, District and UHS East End Sub, LLC, a wholly-owned subsidiary of UHS as “**Tenant**” entered into a Lease Agreement, pursuant to which District will lease the Land and Hospital to Tenant (“**Lease**”) after Substantial Completion (as defined below).

H. WHEREAS, the Council of the District of Columbia authorized the Mayor to execute this Agreement in [authorizing Act name, citation, and effective date].

I. WHEREAS, Program Manager plans to develop the Hospital in the following segments: (i) design and engineering for the Hospital; (ii) Ambulatory Facility construction; (iii) Inpatient Hospital construction phase 1; (iv) Inpatient Hospital construction phase 2; (v) Parking Facility construction (approximately 500 spaces); and (vi) furniture, furnishings, fixtures, and equipment installation.

J. WHEREAS, the Hospital will be completed and submitted by Contractors for Program Manager and District at Substantial Completion and Final Completion, each as defined herein, and in the following phases (i) Ambulatory Facility, (ii) Inpatient Hospital and (iii) Parking Facility (collectively the "Phases" and each a "Phase").

K. WHEREAS, District and Program Manager desire that the Phases be completed no later than the dates set forth in Exhibit L, for the Project ("Substantial Completion Date(s)"), as shall be updated in accordance with this Agreement.

L. WHEREAS, District and Program Manager have established a Project Budget including all design, hard construction and general conditions costs of the Work to complete the Project on the Land, as shall be updated in accordance with this Agreement.

M. WHEREAS, District and Program Manager have established the scope of work herein as the "Work" attached hereto as Exhibit L to design, construct, furnish, equip, and Commission the Project (as shall be updated in accordance with this Agreement).

NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, including the granting of the Lease to an Affiliate of the Program Manager and owned by UHS, District and Program Manager agree as follows:

## ARTICLE 1 DEFINITIONS

As used herein, the capitalized terms set forth below have the following meanings:

"**ADA**" shall mean the Americans with Disabilities Act of 1990, as amended.

"**Affiliate**" shall mean with respect to any Person ("first Person") (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, partner, shareholder, manager, member, or trustee of such first Person, or (iii) any officer, director, general partner, manager, member, or trustee of any Person described in clauses (i) or (ii) of this sentence.

"**Agreement**" shall mean collectively, this Agreement and all exhibits and attachments hereto, as any of the same hereafter may be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Agreement or by mutual agreement of the Parties.



**“Agreement Change Directive”** shall mean a change as directed to Program Manager by District issued in accordance with the terms of this Agreement to the (i) scope of the Work included in this Agreement; (ii) Project Budget included in this Agreement; or (iii) CPM Schedule, included in this Agreement.

**“Agreement Change Order”** shall mean any written instrument issued after the Effective Date signed by District and Program Manager issued in accordance with the terms of this Agreement, stating their agreement upon a change to any of the following: (i) the scope of the Work included in this Agreement; (ii) the Project Budget included in this Agreement; and (iii) the CPM Schedule included in this Agreement.

**“Ambulatory Facility”** shall have the meaning set forth in the Recitals.

**“Applicable Law”** shall mean all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historic preservation, laws relating to accessibility for persons with disabilities, Davis-Bacon Act, Green Building Act, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over the Project and/or the Land or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Land.

**“Application for Payment”** shall have the meaning set forth in Section 4.7(e).

**“Approved Design(s)”** shall mean the conceptual design for each of the Phases of the Work, as agreed upon by the Parties in accordance with Section 4.1(d)(i).

**“Architect”** shall mean such architect as shall be engaged from time to time by Program Manager to design the Project in accordance with the terms of this Agreement.

**“Architect Contract”** shall mean the contract between the Architect and the Program Manager.

**“Assignment”** shall mean a sale, exchange, assignment, lease, transfer or other disposition by Program Manager of Program Manager’s rights and interest under this Agreement, whether by operation of law or otherwise.

**“BIM”** shall mean a Building Information Model for the Project.

**“Bonds”** shall mean the debt instruments issued by the District for the purpose of funding Project in accordance with this Agreement.

**“Building Equipment”** shall mean all personal property and fixtures incorporated in, located within, at or attached to and used or usable in the operation of, or in connection with, the Project (but then only to the extent of Program Manager’s rights therein) and shall include, but shall not be limited to, machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; washroom, toilet and lavatory plumbing equipment; window washing hoists and equipment; and all additions or replacements thereof. The term “Building Equipment” shall not include any personal property owned or leased by the Tenant under the Lease or any other occupant of all or any portion of the Hospital.

**“Business Day”** shall mean Monday through Friday, inclusive, other than holidays recognized by District of Columbia government or days on which District of Columbia government is officially closed.

**“CBE”** shall have the meaning set forth in the CBE Act for the term “Certified Business Enterprise.”

**“CBE Act”** shall mean the Small and Certified Business Enterprise Development and Assistance Act of 2005, D.C. Law 16-33, as amended as of February 1, 2020 (codified at D.C. Official Code §§ 2-218.01 et seq.)

**“CBE Utilization Agreement”** shall mean an agreement with District regarding the utilization of CBE entities in accordance with the CBE Act.

**“Certificates of Occupancy”** shall mean the temporary and/or permanent certificate or certificates of occupancy issued for the Project permitting occupancy for its intended use as then in force.

**“Certificate of Substantial Completion”** shall have the meaning set forth in Section 5.12.

**“Collaboration Agreement”** shall have the meaning set forth in the Recitals.

**“CGL”** shall have the meaning set forth in Section 7.1.

**“Commission”** and **“Commissioning”** shall mean the systematic process of assuring by verification and documentation, from the design phase to a minimum of one year after Substantial Completion of the Hospital, that all facility systems perform interactively in accordance with the design documentation and intent, including preparation of Hospital facility operations personnel.

**“CON”** shall mean a certificate of need specified in DC Official Code 44 – 401 et. seq. of the Health Services Planning Program Reestablishment Act of 1996, as amended, and the Certificate of Need (CON) Regulations (Title 22B, DC Municipal Regulations, Sec. 4000, et seq.)

**“Construction Consultant”** shall have the meaning set forth in Section 3.4.

**“Construction Contract(s)”** shall have the meaning set forth in Section 4.2(a).

**“Construction Contractor(s)”** means the Contractor(s) selected by Program Manager to serve as the Contractor under the Construction Contract(s).

**“Contract”** shall mean the agreement for performance of the Work between Program Manager and each Contractor.

**“Contractor”** and **“Contractors”** shall mean the contractors hired by the Program Manager through Contracts in accordance with the terms of this Agreement to construct, furnish, equip, activate, and Commission the Project.

**“Contract Change Directive”** shall mean a change as directed to Contractor(s) by Program Manager in accordance with the terms of Contract to the (i) the scope of the Work in the Contract; (ii) the Project Budget in the Contract; and (iii) the CPM Schedule in the Contract.

**“Contract Change Order”** shall mean a change order requested by the Contractor(s) or Program Manager in accordance with the terms of a Contract(s), signed by Contractor and Program Manager stating their agreement upon a mutually-agreed upon change to any of the following: (i) the scope of the Work in the Contract; (ii) the Project Budget in the Contract; or (iii) the CPM Schedule in the Contract. A Contract Change Order shall be subject to approval by District, to the extent such approval is required in accordance with the requirements of Section 4.

**“Control”** shall mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of, as applicable, the directors, managers, managing partners, or Persons exercising similar authority with respect to the subject Person. The terms **“Control,”**

**“Controlling,” “Controlled by,” or “under common Control with”** shall have meanings correlative thereto.

**“Cost of the Project”** shall mean the cost of the Project including the Work, all of which is included within the Project Budget (as the same may be updated as provided in this Agreement), as approved by District and Program Manager in accordance with the terms of this Agreement, to be disbursed pursuant to the requirements set forth in Section 4.7.

**“Council”** shall mean the Council of District of Columbia.

**“CPM”** shall have the meaning set forth in Section 4.5(b).

**“CPM Schedule”** shall have the meaning set forth in Section 4.5(b).

**“DCFOIA”** shall have the meaning set forth in Section 13.16.

**“DCRA”** shall mean District of Columbia Department of Consumer and Regulatory Affairs, or any successor agency.

**“Design Development”** shall mean 100% design and permit documents. The Design Development set integrates all design elements in order to provide sufficient information for Contractor to submit a guaranteed maximum price proposal and satisfy permit requirements. The documents include, but are not limited to, plans, sections, elevations, typical construction details, three-dimensional sketches, study models, final material selection, equipment layout, and estimates of construction cost supportive of a guaranteed maximum price contract.

**“Design Modification”** shall have the meaning set forth in Section 4.1(f).

**“Design Modification Directive”** shall have the meaning set forth in Section 4.1(f)(ii).

**“Detrimental to the Project”** shall have the meaning set forth in Section 4.6(d)(v).

**“Dispute”** shall have the meaning set forth in Section 10.5.

**“District”** shall have the meaning set forth in the Preamble.

**“District Indemnified Parties”** shall mean, collectively, the District of Columbia, including, without limitation, any agencies, instrumentalities, and departments thereof, and its elected and appointed officials (including, without limitation, the Mayor and the Council), officers, directors, agents, and employees.

**“DOES”** shall mean District of Columbia Department of Employment Services or any successor agency.

**“DSLBD”** shall mean District of Columbia Department of Small and Local Business Development or any successor agency.

**“Effective Date”** shall have the meaning set forth in the Preamble.

**“Environmental Law(s)”** shall mean any present and future federal, state, or local law and any amendments (whether common law, statute, rule, order, regulation, or otherwise), permits, and other requirements or guidelines of Governmental Authorities and relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; D.C. Code Title 8, Chapter 1 (Environmental Controls); and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

**“Event of Default”** shall have the meaning set forth in Section 10.1.

**“False Claims Provisions”** shall have the meaning set forth in Section 13.20.

**“Final Completion”** shall mean the point at which the Work with respect to the Project including all punch list items has been completed by the Contractor in accordance with the terms of the Construction Contract(s).

**“Final Completion Date”** shall mean the date(s) of Final Completion which occur after the Substantial Completion Date(s) as initially set forth in Exhibit L, as may be adjusted in accordance with the terms of this Agreement.

**“Final Payment”** shall mean the final payment to be made by District pursuant to the provisions of Section 4.7.

**“First Source Act”** shall mean the First Source Employment Agreement Act of 1984, as amended (D.C. Official Code §§ 2-219.01 et seq.).

**“First Source Employment Agreement”** shall mean the agreement with the District requiring compliance with the First Source Act.

**“Governmental Authority”** or **“Governmental Authorities”** shall mean the United States of America, District of Columbia, and any agency, department, commission, board, bureau, instrumentality or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Program Manager or over the Project, the Land or any portion thereof or any street, road, avenue or sidewalk comprising a part of the Land, or any vault in or under or airspace over the Project or the Land.

**“Green Building Act”** shall mean the Green Building Act of 2006, D.C. Law 16-234, as amended, together with the regulations promulgated in connection therewith.

**“Hazardous Material(s)”** shall mean (a) asbestos and any asbestos containing material; (b) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a “hazardous substance,” “hazardous material,” “hazardous waste,” “infectious waste,” “toxic substance,” or “toxic pollutant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties, such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (c) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources; and (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (excluding Nuclear Regulatory Commission licensed radioactive materials used for Hospital operations), medical waste, chlorofluorocarbon, lead or lead-based product, and any other substance the presence of which could be detrimental to the Land or hazardous to health or the environment.

**“Hospital”** shall have the meaning set forth in the Recitals.

**“Inpatient Hospital”** shall have the meaning set forth in the Recitals.

**“Instruments of Service”** shall have the meaning set forth in Section 10.4(b).

**“ISO”** shall have the meaning set forth in Section 7.1(c).

**“Land”** shall have the meaning set forth in the Recitals.

**“Land Use Approvals”** shall mean all plan reviews and zoning approvals and/or waivers, necessary to obtain the Permits and Approvals for the construction and contemplated uses of the Project. The term “Land Use Approvals” shall not include the certificate of need for the Hospital (the “CON”) which shall be obtained by District in accordance with the Operations Agreement.

**“Lease”** shall have the meaning set forth in the Recitals.

**“Notice Address”** shall mean the address for notice set forth below, as amended from time to time by notice sent to the other Party as provided herein:

To District: Department of General Services  
2000 14<sup>th</sup> Street, NW  
8<sup>th</sup> Floor  
Washington, DC 20009  
Attention: Director

with a copy to: Department of General Services  
2000 14<sup>th</sup> Street, NW  
8<sup>th</sup> Floor  
Washington, DC 20009  
Attention: Capital Construction and Chief Project Delivery  
Office / Deputy Director of Capital Construction Division

with a copy to: Department of General Services  
2000 14<sup>th</sup> Street, NW  
8<sup>th</sup> Floor  
Washington, DC 20009  
Attention: General Counsel

To Program Manager: UHS Building Solutions, Inc.  
Universal Health Services, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406  
Attn: Vice President Design and Construction – Mark  
D’Arcy

**“Notice to Proceed”** shall mean a written notice to proceed, signed by District, directing Program Manager to have a Contractor proceed with the Work under each Phase of the Project.

**“OCFO”** shall have the meaning set forth in Section 4.7(k).

**“Operating Entity”** has the meaning set forth in the recitals.

**“Operations Agreement”** shall have the meaning set forth in the Recitals.

**“Outside Performance Dates”** shall have the meaning set forth in Section 11.2.

**“Parking Facility”** shall have the meaning set forth in the Recitals.

**“Party(ies)”** when used in the singular, shall mean either District or Program Manager; when used in the plural, shall mean both District and Program Manager.

**“Performance and Payment Bond”** shall have the meaning set forth in Section 5.1.

**“Permits and Approvals”** shall mean any and all permits, approvals and/or waivers required and/or necessary to be issued by Governmental Authorities in connection with the construction of the Project.

**“Person”** shall mean any individual, corporation, limited liability company, trust, partnership, association, or other entity.

**“Phase”** or **“Phases”** shall have the meaning set forth in the Recitals.

**“Phase Budget Amendment”** shall have the meaning set forth in Section 4.1(d)(i).

**“Plans and Specifications”** shall mean, collectively, all plans and specifications as developed in accordance with the Approved Designs for the Project and approved by the Parties as such plans and specifications for the Phases of the Work may be modified from time to time only in accordance with the terms of this Agreement and as mutually approved by District and Program Manager.

**“Program Manager”** shall have the meaning set forth in the Preamble.

**“Progress Payments”** shall mean the progress payments to be made by District pursuant to the provision Section 4.7.

**“Prohibited Person”** shall mean any of the following Persons: (A) any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of, has pleaded guilty in a criminal proceeding for, or is an on-going target of a grand jury investigation concerning, a felony for one or more of the following: (i) fraud, (ii) intentional misappropriation of funds, (iii) bribery, (iv) conspiracy to commit a crime, (v) making false statements to a governmental agency, (vi) improperly influencing a governmental official, or (vii) extortion; or (B) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. § 4301 et seq., as amended; (y) the International Emergency Economic Powers Act of 1977, 50 U.S.C. § 1701 et seq., as amended; and (z) the Antiterrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. § 4605, as amended; or (C) any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (D) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department’s Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order described above; or (E) any Person who could be debarred if the standards applied in Title 27, Section 2213 of the D.C. Municipal Regulations were applied to such Person’s failure to satisfy a contractual obligation to District of Columbia; or (F) any Person who is on District of Columbia’s list of debarred, suspended or ineligible Persons; or (G) any Affiliate of any of the Persons described in any one or more of clauses (A) through (F) above.

**“Project”** shall mean the design, construction, furnishing, equipping, and Commissioning of the Hospital and supporting facilities and infrastructure all as described in the Work and this Agreement.

**“Project Budget”** shall mean the total price for the Project which shall not exceed, \$375,000,000.00 and includes all costs of the Project and all costs the District is obligated to expend under this Agreement, including all design, hard construction and general condition costs of the Work. The Project Budget may only be amended in accordance with Section 2.4 of this Agreement and District and federal Law.

**“Projected Payments”** shall have the meaning set forth in Section 4.7(a).

**“RFP”** shall mean a request for proposals.

**“Safety Plan”** shall have the meaning set forth in Section 5.17(a).

**“Schematic Design”** shall mean 35% design to establish the general layout, form and overall appearance of the buildings and site. Such design shall include but not limited to conceptual building plans, preliminary sections and elevations, preliminary selection of building systems and materials, development of approximate dimensions/areas/volumes, perspective sketches, and study models. Program Manager shall assist in coordinating interagency and intergovernmental coordination meetings, including with DCRA and DDOT and other District agencies, as appropriate, in the development of the Schematic Design.

**“Scope of Work”** shall mean all Program Manager obligations set forth in this Agreement.

**“Self-Performed Work”** shall mean work performed by employees of, as applicable, (i) Program Manager; (ii) Contractor; (iii) any entity that is a partner or member of the entity comprising Program Manager or Contractor; (iv) any entity that Controls, is Controlled by, or is under common control with Program Manager or Contractor; or (v) any entity that Controls, is Controlled by, or is under common Control with any entity that is part of Program Manager or Contractor. Self-Performed Work is distinguished from trade work performed by subcontractors unaffiliated with Program Manager or Contractor, as applicable, or the entities of which Program Manager or Contractor, as applicable, is comprised.

**“Substantial Completion”** or **“Substantially Complete”** or **“Substantially Completed”** shall mean the satisfaction of the conditions set out in Section 5.12(b).

**“Substantial Completion Date(s)”** shall mean the date(s) of Substantial Completion for each Phase set forth in Exhibit L, as may be adjusted in accordance with the terms of this Agreement.

**“Tenant”** shall have the meaning set forth in the Recitals.

**“Term”** shall mean the term of this Agreement, which shall be from the Effective Date through, unless otherwise earlier terminated pursuant to this Agreement, the Final Completion of the Project and Final Payment.

**“UHS”** shall mean a Universal Health Services, Inc.



**“Unavoidable Delay”** shall mean an act or event, including, as applicable, an act of God; fire; earthquake; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; terrorism; inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market; failure or unavailability of transportation; strike, lockout, or other actions of labor unions; failure of power; fuel shortages; inclement weather; a taking by eminent domain; and laws or orders of government or of civil, military, or naval authorities; or any other cause beyond the reasonable control of the Party; so long as such act or event: (i) is not within the reasonable control of the claiming Party; (ii) is not due to the breach of this Agreement by fault or negligence of the claiming Party or Contractor; (iii) is not reasonably avoidable by the claiming Party or Contractor; and (iv) results in a delay in performance by the claiming Party or any Contractor. If any Party to this Agreement claims any extension of the date of completion of any obligation hereunder due to an Unavoidable Delay, it shall be the responsibility of such Party to reasonably demonstrate that the Unavoidable Delay is a proximate cause of the delay.

**“Work”** shall mean any and all work done necessary to complete the Project. The initial requirements for the Work are set forth in Exhibit L.

## **ARTICLE 2 REPRESENTATIONS AND WARRANTIES**

2.1. Program Manager’s Representations and Warranties. Program Manager represents and warrants to District (i) as of the Effective Date and (ii) shall affirm upon each Application for Payment Sections 2.1(a), (b), (d), (e), (f), (g), (h), and (i); provided that for subsection (g) and (i) if Program Manager cannot affirm upon each Application for Payment, Program Manager shall notify District as to why it cannot affirm each such representation and warranty, the following:

(a) Program Manager is a corporation duly created and validly existing pursuant to the laws of Delaware and is qualified to do business in District of Columbia. True, correct and complete copies of the articles of organization of Program Manager have been delivered to District on or before the Effective Date.

(b) Program Manager has full right, power, and authority to enter into, execute, and deliver this Agreement and to perform its obligations hereunder.

(c) This Agreement has been duly executed and delivered by Program Manager and, when duly executed and delivered by District, shall constitute a legal, valid, and binding obligation of Program Manager enforceable against Program Manager in accordance with its terms.

(d) The execution, delivery, and performance of this Agreement does not violate any of the terms, conditions, or provisions of (i) Program Manager’s organizational documents, (ii) any judgment, order, injunction, decree, regulation, or ruling of any court or other Governmental Authority, or any Applicable Law to which Program Manager is subject, or (iii) any agreement or contract to which Program Manager is a party or is otherwise subject.

(e) This Agreement and Program Manager's other undertakings pursuant to this Agreement are and will be used for the purpose of developing the Project, and not for speculation in land holding or any other purpose.

(f) No action, consent, or approval of, or registration or filing with or other action by, any Governmental Authority or other Person is or will be required in connection with the execution and delivery by Program Manager of this Agreement or the assumption and performance by Program Manager of its obligations hereunder, other than the issuance of the Permits and Approvals, and all required governmental permits and licenses.

(g) Neither Program Manager nor any of its members, partners nor shareholders nor the constituent members of any of its members, are the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation, or winding up of its assets.

(h) Neither Program Manager nor any member, partner, shareholder or Affiliate of Program Manager is a Prohibited Person.

(i) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or, to Program Manager's knowledge, threatened in writing against Program Manager or its members which, if decided adversely to Program Manager or its members: (i) would impair Program Manager's ability to enter into and perform its obligations under this Agreement; (ii) would materially adversely affect the financial condition or operations of Program Manager or its members; or (iii) threaten the legal existence of Program Manager.

(j) Program Manager represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work including, but not limited to, the following: (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Land; (e) the surface and sub-surface conditions generally known to exist in the area in which the Land is located (including the conditions listed in the environmental documents received by Program Manager and set forth in Exhibit D); and (f) the character of equipment and facilities needed prior to and during the performance of the Work. Program Manager shall provide to each Contractor and include the reports and documents in Exhibit D.

2.2. District Representations and Warranties. District represents and warrants to Program Manager, as of the Effective Date as follows:

(a) District has all requisite right, power, and authority to enter into, execute, and deliver this Agreement and to perform its obligations hereunder.

(b) This Agreement has been duly executed and delivered by District and, when duly executed and delivered by Program Manager, shall constitute a legal, valid, and binding obligation of District enforceable against District in accordance with its terms.

(c) The execution, delivery, and performance of this Agreement by District does not violate any of the terms, conditions, or provisions of any judgment, order, injunction, decree, regulation, or ruling of any court or other Governmental Authority or Applicable Law to which District is subject, or any agreement or contract to which District is a party or otherwise subject.

(d) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or, to District's knowledge, threatened in writing against District involving the Land or that, if decided adversely to District, (i) would impair District's ability to perform its obligations under this Agreement; or (ii) would materially adversely affect the financial condition or operations of District.

(e) The documents listed in Exhibit D are the environmental, soil, property condition, and construction reports regarding the nature, condition, and location of the Land that are known and in the possession of District Department of General Services.

2.3. Disclaimer of Warranties. Except as otherwise expressly provided herein, as of the Effective Date, each of District and Program Manager makes no warranty or representation, express or implied, as to the title, value, design, condition, merchantability, or fitness for a particular purpose of the Land or fitness for use of the Land or any portion thereof or any other warranty with respect to the Land. In no event shall District or Program Manager be liable for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

2.4. Limitation of Funds. The Parties recognize that the funds available to complete the Project are set forth in the Project Budget, as amended from time to time in accordance with the terms of this Agreement. Notwithstanding anything herein, the Project Budget may only be amended with the written approval of District. No other funds will be available for the Project unless appropriated by the District.

