



## CONTRACT FOR PROFESSIONAL SERVICES

**THIS AGREEMENT** is made this 21st day of August, 2022, in the Territory of the Virgin Islands, by and between the **Government of the Virgin Islands, Department of Property and Procurement**, on behalf of the **Department of Education** of 2133 Hospital Street, Christiansted, U.S. Virgin Islands 00802 (hereinafter referred to as "Government") and **MCN Build, Inc.** with a principal place of business at 1214 28<sup>th</sup> Street NW, Washington, D. C. 20007 (hereinafter referred to as "Contractor" or "Design/Build Contractor"). The Government and Contractor are collectively referred to a "Parties" to this Contract.

### WITNESSETH:

**WHEREAS**, as a result of the passages of 2017 Hurricane(s) Irma and Maria, the Territory of the U.S. Virgin Islands incurred significant damages to its buildings, facilities, and infrastructure including the Arthur A. Richards, Jr. High School located in Frederiksted, St. Croix; and

**WHEREAS**, the Government is in need of the services of a qualified and experienced Contractor to provide the necessary tools, labor, and supplies with expertise in designing and constructing a turn key school facility at 13-A Estate Mount Pleasant on the island of St. Croix to include all furnishings, furniture, and equipment as specified in the Basis of Design which duties and responsibilities are more particularly described in Addendum I (Scope of Work) and its Attachment A (Bridging Documents), Addendum II (General Provisions and Warranties together with the additional General Provisions-Construction), Addendum III (Termination of Contracts), Addendum IV (Compensation), Addendum V (Provisions from 2 CFR 200 – Appendix II), and Addendum VI (Department of Housing and Urban Development ("HUD") General Provisions-HUD RIDER), and Addendum VII (Historically Underutilized Business / Minority/Women/Disadvantaged Business Enterprise Requirements) attached hereto; and

**WHEREAS**, the Government solicited the services under RFP No.017-C-2021 - Design-Build Services Arthur Richards PreK-8 New Build; and

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

**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

1.1 The Contractor will provide the services described in Addendum I (Scope of Work) and its Attachment A (Bridging Documents) attached hereto and made a part of this Contract (the "Project").

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1.2 The Design/Build Contractor has overall responsibility for and shall provide complete Pre-Construction Phase Services and Construction Phase Services and furnish all design services, materials, equipment, tools, and labor as necessary or reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Bridging Documents and the terms of this Agreement between the Government and Design/Build Contractor (the "Agreement"). The Services include the architectural, engineering, construction, installation, furnishing and equipping of classrooms and structures at the New Arthur A. Richards PK-8 School located to be located at 13-A Estate Mount Pleasant on the island of St. Croix (the site of the former Evelyn Williams campus in the St. Croix school district) in the U.S. Virgin Islands (hereinafter referred to as the "Project").

1.3 The Services, the Contract Sum, and the Contract Time established herein are based on the criteria set forth in the RFP, the assumptions and details contained in Attachment A (Bridging Documents), Addendum IV (Compensation), and Contractor's estimate dated October 7, 2021. Given the design/build nature of this Agreement and the conceptual state of the Bridging Documents, the Parties anticipate that the scope of the Services, including the proposed site plans, layouts, quantities, building selections, space planning, programming, and other details will change, evolve, and be refined during the Pre-Design Services Phase, Space Planning, Programing, & Schematic Design Phase, and Design Development Phase (collectively, the "Design Phase"); resulting in Contractor's Basis of Design. In recognition of this design development process, prior to commencing with the construction services, Contractor shall be entitled to a Change Order that will include adjustments to the portion of the Contract Sum applicable to the construction services only. The Parties shall, in good faith, negotiate such Change Order and agree that the adjustments to the Contract Sum shall correspond with, and be evaluated based upon a comparison of: (a) the initial Bridging Documents cost proposal attached to this Contract; Contractor's Basis of Design & Basis of Estimate, and cost proposal, relied upon to prepare the final approved Design Development Documents. Such revised Contract Sum is sometimes referred to herein as the "Definitive Contract Sum" and the Change Order establishing the Definitive Contract Price shall include a Basis of Design that further qualifies and describes the assumptions upon which the Definitive Contract Price is based as well as a CPM Schedule that sets forth the Substantial Completion date as well as the logic, construction durations, and milestone dates for key construction activities. Such schedule will be a summary level master schedule. The Definitive Contract Sum, itself, shall include (i) a Contractor controlled contingency of 10% and (ii) the amounts set forth in Addendum IV for A&E Fees, overhead and profit and general conditions unless the Definitive Contract Sum varies by more than five percent (5%) from the Initial Contract Sum in which case those cost elements shall be appropriately adjusted. In the event the Parties are unable to reach agreement on such Change Order after at least sixty (60) days of good faith negotiation, then either Party may terminate this Contract by providing written notice to the other Party. Such termination shall be treated as a termination for convenience and the procedures set forth in Addendum III (Termination of Contracts) shall apply.

