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CONSTRUCTION CONTRACT

THIS AGREEMENT is made this ____ day of _____, 20__, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property & Procurement, on behalf of the Department of Public Works (hereinafter referred to as “Government”) and **[Insert Contractor’s Name or Company Name as it appears on Articles of Incorporation/ Formation Documents]** (hereinafter referred to as “Contractor”).

WITNESSETH:

WHEREAS, the Government is in need of a contractor to furnish all labor, materials and equipment necessary for the **[Insert Project Description]** in strict accordance with the plans and specifications (incorporated by reference and made a part of this contract), which duties and responsibilities are more particularly described in *Addendum I*, (Scope of Work), *Addendum II* (General Provisions and Warranties together with the additional General Provisions – Construction), *Addendum III* (Termination of Contracts), and *Addendum IV* (Compensation) attached hereto; and

WHEREAS, the Contractor represents that it is willing and capable of providing such services;

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

1. SERVICES

The Contractor will provide the services described more particularly in Addendum I (Scope of Work) incorporated herein by reference and made a part of this construction contract.

2. TERM

This Contract shall commence upon execution by the Commissioner of the Department of Property and Procurement and shall terminate within **number of days in words (# of days)** calendar days from the issuance of the formal Notice to Proceed, or in accordance with an agreed upon extension pursuant to the General Provisions.

3. COMPENSATION

The Government, in consideration of satisfactory performance of the services described in Addendum I, agrees to pay the Contractor the sum of **[insert contract price in words (contract**



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price in numbers)] in accordance with the provisions set forth in Addendum IV (Compensation), attached hereto is hereby incorporated by reference and made a part of this contract.

4. LIQUIDATED DAMAGES

It is hereby expressly agreed by the parties hereto that in the event the Contractor has not completed the scope of work under the term set forth in Paragraph 2 hereof, **[insert liquidated damages in words (liquidated damages in numbers)]** for each calendar day or portion thereof shall be due the Government. The liquidated damages shall first be deducted from any contract monies due, but not yet paid to the extent available.

5. RECORDS

The Contractor will present documented, precise records of time and/or money expended under this Contract.

6. PROFESSIONAL STANDARDS

The Contractor agrees to maintain the professional standards applicable to its profession and to Contractors doing business in the United States Virgin Islands.

7. DOCUMENTS, PRINTOUTS, ETC.

Certified copies of all documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract, or at the Government's request, during the life of the contract. The above-described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

8. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, independent contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms, associations or corporations for the acts, omissions, responsibilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance, gross receipt, excise, and social security taxes for Contractor, its servants, agents or independent contractors.



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9. ASSIGNMENT

The Contractor shall not subcontract or assign any part of the services under this contract without the prior written approval of the Government.

10. INDEMNIFICATION

Contractor agrees to indemnify, defend, and hold harmless the Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expenses (including attorney's fees) and causes of action of whatsoever character which the Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of Government.

11. INDEPENDENT CONTRACTOR

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

12. GOVERNING LAW

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction and venue are exclusive in the United States Virgin Islands.

13. WAIVERS AND AMENDMENTS

No waiver, modification, or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification, or amendment. Any such waiver, modification, or amendment in any instances shall in no event be construed to be a general waiver, modification, or amendment of any of the terms, conditions, or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

14. ENTIRE AGREEMENT

This agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this agreement. This agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether written or oral.



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15. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms, hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as the Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, the Government may apply such sums in such manner as the Government may deem proper to secure itself or to satisfy such claims. The Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

16. CONDITION PRECEDENT

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Commissioner of the Department of Property and Procurement.

17. TERMINATION

Either Party will have the right to terminate this contract with cause on ten (10) days written notice to the other party specifying the date of termination. The attached "Addendum III-Termination of Contracts for the Convenience of the Government" is hereby fully incorporated herein by reference and is made a part of this agreement.

18. PARTIAL TERMINATION

The performance of work under this contract may be terminated by the Government in part, whenever the Government shall deem such termination advisable by providing ten (10) days written notice to the Contractor. This partial termination shall be affected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the ten (10) days' notice.

19. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

20. CONFLICT OF INTEREST

- (a) Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to perform under this Contract.



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(b) Contractor further covenants that it is:

- (1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature or any other elected territorial official; or an officer or employee of the legislative, executive, or judicial branch of the Government or any agency, board, commission, or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or
- (2) a territorial officer or employee and, as such, has:
 - (i) familiarized itself with the provisions of Title 3, Chapter 37, Virgin Islands Code, pertaining to conflicts of interest, including the penalties provisions set forth in section 1108 thereof;
 - (ii) not made, negotiated or influenced this contract, in its official capacity; and
 - (iii) no financial interest in the contract as that term is defined in section 1101, (1) of said Code chapter.

21. EFFECTIVE DATE

The effective date of this Contract is upon the execution by the Commissioner of the Department of Property and Procurement.

22. NOTICE

Any notice required to be given by the terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT

Anthony D. Thomas, Commissioner
Department of Property and Procurement
8201 Sub Base, Suite 4
St. Thomas USVI 00802

Head of User Agency Name
User Agency's Title
User Agency Name
User Agency's Address
User Agency's City, State, Zip Code

CONTRACTOR

Contractor's Name
Contractor's Title
Contractor's Name or Company Name
Contractor's P. O. Box
Contractor's City, State, Zip Code



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23. LICENSURE

The Contractor covenants that it has:

- a. obtained all of the applicable licenses or permits, temporary or otherwise, as required by Title 27 of the Virgin Islands Code; and
- b. familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

24. CONTRACTOR'S REPRESENTATIONS

The Contractor agrees that it is fully informed regarding all the conditions affecting the work to be done and labor and materials to be furnished for the completion of the Contract, and that it has been engaged in and now does such work and represents that it is fully equipped, competent, and capable of performing the work and is ready and willing to perform such work.

The Contractor agrees further to begin work not later than the date indicated on the formal Notice to Proceed and complete the work within the number of days specified in the proposal or as extended in accordance with the General Provisions of the Contract.

The Work shall be done under the direct supervision of the Government, and in accordance with the laws of the Government and its Rules and Regulations thereunder issued and any and all applicable federal rules and regulations. The parties hereto agree that this contract shall, in all instances, be governed by the Laws of the Government of the Virgin Islands.

25. WARRANTY OF NON-SOLICITATION

The Contractor expressly warrants that it nor its officers, agents or employees has employed no person to solicit or obtain this contract on its behalf, or to cause or procure the same to be obtained upon compensation in any way, contingent, in whole or in part, upon such procurement, and that it nor its officers, agents or employees has not paid, or promised or agreed to pay to any person, in consideration of such procurement, or in compensation for services in connection therewith, any brokerage, commission, or percentage upon the amount receivable by him hereunder; and that it nor its officers, agents or employees has not, in estimating the contract price demanded by it included any sum by reason of such brokerage, commission or percentage; and that all monies payable to it hereunder are free from obligation to any other person for services rendered, or supposed to have been rendered, in the procurement of this contract.

Breach of the warranty shall give the Government the right to terminate this Contract, or in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fees.



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26. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

27. DEBARMENT CERTIFICATION

By execution of this contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT." In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

28. OTHER PROVISIONS

Addendum I (Scope of Work), Addendum II (General Provisions and Warranties), Addendum III (Termination of Contracts), and Addendum IV (Compensation) attached hereto are hereby incorporated by reference and made a part of this contract.

29. INSURANCE

Contractor shall maintain the following insurance coverages during the term of this Contract

- (a) **COMMERCIAL GENERAL LIABILITY:** Commercial general liability insurance, in a form acceptable to the Government, on a "per occurrence" basis with a minimum limit of not less than **one million dollars (\$1,000,000.00)** for any one person per occurrence for death or personal injury and **one million dollars (\$1,000,000.00)** for any one occurrence for property damage. Insurance policy(ies) shall name the Government of the Virgin Islands as the certificate holder and additional insured via an endorsement. **(For contracts small contracts valued under \$100,000, insurance limits up to \$100,000 are acceptable)**
- (b) **WORKERS' COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.