(a) If the District agrees with a Program Manager determination or the District determines that it is necessary to increase the Project Budget to account for increased costs of the Project, District will seek additional appropriated funds through the District's financial reprogramming, appropriations, or supplemental appropriations processes, or any determined combination thereof.

(b) On the Effective Date, District represents to Program Manager that the Office of the Chief Financial Officer has issued a fiscal impact statement, certifying that funds for the Work as identified in the Project Budget are available.

(c) The Parties acknowledge and agree that Program Manager shall have no obligation to provide any funds for the Cost of the Project.

**ARTICLE 3**  
**PROGRAM MANAGER ROLE AND OBLIGATIONS; DISTRICT CONSENTS**

3.1. Program Manager Services. As part of the services to be provided by Program Manager under this Agreement, subject to the terms of Section 3.4, Program Manager agrees to provide the following services to District, in addition to such other services to be provided by Program Manager as are specified in this Agreement:

(a) Manage and oversee the design, construction, furnishing, equipping, activating and Commissioning of the Project to Final Completion

(b) Coordinate the activities of the Contractors and provide overall team leadership for the Project in accordance with the terms of this Agreement.

(c) Include all of the provisions set forth in this Agreement that are required to be included in Contracts in each applicable Contract.

(d) Enforce all of the terms of the Contracts in accordance with the terms of this Agreement and oversee and monitor the Work of the Contractors.

(e) Coordinate with all Contractors and request each Contractor to coordinate with the other Contractors working on the Project.

(f) Develop Project specific request for qualifications, advertise the request for qualifications, and solicit qualifications. Program Manager and the District will analyze the responses from bidders and Program Manager will make recommendation of shorted list for receipt of RFP. Develop Project specific RFPs, seek bids from at least three (3) bidders, manage the RFP process, and select and hire, each of the Contractors required to design and construct the Project. Contractors for the Project may include: architectural and engineering design team (architect, mechanical electrical and plumbing engineers, structural engineer, civil engineer, interior designer), construction manager, medical equipment planner, technology planner, food services consultant, and any other consultants necessary. Program Manager will also evaluate the status and/or hire additional consultants, as part of the Cost of the Project, for the Project as may be required, any and all compensation due any such consultant shall be part of the Cost of the Project (and Program Manager shall have no obligation to pay any such compensation with Program Manager's own funds).

(g) Coordinate with key team members, including the District and the District's construction consultant, through regularly scheduled project meetings, to assist on reaching agreement on Project goals and expectations, Project Budget, CPM Schedule, guiding design principles, communication expectations and responsibility and approval levels of authority.

(h) Monitor and update the costs incurred under the Project Budget and CPM Schedule and maintain the accounting of the CPM Schedule and Project Budget (including cash flow requirements) throughout the course of the Project. Program Manager will evaluate and provide feedback to District on each Contractor's price estimates.

(i) Review, evaluate, and sign-off on Contractor applications for payment and provide recommendations for revisions of payment, track commitments and expenditures related to the Project; provided, however, that Program Manager's sign-off on Contractor applications for payment will not be considered a warranty or guaranty by Program Manager of the accuracy or correctness of any such application for payment.

(j) Submit to District a monthly Project status summary report that provides an executive overview of the state of the project with a focus on the progress, CPM Schedule, Project Budget (including an accounting for each Project Budget line item), and key issues requiring action to keep the Project moving forward.

(k) Support, attend, and participate in, with support of the District, required presentations to provide updates to the Project status, zoning and permit discussions and submissions, hearings as needed, and other federal, state and local agency reviews, in accordance with the terms of this Agreement.

(l) Provide medical equipment planning, procurement and information technology consultancy services related to the furniture, fixtures, and equipment and Commissioning of the Project.

(m) Provide, or include in Contract(s), the requirement for Contractors to deliver customary turnover materials upon completion of construction of the Project, including as-built plans and specifications, owner manuals and warranty information. Additionally, customary plans for the transition of the Project from construction to operation and management of the Hospital will be provided under the Operations Agreement.

3.2. Program Manager Role. Program Manager shall perform the Scope of Work consistent with the skill and care ordinarily provided by program managers practicing in the same or similar locality under the same or similar circumstances. Program Manager shall perform its Scope of Work as expeditiously as is consistent with such skill and care and the orderly progress of the Work.

3.3. Enforcement of Contracts. Program Manager shall take all commercially reasonable actions necessary and appropriate to enforce the terms of each Contract, including the Construction Contract(s) and the Architect Contract. To the extent Program Manager reasonably believes it is necessary or the District requests Program Manager to bring an action in court against a non-performing Contractor or the Architect, the cost to bring such action shall be paid by District as a Cost of the Project as and when required to enable Program Manager to enforce any such Contract or the Architect Contract; provided that funds are available in the Project Budget and Program Manager notifies District of such action. If funds are not available in the Project Budget for any such enforcement action, Program Manager shall not be required to bring any such enforcement action. Program Manager shall assist District if District as a third party beneficiary of a contract between Program Manager and Contractor brings an action in court against a non-performing Contractor; provided that funds are available in the Project Budget for any such assistance of District in the enforcement action. In no event shall Program Manager be required to expend its own funds in connection with any such enforcement action.

3.4. Program Manager Not Liable for Actions of Contractors. District understands and agrees that Program Manager does not purport to offer architectural, design, surveying, and

engineering services or installation and construction services (collectively “**Construction Services**”); and that Program Manager is not liable for the means or methods relating to the Construction Services or the Work. Program Manager shall have no responsibility or liability in regard to the performance of any duty by Architect or any Contractor. Nothing in this Agreement shall be deemed to require, or authorize, or permit Program Manager to perform any act which would constitute design services related to the practice of architecture, professional engineering, certified public accounting or law. The recommendations, advice, budgetary information and schedules to be furnished by Program Manager under this Agreement are solely for the use of District and shall not be deemed to be representations, warranties or guarantees. As Program Manager is not a design or engineering professional or licensed contractor, it is expressly understood that Program Manager is not a guarantor nor warrantor nor otherwise responsible, neither expressly nor implied, for the relative quality of the Work, designs, or specifications of those who have or will design or construct the Project, the Cost of the Project or the timely completion of the Project.

3.5. Governmental Authority Permits and Approvals. Program Manager shall include in the Contracts the requirement for Contractors to initiate, lead, and endeavor to obtain the required Permits and Approvals for the Project. District shall assist Program Manager and Contractors to obtain Permits and Approvals required by District’s agencies for the Project.

3.6. District Consent to Form and Substance of Contracts and Amendments. Prior to Program Manager’s execution of a Contract, the Architect Contract or any amendment thereto, including the Construction Contract(s), Program Manager shall provide the form and substance of each Contract or the Architect Contract or amendment to District for input. Program Manager shall obtain District agreement to the final form and substance of each Contract and Architect Contract and any amendments to each Contract and Architect Contract. Any delays directly caused by a District failure to approve any form of Contract, the Architect Contract or any amendment thereto in the reasonable time provided to District for such review and approval, which shall not be less than fifteen (15) days, shall result in an adjust in the CPM Schedule. Program Manager shall endeavor to provide District with advance notice and documents to review of any new Contract or Architect Contract and any amendment thereto as soon as reasonably practical. After the form of Contract or Architect Contract is approved by District, and Program Manager executes such approved form of Contract or Architect Contract, the Program Manager shall be deemed to be in compliance with the requirements to include specific contract requirements in such Contract or Architect Contract set forth in this Agreement.

## **ARTICLE 4 DESIGN AND-CONSTRUCTION**

### 4.1. Project Plans and Specifications.

(a) Program Manager shall use commercially reasonable efforts to contract with Architect within ninety (90) days of the Effective Date to prepare all architectural plans, working drawings and specifications required to enable Program Manager, or upon hiring of the Contractor, for the Contractor, to obtain permits for the Project pursuant to the terms of this Agreement. The Architect shall be selected by Program Manager with review and input from the District in accordance with Section 3.6. District shall be provided by Program Manager with the ability to participate in interviews and other reviews by Program Manager of the Architect. The Architect Contract shall be on an AIA form (or such other similar form acceptable to Architect, Program

Manager and District) as modified by a contract addendum utilized by Program Manager containing negotiated terms used by Program Manager on its other construction projects and terms consistent with this Agreement. District shall be named as a third party beneficiary of such Architect Contract and approved assignee of Program Manager pursuant to such Architect Contract.

(b) The Architect Contract shall provide that the Architect, with input from the Program Manager and District, shall be required to develop, within seven (7) months after the Effective Date, one or more proposed conceptual designs for each Phase of the Project for review by Program Manager and District. The proposed conceptual designs shall include, but not be limited to, the proposed exterior design, massing and the type and quality of materials that are proposed to be used on the exterior of the Project. The final conceptual design for the Project shall be subject to the approval of both Program Manager and District.

(c) The Architect Contract shall provide that the Architect be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, and other services furnished by the Architect. The Architect Contract shall provide that the Architect correct or revise errors or deficiencies in any plans at no additional cost. The Architect Contract shall require that all Work shall be prosecuted under the full-time direction of a principal officer or responsible representative of the Architect. The design of architectural, structural, mechanical, plumbing, electrical, or other engineering features of the Work shall be accomplished and/or reviewed and certified by architects or engineers registered to practice in the District of Columbia in the particular professional field involved.

(d) The Architect Contract shall provide that the Architect, with input and cooperation from Program Manager and District, shall develop design documents for the improvement, building shell, location of infrastructure and buildings on the Land, and equipment installation locations for the written approval of Program Manager and District at concept drawings, Schematic Design, Design Development, and at 65% and 100% construction documents for each Phase of the Work. The Architect Contract shall provide that all Architect-submitted designs shall include the estimated cost of the Work based on such designs. District and Program Manager shall return comments on the design documents to the Architect and to each other within fifteen (15) days after receipt of the design documents. In the event either District or Program Manager does not approve the submitted design documents or in the alternative returns the submitted design documents with comments, the Parties shall meet with the Architect in a working session within seven (7) days following a Party's disapproval or return of the design documents with comments, and the Parties agree to use commercially reasonable efforts to address and resolve all comments. The meeting shall occur promptly following receipt of a Party's comments. If the Parties are unable to reach an agreement on the design documents, the Parties shall use the Dispute procedures set forth in Section 10.5, to resolve the dispute concerning the design documents.

(i) The Parties, for each Phase of the Work, shall as part of the approval of the 100% construction documents (or such other percentage agreed to by the Parties) agree on the estimated budget of the Work based on such 100% construction documents (or such other percentage agreed to by the Parties). Following the Parties' mutual approval of 100% construction documents (or such other percentage agreed to by the Parties) and the estimated budget, a copy of the approved 100% construction documents (or such other percentage agreed to by the Parties) for each Phase of the Work (the "**Approved Design**") shall be attached as

an amendment to this Agreement and include an approved budget amount (“**Phase Budget Amendment**”). Each Approved Design for each Phase of the Work will comply with Program Manager’s design and construction standards and the St. Elizabeths Master Design Guidelines (as of the Effective Date located at [https://stelizabethseast.com/wp-content/uploads/21087-GL-DRAFT\\_2012\\_0605\\_FINAL\\_with\\_appendices.pdf](https://stelizabethseast.com/wp-content/uploads/21087-GL-DRAFT_2012_0605_FINAL_with_appendices.pdf)) and will use Program Manager’s standard universal patient room design template. Upon completion of the Approved Design for each Phase of the Work, such Approved Design shall be used to complete the final Plans and Specifications that the Program Manager shall use to bid each Phase of the Work.

(ii) The Parties shall develop the Approved Design (program, design and engineering) for each Phase of the Work, working collectively and in a timely manner to permit the Program Manager to bid each Phase of the Work.

(iii) Any change to the Phase Budget Amendment shall be by Agreement Change Order or Agreement Change Directive, in accordance with the terms of this Agreement.

(e) The Architect Contract shall provide that the Architect shall host design process meetings with District, Construction Consultant, and Program Manager a minimum of once every two (2) weeks or more frequently as may be requested by District until the Parties approve all of the Approved Designs for the all of the Phases of the Work.

(f) At any time prior to Program Manager’s execution of Construction Contract(s), Program Manager or District may propose modifications to the Approved Design (“**Design Modification**”). If either Party desires a Design Modification, the Party requesting the Design Modification shall outline the proposed Design Modification for the other Party. The Architect Contract shall provide for the Architect to develop and submit modified Plans and Specifications clearly showing the changes to the Parties and Construction Consultant, together with an estimate of any cost changes and adjustment to the CPM Schedule resulting from such Design Modification.

(i) All Design Modifications proposed by the Program Manager and agreed to by District or proposed by District and agreed to by Program Manager, shall be memorialized by written agreement signed by the Parties, and Program Manager shall require in accordance with the terms of the Architect Contract, that the applicable Approved Design be updated by Architect to incorporate the Design Modification. If a Design Modification proposed by the Architect or Program Manager is not agreed to by the District, then it shall be of no force or effect.

(ii) If Program Manager does not agree to a Design Modification proposed by District, Program Manager shall provide a detailed written notice to District why it does not agree to the Design Modification. Provided a Design Modification is not Detrimental to the Project, the District may require the implementation of the Design Modification through a directive (“**Design Modification Directive**”) and Program Manager shall require, in accordance with the terms of the Architect Contract, that the applicable Approved Design be updated by Architect to incorporate the Design Modification Directive. To the extent impacted by the Design Modification Directive, the Project Budget and CPM



Schedule shall be adjusted in accordance with the estimates obtained by Program Manager to implement such Design Modification Directive.

(g) The Architect Contract shall provide that the Plans and Specifications for each Approved Design shall comply with all Applicable Laws.

(h) Within ninety (90) days after the execution of the Architect Contract, the Architect, the Program Manager and other consultants hired by the Program Manager shall, with the support of District, prepare a community engagement plan. Before each Approved Design is deemed final, Program Manager shall, with assistance from District, participate in community meetings on the Project, including Advisory Neighborhood Commission meetings to provide information on the then proposed design of the Project and to receive input from the public on the proposed design. The Architect Contract shall provide that the Architect shall participate in such meetings.

#### 4.2. Project Construction Contract(s).

(a) Program Manager shall use commercially reasonable efforts to enter into one or more guaranteed maximum price agreement(s) (the “**Construction Contract(s)**”), for the Project within one-hundred and twenty (120) days after approval of each of the Approved Design(s), or such other earlier period agreed to by the Parties.

(i) Construction Contractor(s) shall be selected by Program Manager with review and input from the District in accordance with Article 3. District shall be provided by Program Manager with the ability to participate in interviews and other reviews of the Contractors by Program Manager. The Construction Contract(s) shall include: a schedule of values, the Approved Design, a guaranteed maximum price, and specific dates of Substantial Completion and Final Completion for each Phase of the Work and such amounts and dates shall be the same amounts and dates set forth in Exhibit L and this Agreement, as amended from time to time, all as set forth in this Agreement.

(ii) The Construction Contract(s) shall be on an AIA form of construction contract as modified by a contract addendum utilized by Program Manager containing negotiated terms used by Program Manager on its other construction projects and terms consistent with this Agreement.

(iii) District shall be named as a third party beneficiary of such Construction Contract(s) and approved assignee of Program Manager pursuant to such Construction Contract(s).

(b) Program Manager shall keep District apprised of Program Manager’s progress in negotiating the Construction Contract(s).

(c) The Construction Contract(s) shall provide that the Contractor has the right to Self-Perform Work for those portions of the Work that Contractor customarily performs, as long as the cost of the Self-Performed Work by Contractor: (i) does not exceed the cost for such portion of the Work that is consistent with at least three (3) bids for the Work and (ii) is consistent with and no more than the price set forth in the Project Budget.

(d) Program Manager shall take all actions necessary or appropriate to enforce the terms of the Construction Contract(s) in accordance with this Agreement.

(e) Each Construction Contract shall provide that the Contractor shall provide to Program Manager and District all subcontracts in excess of Ten Million Dollars (\$10,000,000), including the name of the subcontractor, the scope and the dollar amount of the subcontract at least seven (7) Business Days before such subcontracts are executed.

#### 4.3. Permits and Approvals.

(a) The Construction Contract(s) shall provide that: (i) Contractor shall be responsible for preparing and submitting all of the permit applications that are necessary to obtain the Permits and Approvals required to complete the Project, except as set forth in subsection (c), below; (ii) Contractor shall develop a list of the required permits and shall track the progress of all such permits through the review process; (iii) Contractor shall update Program Manager with the status of each Permit and Approval that is required for the Project; and (iv) Contractor may engage such permit expeditors as Contractor deems appropriate in light of the Project's schedule.

(b) District will assist Program Manager and Contractor, to facilitate and expedite the Permit and Approval process whenever possible.

(c) District, at District's sole cost and expense, shall be responsible for obtaining the Land Use Approvals described on Exhibit M and the CON. Program Manager shall assist District to complete and process the applications and other requirements to obtain such permits and the CON. Program Manager shall request and use commercially reasonable efforts to obtain any additional required Land Use Approvals for the Project, the cost of which shall be included in the Cost of the Project. Program Manager shall invite District to participate in any meetings with Governmental Authorities relating to any Land Use Approvals to be requested by Program Manager. District, in its role as a contracting party, will facilitate and expedite the Land Use Approvals process whenever possible.

4.4. Construction Consultant. District may, at District's option, hire a Construction Consultant (the "**Construction Consultant**") to assist District to (i) review and report to District, before and during the Work, on the construction documents relating thereto, the schedule for construction, and the conformity of such matters to the Approved Design, (ii) report to District as to whether the Work is on schedule, or if not, whether a reasonably satisfactory recovery plan has been adopted and is being implemented, and/or (iii) any other terms required by District. Program Manager agrees that the Construction Consultant shall be afforded the same privileges, notices and access as would reasonably be afforded to District or any construction consultant or advisor of any traditional lender, including, without limitation, being permitted to attend meetings with Program Manager or Construction Contractor(s) and receiving all plans, drawings, change orders and other similar documents. Upon reasonable notice to Program Manager, Construction Consultant and District shall have the right to participate in any tests of the Work performed by Construction Contractor(s). The Construction Contract(s) shall provide that, Contractor promptly furnish all facilities and material reasonably needed for performing safely and conveniently such inspections and health or related tests as may be reasonably required by the Construction Consultant. The Construction Contract(s) shall provide that Contractor replace, or correct Work found by the Construction Consultant not to conform to requirements of the Work unless District consents to accept the Work. The Construction Contract(s) shall provide that that Construction Contractor(s)

maintain an adequate inspection system and permit the Construction Consultant reasonable access to such system. The Construction Consultant shall not be authorized to issue or approve any Agreement Change Directives or Agreement Change Orders on behalf of District, nor shall the Construction Consultant have the ability to render decisions on behalf of District required in connection with this Agreement.

**4.5. Preliminary Schedule; CPM Schedule; Project Coordination Meetings; Inspection and Monitoring Rights.**

(a) The initial preliminary construction schedule is attached hereto as Exhibit L. The construction schedule and Project Budget shall be updated through an amendment signed by District and Program Manager updating Exhibit L and the dates set forth therein upon (i) approval of the Approved Design, (ii) upon approval of the CON, (iii) upon the execution of the Construction Contract(s), (iv) upon execution of any Agreement Change Order or Agreement Change Directive which amends the construction schedule, and (v) as otherwise specifically set forth in this Agreement. Each update of Exhibit L shall, as necessary, identify any amendment to the dates of Substantial Completion and Final Completion.

(b) Upon approval of the Approved Design for a Phase of the Work and prior to execution of the Construction Contract(s), Program Manager shall submit to District for mutual approval of District and Program Manager an updated preliminary construction schedule with specific details for each phase of the Project, which schedule shall be prepared using the critical path method (“CPM”) (such schedule, as it may be amended from time to time in accordance with the Construction Contract(s), shall be referred to as the “CPM Schedule”) for use in scheduling and controlling the construction of the Project.

(i) Each amendment of the CPM Schedule in accordance with the terms of this Agreement, shall, to the extent impacted and as necessary, amend the dates of Substantial Completion and Final Completion as set forth in this Agreement; provided that any changes to the Substantial Completion Date and Final Completion Date permitted by this Agreement without the consent of District shall require a notice from Program Manager to District within thirty (30) days after Program Manager has actual knowledge of such event giving rise to a right to revise such dates occurring and such notice shall identify the event giving rise to the revision of time and the revised dates of the Substantial Completion Date and Final Completion Date to become effective.

(ii) The CPM Schedule shall, at a minimum, show:

(A) the early and late start and stop times for each major construction activity;

(B) all “critical path” activities, resources required for these activities, and their duration;

(C) the sequencing of all procurement, approval, delivery and work activities;

- (D) late order dates for all long lead time materials and equipment;
- (E) critical Program Manager/District and Contractor decision dates;
- (F) each estimated date of Substantial Completion; and
- (G) each estimated date of Final Completion for each Phase of the Project (including the Final Completion of the Project).

(iii) Program Manager shall update the CPM Schedule and deliver the CPM Schedule to District monthly prior to the time that the guaranteed maximum price is established for the Project, upon execution of the Construction Contract(s) and monthly thereafter. With each submission to District of the CPM Schedule, the Program Manager shall cause an updated Project Budget to be provided to District for planning purposes.

(c) District and Program Manager recognize the need to maintain clear lines of communications and facilitate timely and coordinated decision-making to implement the Project. To facilitate these objectives, the Parties will hold meetings once every two (2) weeks prior to the commencement of the Work. Following the commencement of the Work, the Parties will continue to meet regularly at least monthly to discuss the status of the Project, and to address any issues that may have arisen since their last meeting. All such meetings shall be scheduled reasonably in advance by Program Manager, with input from the District or can be requested by District through Program Manager.

(d) Following the Notice to Proceed for each Contract, in addition to any applicable District building and health code requirements, District and Construction Consultant shall have the right to enter onto the Land from time to time (but at the risk of District and the Construction Consultant), for the purpose of performing routine inspections in connection with the development and construction of the Project; provided, however, in no event shall District or Construction Consultant interfere with the construction of the Project. Each Contract shall provide that District and/or its representatives will enter onto the Land from time to time, for the sole purpose of undertaking the inspection of the Project to determine conformance to the terms and conditions of this Agreement. Program Manager and Contractors shall have the right to accompany those persons during any such inspections. Program Manager waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the Land unless resulting from the gross negligence or willful misconduct of District or its representatives. Any inspection of the Project by District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance thereof with any building codes, regulations, standards, or other Applicable Laws; however, if the District and/or any of the its representatives (including, without limitation, Construction Consultant) observe any matters regarding non-compliance with any Applicable Laws, District shall immediately notify Program Manager of the same. For the avoidance of doubt, the rights set forth in this Section are in addition to those rights set forth in Section 3.4. District, after prior written notice to Program Manager, or in the case of an emergency notify Program Manager as soon as practical thereafter, shall have the right to enter the Land to remediate any Hazardous Materials on the Land using funds from the Project Budget or at District's expense from sources other than the

Project Budget. If District enters the Land for purposes of remediation in accordance with this Section, to the extent impacted, the Project Budget (with the written agreement of District pursuant to Section 4.6) and the CPM Schedule shall be adjusted accordingly, in accordance with the provisions of this Agreement. To the extent Project Budget is impacted by such remediation, District, in its sole discretion, may request additional funds through the District's appropriation process. If (i) the Project Budget is utilized for remediation, (ii) District does not appropriate additional funds to replenish the Project Budget and (iii) the remaining Project Budget is Detrimental to the Project, then either Party shall have the right to terminate this Agreement pursuant to the terms of Section 11.3.

