

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES**

**ARCHITECTURAL/ENGINEERING SERVICES FOR
HEARST PARK AND POOL**

Solicitation #: DCAM-15-AE-0158

**Amendment No. 3
Issued: November 6, 2015**

This Amendment Number 03 is issued by e-mail on November 6, 2015. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

Item #1

Clarifications:

1. Delivery method clarification: The Department will bring on a Construction Manager at Risk (CM) around the time the schematic design documents are being finalized, to work with the Architect as the design is progressed. The Architect’s contract will be assigned to the CM when a guaranteed maximum price is established.
2. Cost Estimates: The Architect shall include in its Design Fee a cost estimate of the concept design and a cost estimate of the schematic design. The Architect should also include add/alternate pricing for additional costs estimates of the design development documents and of the permit set of construction documents. Please see attached revised bid form.

Item #2

Requests for Information: Below is a list of questions received and the Department’s responses.

1. Please confirm that cost estimating services are considered solely an add-alternative.
Response: Please see Items #1, clarification #2 above.
2. The RFP is not clear on whether the existing play areas next to the Hearst School are to be included in the overall park re-design effort. This area was recently rehabilitated. Should we assume this area is in our scope of work? Thank-you in advance for your assistance. **Response: The Hearst ES play area is not included in this Project’s scope of work.**

Item #3

Form of Contract: Attached to this Amendment is the Form of Contract. THE TERMS OF THE FORM OF CONTRACT SHALL PREVAIL OVER THE RFP. TO THE EXTENT THERE IS AN INCONSISTENCY BETWEEN THE FORM OF CONTRACT ISSUED HERewith AND

THE RFP, THE FORM OF CONTRACT SHALL GOVERN.

Item #4

The bid date remains unchanged. Proposals are due by **November 13, 2015 at 2:00 pm EST.** Proposals that are hand-delivered should be delivered to the attention of: Alicia Norris, Contract Specialist, at **Frank D. Reeves Center, 2000 14th Street, NW, 8th floor, Washington, DC 20009.**

- End of Addendum No. 3 -

Attachment B

[Insert Date]

District of Columbia Department of General Services
2000 14th Street, NW
Washington, DC 20009

Att'n: Mr. Christopher Weaver
Acting Director

Reference: Request for Proposals
Architectural/Engineering Services – Hearst Park and Pool

Dear Mr. Weaver:

On behalf of [INSERT NAME OF BIDDER] (the “Offeror”), I am pleased to submit this proposal in response to the Department of General Services’ (the “Department” or “DGS”) Request for Proposals (the “RFP”) to provide Architectural/Engineering Services for the Hearst Park and Pool project. The Offeror has reviewed the RFP and the attachments thereto, any addenda thereto, and the proposed Form of Contract (collectively, the “Bid Documents”) and has conducted such due diligence and analysis as the Offeror, in its sole judgment, has deemed necessary in order to submit its Proposal in response to the RFP. The Offeror’s proposal, the Design Fee and Add/Alternate Pricing (as defined in paragraph A), the Unit Prices (as defined in paragraph B), and the Hourly Rates (as defined in paragraph C) are based on the Bid Documents as issued and assume no material alteration of the terms of the Bid Documents (collectively, the proposal, the Design Fee, the Meeting/Workshop Price, and the Hourly Rates are referred to as the “Offeror’s Bid”).

The Offeror’s Bid is as follows:

A. Design Fee: see attached spreadsheet

Add/Alternate Prices: see attached spreadsheet

The Offeror acknowledges and understands that the Design Fee is a fixed fee and covers all of the Offeror’s costs associated with the preparation of (i) programming/planning/concept designs; (ii) a schematic design; (iii) design development documents; (iv) construction documents; and (v) construction administration and close-out services, as outlined in the RFP. The Add/Alternate Prices are fixed fees for additional cost estimates.

B. Meeting/Workshop Prices: see attached spreadsheet

The Offeror acknowledges and understands that the Meeting/Workshop rates are fixed prices and provide for additional meetings and/or workshops, as noted, beyond what is specified in the RFP.

C. Hourly Rates: see attached spreadsheet

Mr. Christopher Weaver

[DATE]

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The Offeror acknowledges and understands that the attached hourly rates are fully loaded hourly rates at which any additional services will be charged.

The Offeror's Bid is based on and subject to the following conditions:

1. The Offeror agrees to hold its proposal open for a period of at least sixty (60) days after the date of the bid.

2. Assuming the Offeror is selected by the Department and subject only to the changes requested in paragraph 5, the Offeror agrees to enter into a contract with the Department on the terms and conditions described in the Bid Documents within ten (10) days of the notice of the award.

3. Both the Offeror and the undersigned represent and warrant that the undersigned has the full legal authority to submit this bid form and bind the Offeror to the terms of the Offeror's Bid. The Offeror further represents and warrants that no further action or approval must be obtained by the Offeror in order to authorize the terms of the Offeror's Bid.

4. The Offeror and its principal team members hereby represent and warrant that they have not: (i) colluded with any other group or person that is submitting a proposal in response to the RFP in order to fix or set prices; (ii) acted in such a manner so as to discourage any other group or person from submitting a proposal in response to the RFP; or (iii) otherwise engaged in conduct that would violate applicable anti-trust law.

5. The Offeror's proposal is subject to the following requested changes to the Form of Contract: **[INSERT REQUESTED CHANGES. OFFERORS ARE ADVISED THAT THE CHANGES SO IDENTIFIED SHOULD BE SPECIFIC SO AS TO PERMIT THE DEPARTMENT TO EVALUATE THE IMPACT OF THE REQUESTED CHANGES IN ITS REVIEW PROCESS. GENERIC STATEMENTS, SUCH AS "A MUTUALLY ACCEPTABLE CONTRACT" ARE NOT ACCEPTABLE. OFFERORS ARE FURTHER ADVISED THAT THE DEPARTMENT WILL CONSIDER THE REQUESTED CHANGES AS PART OF THE EVALUATION PROCESS.]**

6. The Offeror hereby certifies that neither it nor any of its team members have entered into any agreement (written or oral) that would prohibit any contractor, subcontractor or subconsultant that is certified by the District of Columbia Department of Small and Local Business Development as a Local, Small, or Disadvantaged Business Enterprise (collectively, "LSDBE Certified Companies") from participating in the work if another company is awarded the contract.

7. This bid form and the Offeror's Bid are being submitted on behalf of [INSERT FULL LEGAL NAME, TYPE OF ORGANIZATION, AND STATE OF FORMATION FOR THE OFFEROR].

Sincerely,

Mr. Christopher Weaver

[DATE]

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By: _____

Name: _____

Its: _____

RFP for Architect/Engineering Services
Hearst Park and Pool
Attachment to Offer Letter

Planning, Programming & Concept Designs	Schematic Design	Design Development Documents	Construction Documents	Construction Administration & Close-Out	Total Design Fee

Personnel Classification	Hourly Rate
Principal in Charge	
Design Principal	
Project Architect	
Staff Architect	
Landscape Architect	
Senior Mechanical Engineer	
Mechanical Engineer	
Senior Electrical Engineer	
Electrical Engineer	
Senior Structural Engineer	
Structural Engineer	
Meeting/Workshop	Unit Rate
Price per Community Meeting (On Site) (beyond 5 included included in the fixed Design Fee)	
Price per Community Workshops (On Site) (beyond 1 included included in the fixed Design Fee)	
Price Per meeting with DPR director, Chief of Staff and/or DPR Staff (At DPR Office) (beyond 4 included included in the fixed Design Fee)	

Permit Allowance	Printing Allowance	Reimbursable Allowance
\$100,000.00	\$7,500.00	\$40,000.00

Add/Alternate: Design Development Cost Estimate	Add/Alternate: Design Development Cost Estimate

**PLEASE
COMPLETE THE
SHADED CELLS**

**AGREEMENT FOR
ARCHITECTURAL/ENGINEERING SERVICES**

BY AND BETWEEN

**DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES**

AND

[SELECTED OFFEROR]

HEARST PARK AND POOL

DCAM-15-AE-0158

**AGREEMENT BETWEEN OWNER AND ARCHITECT FOR
ARCHITECTURAL/ENGINEERING SERVICES
DCAM-15-AE-0158**

THIS AGREEMENT (“Agreement”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Owner” or the “Department”) and **[OFFEROR]**, being duly organized under the laws of the [Location], and with a place of business at [ADDRESS] (the “Architect”).

