

CONSTRUCTION OF THE Allegheny Highlands Community Services Crisis Receiving Center-Crisis Stabilization Unit

ACCEPTANCE DATE: Prior to 4:00 p.m., June,20 2025, E.S.T.

IFB NUMBER: CRC-CSU2025

ACCEPTANCE PLACE: Allegheny Highlands Community Service
Attn: Darcie McCraw
205 East Hawthorne Street
Procurement Bids and Proposals Drop Box
Covington, Virginia 24426

Due to security and HIPPA restrictions, public access to AHCS facilities is extremely limited. The mailing of bids is preferred. However, if a bid is hand delivered, it will be received in the lobby of 205 East Hawthorne Street, Covington, Virginia 24426 between the hours of 9:00 a.m. and 5:00 p.m.

ALL HAND DELIVERED AND MAILED BIDS MUST BE SUBMITTED AT THIS LOCATION PRIOR TO 4:00 P.M. on the Acceptance Date of the bid in order to be considered. Bids will not be accepted at any other building locations or after 4:00 P.M. Bids will be opened and announced by the Procurement Division staff at 4:15 p.m. (E.S.T.) on the Acceptance Date. AHCS holds no responsibility for any irregularities in delivery of bids, It is solely the responsibility of Bidder to allow for potential irregularities or delays in any selected delivery method.

Please contact the Contracting Officer, Patty Flanagan, with any questions regarding this process. Bidders are strongly encouraged to check the Agency's website routinely for updates.

The terms and conditions contained in this Invitation for Bid and in the Agency-Contractor Agreement are not negotiable.

PLEASE NOTE:

- A. To obtain the plans and specifications for this Project, send an email to the dmccraw@ahcsb.org and the Agency will make them available via email.
- B. **Bid Forms.** Bid forms may be downloaded from the Agency's web site: <https://www.ahcsb.org> and are included in this packet.
- C. **Pre-Bid Conference.** A pre-bid conference will be held in person on June 2, 2025, at 1:30 p.m. at 214 S. Lexington Avenue, Covington, VA 24426 and is mandatory for all firms to view the building and for clarification of any questions on the plans and specifications.
- D. **The terms and conditions contained in this Invitation for Bid and in the Agency-Contractor Agreement are not negotiable.**

Requests for information related to this Invitation should be directed to:

Name: Darcie McCraw

Title: Point of Contact

(540) 965-2135 X107

E-mail address: dmccraw@ahcsb.org

This document can be downloaded from our web site: www.ahcsb.org/

Issue Date: May 19, 2025

IF YOU NEED ANY REASONABLE ACCOMMODATION FOR ANY TYPE OF DISABILITY IN ORDER TO PARTICIPATE IN THIS PROCUREMENT, PLEASE CONTACT THIS DIVISION AS SOON AS POSSIBLE .

https://drive.google.com/drive/folders/1YMFV_-CFcNNfRis3HrSpdOb08XqsnikS?usp=sharing

The construction documents and specs are contained in the link above.

CONSTRUCTION OF AHCS CRISIS RECEIVING CENTER-CRISIS STABILIZATION UNIT

1.0 PURPOSE

The Intent of this Invitation for Bid is for the Alleghany Highlands Community Services Board (Agency) to obtain the services of a qualified General Contractor for the renovation of 214 S. Lexington Avenue in Covington, Virginia. The existing building is 1-story and approximately 9,300 square feet. This IFB is to renovate the existing building, for use as a crisis receiving center, crisis stabilization unit, a mobile crisis response team office, crisis intervention team assessment center, nursing and care centers, office space, custodial/janitor space, I.T. space, miscellaneous storage/closets and kitchens. The entire building will be provided with a new fire sprinkler system and full facility generator.

Site Work under this Proposal is anticipated to be limited modifications to include: new entry and exterior siding, new sprinkler water service line extended from water main at street into building, and parking lot resurfacing.

1.1

This project may be partially funded with state funding from:

- DBHDS

As a result, the awarded contract may be subject to further terms, conditions and reviews. The contract award and project start are contingent on both agencies' approval.

The Agency Construction Contract resulting from this IFB requires the payment of **Prevailing Wage Rates**. Refer to Section 3.0 of this IFB.

2.0 COMPETITION INTENDED

It is the Agency's intent that this IFB permits competition. It shall be the bidder's responsibility to advise the Purchasing Agent in writing if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this IFB to a single source. Such notification must be received by the Purchasing Agent not later than fifteen (15) days prior to the date set for bids to close. This solicitation is being issued in accordance with Virginia Code 2.2-4302.2 A. 4.

3.0 PREVAILING WAGE RATES

Remuneration to any individual performing work on the Agency Construction Contract resulting from this IFB shall be at a rate equal to or greater than to the prevailing wage rate identified in Attachment 3 to this IFB.

1. The General Contractor awarded a Agency Construction Contract as a result of this IFB, and any sub-contractors hired by the General Contractor to perform Work on the Agency Construction Contract resulting from this IFB, shall pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to

perform Work in connection with the resulting Agency Construction Contract at or greater than the prevailing wage rate identified in this IFB.

2. Any General Contractor or any subcontractor who employs any mechanic, laborer, or worker to perform Work under the Agency Construction Contract resulting from this IFB, at a rate that is less than the prevailing wage rate identified in this IFB (i) shall be liable to such individuals for the payment of all wages due, plus interest at an annual rate of eight percent accruing from the date the wages were due; and (ii) shall be disqualified from bidding on public contracts with any public body until the contractor or subcontractor has made full restitution of the amount described in clause (i) owed to such individuals. A contractor or subcontractor who willfully violates this section is guilty of a Class I misdemeanor.
3. After award of the Agency Construction Contract, the General Contractor to whom such contract is awarded shall certify under oath, to the Commissioner of Labor and Industry the pay scale for each craft or trade employed on the Project to be used by such contractor and any of the contractor's subcontractors for work to be performed under such public contract. This certification shall, for each craft or trade employed on the Project, specify the total hourly amount to be paid to employees, including wages and applicable fringe benefits, provide an itemization of the amount paid in wages and each applicable benefit, and list the names and addresses of any third-party fund, plan or program to which benefit payments will be made on behalf of employees. The certification shall be sent to the Commissioner of Labor and Industry each pay period for the duration of the Project.
4. The General Contractor awarded an Agency Construction Contract as a result of this IFB, shall keep, maintain, and preserve (i) records relating to the wages paid to and hours worked by each individual performing the work of any mechanic, laborer, or worker and (ii) a schedule of the occupation or work classification at which each individual performing the work of any mechanic, laborer, or worker on the public works Project is employed during each workday and week. The employer shall preserve these records for a minimum of six (6) years and make such records available to the Department of Labor and Industry within ten (10) days of a request and shall certify that records reflect the actual hours worked and the amount paid to its workers for whatever time period they request.
5. No later than ten (10) days after the date of the Notice to Proceed, the General Contractor awarded an Agency Construction Contract as a result of this IFB and subcontractors performing on an Agency Construction Contract shall post the prevailing wage rate for each craft and classification involved, as determined by the Commissioner of Labor and Industry, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at any such places as are used by the Contractor or subcontractors to pay workers their wages. Within ten (10) days of such posting, a Contractor or subcontractor shall certify to the Commissioner of Labor and Industry its compliance with this

subsection.

6. The General Contractor awarded an Agency Construction contract as a result of this IFB shall include the requirement in all subcontracts issued and require the same requirement to be inserted by all lower tier subcontractors in their subcontracts to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform Work in connection with the resulting Agency Construction Contract at or greater than the prevailing wage rate identified in this IFB.
7. Information regarding Prevailing Wage Rates and the Department of Labor and Industry Forms can be found at <https://www.doli.virginia.gov/prevailing-wage-law/>.

4.0 BIDDER MINIMUM QUALIFICATIONS

Bidders must demonstrate that they have the resources and capability to provide the materials and services as described herein. All bidders must submit the documentation and information indicated below with their bid. Failure to provide any of the required documentation/information will be cause for bid to be deemed non-responsive and/or non-responsible and rejected.