#### 4.6. Change Orders to the Work.

(a) *Executed Agreement Change Directive/Change Order Required.* Notwithstanding anything else herein, only a written Agreement Change Directive or Agreement Change Order, approved by the District, may make changes to the Work, Substantial Completion Date, Final Completion Date, or Project Budget in the Agreement; provided that in the case of changes to the Substantial Completion Date and Final Completion Date Program, Manager has the right to make changes to the Substantial Completion Date and Final Completion in accordance with Section 4.5(b) and 4.6(e)(ii).

(b) *Statement to Recognize the Parties Attempt to Limit Change Orders.* The Parties included allowances and contingencies in the Project Budget to attempt to minimize the number of Agreement Change Directives and Agreement Change Orders to complete the Project.

(c) *Statement Related to Mutual Agreement on Change Orders.* The Parties will work in good faith to issue a Change Order pursuant to the mutual agreement of the Parties. However, the District may require Program Manager to issue an Agreement Change Directive in accordance with the terms of this Agreement.

(d) *Process for Issuance of Agreement Change Directives and Agreement Change Orders.*

(i) Program Manager may propose the issuance of an Agreement Change Order. District may request the issuance of an Agreement Change Order or Agreement Change Directive. Program Manager may not issue a Contract Change Directive or enter into a Contract Change Order or Contract Change Directive with Contractor(s), except as provided in this Section 4.6.

(ii) If Program Manager proposes an Agreement Change Order (either on its own initiative or at the request of Contractor), Program Manager shall submit the change order request to the District for the District's approval. The change order request shall include a draft change order and a written statement of all proposed changes in the Contract(s), including, without limitation, any changes to each Substantial Completion Date or Final Completion Date or the change in the Project Budget as a result of the requested Agreement Change Order. Such proposal shall also include Program Manager's analysis of the impact, if any, of the proposed Agreement Change Order on the Hospital, Operating Entity Hospital operations and Operating Entity Hospital profitability. If additional time is proposed, the Program Manager or Contractor shall include a schedule analysis supporting the proposed

extension in the request. The schedule analysis shall include a written narrative explanation. If a change in the maximum amount of the Project Budget is proposed, the statement shall include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. District may request, and Program Manager shall request that the relevant Contractor or Architect provide further cost breakdowns, clarifications, documentation or back-up if District reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data. Any requested adjustment to the maximum amount of the Project Budget shall be limited to increased Cost of the Project due to the Agreement Change Order.

(iii) After Program Manager proposes an Agreement Change Order and provides the required information, District and Program Manager shall work together in an effort to agree on the Agreement Change Order. If District approves the proposed Agreement Change Order (or if Program Manager and District approve a revised Agreement Change Order), Program Manager shall issue the Contract Change Directive or Contract Change Order to the Contractor(s) in a manner consistent with the terms of the Contract(s). If District does not approve the proposed Agreement Change Order, the Program Manager shall not issue the Contract Change Directive or Contract Change Order to the Contractor, and the proposed Agreement Change Order shall be of no force or effect. If the Agreement Change Order requested by Program Manager requires an increase in the Project Budget, such additional amount required to implement the Agreement Change Order shall be paid for by District.

(iv) If District submits a request for an Agreement Change Order, the Program Manager shall, within ten (10) days after receiving the request, provide District with a draft change order and a written statement of all changes in each Contract, including, without limitation, any changes to each Substantial Completion Date or Final Completion Date or the change in the Project Budget, to which it believes it is entitled as a result of the request for an Agreement Change Order. Such written response shall also include Program Manager's analysis on the impact of the proposed Agreement Change Order to the Hospital, Operating Entity Hospital operations and Operating Entity Hospital profitability. If additional time is sought, a schedule analysis supporting the requested extension shall be included. The schedule analysis shall include a written narrative explanation. If a change in the maximum amount of the Project Budget is sought (or if the District has requested a deduct change), the statement shall include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. District may request, and Program Manager shall request that the relevant Contractor or Architect provide further cost breakdowns, clarifications, documentation or back-up if District reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data. Any requested adjustment to the maximum amount of the Project Budget shall be limited to increased Cost of the Project due to the requested Agreement Change Order.

(v) After Program Manager provides the required information identified in subsection (iv) above in response to a request from the District for an Agreement

Change Order, District and Program Manager shall work together in an effort to agree on the scope anticipated in the requested Agreement Change Order. If District and Program Manager approve the Agreement Change Order (or a revised change), it shall be an approved Agreement Change Order, and Program Manager shall issue the Contract Change Directive or Contract Change Order to the Contractor(s), in a manner consistent with the terms of the Contract(s). If the Program Manager does not approve the proposed change(s) and the proposed change(s) in the request for the Agreement Change Order are not detrimental to the Hospital facility, Hospital operations, or Hospital profitability as determined by the Parties (collectively, "**Detrimental to the Project**"), the request for an Agreement Change Order shall be treated as an Agreement Change Directive, and Program Manager shall issue to the Contractor(s) a Contract Change Directive or Contract Change Order in a manner consistent with the terms of the Contract(s). If the Agreement Change Order requested by District or Agreement Change Directive results an increase in the Project Budget, such additional amount required by the Contractor to implement the proposed Agreement Change Order or Agreement Change Directive shall be paid for by District, and if such Agreement Change Order or Agreement Change Directive results in a delay in the CPM Schedule, then the CPM Schedule shall be adjusted by the amount of time required by the Contractor to complete the Work under the proposed Agreement Change Order or Agreement Change Directive. If the Parties cannot agree on whether the proposed change(s) in the proposed Agreement Change Order or Agreement Change Directive is Detrimental to the Project, the Parties shall resolve such Dispute pursuant to Section 10.5.

(vi) An Agreement Change Directive or Agreement Change Order may include deductive Agreement Change Directives or Agreement Change Orders (reducing the Project Budget including the maximum amount of the Project Budget or modifying one or more Substantial Completion Date(s) or Final Completion Date(s) to an earlier date) which will decrease the cost of completing the Work or the time within which it can be completed. Any such deductive Agreement Change Directives or Agreement Change Orders shall not be Detrimental to the Project. If the Parties cannot agree upon (1) whether any deductive Agreement Change Directive or Agreement Change Order is Detrimental to the Project, or (2) the amount of the reduction to the Project Budget or the modification of one or more Substantial Completion Date(s) or Final Completion Date(s) to an earlier date, then the Parties shall use reasonable efforts to resolve the differences as provided in Section 10.5; provided that if such attempt to resolve the differences is unsuccessful, either Party shall have the right to terminate this Agreement as set forth in Section 11.3.

(e) *Process for Program Manager and Contractor(s) Change Orders.*

(i) A Contract Change Order that: (A) is not more than one-million dollars (\$1,000,000) in a single instance; (B) does not at the time of the request, in cumulation with other Contract Change Directives and Contract Change Orders issued by the Program Manager exceed ten percent (10%) of the Contractor or subcontractor total value set at the time of the execution of the Contract; (C) does not impact any Substantial Completion Date or Final Completion Date more than is allocated in such Construction Contract as a time contingency for Contract

Change Orders<sup>1</sup>; and (D) does not increase the Project Budget shall not be subject to District approval under this Agreement and Program Manager may execute such Contract Change Order after notice to the District. The Parties agree that Project Budget contingency accounts may be used to pay for Contract Change Orders.

(ii) Contract Change Orders caused by Unavoidable Delays may be executed by Program Manager and Contractor without District's consent, after three (3) Business Days prior notice to District identifying the details of the delay, the impact to the Work, and the actual delay caused by the Unavoidable Delay if: (A) funds are available in the Project Budget contingency account for such Work and (B) such Work is not more than one-million (\$1,000,000) in a single instance to cover the additional cost of the Work. Such Contract Change Order may also delay the applicable Substantial Completion Date or Final Completion Date for so long as such Unavoidable Delay reasonably causes such delay to such portion of the Work; provided that each Contract shall provide for a requirement for the Contractor to notify District of the Unavoidable Delay within fifteen (15) days of an Unavoidable Delay occurring and to use commercially reasonable efforts to mitigate any time delays caused by an Unavoidable Delay.

(iii) *Amendments to Agreement based on Change Order; Failure to Agree.* Except as set forth above in this Agreement with respect to Contract Change Orders that do not require District's approval, prior to execution of a Contract Change Order (on and AIA Change Order form attached to the Contract) by the Program Manager and Contractor, Program Manager will submit such form to District for District's approval as to the changes set forth in the proposed Contract Change Order. If District does not agree that the change(s) in such Contract Change Order is/are justified, the appropriate changes to this Agreement resulting from the proposed Contract Change Order shall be determined pursuant to the Dispute process set forth in Section 10.5; provided that, if Program Manager and Contractor have proceeded through arbitration or an action in court pursuant to the terms of the applicable Contract and the final determination of the arbitrator or court rules that the Contractor is entitled to the proposed Contract Change Order pursuant to the terms of such Contract, District agrees that the terms of such final arbitration, or court ruling shall be binding on District and the CPM Schedule shall be adjusted accordingly and any change to the Project Budget will be subject to District limitations on funding as set forth in this Agreement; provided that in no event shall any such rulings in the aggregate exceed the Project Budget

(f) *Executed Change Orders Final.* Program Manager agrees that any Agreement Change Order executed by District and Program Manager or Agreement Change Directive issued on accordance with the terms of this Agreement constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, or other consequences arising from the change in question, and that no further adjustments in compensation or time shall be sought or made with respect to such Agreement Change Order or Agreement Change Directive.

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<sup>1</sup> The Construction Contracts will include a time contingency of approximately 45 days.



(g) *Change Orders and Amendments*: Any amendment to any Contract sought by the Program Manager, other than as set forth in subsection (e), shall be subject to the review and approval by District, as set forth in Section 3.6.

#### 4.7. Disbursement of Progress Payments.

(a) The District will make all reasonable efforts to issue Bonds for the Project, within ninety (90) days, or otherwise as soon as possible, of the Effective Date, in an amount sufficient to cover the Project Budget annual cash flow model (set forth in Exhibit L). Funding for the Project Budget will be included in the District's annually approved "Capital Improvement Program" until the Project is completed in accordance with this Agreement. Within thirty (30) days after the Effective Date, the District's Chief Financial Officer shall confirm that adequate funding is included in the District "Capital Improvement Program" to pay for the costs of the Project Budget. District will issue and sell the Bonds on terms determined in the sole and absolute discretion of District and will notify Program Manager when the Bonds are issued and the amount of the Bonds. Upon issuance of such Bonds, District shall provide to Project Manager the trust indenture or other similar document that identifies the total principal amount that identifies the total principal amount of such Bonds and the relevant repayment terms of such Bonds. Program Manager shall submit to District an initial schedule of expected Costs for the Work and schedule of projected progress payments ("**Projected Payments**") within fifteen (15) days after the execution of the initial Contract. Cost of the Project must articulate capital eligible items in alignment with the capital eligibility guidelines set forth in Exhibit B.

(b) Upon receiving the proceeds of the sale of the Bonds, District shall immediately pay or cause a Bond trustee that is party to the Bond trust indenture to pay the bond issuance costs to the appropriate payees; and to cause the Bond trustee selected by District's Chief Financial Officer to establish the necessary Bond trust funds, accounts, and subaccounts and to hold and disperse such Bond net proceeds to Program Manager or its designees pursuant to this Agreement and in accordance with the Bond trust indenture. District will deliver the account balance amount to Program Manager within seven (7) Business Days upon Program Manager's request.

(c) District shall, within thirty (30) days after the Effective Date, fund the project in a sufficient amount to pay for the Cost of Work identified in the CPM Schedule up to ten million dollars (\$10,000,000.00).

(d) Program Manager shall on a monthly basis identify the Projected Payments to District and District shall cause the Bond trustee to retain at least six (6) months of Projected Payments in the Bond project fund, and to invest the balance of the Bond net proceeds in high quality, highly liquid investments, in accordance with District's internal Cash & Investment Management Investment Policy.

(e) District agrees to pay to Program Manager and Program Manager agrees to accept from District the payments identified in this Section 4.7, subject to and in accordance with the terms of this Agreement, and the Bond trust indenture.

(f) In order for Program Manager to receive payment for the Cost of the Project, Program Manager shall deliver to District the Contractor's Application for Payment in the form attached hereto as Exhibit C ("**Application for Payment**"). The Application for Payment shall include Contractor's job cost ledgers in a form reasonably satisfactory to District, Contractor's,

subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form reasonably acceptable to District, and such other supporting documentation as District may reasonably request Each Application for Payment shall also include:

(i) written waivers of the right to file a mechanic's lien and all other claims, in a form substantially similar to Exhibit G, for 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 District so requests, Program Manager shall or shall require Contractor to 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 this Agreement, and providing final release of such liens, if applicable; and

(ii) detailed documentation of costs as a condition to approving progress payments, but Contractor shall nevertheless maintain complete documentation of the costs including:

(A) The Cost of the Project completed to date;

(B) Current approved estimated amount for the upcoming Work based on the Project Budget, as the same may be amended as provided in this Agreement;

(C) Minus applicable retainage (10% retainage through 50% Substantial Completion and 5% thereafter);

(D) Minus amounts previously paid by District.

(g) District shall not be required to pay for materials stored at the site or stored at other locations absent prior written authorization by Program Manager to do so. For materials stored at the site but not yet incorporated into the Work, the Application for Payment may also include a request for payment of the cost of such materials, if the materials have been delivered to the site, and suitably stored. Such requests shall be documented by appropriate invoices and bills of sale. Payment for stored materials shall be conditioned also on Contractor's representation that it has inspected the material and found it to be free from defect and otherwise in conformity with this Agreement, and on satisfactory evidence that the materials are insured under the builder's risk policy.

(h) Program Manager shall not collect or be paid a fee for Program Manager's or any Affiliate's work under this Agreement. Program Manager shall not be paid for any Self-Performed Work performed by Program Manager. Program Manager shall not be required to perform any Self-Performed Work in connection with the Project.

(i) Program Manager shall not include in an Application for Payment amounts for Work for which Program Manager does not intend to pay to the Contractor from such Application for Payment. Each Application for Payment shall be signed by Program Manager stating that the

Program Manager reviewed and submitted the Contractor's payment application with a Contractor certification that includes:

(i) all amounts paid to Program Manager on the previous Application for Payment that were attributable to Contractor and subcontractor Work or to materials or equipment being supplied by any supplier have been paid over to the appropriate subcontractors and suppliers in accordance with the requirements of the contracts signed by such entities;

(ii) that all amounts currently sought by Program Manager for Contractor or Contractor's subcontractor Work or supply of materials or equipment are currently due and owing to the Program Manager for Contractor or Contractor's subcontractors and material or equipment suppliers (subject to the exception set forth in subsection (a));

(iii) that all Work, materials or equipment for which payment is sought is, to the best of Contractor's knowledge, free from defect and meets all of the requirements set forth in the Agreement; and

(iv) that Contractor's subcontracts include the clauses required by subparagraphs (1) through (5) of D.C. Official Code § 2-221.02(d) (2017).

(j) Program Manager shall not cause to be placed and shall include in the Construction Contract that no Contractors or subcontractors or any other laborers shall not place or cause to be placed any encumbrances on any portion of the Project or covering any portion of the Work (Program Manager shall include this restriction within the terms and conditions of each Contract including the Construction Contract(s)). By submitting an Application for Payment, Program Manager shall or shall require Contractor to warrant to District that title to all Work for which payment is sought will pass to District, without liens, claims, or other encumbrances, upon the receipt of payment by Contractor. District 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 Contractors until Substantial Completion, unless otherwise agreed by District, in writing.

(k) On the fifteenth (15<sup>th</sup>) day of each month Program Manager shall submit to District an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted. If District is unable to agree on the amounts properly due and owing, District may withhold payment from the Application for Payment in accordance with its good faith determination and Program Manager may protest and pursue a claim as a dispute as provided in Section 10.5 of this Agreement.

(l) Upon receipt of an Application for Payment with the necessary documentation, as set forth in this Agreement, the District (through the Department of General Services) will review the Application for Payment within seven (7) Business Days and within such seven (7) Business Day period either approve the Application for Payment or return the Application for Payment to the Program Manager with a request for additional information and any necessary adjustments. Once adjustments have been made by the Program Manager, or the applicable Contractor, the Program Manager shall resubmit the Application for Payment and the process above shall be followed until the issues identified by District to Program Manager are resolved. If such requests do not obtain District (through the Department of General Services) approval of the review of the

Application for Payment, the request will be reviewed by District (through Department of General Services Deputy Director, Capital Construction) for the issue to be resolved within seven (7) Business Days and if the issue is not resolved between the Parties within such period the Parties shall proceed through the dispute process in Section 10.5. Following approval of the application for Payment by District Department of General Services, as provided above, within three (3) Business Day thereafter District shall forward the relevant documentation to the District Office of Chief Financial Officer (“OCFO”) and upon receipt by the OCFO from the District Department of General Services (with all relevant documentation relating to the Application for Payment, as set forth in this Agreement), the OCFO shall cause payment to be made to the Program Manager within seven (7) Business Days following the OCFO’s receipt of the Application for Payment approval from District Department of General Services, as provided above. District may withhold payment, in whole or part, as appropriate, if:

- (i) the Work is defective and such defects have not been remedied; or
- (ii) District has determined that progress has fallen materially behind the dates identified in the CPM Schedule, as amended from time to time as provided in this Agreement, not due to the acts or omissions of District or Unavoidable Delays, and Contractor or Program Manager fails, within ten (10) days of District’s written demand, to provide District with a realistic and reasonably acceptable remedial plan; or
- (iii) Program Manager’s monthly schedule update reflects that Contractor has fallen materially behind the dates identified in the CPM Schedule, as amended from time to time as set forth in this Agreement, not due to the acts or omissions of District or Unavoidable Delays, and Contractor or Program Manager fails to include, in the same monthly report, a realistic and reasonably acceptable remedial plan; or
- (iv) Program Manager has failed to provide reports due from Program Manager in compliance with this Agreement and not remedied such failure within thirty (30) days of Program Manager’s receipt of written notice from District; or
- (v) Program Manager has failed to pay Contractor or Program Manager has failed to enforce the Contract to require Contractors to pay subcontractors after receipt of funds from District for amounts that are not in dispute, or Contractor has made false certifications in an Application for Payment that payments to subcontractors or suppliers are due or have been made which is not remedied within thirty (30) days after Program Manager’s receipt of written notice from District; or
- (vi) any mechanic’s lien has been filed against District, the site or any portion thereof or interest therein, or any improvements on the site, even though District has paid all undisputed amounts due, and Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within thirty (30) days after Contractor’s receipt of such notice from District; or
- (vii) Program Manager is otherwise in substantial breach of this Agreement beyond the applicable notice and/or grace period; or

(viii) the Application for Payment is materially incomplete, unsubstantiated and/or does not contain sufficient documentation for evaluation by District in accordance with the terms of this Agreement.

(m) Payment of any Progress Payment or Final Payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to this Agreement, or a waiver of any rights or remedies District may have with respect to defective or nonconforming Work.

(n) District shall have no obligation to pay or be responsible in any way for payments directly to a Contractor's consultant or subcontractor performing portions of the Work.

(o) Final Payment shall be made by District to Program Manager when: (i) Final Completion has been achieved; (ii) all deliverables required in this Agreement have been delivered to and are accepted by District; (iii) Program Manager provides District a complete set of product manuals (O&M), training videos, and warranties, as applicable; and (iv) a complete final Application for Payment and a final accounting for the Cost of the Project have been submitted by Program Manager and reviewed by District and, to the extent District determines appropriate, District's accountants. District shall make Final Payment not more than thirty (30) days after District verifies the amount of the final payment set forth in a complete final Application for Payment.

(p) The amount of the "Final Payment" shall be calculated as follows:

(i) Take the sum of the Cost of the Project substantiated by Program Manager's final accounting; but not more than the Project Budget, as the same may be amended from time to time as provided in this Agreement

(ii) Subtract amounts, if any, for which District has withheld pursuant to the terms of this Agreement, if any.

(iii) Subtract the aggregate of previous payments made by District.

(q) District will review Program Manager's final accounting within thirty (30) days after delivery of the final accounting to District by Program Manager. Based upon District's determination of the Cost of the Project in accordance with the terms of this Agreement and provided the other conditions of this Section 4.7 have been met, District will, within fifteen (15) days after District's determination, notify Program Manager of any amount that District will withhold, if any, and the reasons therefor. The time periods stated in this Paragraph supersede those for typical progress payments.

(r) Program Manager shall pay (where District pays the Program Manager and not the Contractor directly) all Contractors, Architect and any other contractor within seven (7) Business Days of receipt of payment from District. Each Contract shall include a clause that all Contractor subcontractors and vendors shall be paid by Contractor within seven (7) Business Days of Contractor's receipt of payment.

#### 4.8. Bid Process.

(a) In addition to the requirements set forth in Section 3.6 and Section 5.13, the Program Manager and each Contract shall provide that Contractors (and each major subcontractor

under the such Contracts) shall use commercially reasonable best efforts to solicit at least three (3) qualified and bona fide bids for each trade package that has an expected cost in excess of One Hundred Thousand Dollars (\$100,000). Trade packages shall not be parceled, split or divided to avoid such threshold amount. In addition to the information normally required in such bids, each Contract shall also require Contractors and its subcontractors to provide an estimate of the percentage of labor hours to be performed in completing the subcontracted work which will be performed by District residents. The Program Manager and each Contract shall provide that Contractors shall carefully document the procedures for making available bid packages to potential bidders, the contents of each bid package, discussions with bidders at any pre-bid meetings, bidders' compliance with bid requirements, all bids received, Contractor's evaluations of all bids, and the basis for each Contractor's recommendation as to which bidders should be chosen. District shall be afforded access to all such records at all reasonable times so that, among other things, it may independently confirm adherence to all requirements set forth in this Agreement. District shall provide reasonable assistance to Program Manager and/or Contractor(s) with respect to the preparation of the request for proposals related to First Source Employment Agreement, project labor agreement, CBE and other District requirements set forth in this Agreement.

(b) As part of the negotiations leading up to the Project Budget, Program Manager shall provide to District tabulations of the trade bids solicited and copies of all trade bids. In general, the bid tab shall be presented in tabular format that compares the bids received and any other relevant information (i.e. exclusions, past performance history, etc.). The bid tabulation shall include scope assessments and identify required leveling of the trade submitted. To the extent that Program Manger's award recommendation is based on scoping adjustments, the Program Manger shall clearly identify the scoping adjustment and the need for such adjustments. Such bid tabulation shall include CBE utilization information in addition to price and other information. Such bid tabulations as well as copies of the bids shall be submitted to District and Construction Consultant. Program Manager represents and warrants that, to Program Manager's knowledge, the bid tabs so submitted shall fairly represent the results of Contractors and subcontractor bidding process.

## ARTICLE 5 CONSTRUCTION OF THE PROJECT

5.1. Performance and Payment Bond; Development. Notwithstanding anything to the contrary in this or any other agreement, Program Manager shall not authorize construction of the Project until Contractor posts a 100% performance and payment bond for the applicable Phase from a surety authorized to do business in the District and listed on the U.S. Treasury's listing of approved sureties with a multi-obligee rider naming District as an assured and in such a bond's customary form for District projects (the "**Performance and Payment Bond**") and delivering such executed Performance and Payment Bond to the District.