WITNESSETH:

WHEREAS, the Department issued a solicitation for architectural/engineering services for the renovation of Hearst Park, located at 3950 37th Street, NW, Washington, DC 20008 (the “Project”); and

WHEREAS, the Architect submitted a proposal dated [DATE] in response to the Department’s solicitation; and

WHEREAS, the Department wishes to retain the Architect to provide all necessary design and related services for the Project pursuant to the terms and conditions set forth in this Agreement;

WHEREAS, the Architect wishes to provide all of the design and related services necessary for the Project pursuant to the terms and conditions set forth in this Agreement;

WHEREAS, the Department has retained the services of a Program Manager (the “Program Manager”) to advise it concerning the Project; and

WHEREAS, the Department requires that the Project, including the requisite construction, be completed in two phases, with Phase 1 being Substantially Complete no later August 30, 2016 (the “Phase 1 Substantial Completion Date”), and Phase 2 being Substantially Complete no later than August 30, 2019 (the “Phase 2 Substantial Completion Date”); and

WHEREAS, the Department intends to engage a builder (the “Construction Manager”) to work with the Architect in advancing the design, to provide a guaranteed maximum price (“GMP”) for the requisite construction, to assume the Architect’s contract and manage the completion of the design after a GMP has been established, and to construct the Project.

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

ARTICLE 1 GENERAL PROVISIONS

Section 1.1 Relationship of Parties. The Architect accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Architect's reasonable skill and judgment and to cooperate with the Program Manager in furthering the interests of the Department. The Architect shall use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Department. The Department shall endeavor to promote harmony and cooperation among the Department, Architect, Construction Manager, Program Manager, and other persons or entities employed by the Department for the Project.

Section 1.2 Project Description. In general, the Project includes the full range of planning, programming architectural and engineering services required for the Project. The Project will include, but is not limited to, a new playground area, new tennis courts, renovation or replacement of existing soccer fields, renovation of existing tennis courts, the design of a new outdoor pool including a new pool house, new dog park, ADA site accessibility and furnishings, storm water management, remediation of site drainage, runoff, erosion issues, landscaping, fencing, site furnishings amenities, signage, and hardscaping. The Architect is encouraged to provide innovation and creativity in the programming, planning and design process. The Project shall be designed in such a way so as to achieve, at a minimum LEED – Silver certification. Construction shall be completed in two phases, with the first phase beginning in late 2016, and the second phase beginning in the fall of 2018. The Architect shall be required to develop a phasing plan for the Project, in consultation with the Department, such that the construction work for each phase can be bid separately if needed. The Department anticipates that the first phase of the Project would include all Project elements except for the pool and pool house ("Phase 1"), with the pool and pool house constructed during the Project's second phase ("Phase 2"). As described herein, a GMP will be based on the Construction Documents.

Section 1.3 Program Manager. At its discretion, the Department may hire a Program Manager (or "PM") to provide certain program management functions. The Program Manager shall, at all times, be acting solely for the benefit of the Department, not the Architect. **The Program Manager shall not be authorized to modify any of the rights or obligations of the Department or the Architect pursuant to this Agreement, or to issue Change Orders or Change Directives. The Architect hereby acknowledges and agrees that only a duly authorized contracting officer shall have the authority to issue Change Orders or Change Directives on the Department's behalf. As of the date that this Agreement is signed, the Department's duly authorizing contracting officers are Christopher Weaver, James Marshall, and Kimberly Gray.** Unless otherwise provided herein, all deliverables hereunder shall be submitted to the PM.

Section 1.4 General Description of Architect's Duties. It is the intent of the parties that the Architect will provide all architectural and engineering services necessary for the design and construction of the Project. Without limiting the generality of the foregoing, it is understood

and agreed that the Architect will be responsible for all aspects of the design. The Architect's services include, but are not limited to, (i) engineering services in the civil, structural, mechanical and electrical engineering disciplines as well as any appropriate specialty subconsultants; (ii) the design of FF&E; (iii) providing a site survey; (iv) engaging the services of an industrial hygienist or similar specialist to survey soils and/or existing structures on the Project Site so as to identify hazardous materials that require abatement; (v) sustainable design initiatives include LEED certification; (vi) engaging the services of a geotechnical engineer; and (vii) engaging, consulting with, advising, and coordinating with the Construction Manager such that the Project is substantially complete by the Substantial Completion Dates set forth in the Construction Manager's agreement with the Department for completion of the Project. The Architect shall be required to provide all such services in a timely manner so as to permit DPR to begin to occupy the Project at least two weeks prior to the Substantial Completion Dates.

Section 1.5 Phases. In general, the Architect's work shall be divided into two phases as is more fully described in Articles 2 and 3, including those necessary to develop and submit any deliverables set forth therein. Generally, these duties include (i) development of a set of complete construction documents that are consistent with the Owner's Program (the "Bid Set"); and (ii) providing such construction administration services. The services to be provided under Article 2 constitute the design phase services to be performed by the Architect (the "Design Phase Services"). The services to be provided under Article 3 constitute the construction phase services to be provided by the Architect (the "Construction Phase Services").

Section 1.6 Delivery Method. The Owner intends to use a construction management at risk delivery method for this Project. The Architect understands and agrees that the Owner intends to engage a builder (the "Construction Manager") after the execution of this Agreement while the Architect is preparing the schematic design for the Project and that such Construction Manager shall participate in the design process by reviewing design drawings, conducting constructability reviews and assisting with cost estimating to ensure that the design developed by the Architect is consistent with the Department's budget and schedule for this Project. Working together, but under separate contracts, the Architect and the Construction Manager will develop a complete set of construction documents within eight (8) months of notice to proceed. The Construction Manager will put them out to bid with trade subcontractors in the summer/fall of 2016. Value engineering (if required) and GMP negotiations will occur thereafter. Assuming that an acceptable GMP is developed, the Owner intends to enter into a guaranteed maximum price with the Construction Manager for the Project. Concurrent with the execution of an agreement establishing the GMP, the Owner will assign this Agreement in its entirety to the Construction Manager and from and after the GMP Date, the Architect's contract shall be with the Construction Manager, and the Construction Manager shall be responsible to complete both the design and the construction of the Project. Such assignment shall occur automatically at the time the GMP is agreed to by the Construction Manager and the Department and without the need for any further document; provided, however, that the Department shall issue a notice to both the Construction Manager and the Architect confirming such assignment. In the event that the Construction Manager fails to complete the Project, this Agreement will revert to the Owner.

Section 1.7 Schedule. The Architect shall provide the Design Phase Services and Construction Phase Services in accordance with the schedule set forth below.

Section 1.7.1 Design Phase Schedule. The Architect shall be required to submit a comprehensive CPM schedule within seven (7) days from execution of this Agreement for the Department's review and acceptance. During the Design Phase, the Architect shall provide those services and deliverables set forth in Article 2 in accordance with such CPM schedule. As stated above, the Architect will complete a set of construction documents that will be approved by DCRA within eight (8) months of the Architect's notice to proceed.