The following criteria shall be met in order to be eligible for this Contract:

- 4.1 Debarment: By signing the Pricing Page contained in the IFB, bidders are certifying that bidder is not currently debarred by any local or state government or the federal government. Bidders shall provide in their bid, documentation related to all debarments that occurred within the last ten (10) years.
- 4.2 The Contractor submitting a bid shall not be disqualified from bidding for a violation of the Commonwealth of Virginia prevailing wage law.
- 4.3 Provide evidence of a contractor's certificate of registration, whether resident or nonresident of Commonwealth of Virginia, as required by the following:
 - Registered Commonwealth of Virginia Contractor: Class A. Include a copy of the Class A Contractors license in your bid.
- 4.4 Verification of Bonding Capability. Bidder shall include in their bid a letter from a surety or insurance company (with a Best's Financial Strength Rating of A or better and Financial Size Category VII or higher by A.M. Best Co.) stating that the bidder is capable of obtaining a performance and payment bond based on the bidder's estimated contract value for the construction of the Project, which bonds will cover the Project and any warranty periods. The letter of surety shall clearly state the rating categorization noted above and reference the estimated contract value as identified in herein, in a manner similar to the notation provided below:

"As surety for [the above named Contractor], [XYZ Company] with A.M. Best

Financial Strength Rating [rating] and Financial Size Category [Size Category] is capable of obtaining 100% Performance Bond and 100% Labor and Materials Payment Bond in the amount of the anticipated cost of construction, and said bonds will cover the Project and any warranty periods as provided for in the Contract Documents on behalf of the Contractor, in the event that such firm be the successful bidder and enter into a contract for this Project.” This letter shall also state the bidder’s per Project and total bonding program limits and that the Surety is authorized/licensed to do business in the Commonwealth of Virginia.

- 4.5 Construction Supervisor. Bidder shall include in their bid that a designated construction supervisor will be on-site each day that work is performed. The cost for this service must be included in the bid.
- 4.6 Mandatory Pre-Bid Conference. All firms that wish to submit a bid are required to attend the pre-bid conference on June 2, 2025 at 1:30 p.m. at 214 S. Lexington Avenue, Covington, VA 24426.
- 4.7 Service Coordination. The hours of operation are Monday-Friday from 9:00-5:00 p.m. Bids must include a statement regarding scheduling of large machinery so that it does not impede delivery of services or access to our community.

5.0 SPECIFICATIONS

The work to be performed as a result of this IFB shall be in accordance with the plans and specifications prepared by Lineage Architects, PC., MEP by Salas O'Brien and both dated April 30, 2025.

6.0 GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

The General Conditions of the Construction Contract contained in Attachment 2 to this Invitation for Bid are incorporated into the Contract Documents.

7.0 DISCREPANCIES

Should a bidder find discrepancies in the plans and/or specifications or be in doubt as to the meaning or intent of any part thereof, the bidder shall request clarification from the Agency in writing, not later than the date established in the Instructions to Bidders. Any changes to the IFB that result from such a clarification request, will be communicated through a written addendum and posted on www.ahcsb.org. Failure to request such clarification is a waiver of any claim by the bidder for additional expenses because its interpretation was different than the Agency’s.

8.0 BUSINESS, PROFESSIONAL, AND OCCUPATIONAL LICENSE REQUIREMENT

All firms or individuals located or doing business in the City of Covington/ Alleghany County are required to be licensed in accordance with the City/County's "Business, Professional, and Occupational Licensing (BPOL)" Tax

Ordinance during the initial term of the Contract or any renewal period.

Wholesale and retail merchants without a business location in the City of Covington/ Alleghany County are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the City Office of Commissioner of Revenue, telephone (540) 965-6352 or the County at (540) 863-6640.

9.0 PAYMENT OF TAXES

All Contractors located or owning property in the City of Covington/ Alleghany County during the initial term of the Contract, or any renewal period shall assure that all real and personal property taxes are paid.

10.0 NOTICE OF REQUIRED DISABILITY LEGISLATION COMPLIANCE

The Agency is required to comply with state and federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and The Virginians with Disabilities Act of 1990.

Specifically, AHCS, may not, through its Contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

11.0 ETHICS IN PUBLIC CONTRACTING

The provisions contained in §§ 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all Contracts solicited or entered into by the Agency. A copy of these provisions may be obtained from the Purchasing Agent upon request.

The above-stated provisions supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia State and Local Government Conflict of Interests Act.

12.0 EMPLOYMENT DISCRIMINATION BY CONTRACTORS PROHIBITED

Every Contract of over \$10,000 shall include the following provisions:

A. During the performance of this Contract, the Contractor agrees as

follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service-disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
 3. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient to meet this requirement.
- B. The Contractor will include the provisions of the foregoing paragraphs, 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

13.0 DRUG-FREE WORKPLACE

Every Contract of over \$10,000 shall include the following provisions:

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

14.0 FAITH-BASED ORGANIZATIONS

The Agency does not discriminate against faith-based organizations.

15.0 EXEMPTION FROM TAXES

Pursuant to Va. Code § 58.1-609.1, the Agency is exempt from Virginia State Sales or Use Taxes and Federal Excise Tax, therefore the Contractor shall not charge the Agency for Virginia State Sales or Use Taxes or Federal Excise Tax on the finished goods or products provided under the Contract. However, this exemption does not apply to the Contractor, and the Contractor shall be responsible for the payment of any sales, use, or excise tax it incurs in providing the goods required by the Contract, including, but not limited to, taxes on materials purchased by a Contractor for incorporation in or use on a construction Project. The Agency and the winning bidder can coordinate on the Agency purchasing any large material costs and those savings of tax therefore passed on to the Agency. Nothing in this section shall prohibit the Contractor from including its own sales tax expense in connection with the Contract in its Contract price.

16.0 CONSTRUCTION CONTRACT PERFORMANCE AND PAYMENT BONDS

Within fifteen (15) calendar days after the effective date of the Agency – Contractor Agreement, the following bonds or security shall be delivered to the Agency and shall become binding on the parties upon the execution of the Contract:

- A. A performance bond satisfactory to the Agency, executed by a surety company authorized to do business in Virginia with a Best's Key Rating of Level A or better and in a financial size of Class VII or higher, or otherwise secured in a manner satisfactory to the Agency, for the faithful performance of the Contract in strict conformity with the plans, specifications, and conditions of the Contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the Contract; and
- B. A payment bond satisfactory to the Agency, executed by a surety company authorized to do business in Virginia with a Best's Key Rating of Level A or better and in a financial size of Class VII or higher, or otherwise secured in a manner satisfactory to the Agency, for the protection of all persons supplying labor and material to the Contractor or its subcontractors for the performance of the work provided for in the Contract. Labor and materials shall include public utility services and reasonable rentals of equipment, but only for the periods when the equipment rented is actually used at the site. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the Contract.
- C. The amount of the performance and payment bonds shall increase without the necessity of any action by the Agency, to the same extent the Contract Price increases due to changes.
- D. All sureties providing bonds shall give written notice to the Agency at least thirty (30) days prior to the expiration or termination of the bond(s).
- E. If at any time, any surety or sureties become insolvent or are determined by the Agency to be unable to adequately secure the interests of the Agency, the Contractor shall within thirty (30) days after such notice from Agency to do so, substitute an acceptable bond(s) in such form and sum and signed by such other sureties as may be satisfactory to Agency. The premium on

such bond(s) shall be paid by the Contractor at no additional cost to the Agency provided reasonable justification can be provided by the Agency for its determination.

- F. The Contractor shall not be precluded from requiring each subcontractor to furnish a payment bond with surety thereon in an amount equal to one hundred percent (100%) of the Contract with such subcontractor.
- G. The successful bidder's failure to furnish to the Agency acceptable bonds, within fifteen (15) days after the effective date of the Agency – Contractor Agreement shall be considered just cause for cancellation of the award and forfeiture of the construction contract bid security. In such event, the proposal guaranty shall become the property of the Agency, not as a penalty but in liquidation of damages sustained.

17.0 CONSTRUCTION CONTRACT BOND FORMS AND COPIES; ALTERNATIVE FORMS

In lieu of a payment or performance bond, the Contractor may furnish a certified check or cash escrow in the face amount required for the bond. If approved by the Agency Attorney, a Contractor may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords the same protection to the Agency equivalent to the corporate surety bond.

18.0 CONSTRUCTION CONTRACT RETAINAGES

The Contractor shall be paid ninety percent (90%) of the earned sum when payment is due, with no more than ten percent (10%) being retained to assure faithful performance of the Contract. After 50% of the project is complete, the amount to be retained can convert to five percent (5%.) All amounts withheld may be included in the final payment. Any subcontract which provides for similar progress payments shall be subject to the same limitations.

19.0 ESCROW ACCOUNT FOR RETAINED FUNDS

Section does not apply.

20.0 AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, limited partnership, or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with the Agency pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or

cancelled at any time during the term of the Contract. The Agency may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

21.0 USE OF STATE FUNDS

This Agreement involves the expenditure or reimbursement of state funds and must comply with the standards set forth in the grant award contract. In the event of a conflict between the Terms and Conditions found in this Agreement and the state Terms and Conditions, the state Terms and Conditions shall prevail.

Compliance with Davis-Bacon Wage Rate is required for this project.