### 5.2. Conditions to Commencement of Construction.

(a) In addition to the requirement set forth in Section 4.1, unless otherwise waived by District or Program Manager, as applicable, each of the following conditions shall have been satisfied prior to Program Manager authorizing Contractor's commencement of the Work.

(i) *Project Budget.* The Parties have incorporated the Project Budget into the financial analysis of the Project mutually agreed upon between the Parties. The Architect Contract shall require Architect to update the line items in the Project Budget throughout the design process

identified in Section 3.1 and the updated proposed amendments to the Project Budget shall be submitted to District within thirty (30) days of the Parties' approval of Approved Design. Upon request from the District, Program Manager shall promptly provide an accounting of the status of the expenses incurred by line item under the Project Budget.

(ii) *Project Budget.* The limit on the total Project Budget can only be amended as set forth in Section 2.4.

(iii) *Land Use Approvals.* The Land Use Approvals and CON for the Project have been obtained in accordance with Applicable Laws and this Agreement and such Land Use Approvals and CON shall not have been amended, modified or otherwise revised in a manner that would materially adversely affect the development of the Project.

(iv) *Permits and Approvals.* Contractor shall have obtained the Permits and Approvals necessary for Contractor to commence construction of the Project in accordance with Applicable Laws and this Agreement and such Permits and Approvals shall be in full force and effect and shall not have been amended, modified or otherwise revised in a manner that would materially adversely affect the development of the Project.

(v) *Project Plans.* The Approved Design shall have been submitted to and approved by District and Program Manager in accordance with Article 4.

(vi) *Documents from Program Manager.* Program Manager shall have delivered, or caused to be delivered, to District each of the following items, all of which must be reasonably acceptable to District:

- (A) Copies of all organizational documents of Program Manager;
- (B) A certificate of good standing evidencing that Program Manager is in good standing and authorized to transact business in District of Columbia;
- (C) Certificates of insurance as required under Article 10 for the commencement of the construction of the Project;
- (D) A certificate with the representation and warranty from Program Manager that, in the reasonable expectation of Program Manager, the Project Budget is sufficient to construct and complete the Project in accordance with the Plans and Specifications; provided, however, that Program Manager shall have no liability with respect to any such certificate;
- (E) A Certificate of "Clean Hands" for Program Manager and Contractors from the Office of Tax and Revenue;
- (F) Performance and Payment Bond(s); and
- (G) An updated CPM Schedule.

(vii) *Issuance of Bonds.* The Bonds shall have been and will be issued in accordance with the schedule set forth in Section 4.7(a).

(b) The construction Work shall not commence until District issues a Notice to Proceed for each Phase of the Project.

(c) If each of the conditions set forth in this Section 5.2 have not been satisfied in full on or before twenty-four (24) months after the Effective Date, either Party, only to the extent such condition(s) that is not satisfied is not within the sole control of such Party, may terminate this Agreement by providing thirty (30) days prior written notice to the other Party. In addition, if District does not issue a Notice to Proceed for any Phase of the Project within sixty (60) days after the date that the Plans and Specifications for such Phase of the Project are approved by District and Program Manager, then either Party may provide notice to the other Party that after thirty (30) of receipt of such second notice if the Notice to Proceed is not issued by District this Agreement will be terminated pursuant the terms of Article 11 of this Agreement.

### 5.3. Program Manager's Obligations regarding Construction of the Project.

(a) Following the commencement of construction, each Construction Contract shall provide that the applicable Contractor shall reach Substantial Completion and Final Completion of the Project in accordance with, and subject to, the terms and conditions of each applicable Contract. Each Construction Contract shall provide that Contractor shall perform or provide, or shall cause to be performed or provided, all means, methods, techniques, sequences, procedures, equipment and labor necessary or appropriate to carry out and fully and finally complete the Project in accordance with this Agreement. The applicable Contractor(s) shall prosecute Construction Contract(s) and other Contractor contracts including furnishing, equipping, and Commissioning of the Project with diligence and continuity to completion of the Work, subject in all cases to Unavoidable Delays. Each Construction Contract shall provide that the applicable Contractor shall be solely responsible for funding all overruns if the actual hard or soft costs of the Project are greater than indicated in guaranteed maximum amount of the Construction Contract(s) as set forth in the Project Budget upon execution of the Construction Contract(s), as may be amended as set forth herein, and any such overruns shall not excuse Contractor from fully and finally achieving Substantial Completion and Final Completion of the Project in accordance with, and subject to, the terms and conditions of the applicable Construction Contract.

(b) If, after Contractor has commenced construction, the applicable Contractor fails to diligently prosecute construction of the Project, subject to Unavoidable Delays, and such failure continues for thirty (30) consecutive days after Contractor's receipt of notice of such failure, District shall, as its sole remedies under this Agreement, have the right (i) to require Program Manager to enforce a collateral assignment of liquidated damages in the Construction Contract(s), (if liquidated damages are included in the Construction Contract(s)), (ii) to pursue any remedies that may be available to District under any other applicable agreement between Program Manager and District or Program Manager and Contractor, (iii) to pursue any remedies that may be available to District or request Program Manager pursue any rights it may have under the Performance and Payment Bond, including collection of a lump sum payment where such funds will be used to complete the Project (iv) District, to the extent District is not a third party beneficiary of each Contract and Architect Contract with a right to enforce such Contract or Architect Contract in accordance with this section, shall be granted a power of attorney by Program Manager and shall have the right to prosecute such enforcement in the name of the Program Manager and Program Manager agrees to provide its commercially reasonable cooperation to District if District prosecutes the enforcement in the Program Manager's name; and (v) to seek, either directly or



through Program Manager, such equitable relief (either mandatory or injunctive in nature) as may be necessary to cause the diligent and continuous prosecution of construction of the Project by Contractor, it being understood that construction of the Project is a material inducement to District to enter into this Agreement and monetary damages shall be inadequate to compensate District for harm resulting from such failure. Each Contract and Architect Contract shall include a clause requiring the District to be a third party beneficiary of each Contract and Architect Contract and include a right for District to enforce each Contract and Architect Contract against the Architect and Contractors, as applicable.

5.4. Compliance with Applicable Laws, Land Use Approvals and Permits and Approvals. Each Contract and Architect Contract shall provide that Contractors and Architects shall use commercially reasonable efforts to obtain all Permits and Approvals and Certificates of Occupancy, and any other permits or approvals required from any governmental agency or department, except for those set forth on Exhibit M and the CON. Each Contract shall provide that Contractors shall construct the Project in accordance with Applicable Laws, the Land Use Approvals, and the Permits and Approvals. Further, construction of the Project shall be carried out pursuant to the Plans and Specifications, as the same may be amended from time to time in accordance with the terms of this Agreement.

5.5. Utilities. Each Contract shall provide that Construction Contractors shall be responsible under the Construction Contract(s) for handling all aspects associated with utilities affecting the Project including, without limitation, paying all costs, together with the applicable District sales tax, for receipt of utility services to, on or under the Project and the Land.

5.6. Davis-Bacon Act. Program Manager acknowledges that the construction work performed under this Agreement shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7). The Davis-Bacon provisions, procedures and wage rates applicable to this Project are attached as Exhibit J. Each Contract shall require that Contractor and all of its subcontractors shall comply with Exhibit J.

5.7. Green Building Act. Each Contract shall provide that Contractors shall comply with the District of Columbia Green Building Act, as amended.

5.8. Apprenticeship Act. Each Contract shall provide that Contractors shall comply with the applicable requirements of the D.C. Apprenticeship Act, D.C. Law 2-156, as amended, and shall implement all applicable terms and conditions of the D.C. Apprenticeship Council's Rules and Regulations.

5.9. Project Labor Agreement. Each Contract shall provide that Contractors shall to enter into a project labor agreement meeting the requirements of D.C. Official Code § 2-356.06. Prior to entering into such project labor agreement, Contractors shall submit the draft agreement to District for District's review to confirm satisfaction of the requirements of D.C. Official Code § 2-356.06.

5.10. Utilization of District Businesses. Each Architect Contract and Contract shall provide that Architect and Contractors shall, within ninety (90) days after the effective date of such Contract, enter into a CBE Utilization Agreement with the District within ninety (90) days after the effective date of each Architect Contract and Contract, that shall govern certain obligations of each Architect and Contractors regarding the utilization of certified business enterprises

("CBEs") in the operation of the Project. Throughout the operation of the Project, Architect and Contractors shall be required to submit to the District copies of any reports required to be submitted under the CBE Utilization Agreement. Each Architect and Contractor shall also submit to the District such other reports as the District may from time-to-time require regarding the value of contracts awarded to CBEs (generally and by type of certification) in connection with the operation of the Project.

5.11. Hiring of District Residents. Each Architect Contract and Contract shall provide that Architect and Contractors shall, within ninety (90) days after the effective date of such Contract, enter into a First Source Employment Agreement with the District that shall govern the obligations of Architect and Contractors and subcontractors regarding job creation and employment related to the Contractor's contract, pursuant to the First Source Act. Each Architect Contract and Contract shall provide that Architect and Contractors shall submit such reports as the Project Manager or District from time to time may require regarding the hiring of Washington, D.C., residents.

5.12. Substantial Completion and Final Completion of Construction of the Project.

(a) Subject to Unavoidable Delay, each Contract shall provide that Contractors shall achieve:

(i) Substantial Completion of each Phase of the Work by no later than the Substantial Completion Date, as the same may be amended from time to time in accordance with the terms of this Agreement; and

(ii) Final Completion of each Phase of the Work and Final Completion of the Project by no later than the Final Completion Date, as the same may be amended from time to time in accordance with the terms of this Agreement.

(b) To establish Substantial Completion, each Construction Contract shall provide that the Contractor shall furnish to District and Program Manager the following (collectively the "Certificate of Substantial Completion"):

(i) a certification of Contractor that, to Contractor's knowledge, construction of the specific Phase of the Work has been Substantially Completed in accordance with the final Plans and Specifications (and includes the furniture fixtures and equipment and other items necessary to be operate the Hospital in accordance with the Operations Agreement, if applicable);

(ii) a certification of the Architect (certified to District on the standard AIA Form of Certificate of Substantial Completion, AIA Form G 704), that it has examined the final Plans and Specifications and that, in its professional judgment, after diligent inquiry, construction of the Phase of the Work has been Substantially Completed in accordance with the final Plans and Specifications and, as constructed, the Work complies in all material respects with the local building codes;

(iii) copies of the Certificates of Occupancy for substantially all of the Phases of the Project for which certificates of occupancy are legally required, issued by DCRA. To the extent such Certificates of Occupancy are temporary or conditional, Program Manager shall forward copies of the final Certificates of Occupancy for the Project within six (6) months after Substantial

Completion of the Project; provided, however, such date shall be extended if Program Manager or Contractor is using its reasonable efforts to secure such final certificates; and

(v) a certification signed by Program Manger that it agrees with Contractor's certification; and

(vi) a certification signed by the District that it agrees with Program Manager that Contractor has achieved Substantial Completion.

(c) Following each Phase of Substantial Completion, Program Manager shall as part of the Architect Contract require Architect to furnish District with (i) a complete set of "as built" Plans and Specifications with all addenda thereto and Agreement Change Orders, Agreement Change Directives, Contract Change Orders and Contract Change Directives with respect thereto (which requirement may be satisfied by the delivery of such documents in electronic format) and (ii) copies of full lien waivers in form and substance reasonably satisfactory to District from each Contractor and each major subcontractor in connection with the construction of the Project, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the construction Phase of the Project, to the extent that District has paid the applicable amounts due.

#### 5.13. Subcontracting and Administration.

(a) Each Architect Contract and Contract shall provide that Architect and Contractors shall enter into a written agreement with each subcontractor. All or substantially all of the Work will be carried out by Architect and Contractors and each Architect and Contractor's trade subcontractors, and those trade subcontracts will be awarded through the competitive bid process.

(b) Each Architect Contract and Contract shall provide that Architect and Contractors shall develop a purchasing strategy to address the Project Budget, the CPM Schedule and conditions of this Project and shall include appropriate provisions in the subcontracts to minimize the cost impact associated with such conditions. Such strategies may include, but are not limited to, (i) obtaining from subcontractors unit price quotes for typical coordination items; (ii) setting aside allowances for coordination work; and (iii) such other techniques as may be employed by Contractor.

(c) Each Architect Contract and Contract shall provide that Architect and Contractors shall carefully document its procedures for making available bid packages to potential bidders, the contents of each bid package, discussions with bidders at any pre-bid meetings, bidders' compliance with bid requirements, all bids received, Program Manager or Architect and each Contractor's evaluations, as applicable, of all bids, and the basis for Program Manager or each Architect and Contractor's recommendation, as applicable, as to which bidders should be chosen. District shall be afforded reasonable access to all such records at all reasonable times so that, among other things, it may independently confirm Architect and each Contractor's adherence to all requirements set forth in the Agreement including subcontracting requirements.

(d) Program Manager may, in its sole discretion, reject any or all bids and proposals received for any bid package, and may include in each Architect Contract and Contract that Architect and Contractors obtain new or revised bids or proposals, with respect to any subcontractor who (i) was not previously approved by Program Manager, or (ii) failed to submit a

complete proposal. The Architect Contract and Contract shall require each Architect and Contractor to permit Program Manager to review the form of any subcontract or agreement with a material supplier to ensure that such contract incorporates the applicable contractual provisions required by this Agreement.

(e) Each Architect Contract and Contract shall provide that Architect and Contractors shall include in all subcontracts the provisions set forth in Exhibit K.

5.14. Written Monthly Reports. Each Contract shall provide that Contractors shall provide written reports to Program Manager and District on the progress of the entire Work at least monthly, by the fifteenth day of each succeeding month, from the Effective Date until Final Completion of the Project. Such written report shall include the following elements:

(a) construction progress update and a critical path method schedule, including any plans to correct defective or deficient work or for time lost due to delays;

(b) a cost report identifying the Construction Contract(s) guaranteed maximum price line item, the original line item amount, approved, pending, and projected Contract Change Order amounts, the cost incurred to date, the projected cost to complete the Work of the line item, and any variance between the actually approved budgeted balance of the line item and the projected cost to complete;

(c) a detailed summary of Program Manager's and each Contractor's efforts and results with respect to the economic inclusion goals set forth in this Agreement including: (i) Contractor's overall performance with respect to the goals; (ii) a listing of subcontracts and agreements with material suppliers during the month and the percentage of those subcontracts and agreements with material suppliers awarded to CBEs; (iii) a listing of subcontracts during the month and the estimated percentage of the labor hours to be worked by District of Columbia residents pursuant to those subcontracts; and (iv) a description of the major subcontracting and supply opportunities that will be solicited during the next three (3) months and the actions being taken to meet the subcontracting goals;

(d) a detailed summary of the steps that are being employed to ensure quality construction and workmanship from each Contractor. Each report shall specifically address issues that were raised by District and/or its Construction Consultant during the prior month and outline the steps that are being taken to address such issues;

(e) updated progress photos from the Contractors that shall detail changes in the Work during the month; and

(f) a summary of the daily log of the Contractors containing a record of weather, subcontractors working on the Project, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as District may reasonably require.

5.15. Warranties. Each Contract shall provide that Contractors shall warrant to Program Manager and District that materials and equipment furnished under the Construction Contract(s) and other relevant contracts will be of good quality and that for the one (1) year period following the Substantial Completion Date 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 Agreement. Contractor's warranty excludes remedies for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear from normal usage. Program Manager shall use commercially reasonable efforts to schedule a joint inspection of the Work during the eleventh (11<sup>th</sup>) month after Substantial Completion is achieved. During such inspection, Program Manager, Contractor and a representative of District shall walk the Project to identify any necessary warranty work which the Contractor shall repair in a timely manner.

5.16. Open Book Reporting. Architect Contract and each Contract shall provide that Architect and Contractors shall maintain an open book reporting system with District, allowing District or its consultants access Program Manager, Contractors and each Contractor's subcontractors and material suppliers, invoices, purchase orders, records for Work, and other relevant documentation and sources of information concerning the Work or costs. Each Contract shall require Contractors to utilize an electronic Project Management Information System (PMIS) of its own choosing and allow District and the Construction Consultant reasonable access to the PMIS platform.

5.17. Site Safety and Clean-Up.

(a) Each Contract shall provide that Contractors shall provide a safe and efficient site, with controlled access. As part of this obligation, each Contract shall require Contractors to be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project. Prior to the start of construction activities, Contractors shall prepare a safety plan for the construction phase conforming to OSHA 29 CFR 1926 (such plan, the "**Safety Plan**"). This Safety Plan developed by a Contractor shall describe the proposed separation and the specific nature of the safety measures to be taken including fences and barriers that will be used as well as the site security details. The Safety Plan shall be submitted to District for their review and approval prior to the commencement of construction. Once the Safety Plan has been approved, each Contract shall provide that Contractors shall comply with it at all times during construction. The Architect Contract shall require Architect to comply with the Safety Plan.

(b) As part of its responsibility for Project safety, each Contract shall provide that Contractors shall install such fences and barriers as may be necessary to separate the construction areas of the Land from those areas that are then being used by District for other purposes. Contractor shall describe in the Safety Plan the proposed separation and the specific nature of the fences and barriers that will be used.

(c) Each Contract shall provide that Contractors shall be responsible for site security and to provide such security staff and security measures as are necessary to protect the site from unwanted intrusion.

(d) The right of District to comment on the Safety Plan and the nature and location of the required fences and barriers shall in no way absolve Contractor from the obligation to maintain a safe site.

5.18. Buy American Act Provision. Each Architect Contract and Contract shall provide that Architect and Contractors shall comply with the provisions of the Buy American Act (41 U.S.C. §

10a) as set forth below including 48 CFR Section 52.225-11 (Buy American – Construction Materials under Trade Agreements Oct 2019) which is incorporated herein by reference:

(a) Only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers in the performance of the Construction Contract, except for materials for which an exception applies and a waiver has been granted.

(b) A construction material is any article, material or supply brought to the construction site for incorporation in the building or work. To be considered domestic:

1. Unmanufactured construction materials must be mined or produced in the United States.

2. Manufactured construction materials must be manufactured in the United States and the cost of components mined, produced or manufactured in the United States must exceed 50% of the cost of all components (the Component Test). Components of foreign origin of the same class or kind as those listed at Federal Acquisition Regulation (FAR) 24.104 are treated as domestic for the purposes of the Component Test. The Component Test is waived for commercially available off-the-shelf (COTS) items.

(c) The Contractor may submit a written request for an exception to the Buy American Act requirements on the basis that 1) a construction material is not produced or manufactured in the United States in sufficient quantity of a sufficient quality; 2) acquisition of a construction material would be against public interest; or 3) the cost of the construction material would be unreasonable. The request must explain why the Contractor could not have reasonably foreseen the need for, and could not have requested, the exception before bid closing. If the District determines that the explanation is satisfactory, the District will make a determination of whether an exception to the Buy American Act applies.

#### 5.19. Partnering.

(a) The terms “partnering” and “partnership” used herein shall mean a relationship of open communication and close cooperation that involves both District and Program Manager personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve Agreement objectives and resolve issues and implementing actions as required.

(b) Partnering will be a commitment mutually agreed upon by at least District and Program Manager, and preferably Contractor, subcontractors and the architect and engineer design contractor, if applicable. Sustained commitment to the process is essential to assure success of the relationship.

(c) District intends to facilitate contract management by encouraging the foundation of a cohesive partnership with Program Manager, Contractor, its subcontractors, the architect and engineer design contractor, and District’s staff. This partnership will be structured to draw on the strengths of each entity participating to identify and achieve

mutual objectives. The objectives are intended to complete the Agreement requirements within the Project Budget and on schedule.

(d) To implement the partnership, within thirty (30) days after each Notice to Proceed, Program Manager's personnel, its contractors, including the architect and engineer design contractor, and District personnel will attend a partnership development and team building workshop. Follow-up team building workshops will be held periodically throughout the duration of this Agreement as mutually agreed to by District and Program Manager.

## **ARTICLE 6 COVENANTS OF DISTRICT AND PROGRAM MANAGER**

6.1. Covenants of District. District covenants and agrees as follows:

(a) District shall provide Contractors with reasonable assistance with respect to Contractors' requirement to use commercially reasonable efforts to obtain all Permits and Approvals (except as set forth in Exhibit M and the CON for which District is responsible) and Certificates of Occupancy, and any other permits or approvals required from any agency or department of District for the Project; provided that all applications for such Permits and Approvals and Certificates of Occupancy, and any other permits and approvals are in compliance with Applicable Laws. District makes no representation or warranty that its assistance or participation will assure the issuance of any such Land Use Approvals, Permits and Approvals, Certificates of Occupancy, or and any other permits and approvals. Except as otherwise specifically provided in this Agreement, nothing in this Section shall require District to incur any out-of-pocket cost not included in the Project Budget in providing assistance to Contractors or Program Manager.

(b) District will provide Program Manager and Contractors access to the Land for the purpose of Program Manager's and Contractor's performance of the services and other obligations set forth herein.

6.2. Covenants of Program Manager. Program Manager covenants and agrees as follows:

(a) ***Maintenance of Entity***. Program Manager shall maintain its authority to transact business in District of Columbia and its good standing under the laws of its formation.

(b) ***Compliance With Applicable Law***. Program Manager shall comply with all Applicable Laws in connection with its obligations under this Agreement. In connection with the construction, design and development of the Project, the Architect Contract, each Contract including the Construction Contract(s) shall require Contractor(s) and Architect, as applicable to comply, respects, with all Applicable Laws in connection with its obligations under the Architect Contract and Contract(s). If Program Manager becomes aware or is notified in writing that any construction work on the Project is in violation of Applicable Laws, Program Manager shall promptly request Contractor to cure any such violation in accordance with the terms of its Contract. If District becomes aware or is notified in writing that any Work on the Project is in violation of Applicable Laws, District will promptly notify Program Manager.

(c) ***Hazardous Materials***. Program Manager shall not cause, and each Contract shall provide, that Contractors shall not cause any Hazardous Material to be brought on, kept, released

or used in or about the Land except in compliance with all applicable Environmental Laws. The performance of the Work shall comply with all Environmental Laws with respect to the construction of the Project and, from and after the commencement of construction of the Project, each Contract shall provide that Contractors shall clean up, abate, take corrective action, remove, treat or in any other way remediate any Hazardous Materials brought on to the Land or that is released by Contractor or that is part of the Work in connection with the construction and development of the Project pursuant to this Agreement as may be required pursuant to any Environmental Law. Program Manager hereby acknowledges that, prior to the Effective Date, it reviewed the reports and documents attached in Exhibit D. Each Contract shall require Contractor to abate and remove Hazardous Materials brought on to the Land or that is released by Contractor or that is part of the Work in connection with the Project as necessary to complete the Work contemplated by this Agreement. If any notices to Governmental Authorities are required, each Contract shall provide that Contractors shall give those notices at the appropriate times and provide a copy to District. Each Contract shall require Contractor to require any abatement subcontractors and disposal sites are appropriately licensed and qualified. Each Contract shall provide that Contractors shall keep detailed records documenting Work done so that District may independently verify compliance with all Applicable Laws, the number of units actually removed, treated, and/or disposed of, and the appropriate unit price(s) applicable to the Work.