1.4 The Parties further agree that Contractor shall be entitled to Change Orders during the construction phases of the Project if there are any requested or required changes in the Services that increase the cost or time to perform the Services. Corresponding adjustments in the Contract Sum





and Contract Time will be negotiated and approved by the Parties in accordance with the procedures set forth in Paragraph 36 (Changes in the Services) of this Contract, and shall be substantiated based on an evaluation of Contractor's Basis of Design and Basis of Estimate.

1.5 The Contractor shall perform all services described in the Contract Documents as well as those services reasonably inferable from the Contract Documents as necessary for completion of the Work and the Project. All professional services rendered under this Agreement shall be performed with the professional skill and care ordinarily provided by competent engineers or architects, as applicable, practicing in the same or similar locality and under the same or similar circumstances and professional license, and in compliance with all applicable laws and the terms of this Agreement. Such professional services shall be performed in accordance with the time frames established by this Agreement or agreed to by Government and the Contractor, or if no such time frames have been established, then as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as applicable. Work performed under this Agreement shall be performed in a good and workmanlike manner, free from defects in materials and labor, and in accordance with the Contract Documents, and all applicable Federal, State and local laws. The Contractor shall be responsible for all services and Work performed under this Agreement.

## 2. TERM AND EFFECTIVE DATE

2.1 This Contract shall commence immediately upon the execution of this Contract by the Governor of the Virgin Islands (the "Commencement Date") and shall terminate five (5) years after the issuance of the Notice to Proceed or in accordance with an agreed upon extension granted pursuant to Addendum II (General Provisions and Warranties together with the additional General Provisions – Construction Contracts) attached hereto and made a part hereof or upon the Contractor obtaining full compliance of the terms of this Contract, or December 31, 2025 whichever occurs first ("Final Completion Date"). The Substantial Completion date shall be July 31, 2025, which date shall thereafter be subject to adjustments in the Contract Time approved by the Government (the "Substantial Completion Date").

2.2 The "Contract Time" is defined as the period of time starting on the Commencement Date and ending on the Final Completion Date, subject to adjustments approved by the Government.

2.3 "Substantial Completion" is defined as the stage of the Site whereby the conditions and progress satisfactory to occupy the premises and use all structures for its intended purpose. Furthermore, activities past Substantial Completion required by the Contractor to bring the project to a 100% completion stage (i.e., the "Punch List" stage) will not interfere with the Government's use of the property. The Parties stipulate that no work may be conducted during the Punch List stage anywhere within the Site while students are present. The Government will allow work outside of school hours and on weekends on a case-by-case basis. A Certificate of Substantial Completion will be delivered to the Contractor by the Government at the stage of Substantial Completion. Occupancy and use of a Site by the Government does not constitute acceptance of the Services at the Site nor relieve the Contractor from completing all items on the punch list to bring the project to a 100% completion state.





### 3. COMPENSATION

The Government, in consideration of Addendum I (Scope of Work) and its Attachment A (Bridging Documents) the "Initial Contract Sum" for this Contract shall be an amount of **ONE HUNDRED FIFTY-NINE MILLION, TWO HUNDRED EIGHTY-THREE THOUSAND, ONE HUNDRED FOURTEEN DOLLARS AND THIRTY-TWO CENTS (\$159,283,114.32)** in accordance with Addendum IV (Compensation). The Initial Contract Sum established in this Paragraph 3 shall be increased and decreased in accordance with any and all applicable approved Change Orders approved by the Government including those referenced in Paragraphs 1.3 and 1.4. As used herein the term "Contract Sum" shall mean the then applicable Contract Sum (e.g. the Initial Contract Sum prior to establishing the reset contemplated in Paragraph 1.3, the Definitive Contract Sum thereafter, and in either case as such amounts may have been adjusted by any Change Orders entered into by the Parties.).