22.0 INSTRUCTIONS TO BIDDERS

22.1 Preparation and Submission of Bids

- A. Before submitting a bid, read the **ENTIRE** solicitation including the Contract Terms and Conditions. Failure to read any part of this solicitation will not relieve a bidder of the Contractual obligations.
- B. Pricing must be submitted on IFB pricing form only. Include other information, as required.
- C. All bids must be submitted to the Agency in a sealed container. The face of the sealed container shall indicate the IFB number, time and date of opening and the title of the IFB.
- D. All bids shall be signed in ink by the individual or authorized principals of the firm.
- E. All attachments to the IFB requiring execution by the bidder are to be returned with the bids.
- F. Bids must be received by the Agency prior to 4:00 p.m., local atomic time on the cover of this IFB. The time can be verified by visiting <https://time.gov> and selecting Eastern Time. Requests for extensions of this time and date will not be granted, unless deemed to be in the Agency's best interest. Bidders mailing their bids or using a private carrier shall allow for sufficient mail time to ensure receipt of their bids by the Agency by the time and date fixed for acceptance of the bids. Do not rely on overnight delivery capabilities of private carriers to guarantee timely delivery of bids. Bids or unsolicited amendments to bids received by the Agency after the acceptance date and time will not be considered. Bids will be publicly accepted and logged in at the time and date specified above.
- G. Bids must be submitted via one of the following options:
 - US Mail to:
Alleghany Highlands
Community Services
Attn: Darcie McCraw

205 East Hawthorne Street
Covington, VA 24426

Or

Hand delivered to:

Alleghany Highlands
Community Services
Attn: Darcie McCraw
205 East Hawthorne Street
Covington, VA 24426

or

Private carrier (UPS/FedEx) to:

Alleghany Highlands
Community Services
Attn: Darcie McCraw
205 East Hawthorne Street
Covington, VA 24426

Faxed and e-mailed bids will not be accepted.

Please note: Bidders choosing to submit bids via US Mail or UPS/FedEx should allow at least an additional forty-eight (48) hours in the delivery process to ensure bids are received on time.

NOTE: Bids delivered in person or via private carrier services will not be able to obtain a signature. Please ensure that the requirement is removed from the package to avoid delays or rejection of the package.

ALL BIDS MUST BE SUBMITTED AT THIS LOCATION PRIOR TO 4:00 P.M. on the Acceptance Date of the bid in order to be considered. Bids will not be accepted at any other building location or after 4:00 P.M. Failure by a bidder to address and label their bids in accordance with the requirements of this section may result in bid being delivered to an incorrect location which will ultimately result in bid rejection for late submission.

Failure by a bidder to address and label their bid in accordance with the requirements of this section may result in the bid being delivered to an incorrect location which will ultimately result in bid rejection for late submission.

- H. Each firm shall submit **one (1) original** of their bid and **one (1) electronic copy (in a single PDF format) on a USB flash drive** to the Agency as indicated on the cover sheet of this Invitation for Bid.
- I. A mandatory pre-bid conference will be held at 214 S. Lexington Avenue, Covington, VA 24426 on June 2, 2025 at 1:30 p.m.

22.2 Questions and Inquiries

Questions and inquiries will be accepted in writing (email) only, from any and all bidders at dmccraw@ahcsb.org. Unauthorized contact with other AHCS staff regarding the IFB may result in the disqualification of the bidder. Inquiries pertaining to the Invitation for Bid must give the IFB number, time and date of opening, and the title of the IFB. Material questions will be answered in writing with an Addendum provided, however, that all questions are received **by 5:00 p.m. June 9, 2025**. It is the responsibility of all bidders to ensure that they have received all Addendums and to include signed copies with their bid. Addendums can be downloaded from www.ahcsb.org.

22.3 Prevailing Wage Rate Request for Additional Classifications

Bidders' requests for additional Prevailing Wage Rate classifications shall be submitted to the Contracting Officer not later than fifteen (15) days after the Issue Date of this IFB on the Virginia Department of Labor and Industry, Request for Additional Wage Classification Form. Bidder shall complete the form, provide sufficient supporting documentation to allow the Virginia Department of Labor and Industry to render a decision and sign. Any requests for additional information from the Virginia Department of Labor and Industry shall be provided to the Contracting Officer with seventy-two (72) hours of receipt. Requests for additional Prevailing Wage Rate classifications received after fifteen (15) days from the Issue date of this IFB will not be responded to.

22.4 Exceptions/Additions

No exceptions or additions to the Specifications/Scope of Work or Terms and Conditions shall be permitted. Any questions or concerns regarding any part of the IFB shall be submitted to the Agency prior to the date specified in the Questions and Inquiries section above. Bids containing any exceptions to the Specifications/Scope of Work or Terms and Conditions or submitting additional terms and conditions shall be deemed non-responsive and rejected. Exceptions or additions proposed after bid submission by the successful bidder shall not be accepted.

22.5 Inspection of Site

The property will be available for inspection only at the mandatory pre-bidders conference.

22.6 Firm Pricing for Agency Acceptance

The bid price must be firm for Agency acceptance for a minimum of one hundred and twenty (120) days from the bid opening date.

22.7 Proprietary Information

Trade secrets or proprietary information submitted by a bidder in connection with this solicitation shall not be subject to disclosure under the Virginia Freedom of Information Act; however, **pursuant to § 2.2-4342 of the Code**

of Virginia, the bidder must invoke the protections of this section prior to or upon submission of the data or other materials, and must clearly identify the data or other materials to be protected and state the reasons why protection is necessary. Failure to abide by this procedure may result in disclosure of the bidder's information.

Bidders shall not mark sections of their bid as proprietary if they are to be part of the award of the Contract and are of a "Material" nature.

22.8 Authority to Bind Firm in Contract

Bids MUST give the full firm name and address of the bidder. Failure to manually sign bid may disqualify it. The person signing the bid should show TITLE or AUTHORITY TO BIND THE FIRM IN A CONTRACT. Firm name and authorized signature must appear on bid in the space provided on the pricing page. Those authorized to sign are as follows:

If a sole proprietorship, the owner may sign.

If a general partnership, any general partner may sign.

If a limited partnership, a general partner must sign.

If a limited liability company, a "member" may sign or "manager" must sign if so specified by the articles of organization.

If a regular corporation, the CEO, President or Vice-President must sign.

Others may be granted authority to sign but the Agency requires that a corporate document authorizing him/her to sign be submitted with bid.

22.9 Withdrawal of Construction Contract Bid Due to Error

A bidder for a construction Contract may withdraw its bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing of its claim of right to withdraw its bid within (2) two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

22.10 Subcontractors

Please refer to Article 4: Subcontractors, of the Agency *General Conditions of the Construction Contract*. See Attachment 2 of this IFB.

22.11 Late Bids

LATE bids will be returned to the bidder UNOPENED.

21.12 Rights of Agency

The Agency reserves the right to reject all or any part of any bid, waive informalities, and award the contract to the lowest responsive and responsible

bidder to best serve the interest of the Agency. Informality shall mean a minor defect or variation of a bid from the exact requirements of the Invitation to Bid which does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured.

22.13 Prohibition as Subcontractors Under Competitive Sealed Bidding

No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to, or perform any subcontract or other work agreement, for the person or firm to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the Project for which the withdrawn bid was submitted.

22.14 Vendor Preference in Tie Bids

The Agency all other departments making purchases of goods, services, and construction shall give preference to goods, services, and construction sold by City of Covington/Alleghany County and the Commonwealth of Virginia vendors, in that order, in all cases of tie bids, quality and service being equal.

22.15 Anti-Trust Violations

Tie bids may cause rejection of bids by the Agency and/or prompt an investigation for anti-trust violations.

22.16 Basis for Award

A contract award will be made to the lowest quantified/bona fide responsive and responsible bidder and note that bids will be quantified once received to ensure the apparent low bidder has met all project and bid qualifications.

Whenever the lowest responsive and responsible bidder is a resident of a state other than Virginia and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid preference shall not be considered.

22.17 Negotiation with the Lowest Responsible Bidder

Unless all bids are cancelled or rejected, the Agency reserves the right granted by § 2.2-4318 of the *Code of Virginia* to negotiate with the lowest quantified/ bona fide responsive, responsible bidder to obtain a Contract price within the funds available whenever such low bid exceeds the available funds. Negotiations with the low bidder may include both modifications of the bid price and the specifications/scope of work to be performed.

22.18 Notice of Award

A Notice of Award will be posted on the Agency's web site (www.ahcsb.org) on June 27, 2025 upon opening and qualification

verification.

22.19 Protest

Bidders may refer to §§ 2.2-4357 through 2.2-4364 of the Code of Virginia to determine their remedies concerning this competitive process. Protests shall be submitted to the Director, Department of Finance.