(d) ***Compliance With ADA.*** Each Contract shall provide that Contractors shall cause the Project on the Land to be designed and constructed in compliance with all applicable requirements of the ADA. Each Contract shall provide that each Contractor shall protect, defend, indemnify and hold District Indemnified Parties harmless from and against any and all liability threatened against or suffered by District Indemnified Parties by reason of a breach by any Contractor of the foregoing covenant.

(e) ***Anti-Discrimination.*** Program Manager agrees that in any activities undertaken under this Agreement by it, Program Manager shall comply with the provisions of Title 2, Chapter 14 of District of Columbia Code (D.C. Official Code §§ 2-1401.01 et seq., as amended). Program Manager shall not deny, restrict or abridge or condition the use of, or access to, any of the facilities and services to any person otherwise qualified, for a discriminatory reason, based upon the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, place of residence or business, and status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking.

(f) ***Removal of Liens.*** If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including, without limitation, tax liens, provided the underlying tax is an obligation of Program Manager by law or by a provision of this Agreement) is filed against the Land or any part thereof arising from any act or omission of Program Manager (only to the extent Program Manger filed the lien) or any Contractor or parties claiming by and through them, or such Contractor shall, if District has previously paid under a submitted Application for Payment the amount claimed to be due, within thirty (30) days after Program Manager or Contractor, as applicable, receives written notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien, cause it to be discharged of record or bonded-off by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, provided, however, such Contractor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or



application in whole or in part of any such lien, provided that Program Manager or Contractor, as applicable, shall notify District in writing of any such contest and such Contractor shall diligently and in good faith contest such liens.

(g) **Notice of Injury or Damage.** From the commencement of construction of the Project, Program Manager shall notify District within ten (10) days of any occurrence at the Land of which Program Manager has received written notice and which Program Manager believes could give rise to (i) a claim not covered by insurance and for a cost of \$1,000,000 or more, or (ii) any claim exceeding \$5,000,000 whether or not covered by insurance.

(h) **Litigation.** Program Manager shall furnish to District notice of each action, suit or proceeding before any court or other governmental body or any arbitrator which in Program Manager's reasonable judgment could materially and adversely affect Program Manager's ability to fulfill its obligations under this Agreement no later than the tenth (10th) Business Day after the service of process on Program Manager with respect to such suit or proceeding.

(i) **Signage Requirements.** Program Manager, or each Contract shall provide that Contractors, shall post and maintain up to three (3) signs on the Land in a location that is visible to the public that indicate that the Project has been sponsored by District, to the extent permitted by Applicable Law. District shall have the right to review and approve the form and location of the sign; provided that the form and location of the sign must be in compliance with the requirements of Applicable Law. By approving any sign, District makes no representations or warranties that the sign complies with any applicable governmental requirements or that such signage may be installed on the Project or on the Land. Each Contract shall provide Contractor must comply with all applicable governmental requirements regarding the installation of signage at the Land.

(j) **Procurement of Materials and Supplies.** To the maximum extent reasonable, each Contract shall provide that Contractors shall arrange to purchase or take delivery of construction materials and operating supplies in District, such that if sales tax is payable on such transactions, the sales tax will be payable to District.

(l) **No Prohibited Persons.** Program Manager shall not become, and Program Manager shall not hire or permit Contractor to knowingly hire, a Prohibited Person. Each Contract shall provide that Contractors shall not become and shall not hire or permit subcontractors to knowingly hire, a Prohibited Person.

## **ARTICLE 7 INSURANCE, DAMAGE AND DESTRUCTION**

7.1. **General Requirements.** The Construction Contracts and Architect Contracts shall provide that all Construction Contractors and the Architect hired by the Program Manager in accordance with the terms of this Agreement to construct, furnish, and equip the Project to procure the types of insurance specified below and maintain such insurance during the entire period of performance under their applicable Construction Contracts and the Architect Contract. The Program Manager shall submit Architects' and Construction Contractors' Certificate of Insurance to the District giving evidence of the required coverage prior to a Construction Contractor or the Architect commencing performance of the Work. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have

been provided to, and accepted by, the District. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. Unless as otherwise provided in section 7.13, Each Construction Contract and Architect Contract shall provide that the Construction Contractor(s) and the Architect(s) respectively require their subcontractors to carry the same or similar insurance required herein where commercially reasonable and appropriate under the circumstances, taking into consideration the value, type and attendant risks of the services to be performed by the subcontractors.

(a) All required policies shall contain a waiver of subrogation provision in favor of the District. District shall be included in all policies required hereunder to be maintained by the Construction Contractor(s) and Architect (except for workers' compensation and professional liability insurance) as an additional insured for claims against the District relating to the Work, with the understanding that any affirmative obligation imposed upon the insured Construction Contractor(s) and Architect (including without limitation the liability to pay premiums) shall be the sole obligation of the Construction Contractor(s) and Architect, and not the additional insured. The additional insured status under the Construction Contractors' and Architect's commercial general liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 and CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the District in writing. All of the Construction Contractors' and Architect's liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an additional insured) for all claims against the additional insured arising out of the performance of the Work by the Construction Contractor(s) or Architect, or anyone for whom the Construction Contractors or Architect may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

(b) If the Construction Contractor(s), Architect or their subcontractors maintain broader coverage and/or higher limits than the minimums shown below, District requires and shall be entitled to such broader coverage and/or higher limits. If an Architect or Construction Contractor cannot meet a requirement set forth in this Article 7, Program Manager shall notify District of an alternative available to meet the requirement (which may include requesting decreased insurance coverage) and District shall review the proposed alternative and in District's sole discretion approve or deny such proposed alternative.

(c) Commercial General Liability Insurance ("CGL") - The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s), Architect and their subcontractors under this Agreement that each carry a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the District in writing), covering liability for all ongoing and completed operations under the Construction Contracts and Architect Contract, including ongoing and completed operations under all

subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an insured Construction Contract or Architect Contract (including the tort liability of another assumed in the Agreement) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.

(d) Automobile Liability Insurance - The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s), Architect and their subcontractors under this Agreement of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the District in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Construction Contractor(s), Architect, or their subcontractors, with minimum per accident limits equal to \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

(e) Workers' Compensation Insurance The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide evidence satisfactory to the District with respect to services performed by Construction Contractors, Architect and their subcontractors under this Agreement workers' compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the Work is performed.

(f) Employer's Liability Insurance - The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s), Architect and their subcontractors under this Agreement employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

(g) Crime Insurance (3rd Party Indemnity) - The Construction Contracts shall provide that the Construction Contractor shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s) and its/their subcontractors under this Agreement (but not with respect to the Architect, for whom this coverage is not required) of a Crime policy including 3<sup>rd</sup> party fidelity to cover the dishonest acts of Construction Contractors and their subcontractors, employees and/or volunteers which result in a loss to District. District shall be included as loss payee. The policy shall provide a limit of \$50,000 per occurrence.

(h) Cyber Liability Insurance - The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s), Architect and their subcontractors under this Agreement of Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000

aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Construction Contractors, Architect and their subcontractors in performance of the Work and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

(i) Environmental Liability/Contractors' Pollution Liability Insurance – The Construction Contracts shall provide that the Construction Contractor shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s) and its/their subcontractors under this Agreement (but not with respect to the Architect, for whom this coverage is not required, unless the Architect makes soil borings or other soil investigations, then coverage shall be required to the extent of such investigations) of environmental liability insurance covering losses caused by pollution or other hazardous conditions arising from ongoing or completed operations of the Construction Contractor(s) or its/their subcontractors. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), clean-up costs, transit and non-owned disposal sites. Coverage shall extend to defense costs and expenses incurred in the investigation, civil fines, penalties and damages or settlements. There shall be neither an exclusion nor a sublimit for mold or fungus-related claims. The minimum limits required under this paragraph shall be \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, each Construction Contractor warrants that any retroactive date applicable to coverages under the policy precedes the performance of any of the Work and that continuous completed operations coverage will be maintained for at least ten (10) years or an extended reporting period shall be purchased for no less than ten (10) years after completion.

(j) The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall furnish to District owner certificates of insurance evidencing environmental liability insurance maintained by third party transportation and disposal site operators(s) used by the Construction Contractor(s) for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Work. Such coverages must be maintained with limits of at least the amounts set forth above.

(k) Employment Practices Liability - The Construction Contracts shall provide that the Construction Contractor shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s) and its/their subcontractors under this Agreement (but not with respect to the Architect, for whom this coverage is not required) of employment practices liability insurance to cover the defense of claims arising from employment related wrongful acts including but not limited to: discrimination, sexual harassment, wrongful termination, or workplace torts, whether between employees of Construction Contractors, their subcontractors, or against third parties. Employment

Practices Liability coverage must specifically state third party liability coverage is included. Construction Contractor will indemnify and defend District should it be named co-defendant or be subject to or party of any claim. Coverage shall also extend to temporary help firms and independent contractors hired by Construction Contractors. The policy shall provide limits of not less than \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate for each wrongful act.

(l) Professional Liability Insurance (Errors & Omissions) - The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide evidence with respect to services performed by Construction Contractor(s), Architect and their subcontractors under this Agreement of Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$2,000,000 annual aggregate. The Construction Contracts and Architect Contracts shall provide that the Construction Contractor(s) and Architect each warrants that any applicable retroactive date precedes the date the Construction Contractor(s) or Architect first performed any professional services in furtherance of the Work and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services performance in connection with the Work.

(m) Commercial Umbrella or Excess Liability - The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s), Architect and their subcontractors under this Agreement of commercial umbrella or excess liability insurance with minimum limits equal to: (i) for the Construction Contractor(s) \$25,000,000 per occurrence and \$25,000,000 in the annual aggregate, following the form and in excess of all liability policies; or (ii) for the Architect, \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

(n) Builders Risk - The District shall purchase and maintain in a company authorized to do business in the District builders risk coverage written on an "all-risk" special causes of loss or equivalent form. Builders risk coverage will include boiler and machinery/equipment breakdown, earthquake and flood perils. Building ordinance and terrorism coverage will be included. The deductible shall not exceed \$25,000 except for earthquake, flood, windstorm, water damage or other perils at the discretion of the District and as available in the insurance industry. At the discretion of the District, builders risk coverage will extend to soft costs and delayed completion. Builders risk insurance shall include the interests of the District, the Construction Contractors and their subcontractors.

(o) Primary And Noncontributory Insurance. The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the District

(p) Duration. All required insurance shall be maintained until all the Work is accepted by District and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this Agreement and two years for non-construction related Agreements.

(q) Liability. These are the required minimum insurance requirements established by District. HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONSTRUCTION CONTRACTOR AND ARCHITECT'S LIABILITY UNDER THIS AGREEMENT.

(r) Contractor's Property. Construction Contractor(s), Architect and any subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of District.

(s) Measure Of Payment. District shall not make any separate measure or payment for the cost of insurance and bonds. Unless the District elects to procure and implement an owner's construction insurance program (OCIP) as provided in section 7.14, the Construction Contractor and Architect shall include all of the costs of insurance and bonds in the Cost of the Project, less and except Builders Risk Insurance, which may be procured by the District.

(t) Notification. The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall ensure that all policies provide that the District shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide the District with ten (10) days prior written notice in the event of non-payment of premium. The Construction Contractor and Architect will also provide the District with updated Certificates of Insurance should coverages renew during the Agreement.

(u) Certificates Of Insurance. The Construction Contractor and Architect shall submit certificates of insurance to District giving evidence of the required coverage as specified in this section prior to executing any Construction Contract or the Architect Contract. Certificates of insurance must reference the corresponding Construction Contract or Architect Contract (by identification number or otherwise). Evidence of insurance shall be submitted to District in accordance with Section 13.2. The District may request, and the Construction Contractor(s) and the Architect shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained expires prior to completion of the Work performed by the Construction Contractor(s), the Architect or their subcontractors, renewal certificates of insurance and additional insured and other endorsements shall be

furnished to the District prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the District on an annual basis as the coverage is renewed (or replaced).

(v) Disclosure Of Information. The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall agree that District may disclose the name and contact information of their insurers to any third party which presents a claim against District for any damages or claims resulting from or arising out of work performed by them, their agents, employees, servants or subcontractors in the performance of the Work.

(w) Carrier Ratings. All insurance required in connection with this Agreement shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the District.

#### 7.2. Treatment of Proceeds.

(a) Proceeds of Casualty Insurance in General. Insurance proceeds payable with respect to a property loss shall be payable to District.

(b) Cooperation in Collection of Proceeds. The Construction Contracts and Architect Contracts shall provide that the Construction Contractor(s) and Architect shall reasonably cooperate in connection with the collection of any insurance proceeds that may be due in the event of a loss if so requested by District or Architect or Construction Contractor(s), as applicable.

7.3. Effect of Casualty on Agreement. This Agreement shall not terminate, be forfeited or be affected in any manner (other than the adjustment of the dates by which Substantial Completion and Final Completion of the Project and other pertinent milestones are to be achieved), by reason of damage to, or total or partial destruction of, or untenability of, the Project or any part thereof resulting from such damage or destruction, and District's and Construction Contractor(s) and Architect's obligations hereunder shall continue as though the Project had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever and Construction Contractor(s), upon receipt of the applicable insurance proceeds required to restore the Project, shall restore the Project to its state prior to the casualty, except that the dates by which Substantial Completion and Final Completion of the Project and other pertinent milestones are to be satisfied shall be equitably adjusted in the event of a casualty.

7.4. Owner's Construction Insurance Program (OCIP). The District, with respect to each Phase of the Work, shall have the option, in its sole and uncontrolled discretion, to provide all insurance coverages required under section 7.1 for the Construction Contractor(s) and their subcontractors with respect to services to be performed by them under this Agreement. The District shall notify the Program Manager that it intends to exercise this option no later than ninety (90) days after the Parties, under Section 4.1(d)(i) of this Agreement, have agreed upon the construction documents and the estimated budget for the applicable Phase of the Work, and release and forever discharge the Construction Contractor(s) and Architect of any and all responsibility with respect to the Construction Contractor(s) and Architect's requirements under section 7.1 relating to the applicable Phase of the Work. The Construction Contractor(s) and Architect's obligations with

respect to ensuring that the Architect provides the insurance coverages applicable to the Architect in section 7.1 shall not be affected by the exercise of the District's option to provide insurance coverages for the Construction Contractor(s) and their subcontractors.

## **ARTICLE 8 ASSIGNMENT**

8.1. Assignment. Program Manager shall not assign this Agreement to any Person, and Program Manager represents and warrants that Program Manager shall not make or create, or suffer to be made or created, any Assignment of Program Manager's interest in this Agreement without the prior written consent of District, which may be granted or withheld in District's sole and absolute discretion.

8.2. Affiliate Assignment. Program Manager, upon notice District as soon as practicable, but in any event at least thirty (30) days prior to such assignment, may, without District's approval, assign this Agreement to an: (i) Affiliate of the "Tenant" under the Lease, or (iii) Affiliate of UHS of Delaware, Inc. Program Manager's notice shall include a copy of the proposed assignment and assumption agreement which shall include: (1) affirmation to District that the assignee has accepted all of the Program Manager's obligations pursuant to this Agreement, (2) provide documentation confirming that the proposed assignment is an Affiliate of the "Tenant" under the Lease or an Affiliate of UHS of Delaware, Inc. and (iii) deliver a certification from the proposed assignee affirming the representations and warranties contained in Section 2.1. No later than five (5) Business Days following the consummation of the assignment, the assignee shall deliver to District proof of insurance required under this Agreement obtained by assignee, and a copy of the fully executed assignment agreement.

## **ARTICLE 9 EXCULPATION AND INDEMNITY**

9.1. Exculpation. Other than District with respect to the obligations specifically set forth in this Agreement, none of District Indemnified Parties shall have any liability (personal or otherwise) arising from or in connection with this Agreement or development and construction of the Project except for fraud or willful misconduct.

9.2. Indemnification. From and after the commencement of construction of the Project and subject to Section 9.4 below, District Indemnified Parties shall not be liable to Program Manager or any of its Affiliates for, and Program Manager shall defend, indemnify and hold District Indemnified Parties harmless from and against, any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements), penalty or fine incurred in connection with or arising from any injury (whether physical (including, without limitation, death), economic or otherwise) to Program Manager or to any other Person in, about or concerning the Project or the Land or any damage to, or loss (by theft or otherwise) of, any of Program Manager's property or of the property of any other Person in, about or concerning the Project or the Land, irrespective of the cause of injury, damage or loss (including, without limitation, that caused by any Work on the Project or rising from or associated with any violation of the Environmental Laws by Program Manager), except to the extent (i) any of the foregoing is due to the gross negligence, fraud, or willful misconduct of any District Indemnified Party or (ii)



as otherwise specified as a District obligation in this Agreement. The obligations of Program Manager under this Section 9.2 shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to Workers' Compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Project.

### 9.3. Defense of Claims.

(a) If any claim, action, or proceeding is made or brought against any District Indemnified Party by reason of any event to which reference is made in this Section 9.2 for indemnification by Program Manager, then, unless District determines that such representation is legally prohibited, upon written demand by District, Program Manager shall either resist, defend, or satisfy such claim, action, or proceeding in the District Indemnified Party's name, by the attorneys for, or approved by, Program Manager's insurance carrier (if such claim, action, or proceeding is covered by insurance) or such other attorneys as District shall approve, which approval shall not be unreasonably withheld, conditioned, or delayed. If Program Manager elects to undertake such defense by its own counsel or representatives, Program Manager shall give Notice of such election to the District Indemnified Party within ten (10) days after receiving Notice of the claim therefrom. The District Indemnified Party shall cooperate with Program Manager in such defense at Program Manager's expense and provide Program Manager with all information and assistance reasonably necessary to permit Program Manager to settle and/or defend any such claim. The foregoing notwithstanding, any District Indemnified Party may at its own expense engage its own attorneys to defend it, or to assist it in the defense of such claim, action, or proceeding, as the case may be.

(b) If Program Manager fails or refuses to undertake such defense or fails to act within such period of ten (10) days as provided in Section 9.3(a), the District Indemnified Party may, but shall not be obligated to, after five (5) days' prior Notice to Program Manager, undertake the sole defense thereof by counsel or other representatives designated by it, such defense to be at the expense of Program Manager. The assumption of such sole defense by the District Indemnified Party shall in no way affect the indemnification obligations of Program Manager. If a claim is settled by District and Program Manager has not agreed to the District's settlement of the underlying claim, the Program Manager retains the right to dispute the District's indemnification claim against the Program Manager.

9.4. Notification and Payment. District shall promptly notify Program Manager of the imposition of, incurrence by, or assertion against a District Indemnified Party of any cost or expense as to which Program Manager has agreed to indemnify such District Indemnified Party pursuant to the provisions of this Article 9. Program Manager agrees to pay such District Indemnified Party all amounts due from Program Manager under this Article 9 within sixty (60) days after receipt of the Notice thereof, together with invoices evidencing all such costs and expenses. Any delay by District in sending such Notice does not relieve Program Manager of the indemnification obligations set forth in this Article 9, except to the extent that defense of the claim is materially prejudiced as a result of such delay.

9.5. Survival. The provisions of this Article 9 shall survive the expiration or termination of the Term with respect to events and matters that arise or occur during the Term (even if discovered following the expiration or termination of the Term).

**ARTICLE 10**  
**EVENTS OF DEFAULT; DISPUTES; REMEDIES**

10.1. Events of Default. Each of the following Program Manager events, after the expiration of any applicable notice and cure period, shall constitute an “**Event of Default**”:

(a) Program Manager’s failure to comply with any terms of the Agreement and such failure continues for a term of thirty (30) days after written notice from the District, or if such a default is of such a nature that it cannot reasonably be remedied within such thirty (30) day period (but is otherwise susceptible to cure), within such period of time as may be reasonably necessary to cure such default but in no event more than an additional one hundred twenty (120) days (subject to Unavoidable Delay), or additional period permitted by the District, provided that Program Manager commences the cure within the thirty (30) day period after notice by District and thereafter diligently pursues and completes such cure.

(b) if Program Manager admits, in writing, that it is generally unable to pay its debts as such become due;

(c) if Program Manager makes an assignment for the benefit of creditors;

(d) if Program Manager causes the Architect or a Contractor to incur more than \$10,000.00 in costs that are claimed by either the Architect or Contractor that are incurred due to Program Manager’s fraud or willful misconduct.

(e) if Program Manager files a voluntary petition under Title 11 of the United States Code, or if Program Manager files a petition or an answer seeking, or consenting to any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, District, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Program Manager, of all or any substantial part of its properties, or of all or any part of Program Manager’s interest in the Project or the Land, and the foregoing are not stayed or dismissed within one hundred eighty (180) days after such filing or other action; or

(f) if, within ninety (90) days after the commencement of a proceeding against Program Manager seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, District, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within ninety (90) days after the appointment, without the consent of Program Manager, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Program Manager, of all or any substantial part of its properties, such appointment has not been vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay, such appointment has not been vacated.

10.2. Remedies to Events of Default. If any Event of Default occurs and is continuing, District may take any one or more of the following remedial steps:

- (a) seek enforcement of Program Manager's obligations hereunder by any equitable remedies, such as specific performance or injunction;
- (b) pursue any remedies that may be available to District under the Performance and Payment Bond if the applicable Contractor is in default under its Contract;
- (c) suspend its performance under this Agreement; or
- (d) terminate this Agreement.

10.3. Rights and Remedies Cumulative. Except as otherwise expressly set forth herein, the rights and remedies of the Parties under this Agreement, whether provided by law, in equity, or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach.

10.4. Assignment of Plans and Specifications; Instruments of Service.

(a) If District terminates this Agreement as a result of an Event of Default, Article 11, or if District elects to exercise any right it may have under this Agreement to construct the Project, effective upon such termination or the exercise of such right, Program Manager shall quitclaim to District all of Program Manager's right, title and interest, if any, in and to all of the Plans and Specifications, Instruments of Service, any furniture, furnishings, fixtures, and equipment, Building Equipment, or other tangible personal property or equipment purchased pursuant to the Project Budget, permits, completion bonds in favor of Program Manager, sewer permits and tap fees, utility deposits, any BIM rights and ownership, and all other contracts, agreements, permits, authorizations in any way related to the development and construction of the Project, and at the request of District, the Construction Contract(s). Such assignment shall vest automatically without further written documentation and shall be free of liens and any claims for payment by Program Manager.

(b) The Plans and Specifications and other documents and electronic data furnished by Program Manager to District under this Agreement or prepared by or on behalf of Program Manager are deemed to be "**Instruments of Service.**" The Architect Contract shall provide for transfer of the ownership for all Instruments of Service for the District's use for the Hospital including operations, facilities, and maintenance as well as future design/construction work at the Hospital. The Instruments of Service shall not be used for duplication for any other facility located off of the Land. Program Manager hereby collaterally assigns to District all common law, statutory and other reserved rights, if any, including ownership, licenses, and copyright interests, whether now owned or hereafter acquired in the Instruments of Service with respect to the Project, whether owned directly by Program Manager or obtained by assignment. District may use all Instruments of Service for construction of the Project and for its normal and customary maintenance including for information purposes in connection with future alterations, renovations or expansions of the Project.

(c) In the event District terminates this Agreement prior to Final Completion, District may use the Instruments of Service to complete the Project; provided, however, that District shall

not use the Plans and Specifications and other Instruments of Service for execution of any facilities other than that which is the subject of this Agreement.