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30. PAYMENT AND PERFORMANCE BONDS

The Contractor shall comply with the following minimum bonding requirements:

- (a) A performance bond to secure Contractor’s obligations and performance under the contract for 100% of the Contract price; and
- (b) A payment bond to assure payment to all persons supplying labor and material in the execution of the work provided for in the contract for 100% of the Contract price; or
- (c) In case of preferred bidders only, any allowable form of guaranty allowed under 31 V.I.C. § 236a and as approved by the Commissioner of the Department of Property and Procurement.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

Date: _____

Head of User Agency Name
Title
User Agency Name

Date: _____

Anthony D. Thomas
Commissioner
Department of Property and Procurement

CONTRACTOR

Date: _____

Contractor’s Name, Title
Contractor’s Company Name

(Corporate seal, if Contractor is a corporation)

APPROVED AS TO LEGAL SUFFICIENCY
AT THE DEPARTMENT OF JUSTICE BY: _____
Date _____

Purchase Order No.



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Addendum I (include each addenda on a separate sheet of paper)

Scope of Work

Addendum II

General Provisions and Warranties

Additional General Provisions - Construction

Addendum III

Termination of Contracts



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Addendum IV *Compensation*

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Work), agrees to make progress payments based on the Schedule of Values and invoices submitted by the Contractor **[Insert Contractor's Name or Company Name]** in accordance with Clause 7 (Payments to Contractor) of the General Provisions.

The parties agree that the sum to be paid under this contract is **[Insert Contract price in words] [(Insert Contract price in numbers)]**. The parties further agree that payments will be made in accordance with services rendered.

The final payment is subject to the inspection and acceptance of the project by the Government, the submission of all pertinent warranties, and the Release of Claims. Contractor shall submit a Waiver of Liens or Affidavits of subcontractors who have released the contractor of its obligations. Contractor shall also submit Consent of Surety before final payment and, upon the Government's request, any other documentation the Government deems necessary.

GENERAL PROVISIONS

Section 22. WARRANTY OF CONSTRUCTION

(a) In addition to any other warranties set out elsewhere in this contract, the Contractor warrants that the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of this subcontractors and suppliers at any tier. Such warranty shall continue for a period of one year from the date of final acceptance of the work, but with respect to any part of the which the Government takes possession of prior to final acceptance, such warranty shall continue for a period of one year from the date the Government takes possession. Under this warranty, the Contractor shall remedy at his own expense any such failure to conform or any such defect. In addition, the Contractor shall remedy at his own expense any damage to Government owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirement or any such defect of equipment, material, workmanship, or design. The Contractor shall also restore any work damaged repaired or replaced hereunder will run for one year from the date of such repair or replacement.

(b) The Government shall notify the Contractor in writing within a reasonable time after the discovery of any failure, defect, or damage.

(c) Should the Contractor fail to remedy any failure, defect, or damage described in (a) above within a reasonable time after receipt of notice thereof the Government shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's expense.

(d) In addition to the rights and remedies provided by this clause, all sub-contractor's, manufactures', and suppliers', warranties expressed or implied, respecting any work and materials shall at the direction of the Government, be enforced by the Contractor for the benefit of the Government. In such case if the Contractor's warranty under (a) above has expired, any suit directed by the Government to enforce a subcontractors, manufactures or suppliers warranty shall be at the expense of the Government. The Contractor shall obtain any warranties which the subcontractors, manufacturers, or suppliers would give in normal commercial practice.

(e) If directed by the Contracting Officer, the Contractor shall require any such warranties to be executed to the Government.

(f) Notwithstanding any other provision of this clause, unless such a defect is caused by the negligence of the Contractor or his subcontractors or suppliers at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage which results from any such defect in Government furnished material or design.

(g) The warranty specified herein shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistake, or fraud.

GENERAL PROVISIONS (CONSTRUCTION CONTRACT)

1. DEFINITIONS

(a) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative.