22.20 Construction Contract Bid Security

Bid security is required for this Project. Bid security shall be a bond provided by a surety company selected by the bidder and authorized to do business in Virginia, or the equivalent in cash, or otherwise supplied in a form satisfactory to the Agency. Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid. Non-compliance with this provision requires that the bid be rejected unless it is determined that the bid fails to comply in a non-substantial manner with the security requirements.

The apparent low bidder's Contract Bid Security shall be subject to forfeiture if the apparent low bidder withdraws his bid prior to award or fails to sign and return the Agency – Contractor Agreement. The Contract Bid Security shall be forfeited according to the forfeiture provisions in Code of Virginia (§ 2.2-4336) and the proposal guaranty.

22.21 Construction Contract Bond Forms and Copies; Alternative Forms

In lieu of a bid, payment or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond. If approved by the Agency's Attorney, a bidder may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment, or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords the same protection to the Agency equivalent to the corporate surety bond.

22.22 Debarment

By submitting a bid, the bidder is certifying that the bidder is not currently debarred by a local or state government or the federal government. A copy of the Agency's debarment procedure in accordance with § 2.2-4321 of the Code of Virginia is available upon request.

22.23 Proof of Authority to Transact Business in Virginia

A bidder organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder is not required to be so authorized. Any bidder described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies

and procedures established to implement this section is granted by the Purchasing Agent or his designee. The SCC may be reached at (804) 371-9733 or at <http://www.scc.virginia.gov/default.aspx>.

22.24 W-9 Form Required

Each bidder shall submit a completed W-9 form with their bid. In the event of Contract award, this information is required in order to issue purchase orders and payments to your firm. A copy of this form can be downloaded from <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

22.25 Insurance Coverage

Bidders shall include with their bid a copy of their current Certificate of Insurance that illustrates the current level of coverage the bidder carries. The Certificate can be a current file copy and does not need to include any "additional insured" language for the Agency for submission with the bid.

22.26 Acknowledgement of Contract

By submitting a bid, the bidder acknowledges that it understands and agrees to the Terms and Conditions contained herein.

22.27 Legal Action

No bidder or potential bidder shall institute any legal action until all statutory requirements have been met.

22.28 Certification by Contractor as to Felony Convictions

No one with a felony conviction may be employed under this Contract and by the signature of its authorized official on the response to this Solicitation, the Contractor certifies that neither the contracting official nor any of the Contractor's employees, agents, or subcontractors who will work under the Contract Documents have been convicted of a felony.

22.29 Unit Price Items

The Unit Price Items, identified on the Pricing Page, quantities, and extended prices are to be included in the Bidder's lump sum and used for bid evaluation purposes only; if the actual quantities, as measured by field survey, are above/below those shown above, then the unit price will be used for addition/credit to the Contract amount. The activity schedule and schedule of values shall include each Unit Price Item as a separate and distinct item. Unit price Items are to be used with Agency authorization only.

22.30 Substitutions

Substitutions are defined as changes in products, materials, equipment, and methods of construction from those required by the Contract Documents and proposed by Contractor.

- A. Substitutions for Cause are changes proposed by the Contractor that are required due to changed Project conditions, such as unavailability of product, regulatory changes, or unavailability of required warranty terms.

- B. Substitutions for Convenience are changes proposed by Contractor or Owner that are not required to meet other Project requirements but may offer an advantage to Contractor or Owner.

The Agency will not consider substitutions for convenience during the bidding process. They will be considered after the contract has been awarded. Refer to Article 4.17 – Equal Products in the General conditions of the Construction Contract for procedures. Substitution for Cause once verified may be addressed during the bidding process at the discretion of the Agency.

All references in the specifications to substitutions being approved during the bidding process shall be deleted.

23.0 PRICING PAGE
CONSTRUCTION OF THE AHCS Crisis Receiving Center-Crisis Stabilization Unit

The firm of _____
hereby offers to achieve substantial completion of the Construction of the Crisis Receiving Center-Crisis Stabilization Unit in accordance with this Invitation for Bid within Three hundred sixty-five (365) calendar days after Notice to Proceed.

Attention bidders: Do not take any exceptions or make any qualifications to your bid.

1. Substance Use Expansion

Base bid \$ _____

Total of Unit Price Items
(Section 2 below) +\$ _____

Alternate Bids +\$ _____

Lump Sum =\$ _____

2. Unit Price Items

Bidders shall give unit price and extended price for each of the items listed below. The Unit Price Items, quantities, and extended prices **are to be included in the lump sum** and used for bid evaluation purposes only; if the actual quantities, as measured by field survey, are above/below those shown above, then the unit price will be used for addition/credit to the Contract amount. The activity schedule and schedule of values shall include each Unit Price Item as a separate and distinct allowance item.

<u>Item</u>	<u>Units & Limitations</u>	Price/Unit (\$)
-------------	--------------------------------	-----------------

3. Return the following with your bid. If a bidder fails to provide with their bid, items shall be provided within twenty-four (24) hours of bid opening.

ITEM:	INCLUDED: (X)
1. W-9 Form (22.24):	_____
2. Certificate of Insurance (22.25):	_____
3. Addenda, if any (Informality) (22.2):	_____
4. One (1) electronic copy on USB Flash drive	_____

4. Failure to provide the following items with your bid shall be cause for rejection of bid as non-responsive and/or non-responsible. It is the responsibility of the bidder to ensure that it has received all addenda and to include signed copies with their bid (22.2).

ITEM:	INCLUDED: (X)
1. Addenda, if any (22.2):	_____
2. Payment Terms:	_____ net 30 or _____ Other
3. Proof of Authority to Transact Business in Virginia Form:	_____
4. Bid Bond (22.20):	_____
5. Minimum Qualifications (4.0)	
a. Debarment History, if required (4.1)	_____
b. Virginia Contractor Class A license (4.3): (Include with bid)	_____
c. Verification of Bonding Capacity (4.4)	_____

Person to contact regarding this bid: _____

Title: _____ Phone: _____ Fax: _____

E-mail Address: _____

Name of person authorized to bind the Firm (22.8): _____

Signature: _____ Date: _____

Address: _____

By signing and submitting a bid, your firm acknowledges and agrees that it has read and understands the IFB documents, to include the General Conditions of the Construction Contract and agrees to the Terms and Conditions as contained herein and that your Firm is not currently Debarred by a local or state government or the Federal Government.

PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

THIS FORM MUST BE SUBMITTED WITH YOUR BID/PROPOSAL. FAILURE TO INCLUDE THIS FORM SHALL RESULT IN REJECTION OF YOUR BID/PROPOSAL

Pursuant to Virginia Code §2.2-4311.2, a bidder/offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid/ proposal the identification number issued to it by the State Corporation Commission ("SCC"). Any bidder/offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid or proposal a statement describing why the offeror is not required to be so authorized. Any bidder/offeror described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Purchasing Agent or his designee.

If this bid/proposal for goods or services is accepted by the Agency, the undersigned agrees that the requirements of the Code of Virginia Section 2.2-4311.2 have been met.

Please complete the following by checking the appropriate line that applies and providing the requested information. **PLEASE NOTE: The SCC number is NOT your federal ID number or business license number.**
The Bidder:

is a corporation or other business entity with the following SCC identification number:
_____ -OR-

is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust -OR-

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location) -OR-

is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

****NOTE**** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids (The Agency reserves the right to determine in its sole discretion whether to allow such waiver):

Please attach additional sheets of paper if you need to explain why such bidder/offeror is not required to be authorized to transact business in Virginia.

Legal Name of Company (as listed on W-9)

Legal Name of Bidder/Offeror

Date

Authorized Signature

Print or Type Name and Title

HOW DID YOU HEAR ABOUT THIS INVITATION FOR BID?

IFB CRC-CSU2025

Please take the time to mark the appropriate line and return with your bid.

<input type="checkbox"/> Associated Builders & Contractors	<input type="checkbox"/> Balzer Associates
<input type="checkbox"/> Bid Net	<input type="checkbox"/> Our Web Site
<input type="checkbox"/> Builder's Exchange of Virginia	<input type="checkbox"/> NIGP
<input type="checkbox"/> Email notification from AHCS	<input type="checkbox"/> The Plan Room
<input type="checkbox"/> Dodge Reports	<input type="checkbox"/> Reed Construction Data
<input type="checkbox"/> Virginia Review	<input type="checkbox"/> Tempos Del Mundo
<input type="checkbox"/> Agency Website	<input type="checkbox"/> Valley Construction News
	<input type="checkbox"/> Virginia Business Opportunities
	<input type="checkbox"/> VA Dept. of Minority Business Enterprises
	<input type="checkbox"/> RAPID

Other _____

SERVICE RESPONSE CARD

IFB CRC-CSU2025

Date of Service: _____

How did we do?