10.5. Dispute Resolution. In the event of any dispute arising under, or related to this agreement (each, a “**Dispute**”), the Parties shall endeavor in good faith to resolve the Dispute through informal discussions. If initial informal discussions are unsuccessful at resolving the Dispute, then such Dispute may be submitted to the Mayor and the CEO of Program Manager, who shall meet and confer and use their best efforts to resolve such Dispute within thirty (30) days of such submission. If the Mayor and the CEO of Program Manager are unable to resolve such Dispute within thirty (30) days of such submission, the Parties may try in good faith to settle the Dispute by non-binding mediation. In such event, the Parties will choose a mutually agreeable neutral third party, who shall mediate the Dispute pursuant to the Commercial Mediation Rules of the American Arbitration Association, the Alternative Dispute Resolution Service Rules of Procedure for Mediation of the American Health Lawyers Association, JAMS rules and procedures, or such other mutually agreeable rules and procedures as the Parties may decide. In the event that such mediation efforts are unsuccessful or in any Party’s discretion, either Party may pursue legal or equitable remedies as set forth in this Agreement.

10.6. Remedies for District’s Default. If District shall default or fail in the performance of a covenant or agreement on its part to be performed under this Agreement, including, without limitation, the obligation to timely pay Progress Payments and Final Payment as provided in this Agreement, and such default shall not have been cured for a period of thirty (30) days after receipt by District of written notice of said default from Program Manager, or if such default (other than the failure to timely pay Progress Payments and Final Payment) cannot, with due diligence, be cured within thirty (30) days, and District shall not have commenced the remedying thereof within such period or shall not be proceeding with due diligence to remedy it (it being intended in connection with a default not susceptible of being cured by District, with due diligence within one hundred and twenty (120) days, that the time period within which to remedy same shall be extended for such period as may be necessary to complete same with due diligence), then Program Manager shall have the right to declare a default of this Agreement upon written notice to District, and pursue and exercise all remedies available at law or in equity.

10.7. Mitigation. In the event of a default by either Party under this Agreement, the non-defaulting Party shall use reasonable efforts to mitigate the damages it incurs as a result of such default.

## **ARTICLE 11 TERMINATION FOR REASONS OTHER THAN AN EVENT OF DEFAULT**

11.1. Scheduled Termination. Other than the obligations, if any, of Program Manager or District that expressly survive termination of this Agreement, this Agreement shall automatically terminate and be of no further force and effect the earlier of: (i) after District makes the Final Payment after the Final Completion Date or (ii) September 30, 2026, and District and Program Manager shall each execute such documents as may be reasonably required to evidence such termination. The operation of the Project and the Land shall be governed by the terms and conditions of the Lease. Notwithstanding any other provision herein, the Final Completion Date shall not be extended beyond September 30, 2026 unless amended to a later specific date as agreed to by the Parties in writing as an amendment to this Agreement.

11.2. Failure To Achieve Outside Performance Dates.

(a) In accordance with the terms and conditions of this Agreement, the following tasks and objectives shall be achieved within the timeframes specified below, subject to Unavoidable Delay and as modified in accordance with this Agreement (the “**Outside Performance Dates**”):

(i) The Architect Contract shall provide that Architect shall submit to District and Program Manager permit drawings by Architect for the Project by the date set forth in the CPM Schedule set forth in Exhibit L;

(ii) The Land Use Approvals shall be obtained by eighteen (18) months after the Effective Date;

(iii) The CON shall be obtained by eighteen (18) months after the Effective Date;

(iv) Program Manager shall have entered into Construction Contract (s) for the Project by the date set forth in the CPM Schedule set forth in Exhibit L; and

(v) The Project shall be Substantially Complete and ready for commercial operation by the Substantial Completion Date.

(vi) The Project shall be complete by the Final Completion Date.

(b) If Program Manager fails to accomplish any of the obligation specified in Section 11.2(a)(i)-(vi), District shall have the right to terminate this Agreement by providing written notice to Program Manager prior to Program Manager accomplishing such obligation, and this Agreement shall terminate.

11.3. Termination Due to Project Budget Shortfall. Either Party shall have the right to terminate this Agreement pursuant to Section 4.5(d) or Section 4.6(d)(vi) and with ninety (90) days’ written notice to the other Party. Prior to the termination in this Section 11.3 becoming effective Program Manager shall assign to District all Contracts and Architect Contract.

11.4. Effect of Termination. If this Agreement terminates pursuant to Section 11.1 or 11.3, the Parties shall have no further rights or obligations hereunder, except for payments due to Contractors and Architect for work performed under this Agreement, those rights or obligations that by the express terms survive termination of this Agreement, and no action, claim or demand may be based on any term or provision of this Agreement other than those provisions expressly provided to survive such termination. District shall have no payment obligations for any work activities or services not performed in accordance with this Agreement.

11.5. Termination for Convenience. District may, upon seven (7) days written notice to Program Manager, terminate this Agreement in whole or specified part, for its convenience, for any reason. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions including submission of final invoices to District which shall be paid by District in accordance with the terms of this Agreement.

## **ARTICLE 12 GOVERNMENTAL LIMITATIONS**

12.1. Anti-Deficiency Limitations. The following limitations exist as to each and every purported obligation of District set forth in this Agreement, whether or not expressly conditioned:

(a) The obligations of District to fulfill financial obligations pursuant to this Agreement or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which District is a party) are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 and 1511-1519 (2004) (the “Federal ADA”), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08 (2004 Supp.) (the “D.C. ADA” and (i) and (ii) collectively, as amended from time to time, the “Anti-Deficiency Acts”); and (iii) § 446 of District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of District in anticipation of an appropriation by Congress for such purpose, and District’s legal liability for the payment of any of its obligations under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

(b) No officer, employee, director, member or other natural person or agent of District shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a District Default.

(c) This Agreement shall not constitute an indebtedness of District nor shall it constitute an obligation for which District is obligated to levy or pledge any form of taxation or for which District has levied or pledged any form of taxation. No District of Columbia official or employee is authorized to obligate or expend any amount under this Agreement unless such amount has been appropriated by the Council and by Act of Congress and is lawfully available.

(d) It is specifically understood and agreed that a failure to obtain appropriated funds shall not constitute a District default.

## **ARTICLE 13 GENERAL PROVISIONS**

13.1. Limitation of Rights. With the exception of any rights herein expressly conferred, nothing in this Agreement is intended or shall be construed to give to any other Person any legal or equitable right, remedy or claim under or in respect to this Agreement or any covenants, conditions and provisions hereof.

13.2. Notices. All notices, demands, approvals, consents, directions, certificates or other communications hereunder shall be in writing, addressed to the appropriate Notice Address, and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by nationally recognized overnight commercial courier service or by facsimile with proof of receipt (with a copy to follow by U.S. Mail). Notices which shall be served in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the following times: (i) if hand delivered to a party against receipted copy, when the copy of the notice is receipted; (ii) if given by nationally recognized overnight delivery service, on the next Business Day after the notice is deposited with the overnight delivery service; or (iii) if given by certified mail, return receipt requested, postage

prepaid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement.

13.3. Waiver. No failure by a Party to this Agreement to insist upon the strict performance of any covenant, duty, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of this Agreement, shall constitute a waiver of any such breach or of such covenant, duty, agreement, term or condition. A Party by giving notice to the other Party may, but shall not be required to, waive any of its rights or any conditions to any of its obligations hereunder. No waiver shall affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

13.4. Effect of Granting or Failure To Grant Approvals or Consents. All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. All consents and approvals which may be given by a Party under this Agreement shall not (except as otherwise provided in this Agreement, such as where a consent or approval is to be provided or withheld in a Party's sole and absolute discretion) be unreasonably withheld, conditioned or delayed by such party and the Parties shall use good faith efforts to give or deny any consent or approval within the time period provided. The granting by a Party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a Party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for such act or any other act. All reviews, approval and consents by the Parties under the terms of this Agreement are for the sole and exclusive benefit of the Parties and no other person or party shall have the right to rely thereon. The Parties' sole remedy for the other Party's withholding or conditioning its consent shall be an equitable action in mandamus to compel such consent if it were determined that such consent had been unreasonably withheld, conditioned or delayed.

13.5. Titles of Sections. Any titles of the several parts and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. The headings of the Table of Contents set forth in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect.

13.6. Relationship of Parties. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, a Party shall not be deemed or constituted partners or joint venturers of the other Party, and a Party shall not be the agent of the other Party nor have any authority, express or implied, by implication or otherwise, to enter into contracts on behalf of or otherwise in any way bind the other Party, and a Party shall not be responsible for any debt or liability of the other Party (except as otherwise expressly provided herein relating to indemnification).

13.7. Applicable Law. The laws of District of Columbia shall govern the interpretation and enforcement of this Agreement, without giving effect to choice of law principles.

13.8. Further Assurances. Each Party agrees to execute and deliver to the other Party such additional documents and instruments as the other Party reasonably may request in order to fully carry out the purposes and intent of this Agreement, at no third party out-of-pocket expense or additional liability than is set forth in this Agreement to the Party being requested to execute any such additional documents or instruments.

13.9. Severability. In the event any provision of this Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof, unless this construction would operate as an undue hardship on District or Program Manager or would constitute a substantial deviation from the general intent of the Parties as reflected in this Agreement.

13.10. Joint Preparation. Each of District and Program Manager acknowledges that it has thoroughly read and reviewed this Agreement, including all Exhibits and attachments thereto, and has sought and received whatever competent advice and counsel as was necessary for it to form a full and complete understanding of all rights and obligations herein. The language of this Agreement has been agreed to by the Parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto.

13.11. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

13.12. Incorporation of Exhibits. All Exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

13.13. Survival. The indemnity obligations of Program Manager under Article 9 and any other provisions of this Agreement which expressly provide for survival shall survive any termination of this Agreement.

13.14. Entire Agreement. This Agreement (including the Exhibits annexed hereto and made part hereof) collectively contain all the agreements and understandings between District and Program Manager relative to the transactions contemplated herein and thereby and there are no agreements or understandings, oral or written, expressed or implied, between them with respect thereto other than as herein set forth or expressly referenced herein and made a part hereof.

13.15. Amendments and Supplements. This Agreement may be amended or modified only in writing executed by Program Manager and the Mayor or the Mayor's designee. The Mayor shall have the authority to approve on behalf of District such amendments or modifications as the Mayor shall determine to be in the best interests of District. Any deadline established in this Agreement may be extended by mutual written agreement.

13.16. Confidentiality. The provisions of the District of Columbia Freedom of Information Act of 1976, as amended (D.C. Official Code §§ 2-531 et seq.) ("**DCFOIA**") apply, to the extent of DCFOIA, to communications, documents, agreements, information or records with respect to this Agreement.

13.17. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY



LITIGATION ARISING IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13.18. Forum for Disputes. District and Program Manager agree that any suit, action, or proceeding arising out of this Agreement, or any transaction contemplated hereby, shall be brought exclusively in (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia. District and Program Manager irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Agreement or the transactions contemplated hereby in the courts named in (a) and (b) above, and hereby further waive and agree not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

13.19. Rules of Construction. Unless the context clearly indicates to the contrary, for all purposes of this Agreement, (a) words importing the singular number include the plural number and words importing the plural number include the singular number; (b) words of the masculine gender include correlative words of the feminine and neuter genders; (c) words importing persons include any Person; (d) any reference to a particular Section shall be to such Section of this Agreement and (e) any reference to a particular Exhibit shall be to such Exhibit to this Agreement; and to all sub-Exhibits related thereto (e.g., references to Exhibit A shall include Exhibit A-1, Exhibit A-2, etc.).

13.20. False Claims Provisions. Notwithstanding any provision to the contrary in this Agreement, any demands for payment or reimbursement under this Agreement shall be subject to D.C. Official Code §§ 2-381.01-2-381.10 (2013) ("**False Claims Provisions**") and the remedies available thereunder.

13.21. Time of the Essence; Standard of Performance. Time is of the essence with respect to all matters set forth in this Agreement. For all deadlines set forth in this Agreement, the standard of performance of the Party required to meet such deadlines shall be strict adherence and not reasonable adherence. To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or District of Columbia recognized holiday or day on which the District of Columbia government is officially closed, such deadline shall be extended to the next Business Day.

13.22. Third Party Beneficiaries. Except as otherwise expressly provided herein related to indemnification, nothing in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against any Party, and no third party shall be deemed a third-party beneficiary of this Agreement or any provision hereof. The Parties shall have no joint and several liability.

13.23. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument. Execution and delivery of this Agreement by facsimile or e-mail .pdf shall be sufficient for all purposes and shall be binding on any Person who so executes.

13.24. Attorney's Fees. Each Party shall be responsible for its own legal fees in the event either Party brings any legal action or proceeding to enforce the terms of this Agreement except as set forth in Article 9.

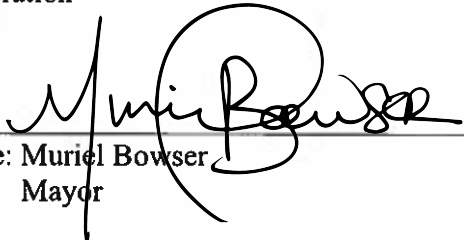
**13.25. District as Contracting Party.** Notwithstanding any other provision herein, District's actions, consents and reviews of matters pursuant to this Agreement refers solely to the review undertaken by District as a contracting party and shall not constitute a regulatory approval required by Applicable Law. All regulatory approvals required by Applicable Law are separate and apart from any approval, consent or any other action of District pursuant to the terms of this Agreement. No approval by District as a contractual Party to this Agreement is binding on the applicable Governmental Authority having authority to issue such regulatory approval; provided such approval by District is binding on the District as a contractual Party to this Agreement.

*[Signature Page Follows]*

IN TESTIMONY WHEREOF, District and Program Manager have caused this Development Agreement to be signed as of the first date hereinabove mentioned.


**DISTRICT:**

DISTRICT OF COLUMBIA, a municipal corporation

By  \_\_\_\_\_  
Name: Muriel Bowser  
Title: Mayor

**PROGRAM MANAGER:**

UHS BUILDING SOLUTIONS, INC.

By  \_\_\_\_\_  
Name: Steve Filton  
Title Vice President

## EXHIBIT A – LAND


DESCRIPTION OF  
PROPOSED A & T LOT A  
FOR  
ST. ELIZABETH EAST CAMPUS  
SUBDIVISION LOT 2, SQUARE S-5868  
DISTRICT OF COLUMBIA  
November 30, 2018

Being part of Subdivision Lot 2 in Square S-5868 as shown on a Plat of Subdivision recorded April 27, 2012 in Subdivision Book 206 at Page 95 and part of Assessment and Taxation (A&T) Lot 830 as shown on Assessment and Taxation Plat 3862-S, both on file among the Records of the Office of the Surveyor of the District of Columbia, and being more particularly described as follows:

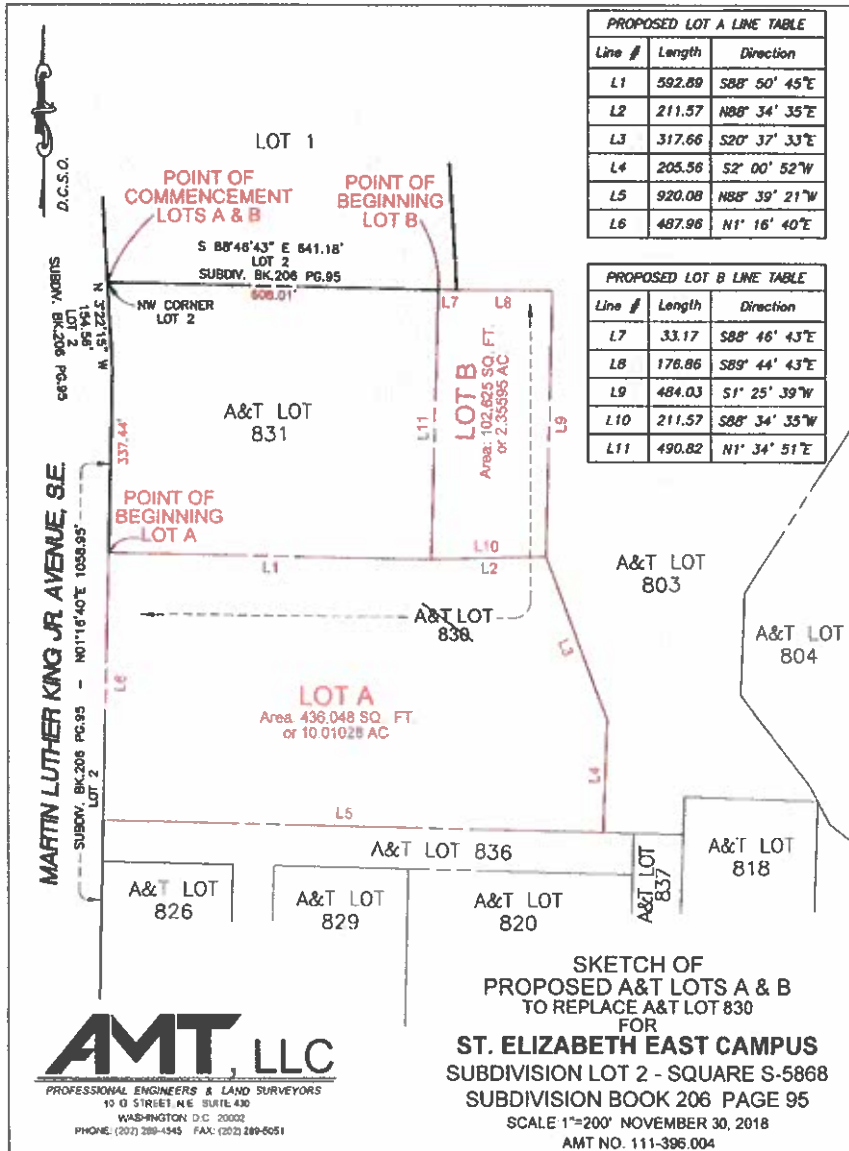
Commencing at a point on the easterly line of Martin Luther King, Jr. Avenue, S.E. (variable width); said point also being the northwesterly corner of said Lot 2; thence running with said easterly line of Martin Luther King, Jr. Avenue, S.E., South 3° 22' 15" East, 154.56 feet; thence South 01° 16' 40" West, 337.44 feet to the Point of Beginning of proposed Lot A, said point being the northwest corner of said A&T Lot 830; thence running in, through, over and across said Lot 2 the following five (5) courses and distances and with the outline of said A&T Lot 830

1. South 88° 50' 45" East, 592.89 feet to a point; thence for a new line of division running through A&T Lot 830
2. North 88° 34' 35" East, 211.57 feet to a point on the outline of said A&T Lot 830, thence continuing to run with the outline of said A&T Lot 830 the following four (4) courses and distances
3. South 20° 37' 33" East, 317.66 feet to a point; thence
4. South 02° 00' 52" West, 205.56 feet to a point; thence
5. North 88° 39' 21" West, 920.08 feet to a point on said easterly line of Martin Luther King, Jr. Avenue, S.E.; thence running with said easterly line
6. North 1° 16' 40" East, 487.96 feet to the Point of Beginning.

Containing a computed area of 436,048 square feet or 10.01028 acres of land, more or less.

  
William L. Gilbert  
Licensed Land Surveyor  
District of Columbia License No. 905059  
For AMT, LLC





**PROPOSED LOT A LINE TABLE**

Line #	Length	Direction
L1	592.69	S88° 50' 45" E
L2	211.57	N88° 34' 35" E
L3	317.66	S20° 37' 33" E
L4	205.56	S2° 00' 52" W
L5	920.08	N88° 39' 21" W
L6	487.98	N1° 16' 40" E

**PROPOSED LOT B LINE TABLE**

Line #	Length	Direction
L7	33.17	S88° 46' 43" E
L8	176.86	S89° 44' 43" E
L9	484.03	S1° 25' 39" W
L10	211.57	S88° 34' 35" W
L11	490.82	N1° 34' 51" E

**AMT, LLC**  
 PROFESSIONAL ENGINEERS & LAND SURVEYORS  
 13 D STREET N.E. SUITE 430  
 WASHINGTON, D.C. 20002  
 PHONE: (202) 289-4545 FAX: (202) 289-6051

SKETCH OF  
 PROPOSED A&T LOTS A & B  
 TO REPLACE A&T LOT 830  
 FOR  
**ST. ELIZABETH EAST CAMPUS**  
 SUBDIVISION LOT 2 - SQUARE S-5868  
 SUBDIVISION BOOK 206 PAGE 95  
 SCALE 1"=200' NOVEMBER 30, 2018  
 AMT NO. 111-396.004

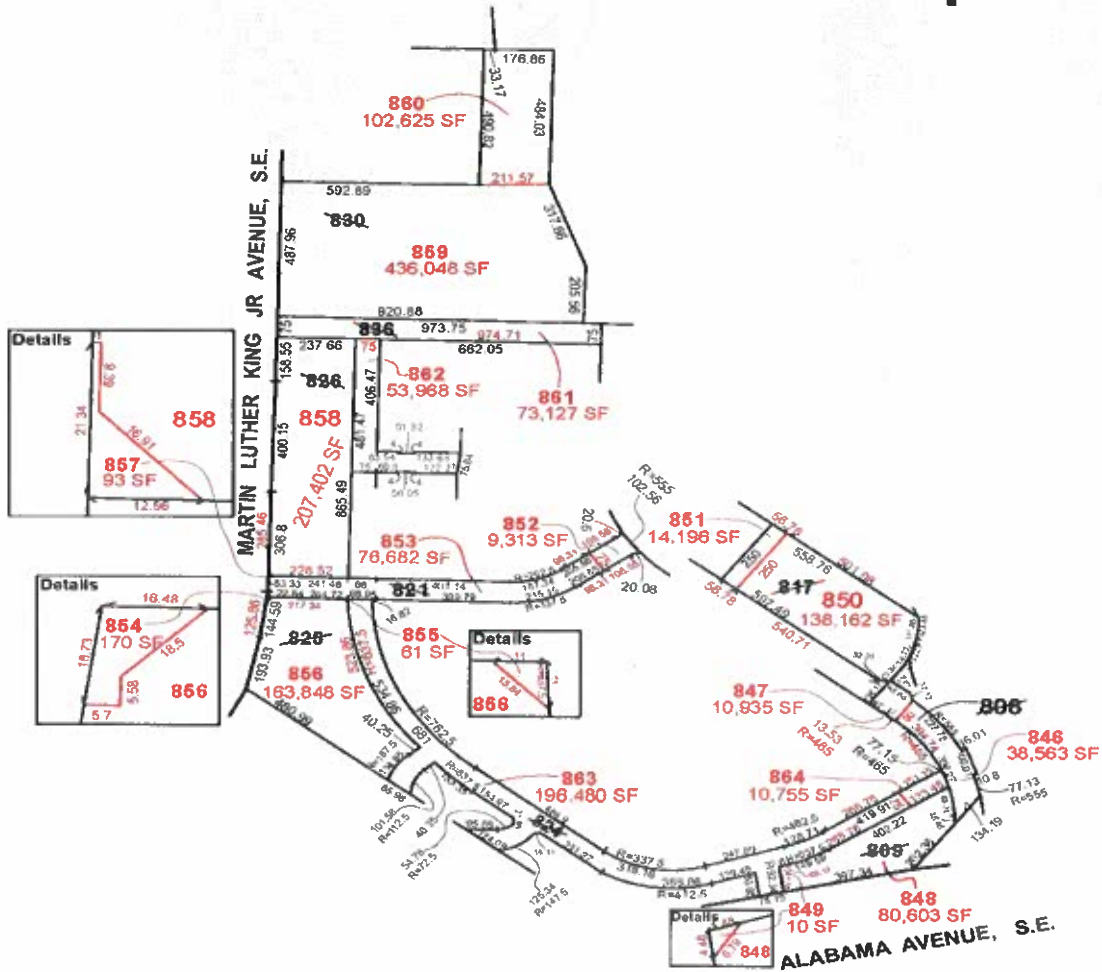
Part 1

OFFICE OF TAX AND REVENUE  
ASSESSMENT DIVISION



ASSESSMENT AND TAXATION PLAT

Square 5868S



David Smith  
Draftsman

A073383  
Reference

5/1/20  
Date

Scale, 1 inch = 400 ft

The Office of Surveyor of the District of Columbia shall admit this plat to record under the provisions of Chapter 7 of Title 47, District of Columbia Code, Designation of Real Property for Assessment and Taxation, and for other purposes.