2. SPECIFICATIONS AND DRAWINGS

The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such determination shall be at his own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

3. CHANGES

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be change order, make any change in the work in the general scope of the contract, including but not limited to changes:

- (i) In the specifications (including drawings and designs);
- (ii) In the method or manner of performance of the work;
- (iii) In the Government-furnished facilities, equipment, materials, services, or site, or
- (iv) directing acceleration in the performance of the work.

(b) Any other written order or an oral order (which terms as used in this paragraph (b) shall include direction, instruction, interpretation, or determination) from the Contracting Officer, which causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

(c) Except as herein provided, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly: Provided, however, That except for claims based on defective

specifications, no claim for any change under (b) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required: And provided further, That in the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increase cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

(e) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under (a) above or the furnishing of a written notice under (b) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Government. The statement of claim hereunder may be included in the notice under (b) above.

(f) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

4. DIFFERING SITE CONDITIONS

(a) The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of: (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing material from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Contracting Officer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

(b) No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in (a) above; provided, however, the time prescribed therefore may be extended by the Government.

(c) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

5. TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor,

terminate his right to proceed with the work of such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract,) notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of any delay and extent the time for completing the work when, in his judgment, the findings of facts justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Clause 6 of these General Provisions.

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the

parties shall, if the contract contains a clause provided for termination for convenience of the Government, be the same as if the notice for termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitable adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in Paragraph (d) (1) of this clause, the term 'Subcontractors or Suppliers' means Subcontractors or Suppliers at any tier.

6. DISPUTES

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the head of the Agency involved. The decision of the head of the agency or his duly authorized representative for the determination if such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this contract as limited judicial review of any such decision to cases where fraud by such official or his representative or board is alleged: **Provided, however,** That any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This Disputes clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in this contract, however, shall be constructed as making final the decision of any administrative official, representative, or board on a question of law.

7. PAYMENTS TO CONTRACTOR

(a) The government will pay the contractor price as hereinafter provided.

(b) The Government will make progress payments monthly as the work proceeds, or at more frequent intervals as

determined by the Contracting Officer, on estimates approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a break down of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis of determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration (1) if such consideration is specifically authorized by the contract and (2) if the Contractor furnishes satisfactory evidence that he has acquired title to such material and that it will be utilized on the work covered by this contract.

(c) In making such progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize any of the remaining progress payments to be made in full. Also, whenever the work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to the Contractor all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made therefore without retention of a percentage.

(d) All material and work covered by progress payments made shall thereupon become the sole property of the Government, by this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or a waiving the right of the Government to acquire the fulfillment of all the terms of the contract.

(e) Upon completion and acceptance of all work, the amount due to the Contractor under this contract shall be paid upon the presentation of a properly executed voucher and after the Contractor shall have furnished the Government with a release, if required, of all claims against the Government arising by virtue of this contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), a release may also be required of the assignee.

8. ASSIGNMENT OF CLAIMS

(a) If this contract provides from payments aggregating \$1,000 or more, claims for moneys due or to become due to the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financial institution,

including any Federal lending agency and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any moneys due to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff.

9. MATERIAL AND WORKMANSHIP

(a) Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limited competition, and the Contractor may, at his option, use any equipment, material, article, or process which, in the judgment of the Contracting Officer is equal to that named. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the work. When required by this contract or when called for by the Contracting Officer, the Contractor shall furnish the Contracting Officer for approval full information concerning the material or articles which he contemplated incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at risk of subsequent rejection.

(b) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

10. INSPECTION AND ACCEPTANCE

(a) Except as otherwise provided in this contract, inspection and test by the Government of material and workmanship required by this contract shall be made at reasonable times and at the site of the work, unless the Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture, or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to the contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for

damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Government after acceptance of the completed work under the terms of paragraph (f) of this clause, except as hereinabove provided.

(b) The Contractor shall, without charge, replace any material or correct any workmanship found by the Government not to conform to the contract requirements, unless in the public interest the Government consents to accept such material or workmanship with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(c) If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Government (1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed in accordance with Clause 5 of these General Provisions.