### 4. TRAVEL EXPENSES

Inclusive of the compensation for services as specified in Paragraph 3 (Compensation) above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing, in advance, by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government, or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed **Not Applicable N/A (\$ N/A)**.

### 5. LIQUIDATED DAMAGES

It is hereby 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 of this Contract, **Eight Thousand One Hundred Fifty Dollars and Zero Cents (\$8,150.00)** for each calendar day or portion thereof shall be due to the Government. The Liquidated damages shall first be deducted from any Contract monies due, but not yet paid to the extent available.

### 6. RECORDS

The Contractor when applicable, and accompanying each invoice, will present documented precise records of time and/or money expended under this Contract.

### 7. PROFESSIONAL STANDARDS

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

### 8. DOCUMENTS, PRINTOUTS, ETC.





8.1 All deliverables required to be provided by Contractor under this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above-described materials shall not be used by the Contractor or by any other person or entity except upon the written permission of the Government.

8.2 This Contract is subject to, and incorporates by reference, 45 CFR 75.322 governing rights to intangible property. Intangible property includes but is not limited to: computer software; patents, inventions, formulae, processes, designs, patterns, trade secrets, or know-how; copyrights and literary, musical, or artistic compositions; trademarks, trade names, or brand names; franchises, licenses, or contracts; methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data; and other similar items. The Contractor may copyright any work that is subject to copyright and was developed, or for which ownership was purchased under this Contract. The Contractor must deliver all intangible property, including but not limited to intellectual property, to the Government in a manner that ensures a limited royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use such intangible property exclusively for purposes of constructing, using, maintaining, altering, and adding to the Project. The Contractor is further subject to applicable regulations governing patents and inventions, including those issued by the U.S. Department of Commerce at 37 CFR Part 401.

8.3 In addition, and notwithstanding the foregoing or anything to the contrary set forth herein, Contractor will retain all common law, statutory, and other reserved rights, including copyright, patent and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience owned or possessed by Contractor before the commencement of, or developed or acquired by Contractor during or after, the performance of the Services and the foregoing shall not be deemed Services and Contractor shall not be restricted in any way with respect thereto.

## **9. LIABILITY OF OTHERS**

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, 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.

## **10. ASSIGNMENT**

The Government acknowledges that the Contractor will subcontract the design work to Perkins Eastman P.C. and Jaredian Design Group, LLC and that all or nearly all of the construction work to qualified construction contractors including but not limited to -GEC, LLC.. The Contractor shall notify the Government prior to awarding any such trade subcontract and shall obtain the Government's consent, which consent shall not be unreasonably delayed, conditioned or withheld.





shall be updated from time to time throughout the Project as additional upon approval by the Government.

## **11. 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 as a result of third-party claims, but only to the extent such loss, damage, liability, cost, charge, or expense, arises out of Contractor's negligent acts or omissions, or the negligent performance of the Services to be performed by Contractor (or any of its contractors, subcontractors, architects, consultants, or others under its control) under this Contract.

## **12. 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.

## **13. GOVERNING LAW; DISPUTE RESOLUTION**

13.1 This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

13.2 The Parties are committed to working cooperatively to ensure successful Service. In the event a dispute arises under the Contract, the Parties<sup>2</sup> agree to comply with the following dispute resolution procedures:

(a) First, in the event of a dispute, either Party may initiate these dispute resolution procedures by submitting a written notice of dispute to the other Party (the "Dispute Notice"). The Dispute Notice shall briefly summarize the nature of the dispute and such Party's claims and factual and legal positions, including a breakdown of the claims and the estimated amount of any monetary damages sought for each claim. After the issuance of the Dispute Notice, the Parties shall attempt to resolve the dispute amicably through good faith informal discussions and negotiations between the Parties' respective authorized representatives. Such meeting shall be scheduled within fifteen (15) days after issuance of the Dispute Notice. At least three (3) days prior to the scheduled date for the meeting, the Party that received the Dispute Notice shall provide the issuing Party with a written response to the Dispute Notice briefly describing such Party's responses, defenses, and counterclaims (if any), including a breakdown of the counterclaims and the estimated amount of any monetary damages sought in connection with each counterclaim.

(b) If the good faith discussions and negotiations required in Paragraph 13.2(a) are not successful, then any remaining disputes shall be referred to non-binding mediation as a condition precedent to commencing binding dispute resolution pursuant to Paragraph





13.2(c). The mediation shall be held in the US Virgin Islands or other mutually agreed upon and convenient location. The Parties shall mutually select a mediator, who shall be a qualified attorney or former judge with experience mediating construction disputes for similar projects. The parties shall split the cost of mediation equally.