Please let us know how we did in serving you. We'd like to know if we are serving you at an acceptable level.

How would you rate the way your request for this document was handled?

Excellent Good Average Fair Poor

Did you have contact with Procurement staff?

How would you rate the manner in which you were treated by the Procurement staff?

Excellent Good Average Fair Poor

How would you rate the overall response to your request?

Excellent Good Average Fair Poor

COMMENTS: _____

Thank you for your response!

We can better assess our service to *you* through feedback from *you*.

Your Name: _____

Address: _____

Phone: _____(day) _____ evening

Please return completed form to: Ingrid Barber-205 East Hawthorne Street, Covington, VA 24426

ATTACHMENT 1

(Proposed)

AGENCY-CONTRACTOR AGREEMENT

THIS AGENCY-CONTRACTOR AGREEMENT (“Agreement” and/or “Contract”) for Renovation of the AHCS Crisis Receiving Center-Crisis Stabilization Unit hereinafter referred to as the “Project,” is effective on the date it is fully executed by and between the **Alleghany Highlands Community Services Board** (herein referred to as the "Agency"), and _____ (herein referred to as the "Contractor").

In consideration of the promises made herein and other good and valuable consideration, the following terms and conditions are hereby agreed to between the Agency and Contractor.

This Agreement consists of and incorporates by reference the following attachments:

- Attachment 1 The Agency’s Invitation for Bid No. CRC-CSU2025 dated May 19, 2025, including any addenda;
- Attachment 2 The General Conditions of the Construction Contract; including any addenda (“General Conditions”);
- Attachment 3 The Contract Plans and Specifications including any addenda;
- Attachment 4 A schedule of work with specific dates for delivery;
- Attachment 5 The Contractor’s bid dated _____.

In the event that Attachment 5 contradicts or limits this Agreement or Attachments 1 through 4, this Agreement and Attachments 1 through 4 shall prevail.

The capitalized terms herein shall have the same meanings as set forth in section 1.1 of the General Conditions.

Article 1

ARCHITECT/ENGINEER FIRM

- 1.1 The Architect/Engineer (hereinafter referred to as the "A/E" and as defined in the General Conditions) shall be Lineage Architects, PC, whose address is 98 Lee Highway, Verona, VA 24482 and Salas Obrien, 119 Norfolk Avenue SW, Suite

310, Roanoke, VA 24011. Provided, however, that the Agency may, at its sole discretion, amend this Article from time to time by designating a different person or organization to act as its A/E and advise the Contractor in writing, at which time the person or organization so designated shall be the A/E for purposes of this Contract.

- 1.2 Construction Support Services will be performed by the Agency. Provided, however, that the Agency may, at its sole discretion, amend this Article from time to time by designating a different person or organization to act as its Construction Support Services Firm and advise the Contractor in writing, at which time the person or organization so designated shall be the Construction Support Services Firm for the purposes of this Contract.

Article 2

TIME OF COMMENCEMENT AND COMPLETION

- 2.1 The Contractor shall commence the Work as defined in the General Conditions of the Construction Contract upon the date established in the Notice to Proceed. Notice to Proceed will be issued as set forth in Article 8 of the General Conditions.
- 2.2 Time is of the essence in this Agreement.
- 2.3 The Contractor shall achieve Substantial Completion, as defined in the General Conditions no later than 365 calendar days after the date of the Notice to Proceed. This time period shall be designated as the Time for Completion.
- 2.4 The Contractor shall complete the Work within the following Milestone dates:

ACTIVITY:

60% of project budget must be completed by January 15, 2026

- 2.5 In the event of a catastrophic event (i.e., hurricane or a declared state of emergency) directly and substantially affecting the Contractor's operations and critical path per the most recently updated construction project schedule, the Contractor and the Agency shall agree as to the number of calendar days to extend the "Incentive Completion Date." In the event the Contractor and Agency are unable to agree to the number of calendar days to extend the "Incentive Completion Date," the Agency shall unilaterally determine the number of calendar days to extend the "Incentive Completion Date" and the Contractor shall have no right whatsoever to contest such determination, unless the Contractor establishes that the number of calendar days determined by the Agency was arbitrary or without any reasonable basis.
- 2.6 The Agency reserves the right to determine if liquidated damages are necessary. A schedule of work must be included with the bid and if the Contractor exceeds

the funding deadlines, then the Agency will determine if liquidated damages are required to meet funder concerns.

Article 3

CONTRACT PRICE

- 3.1 Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Modification or as otherwise provided in the Contract Documents, the Agency shall pay to the Contractor, in current funds and at the times and in the installments hereinafter specified, the sum of _____ Dollars (\$_____) (herein referred to as the "Contract Price").

Article 4

PROGRESS PAYMENTS

- 4.1 The Contractor shall provide a Payment Schedule as referred to in Section 9.3.6 of the General Conditions.
- 4.2 The Contractor hereby agrees that on or about the first day of the month for every month during the performance of the Work Contractor will deliver to the Agency an Application for Payment in accordance with the provisions of Section 9.3 of the General Conditions. This date may be changed upon mutual agreement, stated in writing, between the Agency and the Contractor. Payment under this Contract shall be made as provided in the General Conditions.
- 4.3 An acceptable CPM Schedule Update shall be submitted in conjunction with each Application for Payment. Failure to provide an acceptable CPM Schedule Update will result in the rejection of the Application, and no Payment will be made until such time as an acceptable CPM Schedule Update is received.

Article 5

OTHER REQUIREMENTS

- 5.1 The Contractor shall submit the Performance Bond, Labor and Material Payment Bond, and Certification of Insurance as required by the Contract Documents within fifteen (15) calendar days of the effective date of the Agency – Contractor Agreement. The Guarantee or Warranty Bond shall be submitted as described in Section 9.8.5.2 of the General Conditions.

- 5.2 To the extent required by the Commonwealth of Virginia (see e.g. 54.1-1100 *et seq.* of the Code of Virginia) or the Agency, the Contractor shall be duly licensed to perform the services required to be delivered pursuant to this Contract.
- 5.3 A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so, required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with the Agency pursuant to the Virginia Public Procurement Act, Sections 2.2-4300 *et seq.* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. The Agency may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- 5.4 During the performance of this Contract, the Contractor agrees as follows:
- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service-disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient to meet this requirement.
- 5.5 During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited

from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

- 5.6 All notices and other communications made pursuant to the Contract Documents shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO CONTRACTOR:

TO AGENCY:

AHCS
205 East Hawthorne Street
Covington, VA 24426

Notices shall be deemed received (i) on the date of delivery if delivered in person; (ii) on the first business day after the date of delivery if sent by same day or overnight courier service; or (iii) on the third business day after the date of mailing, if sent by certified or registered United States Mail, return receipt requested, postage and charges prepaid. Once award has been made, communication via email for project concerns is acceptable.

Due to security restrictions, public access to Agency facilities is extremely limited. The mailing or delivery by an agent of notice is preferred. However, if a notice is hand delivered, it will be received in the lobby of 205 East Hawthorne Street, Covington, VA 24426 between the hours of 9:00 a.m. and 5:00 p.m.

Article 6

IMMIGRATION REFORM AND CONTROL ACT OF 1986

- 6.1 By entering this Contract, the Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

Article 7

ENTIRE CONTRACT AND SEVERABILITY

- 7.1 This Agreement, together with all attachments, represents the entire and integrated Contract between the parties hereto and supersedes all prior negotiations, representations, or contracts, either written or oral. The Contract may be amended or changed only by an Amendment or Modification. Nothing contained in the Contract Documents shall create any Contractual relationship between the Agency, (or any agent, consultant, or independent Contractor employed by the Agency) and any subcontractor, sub-subcontractor, supplier, or vendor of the

Contractor, but the Agency shall be entitled to performance of all obligations intended for the Agency's benefit, and to enforcement thereof.

- 7.2 In the event that any provision of this Contract shall be adjudged or decreed to be invalid by a court of competent jurisdiction, such ruling shall not invalidate the entire Contract but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding, and in full force and effect.

Article 8

GOVERNING LAW/FORUM

- 8.1 This Contract shall be governed and construed in all respects by its terms and by the laws of the Commonwealth of Virginia. Any judicial action shall be filed in the Commonwealth of Virginia, County of Alleghany or if jurisdiction exists, the United States District Court. Contractor expressly waives any objection to venue or jurisdiction of the Covington Circuit Court, Covington, Virginia. Contractor expressly consents to waiver of service of process in an action pending in the Covington Circuit Court, Virginia, pursuant to Virginia Code Section 8.01-286.1.
- 8.2 Each of the parties irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either party for any claim, demand, action, or cause of action, arising out of this Agreement. Each of the parties hereby agrees and consents that any such claim, demand, action, or cause of action shall be decided by court trial without a jury.