(d) The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspection and test by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in this contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.

(e) Should it be considered necessary or advisable by the Government at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, an equitable adjustment shall be made in the contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted suitable extension of time.

(f) Unless otherwise provided in this contract, acceptance by the Government shall be made as promptly as practicable after completion and inspection of all work required by this contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Government's rights under any warranty or guarantee.

11. SUPERINTENDENCE BY CONTRACTOR

The Contractor shall give his personal superintendence to

the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work at all times during progress, with authority to act for him.

12. PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which therefore may have been accepted.

13. CONDITIONS AFFECTING THE WORK

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the Government. The Government assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the Government are expressly stated in the contract.

14. OTHER CONTRACTS

The Government may undertake or award other contracts for additional work, and the contractor shall fully cooperate with such other contractors and Government employees and carefully fit his own work to such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees.

15. PATENT INDEMNITY

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, arising out of the performance of this contract or out of the use or disposal by or for the account of the Government of suppliers furnished or construction work performed hereunder.

16. ADDITIONAL BOND SECURITY

If any surety upon a bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

17. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

18. OFFICIALS NOT TO BENEFIT

No member of the Legislature or members of Congress shall be admitted to any share or part of this contract, or to any benefit that may arise there from; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

19. UTILIZATION OF SMALL BUSINESS CONCERNS

(a) It is the policy of the Government as declared by the Legislature that a fair proportion of the purchases and contracts for suppliers and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

20. SUSPENSION OF WORK

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interpret all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period time, suspended, delayed, or interrupted by an act of the Contracting Officer in the administration of this contract, or by his failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirements shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption but not later than the date of final payment under the contract.

TERMINATION OF CONTRACTS

— 0 —

CONVENIENCE OF THE GOVERNMENT

- (a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.
- (b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:
 - (i) stop work under the contract on the date and to the extent specified in the Notice of Termination;
 - (ii) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
 - (iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
 - (iv) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - (v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent, he may require, which approval or ratification shall be final for all the purposes of this clause;
 - (vi) transfer title and deliver to the Government in the manner, at the times, and to the extent, if any, directed by the Contracting Officer (A) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information,

and other property which, if the contract had been completed, would have been required to be furnished to the Government.

- (vii) use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Commissioner of Property and Procurement, any property of the types referred to in (vi) above; provided, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at the price or prices approved by the Commissioner of Property and Procurement and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Commissioner of Property and Procurement may direct;
 - (viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
 - (ix) take such action as may be necessary, or as the Commissioner of Property and Procurement may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (c) After receipt of the Notice of Termination, the Contractor shall submit to the Commissioner of Property and Procurement his termination claim, in the form and with certification prescribed by the Commissioner of Property and Procurement. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Commissioner of Property and Procurement, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Commissioner of Property and Procurement determines that the facts justify such action, he may receive and act upon failure of the Contractor to submit his termination claim within the time allowed, the Commissioner of Property and Procurement may determine, on the basis of information available to him, the amount, if any, due to the Contractor by any reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- (d) Subject to the provisions of paragraph (c), the Contractor and the Commissioner of Property and Procurement may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Commissioner of Property and Procurement to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this

clause, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed to be paid to the Contractor pursuant to this paragraph (d):

- (e) In the event of the failure of the Contractor and the Commissioner of Property & Procurement to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Commissioner of Property & Procurement shall pay to the Contractor the amounts determined by him as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):
- (i) for completed supplies, materials and equipment or services accepted by the Government (or sold or acquired as provided in paragraph (b) (vii) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving for freight or other charges;
 - (ii) the total of —
 - (A) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph (e) (i) hereof;
 - (B) the cost settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (v) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (A) above; and
 - (C) a sum, as profit on (A) above, determined by the Contracting Officer to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
 - (iii) the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontract thereunder, together with reasonable storage, transportation and other costs incurred in connection with the protection or disposition of property allocable to this contract.

Provisions from 2 CFR 200 - Appendix II

1. EQUAL EMPLOYMENT OPPORTUNITY

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, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that during employment, employees are treated without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract

or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

3. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

Clean Air Act.