(c) If the mediation as required in Paragraph 13.2(b) does not result in a settlement of the claims, the Parties' authorized representatives may opt to reengage in good faith discussions and evaluations regarding all potential options for binding dispute resolution options, including litigation, and any other alternatives. The Parties shall endeavor to select the most appropriate form of binding dispute resolution based on an evaluation of the nature of the claims, the amount in controversy, the time and cost associated with each form of dispute resolution, and the Parties' respective interests. The discussions shall take place within fifteen (15) days of the completion of the mediation referenced in Paragraph 13.2(b). In the event the Parties are unable to mutually agree on the form of binding dispute resolution, either Party may commence litigation in the US Virgin Islands as the default form of binding dispute resolution.

#### **14. 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 instance or 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.

#### **15. 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.

#### **16. RIGHT TO WITHHOLD**

16.1 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 necessary 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. In such an event, the Contractor shall promptly submit a revised invoice for the amount that is not disputed by the Government. Such revised invoice, however, shall not be deemed an admission by the Contractor that the original





invoice was defective, but rather as merely a request for payment of that portion of the amount that is not in dispute.

16.2 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.

## **17. CONDITION PRECEDENT**

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor of the U.S. Virgin Islands.

## **18. TERMINATION**

Either party will have the right to terminate this Contract with or without cause on sixty (60) days written notice to the other party specifying the date of termination.

## **19. 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 thirty (30) days written notice to the Contractor. This partial termination shall be effected 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 thirty (30) day notice. Addendum III (Termination of Contracts) shall govern the terms of any such payment.

## **20. 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.

## **21. 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 be performed under this Contract.
- (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 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision 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.

## 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

Honorable Anthony D. Thomas  
Commissioner  
Department of Property and Procurement  
3274 Estate Richmond  
St. Croix, U.S. Virgin Islands 00820

Commissioner  
Department of Education  
2133 Hospital Street  
St. Croix, VI 00802

### CONTRACTOR

Rudy Seikaly, President  
MCN Build, Inc.  
1214 28<sup>th</sup> Street NW  
Washington, DC 20007

## 23. LICENSURE

The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, 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. OTHER PROVISIONS**

Addenda I (Scope of Work), II (General Provisions and Warranties with General Provisions Construction Contracts), III (Termination of Contracts), IV (Compensation), V (Provisions from 2 CFR 200- Appendix II), VI (Department of Housing and Urban Development – General Provisions HUD/Rider, Addendum VII (Historically Underutilized Business / Minority/Women/Disadvantaged Business Enterprise Requirements, Attachment A (Bridging Documents), and Exhibit A (Prime Team Members) are attached hereto are a part of this Contract and are incorporated herein by reference.

## **25. 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 Notice to Proceed or as extended in accordance with the General Provisions of the Contract.

## **26. WARRANTY OF NON-SOLICITATION**

The Contractor expressly warrants that it nor any of 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 any of 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 any of 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.

## **27. DAVIS BACON ACT**

Contractor hereby agrees that it shall comply with all rulings and interpretations of the Davis-Bacon Act (40 USC 276a-5) and that the contractor and subcontractor agrees that all employees shall be paid the local prevailing wages as established by Virgin Islands statutes and laws.





## **28. 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.

## **29. 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 claims to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

## **30. NOTICE OF FEDERAL FUNDING**

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offence.

## **31. CHANGES IN CONSTRUCTION SERVICES**

Any changes in the Construction Services may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order subject to the limitations stated in Addendum II (General Provisions – Construction) and 31 V.I. R. & REGS. §§ 242-32 and 242-33. A Change Order is a written instrument signed by the Government and Contractor stating their agreement upon the change in the Services which are within the Scope of Work, and the amount of the adjustment, if any, in the Contract Sum and Contract Time. Contractor shall have no obligation to proceed with changed work without a Change Order executed in accordance with Virgin Islands law.