Article 9

COUNTERPARTS

- 9.1 This Contract and any amendments or modifications hereto may be executed in a number of counterparts, and each counterpart signature, when taken with the other counterpart signatures, is treated as if executed upon one original of this Contract or any amendment or renewal. A signature by any party to this Contract provided by facsimile or electronic mail is binding upon that party as if it were the original.

Article 11

- 11.1 Compliance with Davis-Bacon Wage Rate is required for this project.

WITNESS the following signatures:

Alleghany Highlands Community Services CONTRACTOR

Patty Flanagan
205 E. Hawthorne
Street
Covington, VA 24426

Phone: (540)

Phone:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____

ACKNOWLEDGEMENT

ASBESTOS ABATEMENT REPORT

ATTACHMENT 2:

This form shall be signed and submitted prior to obtaining plans and specifications from the Agency. It will not be released if a signed form has not been submitted.

As evidenced by the Bidder's signature below, the building sites were tested for asbestos and remediation will need to occur for the locations identified in the report dated March 27, 2025 prepared by Todd F. Marcum with samples verified by Pinnacle Consultants. This information is being made to the Bidder in good faith in order to apprise the Bidder of the information within possession of the Agency. The Bidder understands that these report(s) are for informational purposes only and are not part of the Contract and the Agency provides no warranty as to the accuracy, completeness, or correctness of such report(s). These report(s) were developed for bidding purposes to quantify the types of materials to be remediated. The Bidder is responsible for remediating all areas identified in the report following current regulations and guidelines. The Bidder agrees to indemnify, hold harmless, and defend the Agency, its employees, agents, servants, and representatives from and against any costs, claims, extension of Contract time, or liabilities of any kind resulting from the use of or reliance on these reports.

The submission of a Bid shall be considered conclusive evidence that the Bidder has satisfied itself as to the asbestos conditions present that may be encountered in performing the work for the Project.

FIRM NAME: _____

Principal or authorized representative (Print Name)

Date

Principal or authorized representative (Signature)

Date



10 INDEPENDENT AVENUE
 NITRO, WV 25143
 PHONE 304.757.5204
 FAX 304.440.3465
 www.pinnaclecorp.net

ASBESTOS IDENTIFICATION BY POLARIZED LIGHT MICROSCOPY ANALYSIS

Attn: Todd Marcum
 Marcum Insulation
 510 Honaker Hollow Road
 Caldwell, WV 24925

Client Project/PO#:
 PC Project #:
 Received Date: 3/28/2025
 Analysis Date: 4/2/2025

RE: 214 South Lexington Covington VA

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
1	25B-07735		Grey
Texture/Description: Solid/Window Glaze			
TOTAL ASBESTOS: 2 %			
Cellulose: 0 %	Fiber Glass: 0%	Chrysotile: 2 % Amosite: 0% Others: 0%	Tremolite: 0% Actinolite: 0% Crocidolite: 0% Filler/Binder: 98 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
2	25B-07736		White/Brown
Texture/Description: Solid/Drywall			
TOTAL ASBESTOS: 0 %			
Cellulose: 20 %	Fiber Glass: 0%	Chrysotile: 0 % Amosite: 0% Others: 0%	Tremolite: 0% Actinolite: 0% Crocidolite: 0% Filler/Binder: 80 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
3	25B-07737		White/Brown
Texture/Description: Solid/Drywall			
TOTAL ASBESTOS: 0 %			
Cellulose: 30 %	Fiber Glass: 0%	Chrysotile: 0 % Amosite: 0% Others: 0%	Tremolite: 0% Actinolite: 0% Crocidolite: 0% Filler/Binder: 70 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
4	25B-07738		White/Brown
Texture/Description: Solid/Drywall			
TOTAL ASBESTOS: 0 %			
Cellulose: 25 %	Fiber Glass: 0%	Chrysotile: 0 % Amosite: 0% Others: 0%	Tremolite: 0% Actinolite: 0% Crocidolite: 0% Filler/Binder: 75 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
5	25B-07739		White/Brown
Texture/Description: Solid/Drywall			
TOTAL ASBESTOS: 0 %			
Cellulose: 33 %	Fiber Glass: 0%	Chrysotile: 0 % Amosite: 0% Others: 0%	Tremolite: 0% Actinolite: 0% Crocidolite: 0% Filler/Binder: 67 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
6	25B-07740		Brown/White
Texture/Description: Solid/Ceiling Tile			
TOTAL ASBESTOS: 0 %			
Cellulose: 75 %	Fiber Glass: 0%	Chrysotile: 0 % Amosite: 0% Others: 0%	Tremolite: 0% Actinolite: 0% Crocidolite: 0% Filler/Binder: 25 %

RE: 214 South Lexington Covington VA

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
7	25B-07741		White/Brown
Texture/Description:	Solid/Drywall	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 35 %	Fiber Glass: 0%	Others: 0%	Filler/Binder: 65 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
8	25B-07742	behind Drywall	Brown
Texture/Description:	Fibrous/Board	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 99 %	Fiber Glass: 0%	Others: 0%	Filler/Binder: 1 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
9	25B-07743	Closet	Green
Texture/Description:	Solid/Linoleum	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 10 %	Fiber Glass: 0%	Others: 0%	Filler/Binder: 90 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
10	25B-07744	Under Carpet	Tan
Texture/Description:	Solid/Linoleum	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 0 %	Fiber Glass: 8%	Others: 0%	Filler/Binder: 92 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
11	25B-07745	Bathroom	White
Texture/Description:	Solid/Linoleum	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 16 %	Fiber Glass: 0%	Others: 0%	Filler/Binder: 84 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
12	25B-07746a	Under Laminate	Beige
Texture/Description:	Solid/Floor Tile	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 0 %	Fiber Glass: 0%	Others: 0%	Filler/Binder: 100%

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
12	25B-07746b	Under Laminate	Yellow
Texture/Description:	Solid/Mastic	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 0 %	Fiber Glass: 0%	Others: 3%	Filler/Binder: 97 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
13	25B-07747a	Kitchen	Blue
Texture/Description:	Solid/Floor Tile	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 0 %	Fiber Glass: 0%	Others: 0%	Filler/Binder: 100%

RE: 214 South Lexington Covington VA

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
13	25B-07747b	Kitchen	Yellow
Texture/Description:	Solid/Mastic	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 0 %	Fiber Glass: 0%	Others: 6%	Filler/Binder: 94 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
14	25B-07748a	Kitchen	Tan
Texture/Description:	Solid/Floor Tile	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 0 %	Fiber Glass: 0%	Others: 0%	Filler/Binder: 100%

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
14	25B-07748b	Kitchen	Yellow
Texture/Description:	Solid/Mastic	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 0 %	Fiber Glass: 0%	Others: 4%	Filler/Binder: 96 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
15	25B-07749		White/Brown
Texture/Description:	Solid/Ceiling	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 55 %	Fiber Glass: 0%	Others: 0%	Filler/Binder: 45 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
16	25B-07750a	Play Room	Beige
Texture/Description:	Solid/Floor Tile	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 0 %	Fiber Glass: 0%	Others: 0%	Filler/Binder: 100%

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
16	25B-07750b	Play Room	Yellow
Texture/Description:	Solid/Mastic	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 0 %	Fiber Glass: 0%	Others: 5%	Filler/Binder: 95 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
17	25B-07751	Main Foyer	White/Brown
Texture/Description:	Solid/Ceiling	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 50 %	Fiber Glass: 0%	Others: 0%	Filler/Binder: 50 %

CLIENT ID #:	LAB ID #:	LOCATION:	COLOR:
18	25B-07752		White/Brown
Texture/Description:	Solid/Drywall	Chrysotile: 0 %	Tremolite: 0% Anthophyllite: 0%
TOTAL ASBESTOS:	0 %	Amosite: 0%	Actinolite: 0% Crocidolite: 0%
Cellulose: 45 %	Fiber Glass: 0%	Others: 0%	Filler/Binder: 55 %



10 Independent Avenue
 Nitro, West Virginia 25143
 Tel: 304-757-5204
 Fax: 304-440-3465
 Web: www.pinnaclecorp.net

Company Name: Marcum Insulation LLC	TURNAROUND TIME REQUESTED Same Day <input type="checkbox"/> 3-Day <input checked="" type="checkbox"/> 1-Day <input type="checkbox"/> 4-Day <input type="checkbox"/> 2-Day <input type="checkbox"/> 5-Day <input type="checkbox"/> Special Request: _____
Contact Name: Michelle Marcum Todd Marcum	
Address: 510 Honaker Hollow Road	
City State Zip: Caldwell WV 24925	
Phone: 304-661-6092	
Email: marcum_insulation@yahoo.com	