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*

(2) The contractor agrees to report each violation to the Department of Planning and Natural Resources (DPNR) understands and agrees that the DPNR will, in turn, report each violation as required to assure notification to the Government, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act.

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the DPNR and understands and agrees that the DPNR will, in turn, report each violation as required to assure notification to the Government, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Federal Emergency Management Agency.

4. SUSPENSION AND DEBARMENT

(1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the Government. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Government, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

5. BYRD ANTI-LOBBYING

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee

of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Government.

6. PROCUREMENT OF RECOVERED MATERIALS

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

7. ACCESS TO RECORDS

The following access to records requirements apply to this contract:

(1) The Contractor agrees to provide the Government, the Federal Emergency Management Agency Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the Federal Emergency Management Agency Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract

8. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to

be performed by Contractor under this Contract and arising from any cause, except the sole negligence of Government.

9. RIGHT TO WITHHOLD

If work under this contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Government will immediately notify the contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by Government if and while contractor gives satisfactory assurance to Government that such claims will be paid by contractor or its insurance carrier, if applicable in the event that such contest is not successful.

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned _____ certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered. Submission of this certification is a prerequisite for making or entering this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

AFFIDAVIT OF INDIVIDUAL SURETY
(See Instructions on Page 2)

STATE OF _____)
)
)
COUNTY OF _____)
)
)

SS:

I, the person whose signature appears below as surety, being duly sworn, depose and say that I am one of the sureties to the attached bond; that I am a citizen of the United States (a Resident Alien who has declared his intention to become a Citizen of the United States,) and of full age and legally competent; that I am not a partner in the business of the principal on the bond or bonds on which I appear or may appear as surety; that the information herein below furnished is true and correct. This affidavit is made to induce the Government of the Virgin Islands to accept me as surety on the attached bond.

MY NAME (first, middle, last)	MY ADDRESS (street and number, city and State)
-------------------------------	--

TYPE AND DURATION OF MY OCCUPATION	NAME OF MY EMPLOYER
------------------------------------	---------------------

MY BUSINESS ADDRESS (Street and number, city and State)	Amount I am worth in Real Estate and Personal Property over and above (1) All my debts and liabilities owing and incurred. (2) Any property exempt from execution (3) Any pecuniary interests I have in the business of the principal on said bond. And (4) Any interest I have in any so-called community property.
---	--

LOCATION AND DESCRIPTION OF REAL ESTATE OF WHICH I AM SOLE OWNER IN FEE SIMPLE (not exempt from seizure and sale under any homestead law, community or marriage law, or upon attachment, execution, or judicial process)

FAIR VALUE OF SUCH REAL ESTATE	ASSESSED VALUE OF SUCH REAL ESTATE FOR TAXATION PURPOSES
--------------------------------	--

ALL MORTGAGES OR OTHER ENCUMBRANCES AGAINST ABOVE REAL ESTATE. THERE BEING NO OTHERS (if none, so state)

MY LIABILITIES OWING AND INCURRED DO NOT EXCEED THE AMOUNT OF	Amount I am worth in Real Estate and Personal Property over Personal property subject to execution and sale. This amount being additional to the real estate above described
---	--

THE ABOVE PERSONAL PROPERTY CONSISTS OF THE FOLLOWING

ALL OTHER BONDS ON WHICH I AM SURETY (state character and amount of each bond; if none; so state)

MY SIGNATURE AS SURETY

Subscribed and sworn to before me this date at _____

(Signature) (Title of official administering oath) (Date)

OFFICIAL SEAL

CERTIFICATE OF SUFFICIENCY

I HEREBY CERTIFY, that the surety named herein is personally known to me; that, in my judgment, said surety is responsible, and qualified to act as such; and that, to the best of my knowledge and belief, the facts stated by said surety in the foregoing affidavit are true.