Section 1.7.2 Construction Phase Schedule. During the Construction Phase, the Architect shall provide those services set forth in Section 3.

Section 1.7.3 Time is of the Essence. Time is of the essence in the performance of the Architect's obligations under this Agreement. The Architect acknowledges that the timely completion of the various design phases is essential to the timely bidding of the design documents with trade subcontractors, to the formation and approval of the GMP, and ultimately to the completion of the Project. The Architect further acknowledges that delay in the completion of the design will cause the Department to incur additional costs in the form of acceleration of the construction of the work and expediting of necessary materials and supplies, the costs of which may be difficult to ascertain.

Section 1.7.4 Certain Adjustments to the Architect's Fee. In the event that the Architect fails to provide any required deliverable by the deadlines set forth in the schedule agreed upon in accordance with Section 1.7.1 of this Agreement and unless excused by an event of force majeure or the failure of the Department to take any action in a timely manner, the Architect's compensation shall be decreased by an amount equal to One Thousand Dollars (\$1,000) for each calendar day that any given deliverable is late in order to compensate the Department for the additional costs it will incur in accelerating the work to meet the required Substantial Completion Date; provided, however, that the Architect shall have a cumulative (i.e., not per deliverable) five (5) calendar day grace period before any such adjustments are calculated; and, provided, further, that in no event shall the cumulative amount of such adjustment exceed Twenty Five Thousand Dollars (\$25,000).

Section 1.8 Owner's Representative. The Owner's representative for this Project shall be:

Christopher Weaver
Acting Director
Department of General Services
2000 14th Street, NW, 8th Floor
Washington, DC 20009

Although day-to-day communications with the Architect shall be routed through the Program Manager, only the individual specified in this Section 1.8 shall have the authority to alter the terms of this Agreement; provided, however, that James Marshall, Supervisory Contract Specialist, shall have the authority to act on behalf of the Department with respect to matters with value up to \$100,000. **Without limiting the generality of the foregoing, it is understood and agreed that the Program Manager shall not have the authority to: (i) increase the Architect's fee or the not-to-exceed amount established herein; (ii) authorize any additional work; or (iii) increase the overall Project budget or the specified design-to-budget.**

Section 1.9 Architect's Representative. The Architect representative for this Project shall be:

[ARCHITECT'S REPRESENTATIVE]

The Architect hereby represents and agrees that the representative specified in this Section 1.9 has the full legal authority to bind the Architect and to agree to changes to the terms of this Agreement.

Section 1.10 Project Budget. The Architect has been advised that the Government of the District of Columbia has set aside \$[AMOUNT] (such amount, the "Budget") to complete the Project (including hard and soft costs) and that any increases to such Budget must be approved by the Department's Budget Representative. As used herein, the term "Budget Representative" shall mean the Department's Director or its Deputy Director – Capital Construction. Any increase to the Budget shall only be effective if such authorization is signed by the Budget Representative. For the avoidance of doubt and as more fully set forth herein, the Architect further understands and agrees that it will manage its work in accordance with the Design-to-Budget Requirements set forth herein.

Section 1.11 Land Use Entitlements. The Parties acknowledge that the design for the Project may require various land use approvals. The Parties anticipate that the approval of the following bodies may be required:

- .1 Commission of Fine Arts
- .2 Office of Planning
- .3 Office of Historic Preservation

The Architect shall obtain from the bodies listed above the approvals required in order for the Project to proceed, as may be necessary. The Architect 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.

Section 1.12 Permits. In addition to securing land use approvals, the Parties anticipate that permits may be required from the following bodies:

- .1 District of Columbia Department of Consumer and Regulatory Affairs
- .2 District of Columbia Department of Environment
- .3 District of Columbia Department of Transportation
- .4 District of Columbia Water and Sewer Authority

The Architect will be required to manage the process of obtaining the necessary permits for the Project in addition to responding to comments provided by the regulatory agencies on the design documents as contemplated in Section 2.10 of this Agreement.

Section 1.13 Letter Contract. It is understood and agreed that certain of the design services required by this Agreement were performed by the Architect while the Letter Contract was in place, and the terms of the Letter Contract shall merge into and be superseded by this Agreement upon its execution.

ARTICLE 2 **DESIGN PHASE SERVICES**

Section 2.1 The Architect shall provide all services, professional and otherwise, necessary to develop a design for the Project. Without limiting the generality of the foregoing, the services set forth in this Agreement and all other services reasonably necessary to achieve the goals set forth herein. The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

Section 2.2. Key Personnel.

Section 2.2.1 Attached as **Exhibit A** is a list of the key personnel (the "Key Personnel") and the role played by each that will be assigned by the Architect and its principal consultants to this Project. The Architect understands that the Owner selected the Architect based in large part on the key personnel proposed to staff this Project, and as such, the Architect agrees that the Architect will not be permitted to reassign any of the key personnel unless the Owner approves the proposed reassignment and the proposed replacement. In the event that any of the key personnel become unavailable to work on this Project for reasons beyond the control of the Architect or its principal consultants (i.e. due to death, disability, retirement, resignation, etc.), the Architect shall propose a substitute for any such individual and obtain the Owner's consent to such substitute.

Section 2.2.2 Certain members of the Architect's Key Personnel shall be subject to liquidated damages for their removal or reassignment by the Architect. Those members of the Architect's Key Personnel subject to the liquidated damages provisions of this Agreement shall

be identified in **Exhibit A** as subject to the liquidated damages provisions. In the event there is no delineation in **Exhibit A** of those members of the Architect's Key Personnel subject to the liquidated damages provisions of this Agreement, then all of the Key Personnel shall be subject to the liquidated damages provisions of this Agreement. In each instance where the Architect removes or reassigns one of the key personnel listed in **Exhibit A** as being subject to liquidated damages (but excluding instances where such personnel become unavailable due to death, disability or separation from the employment of the Architect or any affiliate of the Architect) without the prior written consent of the Department's Designated Representative, the Architect shall pay to the Department the sum of Twenty Five Thousand dollars (\$25,000) as liquidated damages and not a penalty, to reimburse the Department for its administrative costs arising from the Architect's failure to provide the Key Personnel. The foregoing liquidated damage amount shall not bar recovery of any other damages, costs or expenses other than the Department's internal administrative costs. In addition, the Department shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Architect in the event that a member of the Key Personnel has been removed or replaced by the Architect without the consent of the Department. In the event the Department exercises the right to remove, replace or to reduce the scope of services of the Architect, the Department shall have the right to enforce the terms of this Agreement and to keep-in-place those members of the Architect's team not removed or replaced and the remaining members shall complete the services required under this Agreement in conjunction with the new members of the Architect's team approved by the Department.

Section 2.3 Except with the knowledge and consent of the Department's Designated Representative, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

Section 2.4 The Architect shall manage the Architect's services, consult with the Department, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Department. The Architect shall review the Department's Program and other information furnished by the Department, and shall review laws, codes, and regulations applicable to the Architect's services.

Section 2.5 The Architect shall coordinate its services with those services provided by the Department and the Department's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Department and the Department's consultants. The Architect shall provide prompt written notice to the Department if the Architect becomes aware of any error, omission or inconsistency in such services or information.

Section 2.6 Upon request of the Department, the Architect shall make periodic presentations to explain the design of the Project to representatives of the Department and to others in support of the Department's efforts for the Project. The Architect understands and agrees that this obligation will require the Architect to participate in briefings of the affected

neighbors, community organization, community leaders and District government officials as identified by Department. Without limiting the generality of the foregoing, the Architect understands and agrees that it shall be required to meet at least twice a month with DPR for the duration of the Project and that such meetings are likely to be more frequent during key aspects of the design process.