Quincy Loney  
for Chief Assessor, Office of Tax and Revenue

FP-128 (Rev. 5-8-9)  
10-24-21

**EXHIBIT B**  
**CAPITAL ELIGIBILITY GUIDELINES**

**American Hospital Association 2018 Estimated Useful Lives of Depreciable Hospital Assets**

Product Code: 061190

Author: Health Forum

ISBN: 978-0-87258-983-4

[https://ams.aha.org/eweb/DynamicPage.aspx?WebCode=ProdDetailAdd&ivd\\_prd\\_key=de31803d-40e3-4a9e-91dc-4e780fb1d5b7](https://ams.aha.org/eweb/DynamicPage.aspx?WebCode=ProdDetailAdd&ivd_prd_key=de31803d-40e3-4a9e-91dc-4e780fb1d5b7)

# EXHIBIT C APPLICATION FOR PAYMENT FORM

1

DRAFT AIA® Document G702™ - 1992

## Application and Certificate for Payment

<b>TO OWNER:</b>	<b>APPLICATION NO.:</b> 001	<b>Distribution to:</b> OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>
<b>FROM CONTRACTOR:</b>	<b>PERIOD TO:</b>	<b>CONTRACTOR'S PROJECT NOS.:</b>
<b>VIA ARCHITECT:</b>	<b>CONTRACT DATE:</b>	<b>DATE:</b>

### CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM ..... \$0.00
2. NET CHANGE BY CHANGE ORDERS ..... \$0.00
3. CONTRACT SUM TO DATE (Line 1 + 2) ..... \$0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) ..... \$0.00
5. RETAINAGE:
  - a. 0 % of Completed Work (Column D + E on G703) ..... \$0.00
  - b. 0 % of Stored Material (Column F on G703) ..... \$0.00
 Total Retainage (Lines 5a + 5b or Total in Column F of G703) ..... \$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

**CONTRACTOR:** \_\_\_\_\_  
 By \_\_\_\_\_  
 State of \_\_\_\_\_  
 County of \_\_\_\_\_  
 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
 Notary Public.  
 My Commission expires \_\_\_\_\_

### ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data accompanying this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the

AMOUNT CERTIFIED ..... \$0.00  
 AMOUNT CERTIFIED ..... \$0.00  
 (Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

**ARCHITECT:** \_\_\_\_\_  
 By \_\_\_\_\_  
 Date \_\_\_\_\_  
 This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
<b>TOTALS</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>NET CHANGES by Change Order</b>	<b>\$0.00</b>	<b>\$0.00</b>

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# EXHIBIT C APPLICATION FOR PAYMENT FORM

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES  
CAPITAL CONSTRUCTION SERVICES



## Instructions to Vendors

This worksheet contains formulas that calculate the appropriate amount due for work performed. To ensure the prompt payment of invoices, contractors are advised not to alter fields containing formulas. Errors in the calculations of the amount due will result in submissions being rejected resulting in a delay of payment.

### Summary Progress Cover Sheet

Vendors are to complete fields highlighted in yellow.

Date Submitted	Vendor Invoice #	Vendor Signature
Contract #	Purchase Order #	Printed name
Project Name	Contract Start & End Dates	Title
Contractor	Billing Start and End Dates	Date

### Pay Request Form

Vendors are to complete columns highlighted in yellow. Complete the Pay Request Form to match the line items on your PO.

CO# / Mod# (drop-down menu provided)	Enter the change order number if the line corresponds to change order work. Leave blank if line is original/base contract work.
Description	Enter a description from PO for line item
Contract Amount	Enter line item cost from PO
Previous Work Value	Enter total complete amount for this line item from previous invoices
Work This Invoice Value	Enter cost of completed work in this invoice period for this line item
Stored Material This Invoice Value	Enter the stored material value for this invoice
General Retainage Percent	Enter the General retainage amount for each line used
Previous Retainage Percent	Enter the percentage held for retainage in the previous invoice

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES  
CAPITAL CONSTRUCTION SERVICES



Date Submitted: \_\_\_\_\_

---

Contract # _____	Purchase Order # _____
Project Name _____	Contract Start Date _____
Contractor _____	Contract Completion Date _____
Vendor Invoice # _____	Billing Start: _____
	Billing End: _____

1. Original Contract Amount	\$0.00	
2. Net Amount of Change Orders Approved	\$0.00	
3. Total Contract Amount To Date (1+2)		\$0.00
4. Total Amount Completed %	0.00%	\$0.00
5. Retainage	0.00%	\$0.00
6. Less Previous Payments		_____
<b>TOTAL AMOUNT DUE THIS PAYMENT</b>		<b>\$0.00</b>

Balance to Finish 0.00%

**CONTRACTOR'S (GC) CERTIFICATE** I certify that all items, quantities and prices of work and material shown in the application for payment are correct to the best of my knowledge and belief and have been completed in accordance with the Contract Documents. ARCHITECT'S / A/E / CONSTRUCTION MANAGER (CM) CERTIFICATE: In accordance with the Contract Documents, based on site observation and data comprising this application, the A/E / CM certifies to the owner to the best of the A/E / CM's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with Contract Documents, and the contractor is entitled to payment of the AMOUNT CERTIFIED.

**CERTIFICATION OF TIMELY PAYMENTS TO SUBCONTRACTORS AND SUPPLIES:** I will make timely payments from the proceeds of this payment to all subcontractors and suppliers in accordance with my contractual arrangements with them. I have made payment from proceeds of prior payments to all subcontractors and suppliers in accordance with my contractual arrangements with them.

	Vendor Signature	
Project Manager	By	
	Printed name	
Program Manager	Title	Date

**DC CERTIFICATE:** I certify that to the best of my knowledge and belief, this requisition is a true and correct statement of work performed and materials supplied by the contractor and that the work and materials comply with the requirements of the contract. I also certify that all of the required certified payroll affidavits have been received.

Cluster Leader	Deputy Director	Chief Project Delivery Officer
----------------	-----------------	--------------------------------

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
 DEPARTMENT OF GENERAL SERVICES  
 CAPITAL CONSTRUCTION SERVICES



Contract # \_\_\_\_\_  
 Project Name \_\_\_\_\_  
 Contractor \_\_\_\_\_

Date Submitted \_\_\_\_\_

DOB NAOR	Description	Contract Amount	Previous Work Value	Work This Invoice Value	Stored Materials This Invoice Value	Total Complete Value	Percent Complete	General Retainage Percentage	General Retainage Value	Previous Retainage Percentage	Previous Retainage Value	Net Current Due	Balance To Complete Value
TOTAL		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%		\$0.00		\$0.00	\$0.00	\$0.00

**EXHIBIT D**  
**LIST OF ENVIRONMENTAL REPORTS**

- Phase I Environmental Site Assessment (Draft Report), St. Elizabeth's Hospital, East Campus, 2700 Martin Luther King Jr. Avenue SE, Washington D.C., April 2003, by Environmental Resources Management.
- Phase II Environmental Site Assessment, St. Elizabeth's 801 Shelter Relocation Project, dated November 27, 2018, by Hillis-Carnes Capitol Services, PLLC.
- Preliminary Geotechnical Engineering Study, St. Elizabeth's Shelter Relocation, Washington, DC, December 3, 2018, by Hillis-Carnes Capitol Services, PLLC.

**EXHIBIT E  
RESERVED**

**EXHIBIT F  
RESERVED**

**EXHIBIT G  
LIEN WAIVER**

**RELEASE OF LIENS AND CLAIMS**

**Project Name: Contract No.:**

**Task Order No.:**

**Contract Date:**

**Contract Amount:**

**Date:**

**Final Release of Liens and Claims:**

The undersigned (Company Name), in consideration of payments received and upon receipt of the amount of payment of \$ \_\_\_\_\_ hereby indemnifies, waives, releases, and holds the District of Columbia harmless for the above referenced project, including all claims, right to liens, terminations, and stop notices upon said premises or the improvements thereon under the statutes of the jurisdiction in which the project is located.

The undersigned further represents and warrants, as of this date, that he/she is duly authorized to sign and execute this Release of Liens and Claims on behalf of (Company Name); that (Company Name) has properly performed all work and furnished all materials of the specified quality in accordance with all contract documents in an acceptable workmanlike manner to the Department of General Services/Construction Division, District of Columbia and that (Company Name) has paid for all labor, including fringe benefits and workers compensation, all materials, equipment, services, taxes, insurance premiums, and bonds (if required) and that any materials supplied to or incorporated in this project have been paid.

(Company Name) is executing this Release of Liens and Claims for the express purpose of inducing the District to make disbursement and payment to (Company Name) of \$ \_\_\_\_\_.

**This letter must be signed and notarized below by authorized individuals.**

Insert Consultants /Contractors name: (Company Name)

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

I, a Notary Public in and for the District of Columbia, hereby certify that, on this (Day) day of (Month), (year), (company representatives name) personally appeared before me, known to me (or satisfactorily proven) to be the person who executed the foregoing Release of Liens and Claims, as of (Company Name) who acknowledged having done so for the purposes therein contained.

IN WITNESS WHEREOF, I have set my hand and official seal.

---

Notary Public, D.C.

My commission expires: \_\_\_\_\_

[NOTARIAL SEAL]



**EXHIBIT H  
RESERVED**

# EXHIBIT I CBE SUBCONTRACTING PLAN



## SBE SUBCONTRACTING PLAN

**INSTRUCTIONS:** All construction & non-construction contracts for government-assisted projects (agency contracts & private project with District subsidy) over \$250,000, shall require at least 35% of the amount of the contract (total amount of agency contract or total private project development costs) be subcontracted to Small Business Enterprises (SBE), if insufficient qualified SBEs to Certified Business Enterprises (CBE). The SBE Subcontracting Plan must list all SBE and CBE subcontracts at every tier. Once the SBE Subcontracting Plan is submitted for agency contracts, options & extensions, it can only be amended with DSLBD's consent.

**SUBMISSION OF SBE SUBCONTRACTING PLAN:**

- ^ For agency solicitations - submit to agency with bid/proposal.
- ^ For agency options & extensions - submit to agency before option or extension exercised.
- ^ For private projects - submit to DSLBD, agency project manager and District of Columbia Auditor, with each quarterly report. As private projects may not have awarded all contracts at the time the District subsidy is granted, the SBE Subcontracting Plan may be submitted simultaneously with each quarterly report and list all SBE/CBE subcontracts executed by the time of submission.

**CREDIT:** For each subcontract listed on the SBE Subcontracting Plan, credit will only be given for the portion of the subcontract performed, at every tier, by a SBE/CBE using *its own organization and resources*. **COPIES OF EACH FULLY EXECUTED SUBCONTRACT WITH SBEs and CBEs (AT EVERY TIER) MUST BE PROVIDED TO RECEIVE CREDIT.**

**EXEMPTION:** If the Beneficiary (Prime Contractor or Developer) is a CBE and will perform the ENTIRE government-assisted project with its *own organization and resources* and will NOT subcontract any portion of the services and goods, then the CBE is not required to subcontract 35% to SBEs.

BENEFICIARY (✓ which applies <input type="checkbox"/> Prime Contractor or <input type="checkbox"/> Developer) INFORMATION:	
Company _____	Contact # _____
Email address: _____	
Street Address: _____	
✓ all that applies. Company is:	
<input type="checkbox"/> a SBE <input type="checkbox"/> a CBE <input type="checkbox"/> CBE Certification Number: _____	
<input type="checkbox"/> WILL perform the ENTIRE agency contract or private project with its own organization and resources	
<input type="checkbox"/> WILL subcontract a portion of the agency contract or private project	
Company's point of contact for agency contract or private project	
Point of Contact _____	Title _____
Contact # _____	Email address: _____
Street Address: _____	

GOVERNMENT-ASSISTED PROJECT (✓ which applies <input type="checkbox"/> Agency Contract or <input type="checkbox"/> Private Project) INFORMATION:	
<b>AGENCY SOLICITATION</b>	<b>PRIVATE PROJECT</b>
Solicitation Number _____	District Subsidy _____
Solicitation Due Date: _____	Agency Providing Subsidy: _____
Agency: _____	Amount of District Subsidy: _____
Total Dollar Amount of Contract \$ _____	Date District Subsidy Provided: _____
*Design-Build must include total contract amount for both design and build phase of project	Project Name: _____
35% of Total Dollar Amount of Contract \$ _____	Project Address: _____
Total Amount of All SBE/CBE subcontracts \$ _____ (include every lower tier)	Total Development Project Budget \$ _____ (include pre-construction and construction costs)
	35% of Total Development Project Budget \$ _____
	Total Amount of All SBE/CBE subcontracts \$ _____ (include every lower tier)



**SBE/ CBE SUBCONTRACTORS (FOR EACH TIER):**

<b>SBE/ CBE SUBCONTRACTOR INFORMATION: (For design-build projects, the SBE Subcontracting Plan is not required to be submitted for preconstruction services; however, a full SBE Subcontracting Plan (35% of the contract amount including total design and build costs) is required to be submitted before entering into a guaranteed maximum price or contract authorizing construction.)</b>			
SBE/ CBE Company	Address/Telephone No / Email	Subcontractor Tier (1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> , etc.)	Description of Subcontract scope of work to be PERFORMED WITH SBE/CBEs OWN ORGANIZATION & RESOURCES
_____	_____	<u>Select Tier</u>	_____
Period of subcontract _____ Price to be paid to the SBE/CBE Subcontractor \$_____		SBE/ CBE Point of Contact Name _____ Title _____ Telephone Number _____ Email Address _____	
<i>✓All that applies, Subcontractor is:</i> <input type="checkbox"/> a SBE <input type="checkbox"/> a CBE <input type="checkbox"/> CBE Certification #: _____ <input type="checkbox"/> SBE/CBE will perform the ENTIRE subcontract with its own organization and resources <input type="checkbox"/> SBE/CBE will subcontract a portion of the subcontract (MUST LIST EACH LOWER TIER SBE/ CBE SUBCONTRACTS)			

<b>SBE/ CBE SUBCONTRACTOR INFORMATION: (For design-build projects, the SBE Subcontracting Plan is not required to be submitted for preconstruction services; however, a full SBE Subcontracting Plan (35% of the contract amount including total design and build costs) is required to be submitted before entering into a guaranteed maximum price or contract authorizing construction.)</b>			
SBE/ CBE Company	Address/Telephone No / Email	Subcontractor Tier (1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> , etc.)	Description of Subcontract scope of work to be PERFORMED WITH SBE/CBEs OWN ORGANIZATION & RESOURCES
_____	_____	<u>Select Tier</u>	_____
Period of subcontract _____ Price to be paid to the SBE/CBE Subcontractor \$_____		SBE/ CBE Point of Contact Name _____ Title _____ Telephone Number _____ Email Address _____	
<i>✓All that applies, Subcontractor is:</i> <input type="checkbox"/> a SBE <input type="checkbox"/> a CBE <input type="checkbox"/> CBE Certification #: _____ <input type="checkbox"/> SBE/CBE will perform the ENTIRE subcontract with its own organization and resources <input type="checkbox"/> SBE/CBE will subcontract a portion of the subcontract (MUST LIST EACH LOWER TIER SBE/ CBE SUBCONTRACTS)			

I \_\_\_\_\_ of \_\_\_\_\_ swear or affirm the above is true and accurate  
 (Name) (Title) (Prime Contractor/ Developer)

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Date)

**Complete additional copies as needed.**



**AGENCY CONTRACTING OFFICER'S USE ONLY** OR  **AGENCY PROJECT MANAGER'S USE ONLY**  
 (✓ which applies. Only one option should be selected.)

AGENCY CONTRACT AWARD	PRIVATE PROJECT SUBSIDY AWARD
Agency: _____ Prime Contractor: _____ Contract Number: _____ Date SBE Subcontracting Plan Accepted: _____ Date agency contract signed: _____  Anticipated Start Date of Contract: _____ Anticipated End Date of Contract: _____  Total Dollar Amount of Contract: \$ _____  <i>*Design-Build must include total contract amount for both design and build phase of project.</i>  35% of Total Contract Amount: \$ _____  Total Amount of All SBE/CBE subcontracts: \$ _____ <i>(include every tier)</i>  (✓ if applies) <input type="checkbox"/> Base Period Contract – Option/Extension Period _____ <input type="checkbox"/> Multi-year Contract First year (period) of Contract: _____ Current year (period) of Contract: _____ <input type="checkbox"/> Design-Build –Date of Guaranteed Contract: _____  <input type="checkbox"/> Check if prime contractor is a CBE and will perform the ENTIRE government-assisted project (agency contract) with its own organization and resources and NOT subcontract any portion of services or goods	Agency Providing Subsidy: _____ District Subsidy: _____ Developer: _____ Amount of District Subsidy: _____ Date District Subsidy Provided/ contract signed: _____  Anticipated Start Date of Project: _____ Anticipated End Date of Project: _____  Project Name: _____ Project Address: _____  Total Development Project Budget: \$ _____ <i>(include pre-construction and construction costs)</i>  35% of Total Development Project Budget: \$ _____  Total Amount of All SBE/CBE subcontracts: \$ _____ <i>(include every lower tier)</i>  <input type="checkbox"/> Check if developer is a CBE and will perform the ENTIRE government-assisted project (private project) with its own organization and resources and NOT subcontract any portion of services or goods.

**AGENCY CONTRACTING OFFICER'S AFFIRMATION** OR  **AGENCY PROJECT MANAGER'S AFFIRMATION**  
 (✓ which applies)

The Below Agency Contracting Officer or Agency Project Manager Affirms the following (✓ to affirm):

- If the Beneficiary is a CBE, DSLBD was contacted to confirm Beneficiary's CBE certification;
- The fully executed Contract (Base or Option or Extension or Multi-Year) or subsidy document, between the Beneficiary and Agency, was emailed to DSLBD @ [Compliance.Enforcement@dc.gov](mailto:Compliance.Enforcement@dc.gov) within five (5) days of signing;
- FOR AGENCY CONTRACT** the SBE Subcontracting Plan, submitted by Beneficiary, was emailed to DSLBD @ [Compliance.Enforcement@dc.gov](mailto:Compliance.Enforcement@dc.gov) within five (5) days of signing the contract between the Beneficiary and Agency.

\_\_\_\_\_  
 Name of Agency Contracting Officer or Agency Project Manager

\_\_\_\_\_  
 Title of Agency Contracting Officer or Agency Project Manager

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

**EXHIBIT J**  
**DAVIS-BACON AND RELATED ACTS, PROVISIONS AND PROCEDURES and WAGE RATES**

**CFR Title 29: Labor**

**Subpart A—Davis-Bacon and Related Acts Provisions and Procedures**

§ 5.5 Contract provisions and related matters.

(a) The Contractor shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- ( 1 ) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- ( 2 ) The classification is utilized in the area by the construction industry; and
- ( 3 ) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or

owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

( / ) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

( 2 ) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

( 3 ) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees* —(i) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that



determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

*(ii) Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

*(iii) Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

*(5) Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

*(6) Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

*(7) Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

*(8) Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

*(9) Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) (10) *Certification of eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The contractor shall insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b) (1) through (4) of this section.

## Wages

"General Decision Number: DC20200002 05/15/2020

Superseded General Decision Number: DC20190002

State: District of Columbia

Construction Type: Building

County: District of Columbia Statewide.

**BUILDING CONSTRUCTION PROJECTS** (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	
0	01/03/2020
1	01/24/2020
2	02/07/2020
3	02/14/2020
4	02/28/2020
5	03/13/2020
6	04/17/2020
7	05/15/2020

ASBE0024-007 04/01/2019

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 36.53	16.42+a

Includes the application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems

a. PAID HOLIDAYS: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day provided the employee works the regular work day before and after the paid holiday.

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ASBE0024-008 04/01/2019

	Rates	Fringes
ASBESTOS WORKER: HAZARDOUS MATERIAL HANDLER .....	\$ 23.71	7.44+a

Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials, whether they contain asbestos or not, from mechanical systems

a. PAID HOLIDAYS: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day provided the employee works the regular work day before and after the paid holiday.

ASBE0024-014 04/01/2019

	Rates	Fringes
FIRESTOPPER.....	\$ 29.16	7.98+a

Includes the application of materials or devices within or around penetrations and openings in all rated wall or floor assemblies, in order to prevent the passage of fire, smoke or other gases. The application includes all components involved in creating the rated barrier at perimeter slab edges and exterior cavities, the head of gypsum board or concrete walls, joints between rated wall or floor components, sealing of penetrating items and blank openings.

a. PAID HOLIDAYS: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day provided the employee works the regular work day before and after the paid holiday.

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\* BRDC0001-002 05/03/2020

	Rates	Fringes
BRICKLAYER \$ 33.00 12.09		

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CARP0197-011 05/01/2019

	Rates	Fringes	
CARPENTER, Hanging, Form Work, and Soft Floor Laying-Carpet .....	\$ 29.00	12.71	Includes Drywall

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CARP0219-001 05/01/2019

	Rates	Fringes
MILLWRIGHT \$ 35.99 11.23		

CARP0441-001 05/01/2018

	Rates	Fringes
PILEDRIVERMAN.....	\$ 30.94	11.45

ELEC0026-016 11/04/2019

	Rates	Fringes
ELECTRICIAN, Installation of HVAC/Temperature Controls.....	\$ 46.85	19.45

Includes

ELEC0026-017 09/02/2019

	Rates	Fringes
ELECTRICAL INSTALLER (Sound & Communication Systems).....	\$ 28.55	11.28

SCOPE OF WORK: Includes low voltage construction, installation, maintenance and removal of teledata facilities (voice, data and video) including outside plant, telephone and data inside wire, interconnect, terminal equipment, central offices, PABX, fiber optic cable and equipment, railroad communications, micro waves, VSAT, bypass, CATV, WAN (Wide area networks), LAN (Local area networks) and ISDN (Integrated systems digital network).

WORK EXCLUDED: The installation of computer systems in industrial applications such as assembly lines, robotics and computer controller manufacturing systems. The installation of conduit and/or raceways shall be installed by Inside Wiremen. On sites where there is no Inside Wireman employed, the Teledata Technician may install raceway or conduit not greater than 10 feet. Fire alarm work is excluded on all new construction sites or wherever the fire alarm system is installed in conduit. All HVAC control work.