NAME (typewritten)

SIGNATURE

OFFICIAL TITLE

ADDRESS

INSTRUCTIONS

1. This form shall be used whenever sureties on bonds to be executed in connection with Government contracts are individual sureties. There shall be no deviation from this form except as authorized by the Department of Property and Procurement.

2. A firm, as such, will not be accepted as a surety, nor a partner for copartners or for a firm of which he is a member. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their stockholdings therein. Sureties, if individuals, shall be citizens of the United States or Resident Aliens who have declared their intention to become United States Citizen.

3. The individual surety shall justify, under oath, in a sum not less than the penalty of the bond, according to the form appearing on the face hereof, before a notary public, or some other officer having authority to administer oaths generally. If the officer has an official seal, it shall be affixed, otherwise the proper certificate as to his official character shall be furnished. Where citizenship is not required, as provided in paragraph 2 of these instructions, the affidavit may be amended accordingly.

4. The certificate of sufficiency shall be signed by an officer of a bank or trust company, under Oath by two persons not related to the surety.

5. By signing this affidavit, the individual surety agrees to assign to the Government of the Virgin Islands as security for performance by the Principal such real and/or personal property as the Government of the Virgin Islands shall designate having a fair market value of three times the bonded amount.

FORM - P&P-PB-20-73
APPROVED: 3-26-73
REVISED: 3-18-08
COMM. OF PROP.& PROC.

**GOVERNMENT OF THE VIRGIN ISLANDS
PERFORMANCE BOND**

(See Instructions on Reverse)

DATE BOND EXECUTED

PRINCIPAL

SURETY

PENAL SUM OF BOND (Express in words and figures)

CONTRACT NO.

DATE OF CONTRACT

KNOW ALL MEN BY THESE PRESENTS, That we, the **PRINCIPAL** and **SURETY** above named, are held and firmly bound unto the Government of the Virgin Islands, hereinafter called the government, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the Government, numbered and dated as shown above and hereto attached:

NOW THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Government, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In Presence of:

WITNESS

INDIVIDUAL PRINCIPAL

1	as to	[SEAL]
2	as to	[SEAL]
3	as to	[SEAL]
4	as to	[SEAL]

WITNESS

INDIVIDUAL PRINCIPAL

1	as to	[SEAL]
2	as to	[SEAL]

Attest

CORPORATE PRINCIPAL

BUSINESS ADDRESS

BY

AFFIX
CORPORATE
SEAL

TITLE

Attest

CORPORATE SURETY

BUSINESS ADDRESS

BY

AFFIX
CORPORATE
SEAL

TITLE

The rate of premium on this bond is per thousand.

Total amount of premium charged, \$

(The above must be filled in by corporate surety)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I,, certify that I am the secretary

of the corporation named as principal in the within bond, that

who signed the said bond on behalf of the principal, was then of said corporation; that I know his/her signature, and his/her signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

[CORPORATE]
[SEAL]

INSTRUCTIONS

1 This form shall be used for construction work or the furnishing of supplies or services, whenever a performance bond is required. There shall be no deviation from this form except as authorized by the Department of Property and Procurement.

2 The surety on the bond may be any corporation authorized under the laws of the Government of the Virgin Islands any State or possession of the United States, or by the Secretary of the Treasury to act as surety, or two responsible individual sureties. Where individual sureties are used, this bond must be accompanied by a complete Affidavit of Individual Surety for each individual surety (Standard Form.)

3 The name; including full Christian name, and business or residence address of each individual party to the bond shall be inserted in the space provided therefor, and each such party shall sign the bond with his usual signature on the line opposite the scroll seal, and if signed in Maine or New Hampshire, an adhesive seal shall be affixed opposite the signature.

4 If the principals are partners, their individual names shall appear in the space provided therefor, with the recital that they are partners composing a firm, naming it, and all the members of the firm shall execute the bond as individuals.

5 If the principal or surety is a corporation, the name of the State in which incorporated shall be inserted in the space provided therefore, and said instrument shall be executed and attested under the corporate seal as indicated in the form. If the corporation has no corporate seal the fact shall be stated, in which case a scroll or adhesive seal shall appear following the corporate name.