Section 2.7 Planning, Public Participation, Programming and Concept Design (Phase I). The first phase of the Project includes program planning, community engagement, development and the preparation of multiple concept designs.

Section 2.7.1 The Architect shall be required to meet with the DGS Project Team, including but not limited to, DGS Staff, DPR Staff, DPR Director, and DPR Chief of Staff, as well as other internal stakeholders to kick-off the Project. The purpose of this meeting will be to review and clarify the Project scope, schedule, goals, objectives, and expectations for the Project, order to fully realize the vision for the new park and pool. The Architect will also collect and present any data available for Hearst Park, including but not limited to previously completed studies, current survey data, aerial photography, GIS data, report on current conditions at site, photographs of sites current conditions, and a statement of need for the Project. The Architect shall complete a Meeting Summary from this meeting and distribute to meeting attendees for review.

Section 2.7.2 The first phase of the Project will include planning, community engagement, program development and the preparation of a concept design. During this phase, the Architect shall complete the following tasks and prepare and submit to the Department the below-listed deliverables. It is understood that all such deliverables shall be subject to review and approval by the Department, and the Architect shall make any revisions may be required to these documents to address concerns raised by the Department and/or other project stakeholders without additional compensation:

- a. Architect shall be required to perform all required site surveys, explorations, and data gathering activities during the Planning Phase. The data obtained is to be used by all parties throughout the lifecycle of the Project. These surveys, explorations, and data gathering activities are to include, but are not limited to:
 - i. Geotechnical Survey and Report of entire site, to comply with DDOEE requirements at minimum, and provide report
 - ii. Arborist Survey and Report of entire site
 - iii. Site Utility Survey of entire site, include type, location, size, and capacity at minimum, and provide drawings(s)
 - iv. Topographical and Boundary Survey of entire site, and provide drawing(s)
 - v. Hazardous Materials Survey and Testing of soils and existing building, and provide report
 - vi. Phase 1 Archeological Survey and Report of entire site, coordinate and comply with applicable DC HPO requirements, and provide report
 - vii. Historic Preservation: determine status and identify requirements and

- Project impact (if any), and provide report
- b. Develop and execute a program of public engagement that presents the DPR and District's Parks & Recreation System vision and plan recommendations to community stakeholders who will be served by the new park and pool and garner community participation.
 - c. Meet with client Project team to outline the Architect's plan to conduct and engage with the community at the community stakeholders meeting.
 - d. Spend one (1) Saturday conducting community stakeholder workshop. It is envisioned that this meeting will take place in a central location within the Hearst Park neighborhood. During this time the Architect will also tour the Hearst Park site and facilities with neighborhood, Advisory Neighborhood Commissions ("ANC"), and City Council representatives and extent involvement to the School Improvement Team ("SIT"). Conduct onsite interviews and public feedback with community stakeholders to gain an understanding of the recreational, social, and cultural program and facilities needs and desires of Hearst Park residents and to learn about any initiatives or projects that are currently taking place to address these needs and desires. Complete a Meeting Summary from these meetings and distribute them to DPR for review.
 - e. Draft Conceptual Hearst Park and Pool Site Plans.
 - i. Based on input obtained through the process outlined in this scope, stakeholder interviews, and public workshop, the Architect will work to determine the recreational, social, and cultural programmatic requirements for Heart Park and Pool. Determine the spatial needs and requirements for the various recreational, social, and cultural program needs and desires identified. These spatial requirements will serve as the basis for determining the size, space programming, and facilities needed for the Hearst Park and Pool. It is envisioned that the response to some of the desired recreational, social, and cultural programs may vary to include the need for indoor spaces, outdoor facilities, and improvements to existing urban spaces and facilities, partnership with other service providers, or mobile/temporary solutions.
 - ii. Develop three (3) conceptual site plan/responses, including a phasing plan, and cost estimates for the Hearst Park and Pool that provide alternatives to addressing the identified recreational, social, and cultural needs. Provide conceptual site plans/responses to DGS for review and comment. The Architect will make any appropriate modifications based on DGS comments prior to presenting the concept(s) to the public.
 - iii. The Architect will conduct a community public meeting to present the plan to the community and various stakeholders. The purpose of the meeting is so that the community can view the conceptual site plan(s) and may respond/comment on the direction of the project. The Architect will document comments for inclusion in the final conceptual site plan/response. Provide report of the findings.

- iv. Draft Final Conceptual Hearst Park and Pool Site Plan – Architect will develop a draft final conceptual site plan/response, including a phasing plan, and cost estimate informed by the comments obtained through the neighborhood concepts public meeting. Submit the draft final conceptual site plan/response and cost estimate to DGS for review before presenting it to the public. Architect will make any appropriate modifications prior to presenting the concepts to the public.
- v. The Architect will conduct a community public meeting to present the draft final conceptual site plan/response and cost estimate to the neighborhood. The Architect will collect input from the community and make refinements based on the comments received.
- f. The Architect will develop an Executive Summary Document of the neighborhood planning process and final conceptual Hearst Pak and Pool Site Plan. It is envisioned that this document will be a full-color, 11x17 document that will summarize the process, identified needs, proposed response, and costs. Provide the Department with digital files of the executive summary as well as digital copies of all files used throughout the process.
- g. Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.
- h. The Architect will be required to prepare project submissions as required for each Project phase, as required, for the Historic Preservation Review Board (“HPRB”), Commission for Fine Arts (“CFA”), National Park Service (“NPS”), and other required review boards. The Architect shall be required to prepare all required drawing drawings, documents and presentation packages in the quantities and formats established by the reviewing board.

Section 2.8 Schematic Design (Phase II). The second phase of the Project will include the preparation of a schematic design.

Section 2.8.1 During this phase, the Architect shall be required to develop a schematic design that meets the program requirements developed in Phase I. The schematic design shall contain such detail as is typically required for schematic design under the standard AIA contract, as well as Industry and AIA Best Practices. In general, the Architect shall be required to undertake the following tasks and prepare and submit to the Department the below-listed deliverables. It is understood that all such deliverables shall be subject to review and approval by the Department, and the Architect shall make any revisions may be required to these documents to address concerns raised by the Department and/or other project stakeholders without additional compensation:

- a. Utilize findings and final concept plans from Phase I, perform site visits as necessary, attend and/or facilitate meetings with stakeholders and District staff to review building square footage, required utilities, drainage, zoning and traffic needs where/when necessary to develop Schematic Design Documents.