TYPE OF ANALYSIS REQUESTED

ASBESTOS PCM (Air Samples) <input type="checkbox"/> PLM (Bulk Samples) <input checked="" type="checkbox"/> TEM Analysis <input type="checkbox"/> Point Count (If Applicable) <input type="checkbox"/> Analyze to Positive <input type="checkbox"/>	FUNGAL SPORE Spore Trap (Air) <input type="checkbox"/> Direct Exam (Tape/Swab/Wipe) <input type="checkbox"/>	LEAD XRF <input type="checkbox"/> Soil <input type="checkbox"/> Wipe <input type="checkbox"/> Chips <input type="checkbox"/>
--	---	---

Bill To If Different: _____ Address: _____ City State Zip: _____ Alt. Email: _____	Comments/Instructions: _____ _____ _____
---	--

PAID BY: Cash Card Check

Project ID: _____	PO Number: _____
Sampling Date/Time: 3-27-25	Sampled By: TODD MARCUM

Project Description/Location:
 214 South Lexington Covington Va

Sample ID	Description	Comments	Lab ID	
1	Window glaze		25B-07785	
2	Drywall			
3	Drywall			
4	Drywall			
5	Dry wall			
6	Ceiling tile			
7	Dry Wall			
8	Board behind Drywall			
9	(Closet) linoleum			
10	linoleum under carpet			
11	linoleum bathroom			
12	floor tile under laminate			
13	blue tile Kitchen			
14	tan tile Kitchen			
15	ceiling			
16	floor tile play room			
17	ceiling main foyer			
18	Dry wall			
19	roofing			25B-07753

Relinquished By: Michelle Marcum Date: 3/27/25
 Received By: Casey Brown Date: _____
 Time: _____

Laboratory Use:

RECEIVED
 MAR 28 2025

DRAFT AIA® Document A201® - 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«Alleghany Highlands Community Services Crisis Receiving Center/Crisis Stabilization Unit »
«313 S Monroe and 320 E Pine St, Covington VA 24426 »

THE AGENCY:

(Name, legal status and address)

«Alleghany Highlands Community Services » «Ingrid Barber Executive Director »
«205 E Hawthorne St, Covington VA 24426 Phone 540-965-2135»

THE ARCHITECT:

(Name, legal status and address)

Lineage Architects

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- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Agency and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Agency/Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Agency in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Agency and by Separate Contractors.

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Agency or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

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

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owner of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Agency, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 AGENCY

§ 2.1 General

§ 2.1.1 The Agency is identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Agency shall designate in writing a representative who shall have express authority to bind the Agency with respect to all matters requiring the Agency's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Agency" means the Agency or the Agency's authorized representative.

§ 2.1.2 The Agency shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Agency's interest therein.

§ 2.2 Evidence of the Agency's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Agency shall furnish to the Contractor reasonable evidence that the Agency has made financial arrangements to fulfill the Agency's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Agency provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Agency shall furnish to the Contractor reasonable evidence that the Agency has made financial arrangements to fulfill the Agency's obligations under the Contract only if (1) the Agency fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Agency's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Agency fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Agency that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Agency furnishes evidence of financial arrangements under this Section 2.2, the Agency shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Agency has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Agency, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Agency

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

§ 2.3.2 The Agency shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Agency shall employ a successor to whom the Contractor and all Subcontractors has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Agency shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Agency but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Agency shall furnish information or services required of the Agency by the Contract Documents with reasonable promptness. The Agency shall also furnish any other information or services under the Agency's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Agency shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Agency's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Agency may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Agency to stop the Work shall not give rise to a duty on the part of the Agency to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Agency's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Agency to commence and continue correction of such default or neglect with diligence and promptness, the Agency may, without prejudice to other remedies the Agency may have, correct such default or neglect. Such action by the Agency and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Agency for the reasonable cost of correcting such deficiencies, including Agency's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Agency. If the Contractor disagrees with the actions of the Agency or the Architect, or the amounts claimed as costs to the Agency, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. In so doing, the Contractor shall endeavor throughout the Project to (a) discover and disclose to the Agency and Architect any errors or omissions in the Plans and Specifications and any defective Work being incorporated into the Project contrary to the Contract Documents that a diligent review would disclose; (b) provide project administration and superintendence so as to efficiently manage the Project and the work of its Subcontractors; (c) furnish at all times sufficient labor, material, and equipment to permit the timely and proper prosecution of the Work; (d) coordinate, schedule, and integrate the work of any other contractors providing services, materials, or equipment to the Project so as to prevent delay in Project completion; and (e) dutifully and timely perform the other duties imposed on the Contractor in the Contract Documents.

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become reasonably familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Agency pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information form. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report any nonconformity discovered by or made known to the Contractor as a request for information.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Agency, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Agency or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Agency and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work, the Contractor may make substitutions only with the consent of the Agency, after evaluation by the Agency and or Architect and in accordance with a Change Order or Construction Change Directive. Prior to requesting any substitution, the Contractor shall confirm in writing to the Architect and the Agency that the Substitution will: (a) meet the intent of the Design; (b) comply with applicable laws, codes, and ordinances; (c) create no conflicts with the Contract Documents; and (d) meet or exceed the quality and performance anticipated for the originally specified materials or equipment.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

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

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Agency, or shall be transferable to the Agency, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Agency before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Agency and or Architect will promptly investigate such conditions and, if it is determined that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If it is determined that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Contractor will be notified, stating the reasons. If either party disputes the determination or recommendation, that party may submit a Claim as provided in Article 15. Failure of the Contractor to give notice set forth herein shall constitute a conclusive waiver of any claim for additional compensation or time related to concealed or unknown conditions.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Agency. Upon receipt of such notice, the Agency shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Agency but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Agency may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Agency with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Agency of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Contractor may be notified, stating whether the Agency has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Agency has made reasonable and timely objection. The Contractor shall not change the superintendent without the Agency's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Agency's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for approval within 14 calendar days and updated no less than once per month. The approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Agency and or Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in

accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Agency, and delivered to the Agency upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Agency and or Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Agency or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Agency and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Agency and or Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Agency and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Agency and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Agency and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect. Contractor shall furnish red line drawings at project conclusion to serve as basis for as-built drawings and shall certify the reasonable accuracy of the red line drawings.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall be aware of the lot lines for the alleyway and adjoining lot and prohibit encroachment on these areas.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Agency or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Agency or a Separate Contractor except with written consent of the Agency and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Agency or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Agency may do so and the Agency shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Agency and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Agency, Owner, and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Agency or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Agency, Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Agency pursuant to Section 2.3.2 and identified as such in the Agreement.

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Agency's representatives will provide administration of the Contract as described in the Contract Documents until the date the final Certificate for Payment. The Architect will have authority to act on behalf of the Agency only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals agreed upon with the Agency, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visit(s), the Architect will keep the Agency reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Agency (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Agency and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Agency shall promptly notify the Architect of the substance of any direct communications between the Agency and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Agency. The Contract Documents may specify other communication protocols.

§ 4.2.5 Contractor's Applications for Payment, the Agency's representative(s) will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Agency and or Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Contractor shall allow a minimum of seven days for review.

§ 4.2.8 The Contractor will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect at the direction of the Agency may conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Agency, for the Agency's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Agency and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Agency shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Agency or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Agency and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Agency's and or Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents at the Agency's direction. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Agency and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Agency or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Agency or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after termination of the Contract by the Agency for cause pursuant to Section 14.2 and only for those subcontract agreements that the Agency accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Agency accepts the assignment of a subcontract agreement, the Agency assumes the Contractor's rights and obligations under the subcontract.

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

§ 5.4.3 Upon assignment to the Agency under this Section 5.4, the Agency may further assign the subcontract to a successor contractor or other entity. If the Agency assigns the subcontract to a successor contractor or other entity, the Agency shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY AGENCY OR BY SEPARATE CONTRACTORS

§ 6.1 Agency's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Agency under separate agreements. The Agency reserves the right to perform construction or operations related to the Project with the Agency's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

§ 6.1.3 The Agency shall provide for coordination of the activities of the Agency's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Agency in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Agency until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Agency performs construction or operations related to the Project with the Agency's own forces or with Separate Contractors, the Agency or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Agency or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Agency or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Agency's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Agency or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Agency for costs the Agency incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Agency shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Agency or Separate Contractor as provided in Section 10.2.5.