6 The official character and authority of the person or persons executing the bond for the principal, if a corporation shall be certified by the secretary or assistant secretary, according to the form herein provided. In lieu of such certificate there may be attached to the bond copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

7 The date of this bond must not be prior to the date of the instrument in connection with which it is given.

The rate of premium on this bond is _____ per thousand.

Total amount of premium charged, \$ _____

(The above must be filled in by corporate surety)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I _____, certify that I am the _____ secretary

of the corporation named as principal in the within bond, that _____

who signed the said bond on behalf of the principal, was then _____ of said corporation; that I know his/her signature, and his/her signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

[CORPORATE]
[SEAL]

INSTRUCTIONS

1 This form, for the protection of persons supplying labor and material, shall be used whenever a payment bond is required. It may also be used in any other case in which a payment bond is to be required. There shall be no deviation from this form except as authorization by the Government of the Virgin Islands.

2 The surety on the bond may be any corporation authorized under the laws of the Government of the Virgin Islands any State or possession of the United States, or by the Secretary of the Treasury to act as surety, or two responsible individual sureties. Where individual sureties are used, this bond must be accompanied by a complete Affidavit of Individual Surety for each individual surety (Standard Form.)

3 The name; including full Christian name, and business or residence address of each individual party to the bond shall be inserted in the space provided therefor, and each such party shall sign the bond with his usual signature on the line opposite the scroll seal, and if signed in Maine or New Hampshire, an adhesive seal shall be affixed opposite the signature.

4 If the principals are partners, their individual names shall appear in the space provided therefor, with the recital that they are partners composing a firm, naming it, and all the members of the firm shall execute the bond as individuals.

5 If the principal or surety is a corporation, the name of the State in which incorporated shall be inserted in the space provided therefore, and said instrument shall be executed and attested under the corporate seal as indicated in the form. If the corporation has no corporate seal the fact shall be stated, in which case a scroll or adhesive seal shall appear following the corporate name.

6 The official character and authority of the person or persons executing the bond for the principal, if a corporation shall be certified by the secretary or assistant secretary, according to the form herein provided. In lieu of such certificate there may be attached to the bond copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

7 The date of this bond must not be prior to the date of the instrument in connection with which it is given.

RELEASE OF CLAIMS UNDER CONTRACT

WHEREAS, the terms of a contract dated _____, entered into by the Government of the Virgin Islands, represented by **Property & Procurement** Contracting Officer, and _____, a corporation organized and existing under the laws of the U.S. **Virgin Islands** with principal offices in _____, **St. Thomas, V.I.**, for the _____, state that: "Upon completion and acceptance of all work required hereunder, the amount due the contractor under this contract will be paid upon the presentation of a properly executed and duly certified voucher therefor, after the contractor shall have furnished the Government with a release, if required, of all claims against the Government arising under and by virtue of this contract, other such claims, if any, as may be specifically excepted by the contractor from the operation of the release in stated amounts to be set forth therein,"

NOW, THEREFORE, in consideration of the premises and the payment by the Government of the Virgin Islands to the contractor of the amount due under the contract the sum of _____ the contractor hereby remises, releases, and forever discharges the Government from all manner of debts, dues, sum or sums of money, accounts, claims, and demands whatsoever, in law and in equity, under or by virtue of the said contract and warrants good title to all materials, supplies and equipment installed or incorporated in the and all work delivered in the premises, together with all improvements and appurtenances constructed thereon by to the Government of the Virgin Islands free of any claims, liens, or charges; further, that neither it nor any person, firm or corporation furnishing any material or labor for any work covered by this contract has any unpaid expenses or wages for such material or labor nor has any right to a lien upon the premises or any improvements or appurtenances thereon.

IN WITNESS WHEREOF, the hand and seal of the contractor have been hereunto set this day of, 20.....

By

(seal)

I, _____, certify that I am the **President** of the corporation named as contractor herein; that _____, who signed this release on behalf of the corporation, was then **President** of said corporation and that said release was duly signed for and on behalf of said corporation by authority of its governing body.

Sworn to before me this date

.....

.....

Notary