- b. Obtain and review applicable District standards and guidelines for design (Design Criteria Manual, Unified Development Code, DPR Standards), where applicable, and provide a complete design that meets all applicable District codes. Coordinate security requirements with DC PSPD. Coordinate IT and Telecom requirements with DC OCTO and DC Net.
- c. Attend and participate in community meeting(s) with ANC and elected officials to update community regarding the project.
- d. Prepare a presentation and provide a minimum of three (3) presentation boards for each community meeting and present/display onsite. Presentation boards shall be in full color and include at least two (2) 3-D renderings. Three dimensional renderings shall adequately illustrate major components of proposed work for park, pool and related components.
- e. LEED Certification work as required.
- f. Prepare and submit three (3) hard-copy sets, and one (1) electronic copy in PDF, of Schematic Design Documents, Preliminary Specifications, Phasing Plan, and Schematic cost estimate to the Project Manager for review and approval (30% SD Plan Review). Components to include, but are not limited to:
 - i. site plans, paving layouts, traffic circulation
 - ii. floor plans, building circulation, ADA requirements
 - iii. exterior elevations, rendering and color palette
 - iv. critical building sections and details
 - v. relevant right of way information such as easements, building set-backs etc.
 - vi. location of utilities and sizes
 - vii. Storm water management
 - viii. Preliminary MEP systems
 - ix. LEED Information as appropriate
 - x. Copies of all surveys and reports
- g. After receiving schematic design comments, meet and coordinate as necessary with:
 - i. DGS, stakeholders, and all relevant regulatory or reviewing agencies as necessary to review Project requirements.
 - ii. Pepco, DC Water, DDOE and all others as necessary for infrastructure and utility requirements.
 - iii. Private utilities and service providers if necessary
- h. Make presentation and update meeting with DGS and DPR regarding the status of the Project.
- i. Act as scribe for all design related meetings, respond in writing to all comments regarding the Project, and report those finds to DPR within 36 hours. Distribute meeting minutes to all attendees.
- j. Provide a preliminary cost estimate for the proposed work. Perform comprehensive value engineering effort (VE) utilizing 30% SD Plan Review submission. Provide report of findings to DGS. Conduct a meeting with DGS and other stakeholders as necessary to present and discuss VE options. VE options

should not impact the overall DPR programming of the site and the design intent of the Project.

- k. Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.

Section 2.8.2 At the conclusion of the Schematic Design Phase, the Architect shall seek and obtain in writing from the Department's Budget Representative confirmation of the Design-to-Budget. The Architect shall use its best efforts to develop the design development documents and all subsequent design documents in a manner that is consistent with the Design to Budget. For the avoidance of doubt, in the absence of any adjustment to the previously approved Design-to-Budget by the Department's Budget Representative, the Architect shall be required to design to the previously approved Design-to-Budget.

Section 2.9 Design Development Phase (Phase III). During this phase, the Architect will be required to progress the schematic design into a full set of design development documents.

Section 2.9.1 The Architect shall be required to work with the Department, DPR and other stakeholders, and at a minimum shall meet with such representatives twice a month to discuss the status of the design and key issues. The progressed design shall contain such detail as is typically required for Design Development under the standard AIA contract, as well as Industry and AIA Best Practices. In general, the Architect shall be required to undertake the following tasks and prepare and submit to the Department the below-listed deliverables during this phase:

- a. Perform site visits as necessary and attend/facilitate meetings with District staff as necessary to develop and progress Design Development Documents. Incorporate VE options chosen by DGS. Incorporate SD comments from DGS. Incorporate regulatory agency review comments as necessary.
- b. Meet and coordinate with regulatory, reviewing, and stakeholder agencies as necessary.
- c. Progress LEED Certification work as required
- d. Prepare and submit three (3) hard-copy sets, and one (1) electronic copy in PDF of Design Development Documents including Detailed Specifications, Phasing Plan, Cost Estimate (if required) and schedule to the District staff for review and approval (60% DD Plan Review). Components to include, but are not limited to:
 - i. site plans, paving layouts, traffic circulation, lighting, signage and utilities
 - ii. floor plans, Structural, Civil, Architectural, MEP, Fire Protection and landscaping
 - iii. exterior elevations, rendering and color palette
 - iv. building sections and details as required
 - v. interior elevations, casework and millwork elevations as required
 - vi. playground equipment
 - vii. athletic fields, courts, etc.

- viii. dog park
- ix. pool and splash pad
- x. storm water management
- xi. food service or other equipment as required
- xii. LEED Information as appropriate
- e. Attend and participate in community meeting(s), with ANC and elected officials, to update community regarding the project.
- f. Make presentation and update by meeting with DGS and DPR regarding the status of the Project.
- g. Prepare and provide a minimum of three (3) presentation boards for each community meeting and present/display onsite. Presentation boards shall be in full color and include at least two (2) 3-D renderings. Three dimensional renderings shall adequately illustrate major components of proposed work for park, pool, and related components.
- h. Coordinate final utility plans as required.
- i. Act as scribe for all design related meetings, respond in writing to all comments regarding the Project, and report those findings to DPR within 36 hours. Distribute meeting minutes to all attendees.
- j. Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.

Section 2.9.2 At the conclusion of the Design Development Phase, the Architect shall seek and obtain in writing from the Department’s Budget Representative confirmation of the Design-to-Budget. Any such adjustment to the Design-to-Budget shall be determined by the Department in its sole and absolute discretion; provided, however, to the extent such budget materially deviates from the Design-to-Budget established at the end of the Schematic Design phase, the Architect shall be entitled to an appropriate equitable adjustment. For the avoidance of doubt, in the absence of any adjustment to the previously approved Design-to-Budget by the Department’s Budget Representative, the Architect shall be required to design to the previously approved Design-to-Budget. The Architect hereby acknowledges and agrees that should value engineering or redesign be necessary in order to meet the Design-to-Budget requirement, such value engineering or redesign shall be at no additional cost to the Department.

Section 2.10 Construction Documents (Phase IV). During this phase, The Architect shall be required to develop a set of complete, coordinated construction drawings for permitting (“Construction Documents”).

Section 2.10.1 The Construction Documents shall represent the further progression of the approved design development documents together with any value engineering strategies approved by the Department, and will be code compliant and permit ready, with all major systems sufficiently designed, detailed, specified, coordinated, and developed. The progressed design shall contain such detail as is typically required for Construction Documents under the standard AIA contract, as well as Industry and AIA Best Practices.

The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project. In addition, the Architect shall be required to (a) define, clarify, or complete the concepts and information contained in the Construction Documents; (b) correct design errors or omissions, ambiguities, and inconsistencies in the Construction Documents (whether found prior to or during the course of construction); and (c) correct any failure of the Architect to follow written instructions of the Department during any phase of design services or the construction of the Project provided they are compatible with industry standards. In general, the Architect shall be required to undertake the following tasks and prepare and submit to the Department the below-listed deliverables:

- a. Progress design and Design Development documents and prepare Construction Documents, Specifications, and Phasing Plan and submit three (3) sets to District staff for Code and general review and approval (90% plan review).
- b. Progress LEED Certification work as required.
- c. Submit three (3) hard-copy and one (1) electronic PDF copy of the complete sets of Construction Documents, including 90% written responses, Specifications and Architect's Cost Estimate (if required) and schedule to the Department for review and approval (100% CD plan review).
- d. Attend follow up meetings and coordinate with regulatory agencies, Fire Marshall, DGS Facilities personnel, and others as necessary.
- e. Obtain all required reviews and signatures on plans.
- f. Coordinate, present at and attend Preliminary Design Review Meetings with regulatory and reviewing agencies as necessary. Coordinate permitting process and obtain Building permit on behalf of DGS.
- g. Complete Platting and record Plat.
- h. Complete final coordination with utilities and service providers as necessary.
- i. Attend and participate in community meeting(s) to update community regarding the project.
- j. Prepare a presentation and provide a minimum of three (3) presentation boards for each community meetings and present/display onsite. Presentation boards shall be in full color and include at least two (2) 3-D renderings.
- k. Prepare building permit application and submit appropriate number of copies of plans to applicable DC regulatory agencies for permit review.
- l. An Environmental Impact Screening Form (EISF) will be required and shall be the responsibility of the selected Architect.
- m. Correct plans to reflect issues noted by regulatory agencies and permit reviewers as required. Re-submit for additional review and approval as required. Provide three (3) hard-copy sets, one (1) electronic PDF copy, and one (1) .DWG copy of drawings and specifications to DGS (100% Construction Documents).
- n. Act as scribe for all design related meetings, respond in writing to all comments regarding the Project, and report those findings to DPR within 36 hours. Distribute meeting minutes to all attendees.
- o. Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.