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

§ 6.3 Agency's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Agency as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Agency may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

§ 7.1.2 A Change Order shall be based upon agreement among the Agency, Contractor, and Architect. A Construction Change Directive requires agreement by the Agency and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

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

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Agency, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Agency and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive. Notwithstanding anything in Article 7 to the contrary, the Contractor conclusively waives any right to additional compensation for extra or changed work that was not memorialized in a written Change Order or Construction Change Directive prior to the extra or changed Work being performed.

§ 7.4 Minor Changes in the Work

The Agency and or Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract

Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Agency in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Agency.

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Agency or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control; (4) by delay authorized by the Agency pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine subject to the Agency’s right to challenge the Architect’s determination by filing a claim.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Agency or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Agency’s Representative before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy. This schedule, shall be used as a basis for reviewing the Contractor’s Applications for Payment. Any changes to the schedule of values shall be submitted to the Agency’s Representative and supported by such data to substantiate its accuracy as may be required, and shall be used as a basis for reviewing the Contractor’s subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Agency an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Agency or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

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

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

§ 9.4 Certificates for Payment

§ 9.4.1 The Agency's representative will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Agency a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue a Certificate for Payment for such amount as determined to be properly due, and notify the Contractor of the reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor stating the reasons for withholding certification in whole as provided in Section 9.5.1.

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Agency may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Agency, if in the Agency's opinion the representations required by Section 9.4.2 cannot be made. If the Agency is unable to certify payment in the amount of the Application, the Agency will notify the Contractor as provided in Section 9.4.1. If the Contractor and Agency cannot agree on a revised amount, the Agency will promptly issue a Certificate for Payment for the amount for which the Agency is able to make such representations. The

Agency may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary to protect the Agency from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Agency is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Agency or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the certification for payment under Section 9.5.1.3, the Agency may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Agency makes payments by joint check, the Agency shall notify the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

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

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Agency, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Agency has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Agency to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Agency shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. The Agency shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Unless the Contractor provides the Agency with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Agency. Nothing contained herein shall

require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Agency has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Agency from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Agency shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If a Certificate for Payment is not issued, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Agency does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Agency, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Agency can occupy or utilize the Work for its intended use. A prerequisite of Substantial Completion is the issuance by the authority having jurisdiction a Certificate of Occupancy to permit beneficial use.

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

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

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

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

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Agency may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Agency and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security,

maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Agency and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Agency or the Agency's property might be responsible or encumbered (less amounts withheld by Agency) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Agency, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Agency. If a Subcontractor refuses to furnish a release or waiver required by the Agency, the Contractor may furnish a bond satisfactory to the Agency to indemnify the Agency against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Agency all money that the Agency may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Agency shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Agency, if permitted by the Contract Documents, after final payment.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not

addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Agency and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Agency shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Agency shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Agency in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Agency. If either the Contractor or Architect has an objection to a person or entity proposed by the Agency, the Agency shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Agency and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Agency and Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Agency shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Agency shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Agency for the cost and expense the Agency incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Agency's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Agency shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Agency and Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds

from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents; the Contractor shall provide notice to the Agency of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Agency shall, unless the lapse in coverage arises from an act or omission of the Agency, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Agency's Insurance

§ 11.2.1 The Agency shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Agency shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Agency fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Agency shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Agency, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Agency fails to procure coverage, the Agency waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Agency would have been covered by the insurance to have been procured by the Agency. The cost of the insurance shall be charged to the Agency by a Change Order. If the Agency does not provide written notice, and the Contractor is damaged by the failure or neglect of the Agency to purchase or maintain the required insurance, the Agency shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Agency's Required Property Insurance. Within three (3) business days of the date the Agency becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents; the Agency shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Agency, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Agency or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Agency waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Agency would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Agency by an appropriate Change Order. The furnishing of notice by the Agency shall not relieve the Agency of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Agency and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Agency or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance

premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Agency insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Agency waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Agency, at the Agency's option, may purchase and maintain insurance that will protect the Agency against loss of use of the Agency's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Agency waives all rights of action against the Contractor and Architect for loss of use of the Agency's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Agency as fiduciary and made payable to the Agency as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Agency shall pay the Architect and Contractor their just shares of insurance proceeds received by the Agency, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Agency shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Agency shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Agency shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Agency does not terminate the Contract for convenience, the Agency and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Agency may proceed to settle the insured loss, and any dispute between the Agency and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Agency may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that has not specifically requested to examine prior to its being covered, a request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Agency to do so, unless the Agency has previously given the Contractor a written acceptance of such condition. The Agency shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Agency fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Agency waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Agency or Architect, the Agency may correct it in accordance with Section 2.5.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Agency and Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Agency may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Agency's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Agency, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Agency shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Agency shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Agency, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Agency, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Agency, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Agency's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

- .1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3** Because a Certificate for Payment has not been issued and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Agency has not made

payment on a Certificate for Payment within the time stated in the Contract Documents and lacked cause under the terms of the Agreement; or

- .4 The Agency has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Agency and Architect, terminate the Contract and recover from the Agency payment for Work executed, as well as the percentage of fee and General Conditions earned to date and reasonable and unavoidable costs incurred by reason of the termination.

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

§ 14.2 Termination by the Agency for Cause

§ 14.2.1 The Agency may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the sums set forth in the Contractor's Application for Payment;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Agency may, without prejudice to any other rights or remedies of the Agency and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

§ 14.3 Suspension by the Agency for Convenience

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

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

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

§ 14.4 Termination by the Agency for Convenience

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

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

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

§ 14.4.3 In case of such termination for the Agency's convenience, the Agency shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

§ 14.4.4 Notwithstanding any provision in the Agreement to the contrary, the Agency's and the Contractor's right to terminate this Agreement for cause must (a) be preceded by a written notice of an intent to terminate, and (b) involve a failure by the defaulting party to cure the stated grounds for the intended termination within seven days of such notice.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Agency and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Agency to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Agency and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case, not more than 10 years after the date of Substantial Completion of the Work. The Agency and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Agency or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Agency or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Agency shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

Except for a Claim for additional compensation due to an Agency-caused delay, which is addressed in Section 15.1.5.1, if the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim and within twenty-one days of the event giving rise to the increase. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4 The Contractor's failure to give such written notice shall constitute a conclusive waiver of any claim for additional compensation under the Agreement up to the date of written notice.

§ 15.1.5.1:

The Contractor shall not be entitled to any compensation for delay unless: (a) it has given the Agency written notice of the cause of the delay and the Agency has not cured the cause of the delay within seven days thereafter; (b) the cause of the delay was within the reasonable control of the Agency to avoid; and (c) the Contractor demonstrates the delay impacted the critical path as shown on the most recent version of the approved Schedule. The Contractor shall not be entitled to assert a delay damage claim under this provision for any damage incurred prior to the running of the cure period set forth herein or where the Contractor's, or any of its Subcontractors' or Suppliers', own failure to prosecute the work in a timely manner was a contributing cause.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given within twenty-one days of the event giving rise to the increase. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. The Contractor's failure to give such written notice shall constitute a conclusive waiver of any claim for time extensions up to the date of written notice.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Agency waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1** damages incurred by the Agency for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker,

unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Agency.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Agency to authorize retention of such persons at the Agency's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Agency may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Agency may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Agency and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Agency and Contractor under this Agreement.

§ 15.5 Liens and Claims

Unless caused by the Agency's wrongful failure to make timely payment to the Contractor for Work properly performed, Contractor shall not permit or suffer any mechanic's or materialmen's liens of any party retained by, through or under Contractor, in connection with the Project to remain a lien upon or against the Project or the Site of the Work. If any such lien should be filed, Contractor shall promptly cause such lien to be discharged by payment or otherwise in accordance with provisions of Virginia law. If Contractor fails to discharge such lien within ten (10) days of written notice to do so from Agency, Agency may discharge the lien and offset its costs and expense, including attorney's fees, in doing so against any amount due Contractor.

§ 15.5.1

The party prevailing in any litigation that is initiated to resolve a Claim shall be entitled to recover reasonable attorneys' fees and litigation expenses incurred in prevailing on such Claim. For the purpose of defining the prevailing party, a party must prevail by (a) final judgment on over 50% of its Claim(s), and (b) defeat over 50% of the other party's Claim(s), if any.

§ 15.5.2

The Contractor and Agency waive their rights against each other, and their respective agents, officers, directors, and employees, for recovery of damages to the extent these damages are covered by any insurance carried by the Agency, Contractor, or other parties participating in the Project. The Contractor shall arrange for its Subcontractors, regardless of tier, to provide the same waiver.

§ 15.5.3

The Contractor shall include in each of its subcontracts a provision that upon the Contractor's termination for convenience or cause, the Agency may, should it elect, to take assignment of the subcontract by providing the Subcontractor written notice thereof.