ELEV0010-001 01/01/2020

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 47.02	34.765+a+b

a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day and the Friday after Thanksgiving.

b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service; 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

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IRON0005-005 06/01/2019

	Rates	Fringes
IRONWORKER, STRUCTURAL AND ORNAMENTAL.....	\$ 32.50	22.385

-----  
IRON0005-012 05/01/2019

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 28.95	21.08

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LABO0011-009 06/01/2019

	Rates	Fringes
LABORER: Skilled .....	\$ 25.05	8.52

FOOTNOTE: Potmen, power tool operator, small machine operator, signalmen, laser beam operator, waterproofer (excluding roofing), open caisson, test pit, underpinning, pier hole and ditches, ladders and all work associated with lagging that is not expressly stated, strippers, operator of hand derricks, vibrator operators, pipe layers, or tile layers, operators of jackhammers, paving breakers, spaders or any machine that does the same general type of work, carpenter tenders, scaffold builders, operators of towmasters, scootcretes, buggymobiles and other machines of similar character, operators of tampers and rammers and other machines that do the same general type of work, whether powered by air, electric or gasoline, builders of trestle scaffolds over one tier high and sand blasters, power and chain saw operators used in clearing, installers of well points, wagon drill operators, acetylene burners and licensed powdermen, stake jumper, demolition.

-----  
MARB0002-004 04/28/2019

	Rates	Fringes
MARBLE/STONE MASON .....	\$ 38.81	18.29

INCLUDING pointing, caulking and cleaning of All types of masonry, brick, stone and cement EXCEPT pointing, caulking, cleaning of existing masonry, brick, stone and cement (restoration work)

-----  
MARB0003-006 04/28/2019

	Rates	Fringes
TERRAZZO WORKER/SETTER .....	\$ 29.12	12.27

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MARB0003-007 04/28/2019

	Rates	Fringes
TERRAZZO FINISHER .....	\$ 24.10	11.24

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MARB0003-008 04/28/2019

	Rates	Fringes
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TILE SETTER..... \$ 29.12 12.27

MARB0003-009 04/28/2019

TILE FINISHER..... Rates Fringes  
\$ 24.10 11.24

PAIN0051-014 06/01/2018

GLAZIER  
Rates Fringes  
Glazing Contracts \$2 million and under..... \$ 26.07 12.15  
Glazing Contracts over \$2 million..... \$ 30.31 12.15

PAIN0051-015 06/01/2018

PAINTER  
Rates Fringes  
Brush, Roller, Spray and Drywall Finisher ..... \$ 25.06 9.76

PLAS0891-005 07/01/2018

PLASTERER ..... Rates Fringes  
\$ 29.53 6.80

PLAS0891-006 02/01/2020

CEMENT MASON/CONCRETE FINISHER... Rates Fringes  
\$ 28.82 11.68

PLAS0891-007 08/01/2016

FIREPROOFER  
Rates Fringes  
Handler ..... \$ 16.50 4.89  
Mixer/Pump ..... \$ 18.50 4.89  
Sprayer..... \$ 23.00 4.89

Spraying of all Fireproofing materials. Hand application of Fireproofing materials. This includes wet or dry, hard or soft. Intumescent fireproofing and refraction work, including, but not limited to, all steel beams, columns, metal decks, vessels, floors, roofs, where ever fireproofing is required. Plus any installation of thermal and acoustical insulation. All that encompasses setting up for Fireproofing, and taken down. Removal of fireproofing materials and protection. Mixing of all materials either by hand or machine following manufactures standards.

PLUM0005-010 08/01/2019

Rates Fringes

PLUMBER..... \$ 43.92                      18.95+a  
 a. PAID HOLIDAYS: Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day, New Year's Day, Martin Luther King's Birthday, Memorial Day and the Fourth of July.

-----  
 PLUM0602-008 08/01/2019

Rates                      Fringes

PIPEFITTER, Includes HVAC

Pipe Installation..... \$ 43.14                      21.87+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving and Christmas Day.

-----  
 ROOF0030-016 07/01/2019

Rates                      Fringes

ROOFER ..... \$ 30.25                      13.24

SFDC0669-002 04/01/2020

Rates                      Fringes

SPRINKLER FITTER (Fire Sprinklers) ..... \$ 35.70                      23.60

SHEE0100-015 07/01/2019

Rates                      Fringes

SHEET METAL WORKER (Including HVAC Duct Installation)..... \$ 40.77                      21.35+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day

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 SUDC2009-003 05/19/2009

Rates                      Fringes

LABORER: Common or General..... \$ 13.04                      2.80

LABORER: Mason Tender - Cement/Concrete ..... \$ 15.40                      2.85

LABORER: Mason Tender for pointing, caulking, cleaning of existing masonry, brick, stone and cement structures (restoration work); excludes pointing, caulking and cleaning of new or replacement masonry, brick, stone and cement..... \$ 11.67

POINTER, CAULKER, CLEANER, Includes pointing, caulking, cleaning of existing masonry, brick, stone and cement structures (restoration work); excludes pointing,



caulking, cleaning of new or  
replacement  
masonry, brick, stone or cement \$ 18.88

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WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number

where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the “SU” identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
 Wage and Hour Division  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

**EXHIBIT K**  
**CONSTRUCTION CONTRACT SUBCONTRACT REQUIREMENTS**

In addition to the other requirements set forth in the Agreement that shall be included in the Architect and Contractor agreements, the following shall be inserted into the Architect (to the extent Architect will be permitted to have any subcontractors) and each Contractor's contracts and subcontracts (the "Contractor" shall also include Architect, as applicable, for this Exhibit).

- 1) to the extent of the work or supply within the agreement's scope, the subcontractor or supplier is bound to Contractor for the performance of all obligations which Program Manager owes District under the Agreement;
- 2) that the subcontractor or supplier is not in privity with District and shall not seek compensation directly from District 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;
- 3) that the subcontractor or supplier consents to assignment of its agreement to District or Program Manager, at District's sole option, if Program Manager or Contractor, as applicable, is terminated for default;
- 4) that the subcontractor or supplier shall comply immediately with a written order from District to Program Manager or Contractor, as applicable, to suspend or stop work;
- 5) that the subcontractor or supplier shall maintain records of all applicable 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 this Agreement and requiring the subcontractor or supplier to make those records available for review or audit by District during that time;
- 6) that the subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of District of Columbia (This provision is not applicable to supply agreements);
- 7) that, if District terminates the Agreement for convenience and does not require Program Manager to assign the Contracts, Program Manager or Contractor, as applicable, 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 Agreement.
- 8) that District shall have the right to enter into a contract with the subcontractor or supplier for the same price as its contract or subcontract or supply agreement price less amounts already paid, if Program Manager or Contractor, as applicable, terminates this Agreement or files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;

- 9) 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;
- 10) 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;
- 11) a provision requiring that all subcontractors at all tiers comply with the provisions of economic inclusion goals; provided, however, that nothing in this provision shall be deemed to excuse each Contractor and subcontractor from achieving the CBE subcontracting goals for the Project;
- 12) a provision which allows Program Manager or Contractor, as applicable, to withhold payment from the subcontractor if the subcontractor does not meet the requirements of the subcontract;
- 13) lien and claim release and waiver provisions substantially identical to those in this Agreement at each payment to such subcontractor.
- 14) Within seven (7) days of receiving any payment from District that includes amounts attributable to the Work performed or materials or equipment supplied by a subcontractor or supplier, Program Manager or Contractor, as applicable, shall either pay the subcontractor or supplier for its proportionate share of the amount paid to Program Manager or Contractor, as applicable, for the subcontractor's or supplier's Work or materials or equipment, or notify District and the subcontractor or supplier, in writing, of Program Manager or Contractor, as applicable, intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to Program Manager or Contractor, as applicable, under the Agreement 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 used for other items. Monies paid by joint check shall be deemed to have been paid fully to the subcontractor or supplier named as a joint payee, unless District agrees otherwise in writing. Any interest paid to subcontractors or suppliers because Program Manager or Contractor, as applicable, has failed to pay them in timely fashion shall not be reimbursable as part of the Cost of the Project.
- 15) Program Manager or Contractor, as applicable, shall not enter into any profit sharing, rebate, or similar arrangement with any subcontractor or supplier at any tier with respect to the Project or the Work to be carried out for the Project.
- 16) District 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 District shall not issue any directions to subcontractors or Suppliers at any tier.

- 17) If it comes to District's attention that a subcontractor or supplier has not been paid in timely fashion (other than for disputed amounts), and if Program Manager or Contractor, as applicable, fails to cure the problem within five (5) days after District gives it written notice of the failure to pay, District may, in District's sole discretion make payments on behalf of Program Manager or Contractor to the subcontractor or supplier and Program Manager or Contractor, as applicable, by joint check.

**Exhibit L**  
**Project Scope and Initial Work, Cash Flow, and Estimated Schedule of the**  
**GW Health Hospital at St. Elizabeths**

The Work shall include designing, developing, constructing and commissioning to Final Completion on the St Elizabeths East Campus:

- i. A new, \$293 million state-of-the-art Inpatient Hospital (community hospital) with a level III verified trauma center;
- ii. A new \$69 million Ambulatory Facility (ambulatory pavilion) to support a continuum of care; and
- iii. A new \$13 million Parking Facility (parking facility/garage) to further facilitate access and convenience of care. The parking garage shall accommodate 500 spaces to be used by patients, visitors and staff, and others with business at the inpatient hospital or ambulatory pavilion.

These three assets and their required furniture, fixtures and equipment, including Information Technology shall comprise the Project as further defined in this Agreement and shall be constructed on Square 5868S, Lot 859.

A new hospital at St. Elizabeths will improve access to high quality, integrated care for all District residents and help address disparities in health outcomes.

The Inpatient Hospital, Ambulatory Facility, and Parking Facility shall be designed and constructed in full compliance with all governing bodies both federal and local. Within the healthcare setting, the District of Columbia has adopted the Facility Guidelines Institute (FGI) 2018 Guidelines. FGI is the healthcare industry's most widely recognized source for healthcare facilities, including both inpatient and outpatient buildings. The facilities shall also be designed and constructed so that the inpatient hospital and ambulatory pavilion can provide, as of the opening date of each facility, identified as the Occupancy/ Final Completion Date in this Exhibit, the Services (as defined in the Hospital Operations Agreement), including the Clinical Services to be provided at such facility pursuant to the Hospital Operations Agreement (Section 3.4.1). The Final Completion Date shall not be extended beyond September 30, 2026 unless amended to a later specific date as agreed to by the Parties in writing as an amendment to this Agreement. This Exhibit also identifies the Substantial Completion Date.

The schedule section of this Exhibit includes current projected milestones and estimated durations based upon input and experience from both the District and UHS. The schedule is subject to regulatory approvals (which are currently estimated based upon UHS and District experience) and amendment per the Agreement.

The Inpatient Hospital shall include a total of 136 licensed inpatient beds. Of the total bed count, 120 beds (one bed per room) shall be for acute services including women's health, maternal services including newborn deliveries and a Level II NICU, general medical-surgical/operating,

and an intensive care unit. The remaining 16 beds shall be dedicated to behavioral health patients. A detailed breakdown of bed count by service line is included on page 3 of this Exhibit. The inpatient hospital shall include an emergency department that shall be a verified level III trauma center. It will also include a pediatric emergency department. Diagnostic and treatment services and spaces shall include the latest in equipment technology necessary for medical imaging, surgery, and procedures. Further detail on these spaces and requisite equipment is included on page 3 of this Exhibit.

All of the patient beds, procedure and diagnostic areas shall be supported by an onsite central energy plant, central sterile processing, dietary services, environmental services, administration and other necessary functions needed to operate a hospital. Patients, families and visitors will be comforted by the public areas, food service and other amenities such as reception, chapel, and gift shop. As the hospital operations grow to full capacity in future years, the building structure shall have been designed and constructed to allow for future vertical expansion that shall support an additional floor with 60 beds, for an eventual operating total of 196 beds.

The Ambulatory Facility shall include outpatient services to complement what is offered in the main hospital, but in a lower acuity setting consistent with current practices and technology, enabling more efficient and patient-centered delivery of care. Spaces shall specifically include an outpatient clinic with physician offices and exam rooms, an imaging department, comprehensive rehabilitation services, surgery, and conference/ community/ education spaces. A \$5M allowance is included for a cancer program with exact services to be determined. Cancer services may consist of exam and consult spaces, medical oncology, infusion, hemodialysis, or chemotherapy (linear accelerator is not included). Further detail on the Ambulatory Facility spaces and requisite equipment is included on page 3 of this Exhibit.

The Project Budget, as shown on page 3 of this Exhibit, also identifies as part of the Work:

- An optional helipad. The helipad will be constructed if further analysis of the option identifies it as feasible based on Federal and local government regulatory approval, health care need and community engagement.
- The acquisition and installation of all furniture, fixtures and equipment and Information Technology equipment.
- Onsite (Lot A) roads, walkways, parking, utilities and landscaping that connects to the rest of the St. Elizabeths campus and the nearby Congress Heights metro station.

During design and construction, the use of Building Information Modeling (BIM) shall be implemented as a tool to facilitate cost effective and well-coordinated construction. Further, upon completion of the building, the BIM model can be used as an asset-management tool for operations and maintenance.



**Exhibit L: Project Scope, Initial Work, Cash Flow, and Estimated Schedule of the  
GW Health Hospital at St. Elizabeths**



**GW Health Hospital at St. Elizabeths**  
PROJECT BUDGET - 6/1/2020

PROGRAM 136 (16 BEHAVIORAL HEALTH)	PRICE	SIZE (SF)	\$ / SF	\$ / BED	COMMENTS
<b>HOSPITAL</b>	\$ 235,422,260	251,049	\$ 938	\$ 1,731,046	on 136 beds
Women's Services - 20 Beds (detailed below)					
AstePartum (2 Beds)					
Labor & Delivery (4 Rooms)					
Labor & Delivery (2 C-Section OR's)					
PostPartum (12 Beds)					
NICU - Level III (6 Beds)					
Holding Nursery (13 Bassinets)					
Med/Surg - 80 Beds					
ICU - 20 Beds					
BH - 16 Beds					
Shell - 0 Beds					
Emergency Department					
Adult - 30 Treatment Rooms (verified Level III Trauma Center)					
Children - 20 Treatment Rooms					
Imaging					
MR (1)					
CT (1)					
Rad (1)					
Fluoro (1)					
Ultrasound (1)					
Mammography (1)					
Surgery					
General OR's (3) - Does Not include Open Heart, Neuro, or other Complex Surgical Cases					
Shell OR's (2)					
Hybrid OR (0) - Not included in Program					
Cath / R (1) - with BI-Plane					
Endo (1)					
Furniture, Fixtures, Equipment	\$ 42,734,412				
Information Technology Equipment	\$ 10,248,000				
<b>HOSPITAL STUB FOR FUTURE 5TH FLOOR (60 BEDS)</b>	\$ 3,000,000				
<b>OPTIONAL HELIPAD - LOCATED ON GRADE</b>	\$ 1,961,793				
<b>PARKING DECK 500</b>	\$ 12,500,000			\$25,000 per space x 500 spaces	
<b>AMBULATORY V2</b>	\$ 50,243,076	77,164	\$ 651	N/A	
Outpatient Clinic - Program TBD					
Cancer Program Allowance (Construction & Equipment)	\$ 5,055,226				
Imaging					
CT (1)					
Rad (1)					
Ultrasound (1)					
Shell (1)					
Cardiac Rehab					
Exam (2)					
EKG (1)					
Phlebotomy (2)					
Surgery					
General OR's (2)					
Minor Procedure (2)					
Conference / Education					
Furniture, Fixtures, Equipment	\$ 10,993,971				
Information Technology Equipment	\$ 2,500,000				
<b>TOTAL</b>	\$ 374,678,738				

**Exhibit I: Project Scope, Initial Work, Cash Flow, and Estimated Schedule of the  
CJW Health Hospital at St. Elizabeths**

6/1/2020

	FY 2020 Oct 19 - Sept 20	FY 2021 Oct 20 - Sept 21	FY 2022 Oct 21 - Sept 22	FY 2023 Oct 22 - Sept 23	FY 2024 Oct 23 - Sept 24	Grand Total
Fiscal Year Spend \$	8,204,294	36,774,371	114,314,396	126,424,957	88,960,719	374,678,738
Cummulative Spend \$	8,204,294	44,978,665	159,293,062	285,718,019	374,678,738	

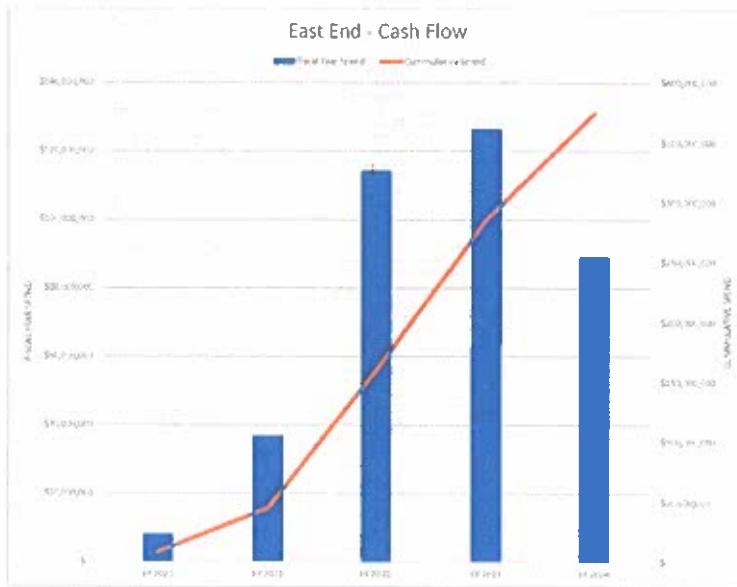
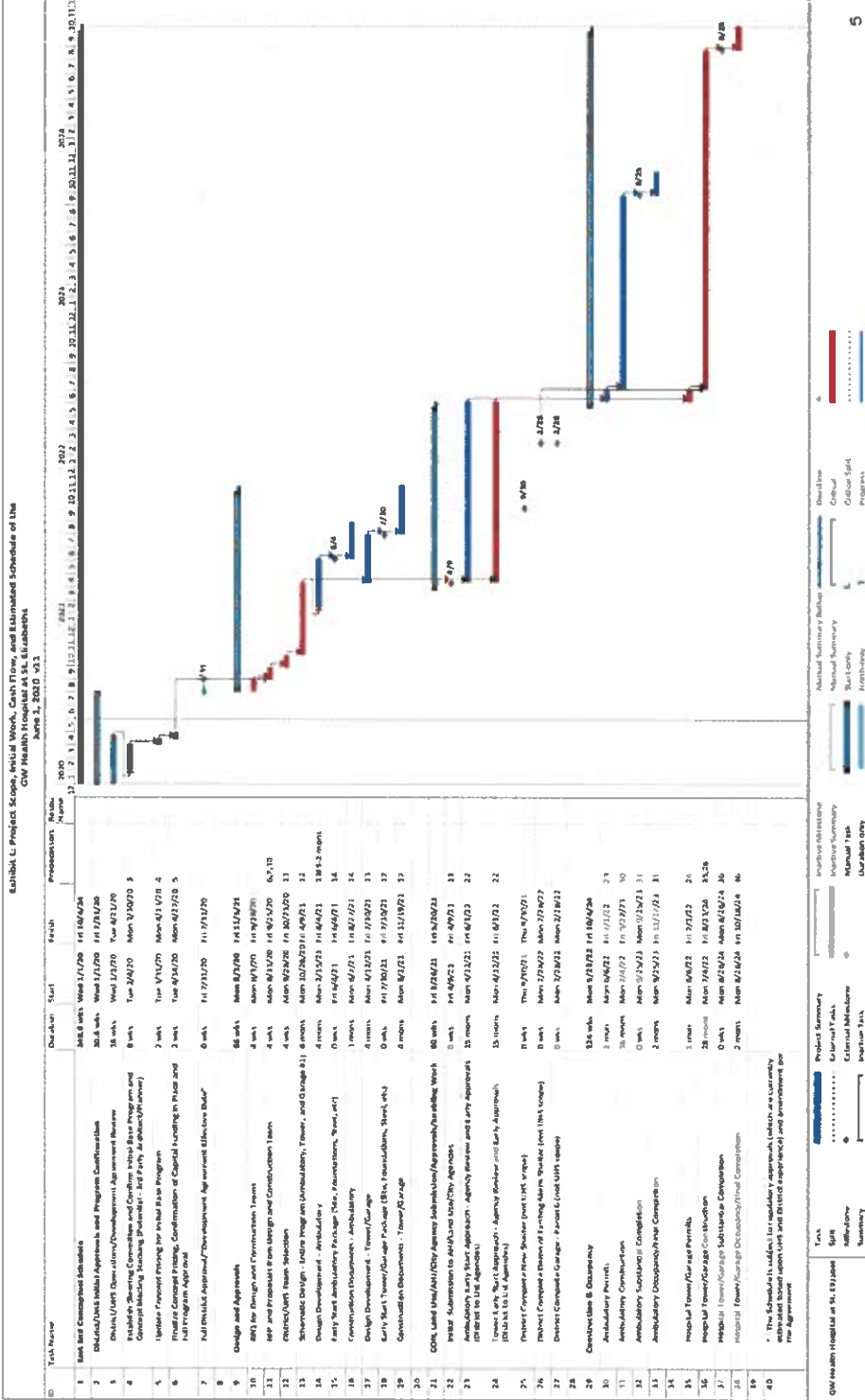


Exhibit L: Project Scope, Initial Work, Cash Flow, and Estimated Schedule of the GW Health Hub at 91-131st St. June 1, 2020 - Q3



## **EXHIBIT M DISTRICT LAND USE APPROVALS**

### **District Land Use Approvals.**

The District shall be responsible for obtaining and facilitating obtaining the following land use approvals:

- Advisory Council on Historic Preservation - All new construction on the East Campus has to be submitted to the ACH under the terms of the 1987 deed.
- Commission on Fine Arts (CFA) review is also required, because this is a District project and District property.
  - CFA will take at least two reviews, concept and final (i.e., permit-level).
- Historic Preservation Review Board (HPRB) review will be necessary.
  - HPRB Concept approval schedule and application
- National Capital Planning Commission (NCPC) has advisory review of projects on District land outside the central area (the hospital use was not in the master plan but is a matter-of-right use in zoning).

Program Manager shall complete and process the applications and other requirements to obtain such approvals. The Program Manager shall utilize as part of their team necessary consultants, including land use attorneys to prepare such materials and make such presentations as necessary to obtain the required land use and entitlement approvals. The Program Manager acknowledges that the aspects of the design for the Project may need to be revised or redesigned in order to obtain such approvals, and the fixed fee set forth herein includes sufficient amounts for such redesign.

### **Other Land Use Approvals and Permits.**

The Program Manager shall be responsible for obtaining and facilitating obtaining all other land use approvals and permits, including, as necessary, but not limited to, land use approvals and permits from:

- District of Columbia Department of Consumer and Regulatory Affairs (DCRA)
- District of Columbia Department of Energy and Environment (DOEE)
- District of Columbia Department of Transportation (DDOT)
- District of Columbia Water and Sewer Authority (DC Water)
- Washington Metropolitan Area Transit Authority (WMATA)