Section 2.11 Design to Budget Requirements. In general, the Architect shall use its best efforts to develop the Construction Documents in a manner that is consistent with the Project Budget. In furtherance of the Architect's design to budget obligations, the Architect hereby agrees that it shall be required to work with the Owner and the Contractor should the bids for the Project exceed the design to budget figure established at the end of the Design Development phase at no additional cost to either the Owner or the Contractor.

The Architect understands and agrees that any such redesign may need to be completed on an expedited basis or in multiple packages in order to keep the Project on schedule and the Architect shall use its best efforts to meet the Project's schedule requirements in performing such redesign. It is understood and agreed by both parties to this Agreement that the Architect's redesign obligations under this Section 2.11 shall be the limit of the Architect's liability for the failure to meet its design to budget obligations.

ARTICLE 3 **CONSTRUCTION PHASE SERVICES**

Section 3.1 Construction Administration (Phase V). The Architect shall provide support to the Builder and the Department as may be necessary to support the bidding of trade subcontracts and the construction phase of the Project. In general, these services and deliverable will include, but are not necessarily limited to:

- a. Attend Pre-Construction meeting and regular weekly construction progress meetings.
- b. Attend additional meetings and site visits as required to address issues and emergencies which arise during the construction phase of the Project.
- c. LEED Certification work as required.
- d. Provide Construction Administration.
 - i. Review and approve submittals, shop drawings, Requests for Information, and all other required items utilizing the District's online based Prolog Converge system.
 - ii. Review Construction Materials Testing and Inspection reports.
 - iii. Coordinate with Construction Manager or Project Manager on all Request for Change Proposals, Change Orders, etc.
 - iv. Provide direction for questions and concerns from the Construction Manager and Project Manager in clarification and resolution of issues.
- e. Provide Field Services for entire construction period
 - i. Conduct site visits and inspections as necessary a minimum of one (1) time per week. Inspections are to include, but are not limited to, observation of structural concrete placement, underground piping installation and inspections, mechanical/electrical/plumbing cover-ups, masonry installation, ceiling close-ins, etc.
 - ii. Provide site visit/inspection reports to DGS within 24 hours of site visit.

- f. Conduct Substantial Completion Inspection. Coordinate with Project Manager to create punch list, substantiate that items noted are completed, and issue Substantial Completion Certificate.
- g. Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.

Section 3.2 Project Close Out (Phase VI). In general, the Architect shall be required to undertake the following tasks and prepare and submit to the Department the below-listed deliverables:

1. Review close out submittal from the contractor for completeness. This includes, but is not limited to:
 - i. Contractor's red lines and as-built notes
 - ii. Warranty information
 - iii. Material Safety Data Sheets (MSDS)
 - iv. Operating Manuals
 - v. Start up and testing reports
 - vi. As-Built record drawings (in hard copy and digital format)
2. Issue Final Completion and Acceptance letter to the District recommending acceptance of the completed project.
3. LEED Certification follow-up work as required to obtain LEED Silver Certification.

Section 3.3 Permitting. The Architect shall be responsible for submitting the necessary documents to the Department of Consumer and Regulatory Affairs in order to obtain a raze permit and the necessary building permits for the project. The Architect's services in this regard shall begin during the design phase and carry through into the construction phase. The Architect has included in its price sufficient amounts to engage permit expeditors and such other consultants as may be required to discharge this obligation. Among other things and without limiting the generality of the foregoing statement, the Architect has included sufficient funding to complete both a Phase 1 Environmental Report and an Environmental Impact Screening Form.

ARTICLE 4 **COMPENSATION**

Section 4.1 Compensation For Design Phase Services. The Architect shall be paid a fixed fee of [AMOUNT (\$NUMBER)] (the "Design Phase Fee") for all services necessary to accomplish the objectives of the Design Phase, as described in Article 2 above. The Design Phase Fee shall be the Architect's sole compensation for the services necessary to achieve the goals of the Design Phase. The Design Phase Fee is allocated among the design phases on **Exhibit B.** Monthly payments shall be made to the Architect on the percentage complete basis.

Section 4.2 Compensation For Construction Phase Services. The Architect shall be paid a fixed fee of [AMOUNT (\$NUMBER)] (the "Construction Phase Fee", and together with

the Design Phase Fee, the “Design Fee”) for all services necessary to accomplish the objectives of the Construction Phase, as described in Article 3 above. The Construction Phase Fee shall be the Architect’s sole compensation for the services necessary to achieve the goals of the Construction Phase. Monthly payments shall be made to the Architect on the percentage complete basis. If the Architect is authorized to provide any additional services outside the scope of this Agreement, such services shall be provided on an hourly or unit rate basis and the Architect shall be reimbursed at the hourly or unit rates set forth in **Exhibit B**. Such rates shall be fixed and not subject to further adjustment for the expected period of this Agreement plus a period of one (1) year thereafter. Compensation for any services performed on an hourly basis shall be computed by multiplying the number of hours directly spent on the Project by the applicable hourly billing rate listed on **Exhibit B**. An allowance of Forty Thousand Dollars (\$40,000) is established for any such additional work (as well as additional reimbursable expenses as set forth in Section 4.3 below).

Section 4.3 Compensation For Reimbursable Expenses. Reimbursable Expenses are in addition to compensation for Design Phase Services and Construction Phase Services and include expenses incurred by the Architect and the Architect’s consultants directly related to the Project. Such expenses shall be reimbursed without markup of any kind and records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times. An allowance of One Hundred Thousand Dollars (\$100,000) is established for permit fees, and an allowance of Seven Thousand Five Hundred Dollars (\$7,500) is established for printing costs. The printing allowance is to be used only for printing drawing and specification submissions for the Department; all other submission printing costs are included in the Design Fee. All allowances are to be used only with written approval of the Department’s Program Manager. Any unspent allowances shall revert to the Department. The allowance noted in Section 4.2 above of \$40,000 is established for other reimbursable expenses, and shall include the following:

- .1 Transportation and authorized out-of-town travel and subsistence, provided, however, that local transportation costs (i.e. taxis, parking, etc.) shall not be reimbursable;
- .2 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 Reproductions, plots, standard form documents;
- .4 Postage, handling and delivery;
- .5 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner; provided, however, that such expenses shall only be reimbursable to the extent that they were caused by the failure of the Owner to act within timeframes agreed to by the parties in advance and in writing;
- .6 Additional renderings, models, and mock-ups, requested by the Owner;
- .7 Any other similar expenditures directly related to the Project and reasonably incurred after first receiving written approval of the Owner.

Section 4.4 Retention. An amount equal to five percent (5%) of all fees (but not expenses) shall be withheld as retention from all progress payments that are due to the Architect.

In addition, the Owner agrees to provide an incentive amount equal to 5% of the original Design Fee (but not expenses). This 5% retention and 5% incentive will only be due the Architect if: (i) the Project is Substantially Complete on or before the Project's Substantial Completion Date as established in the Contractor's contract; and (ii) the final Project cost does not exceed an amount equal to One Hundred Five Percent (105%) of the Design to Budget at the end schematic phase or the initial Lump Sum Price as initially established. The determination as to whether these goals have been achieved shall be measured irrespective of fault, only if both goals are met irrespective of whether the reason these goals were not met was caused by the Architect, the Contractor, the Owner, the District, the Code Official or any other person or cause. The Architect shall forfeit such retention if the final amount due to the contractor exceeds either (i) One Hundred Five Percent of the initial Lump Sum Price; or (ii) One Hundred Five Percent of the Design-to-Budget established at the end of the schematic design phase.

Section 4.5 Payments. Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty five (45) days after the invoice date shall bear interest in accordance with the Quick Payment Act.

Section 4.6 Payment Disputes. Disputes or questions regarding a portion of an invoice shall not be cause for withholding payment for the remaining portion of the invoice.

ARTICLE 5 **INSURANCE**

Section 5.1 Insurance. The Architect shall maintain the following insurance for the duration of this Agreement. Any and all premiums or deductibles associated with such coverage shall be paid by the Architect.

Section 5.1.1 Commercial general public liability insurance against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than One Million Dollars (\$1,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and One Million Dollars (\$1,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage and shall be maintain for three (3) years after substantial completion of the Project is achieved.

Section 5.1.2 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than Two Million Dollars (\$2,000,000) combined single limit and aggregate for bodily injury and property damage.

Section 5.1.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

Section 5.1.4 Workers' compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Architect, or its contractors and subcontractors at or in connection with the Project.

Section 5.1.5 Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than Five Million Dollars (\$5,000,000) per claim and in the aggregate. The Architect shall maintain the coverage required by this Section 5.1.5 for a period of three (3) years after Substantial Completion of the Project is achieved.

Section 5.1.6 The Architect shall provide to the Department certificates of insurance evidencing compliance with the requirements in this Section 2.3. The certificates will show the Department as an additional insured on all such policies other than the Workers' Compensation and professional liability policies.

ARTICLE 6 **OWNERSHIP OF DOCUMENTS**

Section 6.1 Ownership of Documents. Regardless of whether the Project is completed, any Design Documents prepared by the Architect and the architectural and engineering consultants engaged by the Architect, any copies thereof furnished to the Contractor, and all other documents created in association with the Project shall become the sole property of the Owner upon full payment of Architect's fees then due under this Agreement, and shall not to be used by the Architect, its subconsultants on other projects, or for additions to this Project outside the scope of the work, without the specific written consent of the Owner. However, the Owner expressly acknowledges and agrees that the documents to be provided by the Architect under this Agreement may contain design details, features and concepts including some from the Architect's library, which collectively form part of the design for the project, but which separately are and shall remain the sole and exclusive property of the Architect. To the extent that such details are repetitive in nature, not Project specific, function rather than form-oriented, and were not developed for or identifiable with the Project, nothing herein shall be construed as a limitation on the Architect's right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

The Owner shall be under no obligation to account to the Architect for any profits obtained by the Owner as a result of the Project, or the use of such drawings, specifications and other documents in connection with the Project. In the event that the Agreement is terminated prior to completion of the Project or the Architect is unable to complete this Project for any reason, the Owner shall have the right to use without the Architect's consent, and the Architect shall deliver to the Owner and/or its designee within two (2) calendar days after such termination or inability, all such drawings, specifications and other documents as well as design concepts and details in connection with the Project or necessary for the Owner's completion of this Project (including subsequent phases thereof), so long as the Owner has paid the Architect all fees then owed to the Architect under this Agreement. The Owner's rights hereunder shall extend to its successors and

assigns and the Architect's obligation to deliver such drawings, specifications, and documents. Any other use shall be at the Owner's sole risk and without liability to the Architect or the Architect's consultants. Unless Owner fails hereunder to pay Architect therefor, Owner shall be deemed the owner of such drawings, specifications, and other documents and shall have and retain all rights therein. In the event Owner is adjudged to have failed hereunder to pay Architect for such drawings, specifications or other documents, ownership thereof, and all rights therein, shall revert to the Architect. This provision shall survive termination of this Agreement.

ARTICLE 7 **CHANGES, CLAIMS AND DISPUTES**

Section 7.1 Changes.

Section 7.1.1 Changes Authorized. The Department may, without invalidating the Agreement, order changes in the services required under the Agreement, including additions, deletions or modifications to the Architect's scope of work. Any such change must be conveyed by the Department to the Architect via a written change directive or by change order. In the event that the Architect believes that any such additions or modifications entitle the Architect to additional compensation, the Architect shall submit a notification in accordance with Section 7.1.3 of this Agreement. Unless otherwise agreed, additional services that are authorized by the Department and performed by the Architect shall be compensated at the hourly rates set forth in **Exhibit B** hereto. The Architect shall not be entitled to mark-up on any additional services of its own services or the services of subconsultants, it being understood and agreed that the cost of managing, administering and processing any changes to the subconsultants that are generally consistent with the Project's current scope are already covered by the fee quoted herein.

Section 7.1.2 Executed Change Directive Required. Changes to the Agreement may be made only by a written change directive executed by the Department or by written change order executed by both the Architect and the Department.

Section 7.1.3 Prompt Notice. In the event the Architect encounters a situation which the Architect believes to be a change to this Agreement, the Architect shall provide the Department prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than five (5) calendar days after determining that it believes that there is a change to the Agreement and within fifteen (15) calendar days from the date of the event. The Architect acknowledges that the failure to provide such notice in a timely manner could limit or eliminate the Department's ability to mitigate such events, and thus, the Architect may not be entitled to an adjustment to the Design Fee in the event it fails to provide prompt notice. The Architect shall include provisions similar to this provision in all of its subcontracts.

Section 7.1.4 Failure to Agree. If the Architect claims entitlement to a change in the Agreement, and the Department does not agree that any action or event has occurred to justify

any change in time or compensation, or if the Parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Agreement, as it determines are appropriate pursuant to the Agreement. The Architect shall proceed with the work and the Department's directives, without interruption or delay, and may make a claim as provided in Section 7 of this Agreement. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Agreement and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

Section 7.2 Claims and Disputes.

Section 7.2.1 The Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of this Article 7 within the period specified by applicable law, but in any case not more than one (1) year after the date of Substantial Completion of the Work. The Architect waives all claims and causes of action not commenced in accordance with this Section.

Section 7.2.2 To the extent damages are covered by property insurance, the Department and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Department or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

Section 7.2.3 Subject to the terms and conditions set forth in this Agreement, the Architect and Department waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. Subject to the terms and conditions of this Agreement, this mutual waiver is applicable to all consequential damages due to either party's termination of this Agreement.

Section 7.3 Claims & Dispute Resolution. The Department and Architect shall endeavor to resolve claims, disputes and other matters in question between them through the ordinary course of business. If resolution is not reached in such manner, the Architect shall make a claim in accordance with this Section.

Section 7.3.1 Notice of Claim. If the Architect wishes to assert a claim over a contract dispute, the Architect shall provide written notice of the claim to the Department pursuant to procedures set forth in section 4732 of the Department's procurement rules and section 1004 of the District's Procurement Practices Reform Act of 2010 ("PPRA").

Section 7.3.2 Contents of Notice of Claim. The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. The Architect must

submit with its notice all documents relied upon in support of the claim. The notice shall state clearly that the Architect intends to assert a claim against the Department.

Section 7.3.3 Appeal Procedures. All claims arising under or in connection with the Agreement or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved via the claims process may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the PPRA. However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Architect in the court in which such claim is being litigated.

ARTICLE 8 **TERMINATION OR SUSPENSION**

Section 8.1 If the Department suspends the Project for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

Section 8.2 If the Department suspends the Project for more than one (1) year for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

Section 8.3 The Department may terminate this Agreement upon not less than seven (7) days' written notice to the Architect for the Department's convenience and without cause.

Section 8.4 In the event of termination not the fault of the Architect, the termination shall be considered as one for the convenience of the Department.

Section 8.5 In the event Architect fails to perform any of its obligations hereunder, including the services, in the manner required hereby, subject to seven (7) calendar days' notice and a right for Architect to cure, Department shall be entitled to terminate this Agreement and upon such termination, Department shall be entitled to recover from Architect or setoff against any sums due Architect: Department's reasonable damages and costs of delay in replacing Architect with a different architect; the Department's cost to reprocur; the Department's cost to complete; the Department's administrative expenses; and, any other costs allowed under District law. Department shall be entitled to withhold payment from Architect until such damages may be calculated.

Section 8.6 In the event of termination or suspension, the Architect shall discontinue Work immediately upon written notice from the Department. The Architect shall furnish to the Department reproducible copies of all drawings, sketches, etc. and all specifications, reports,

studies, analyses, and other electronic documents in approved format prepared by the Architect and his consultants, to the date of termination, whether or not termination is due to the fault of Architect.

ARTICLE 9 **MISCELLANEOUS PROVISIONS**

Section 9.1 This Agreement shall be governed by the laws of the District of Columbia.

Section 9.2 Terms in this Agreement shall have the same meaning as construed under District law.

Section 9.3 The Department and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns of such other party with respect to all covenants of this Agreement. The Architect shall not assign this Agreement without the written consent of the Department.

Section 9.4 If the Department requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least fourteen (14) days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

Section 9.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Department or Architect.

Section 9.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

Section 9.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Department's confidential or proprietary information if the Department has previously advised the Architect in writing of the specific information considered by the Department to be confidential or proprietary. The Department shall provide professional credit for the Architect in the Department's promotional materials for the Project.

Section 9.8 If the Architect receives information specifically designated by the Department as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform

services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

Section 9.9 The Architect agrees to indemnify and hold the Department, the Department's Designated Representative and the Department's officers, agents, servants and employees harmless from and against all claims, liabilities, demands, losses, damages, judgments, costs, or expenses, including reasonable attorneys' fees and expenses recoverable under applicable law based on, or arising from, or as a consequence, or result of, any act, omission, or default of the Architect, its employees, subcontractors, and its consultants in the performance of, or in connection with, any work required, contemplated, or performed pursuant to this Agreement.

Disputes between the Architect and any subcontractors, consultants or any other third parties over payments allegedly owed by the Architect shall be resolved exclusively between the Architect and the subject third party. The Architect shall permit no pass-through suits or actions to be brought against the Department by a third party in the Architect's name.

Section 9.10 The Architect shall pay for and defend all such suits or claims arising out of the Work for infringement of any patent rights or copyrights and hold the Department and Department's Representative harmless from loss on account thereof.

Section 9.11 Extent of Agreement. This Agreement represents the entire and integrated agreement between the Department and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Department and Architect.

Section 9.12 Living Wage Act. In addition to the requirements set forth in the First Source Employment Agreement, the Architect shall comply with all applicable provisions of the Living Wage Act of 2006, as amended (codified at D.C. Official Code §§ 2-220.01 et seq.) and its implementing regulations.

ARTICLE 10 **GOVERNMENTAL PROVISIONS**

Section 10.1 Buy American Act Provision. The Architect shall not design or specify a proprietary product that does not comply with the provisions of the Buy American Act (41 U.S.C. § 10a).

Section 10.2 False Claims Act. The Architect shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in D.C. Code § 2-381.02.

Section 10.3 Retention of Records: Inspections and Audits.

Section 10.3.1 The Architect shall maintain books, records, documents and other evidence directly pertinent to performance under the Agreement in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Agreement.

Section 10.3.2 The Architect shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

Section 10.3.3 The Department, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Architect for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Architect. The Architect shall provide proper facilities for such access and inspection.

Section 10.3.4 The Architect agrees to include the wording of this Section 10.3 in all its subcontracts in excess of Five Thousand Dollars (\$5,000.00) that directly relate to Project performance.

Section 10.3.5 Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

Section 10.3.6 The Architect agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Architect, the auditing agency will afford the Architect an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

Section 10.3.7 The Architect shall preserve all records described herein from the effective date of the Agreement completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

Section 10.4 Gratuities and Officers Not to Benefit Provisions.

Section 10.4.1 If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Architect, or any agent or representative of the Architect, to any official, employee or agent of the Department or the District with a view toward securing the Agreement or any

other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Architect, terminate the right of the Architect to proceed under the Agreement and may pursue such other rights and remedies provided by law and under the Contract.

Section 10.4.2 In the event the Agreement is terminated as provided in Section 10.4.1, the Department shall be entitled:

- .1 to pursue the same remedies against the Architect as it could pursue in the event of a breach of the Agreement by the Architect; and
- .2 as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Architect in providing any such gratuities to any such Department or employee.

Section 10.4.3 No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the Contracting Officer of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof.

Section 10.5 Ethical Standards For Department's Employees And Former Employees. The Department expects the Architect to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Architect, nor any person associated with the Architect, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Architect shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Agreement. The Architect may not assign to any former Department or District employee or agent who has joined the Architect's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Architect may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Architect shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Architect or vendor.

Section 10.6 Anti-Deficiency Act. The Department's obligations and responsibilities under the terms of the Agreement are and shall remain subject to the provisions of (i) the federal

Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Agreement shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

If this Agreement is a multiyear contract, then the following provision is made part of this Agreement: If funds are not appropriated or otherwise made available for the continued performance in a subsequent year of a multiyear contract, the contract for the subsequent year shall be terminated, either automatically or in accordance with the termination clause of the contract. Unless otherwise provided for in the contract, the effect of termination is to discharge both the Department and the Architect from future performance of the contract, but not from the existing obligations. The Architect shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

ARTICLE 11 **ECONOMIC PROVISIONS**

Section 11.1 LSDBE Utilization.

Section 11.1.1 The Architect shall ensure that Local, Small and Disadvantaged Business Enterprises will participate in at least fifty percent (50%) of the Contract Work. Thirty-five percent (35%) of the Contract Work must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Department of Small and Local Business Development, and twenty percent (20%) of the Contract Work to entities that are certified as Disadvantaged Business Enterprises. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal.

Section 11.1.2 The Architect has developed an LSDBE Utilization Plan that is attached hereto as **Exhibit C**. The Architect shall comply with the terms of the LSDBE Utilization Plan in making purchases and administering its Subconsultants and Supply Agreements.

Section 11.1.3 Neither the Architect nor any Subconsultant may remove a Subconsultant or tier-Subconsultant if such Subconsultant or tier-Subconsultant is certified as an LSDBE company unless the Department approves of such removal. The Department may condition its

approval upon the Architect developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

Section 11.2 Equal Employment Opportunity and Hiring of District Residents.

Section 11.2.1 The Architect shall comply with applicable laws, regulations regarding equal employment opportunity and affirmative action programs.

Section 11.2.2 The Architect shall ensure that at least fifty-one percent (51%) of the Architect's Team and every subconsultant's and subcontractor's employees hired after the effective date of the Contract, or after such subconsultant or subcontractor enters into a contract with the Architect, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade.

Section 11.2.3 Fifty percent (50%) of all apprentices for the Project must be District residents.

Section 11.3 First Source Agreement.

Section 11.3.1 Upon execution of the Contract, the Architect and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

Section 11.3.2 The Architect and its constituent entities shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site.

Section 11.3.3 The Architect shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 11.3.4 The Architect shall be responsible for: (i) including the provisions of this Section 11.3 in all subcontracts; (ii) collecting the information required in this Section 11.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Architect pursuant to Section 11.3.1.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

DEPARTMENT OF GENERAL SERVICES, an agency within the executive

branch of the Government of the District of Columbia

[SELECTED OFFEROR]

By: _____
Name: Christopher Weaver
Title: Acting Director
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A

Key Personnel

Exhibit B

Schedule of Values

Exhibit C

LSDBE Utilization Plan