## **32. INSURANCE**

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

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- (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. Contractor may provide such coverage through a contractor controlled insurance program provided such program is underwritten by a third party insurance company reasonably acceptable to the Government and such program provides at least the coverage as would be otherwise required.
- (b) **PROFESSIONAL LIABILITY:** Professional liability insurance, in a form acceptable to the Government, which covers the services being performed under this Contract, with policy limits of not less than one million dollars (\$1,000,000.00) per claim. The Government shall be listed thereon as a certificate holder.
- (c) **WORKERS’ COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund as required under 24 V.I.C. § 272.
- (d) **BUILDER’S RISK:** Contractor will obtain property insurance written on a builder’s risk “all-risk” or other acceptable policy form for the replacement value of direct physical loss or damage of the project values except for Catastrophic perils such as Earthquake, Flood, and Hurricane, which would be limited in the amount of Ten Million Dollars (USD \$10,000,000) in the annual aggregate. The Government and its architect, consultants, contractors, and subcontractors shall be named as additional insureds on such builder’s risk policy. The property insurance shall be maintained through the term of this Contract. The builders risk policy shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, hurricane, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Contractor’s services and expenses required as a result of such insured loss. The deductibles shall not exceed \$100,000 except for Catastrophic perils such as Earthquake, Flood, and Hurricane, which should be subject to a 5% of the total property value in place at the time of loss subject to a minimum of \$250,000 per event, and the Government shall pay costs not covered because of such deductibles. This insurance shall cover portions of the work stored off the site, and also portions of the work in transit. The Parties acknowledge and agree that: (a) risk of loss for property damage including damages to the work shall pass to the Government upon Substantial Completion of each Site; (b) Contractor’s liability for damages and losses resulting from an insurable event under this builder’s risk policy shall be limited to proceeds payable from such policy; (c) Contractor shall pay the premium and other costs to procure and maintain the policy; (d) Contractor shall be entitled to reimbursement via





a Change Order for any deductibles paid; and (e) Government and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, for causes of loss to the extent covered by proceeds from such builder's risk policy, except such rights as they have to proceeds of such insurance. For the avoidance of doubt, the Contractor's obligation to repair, restore or replace any damage caused by a Catastrophic loss, including, but not limited to a hurricane, shall be limited to the available insurance proceeds; provided, however, that the Contractor shall bear the first \$250,000 of any such loss.

### **33. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES**

A facsimile, electronic or digital signature on this Contract shall be deemed an original and binding upon the Parties hereto.

### **34. PAYMENT AND PERFORMANCE BOND**

Contractor shall maintain payment and performance bonds in a form acceptable to the Government at no less than one hundred percent (100%) of the Contract price.

### **35. CONCEALED OR UNKNOWN CONDITIONS**

35.1 If the Contractor encounters conditions at any of the sites 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 Government before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. The Government shall promptly investigate such conditions and, if the conditions differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Services, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Government determines 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 Government shall promptly notify the Contractor in writing, stating the reasons.

35.2 If, in the course of the Services, the Contractor encounters human remains, or recognizes the existence of burial markers, religious sites, archaeological sites, or wetlands, not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall immediately notify the Government. Upon receipt of such notice, the Government 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 Government but shall continue with all other operations that do not affect those remains or features.





### **36. CHANGES IN THE SERVICES**

36.1 Changes in the Construction Services may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order subject to the limitations stated in this Contract and this Paragraph 36.

36.2 A Change Order is a written instrument signed by the Government and Contractor stating their agreement upon the change in the Services, and the amount of the adjustment, if any, in the Contract Sum and/or Contract Time. Contractor shall have no obligation to proceed with changed work or services without an executed Change Order.

36.3. The adjustment to the Contract Sum and/or Contract Time shall, when applicable, be evaluated under and based upon Contractor's Basis of Design and Basis of Estimate, and such adjustment shall be calculated on one of the following methods:

- (a) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (b) Unit prices stated in the Contract Documents or subsequently agreed upon;
- or
- (c) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

36.4 If the Parties are unable to agree on the method for adjustment to the Contract Sum or Contract Time, the Government shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Services attributable to the change, including, in case of an increase or decrease, an amount for overhead and profit in the percentages set forth in the Basis of Estimate. In such case, the Government's decision shall be considered an interim decision and shall be subject to dispute and resolution through the Disputes clause. During the pendency of any such dispute, Contractor shall keep and present, in such form as the Government may prescribe, an itemized accounting together with appropriate supporting data.

36.5 Unless otherwise provided in the Contract Documents, costs for the purposes of subparagraph 36.4 shall be limited to the following: Additional costs or reduction of costs of construction services; Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed; Rental costs of machinery and equipment, exclusive of hand tools; unforeseen work and additional costs of supervision, labor, and field office personnel directly attributable to the change.

### **37. CONTRACTOR'S WARRANTY**

37.1 The Contractor warrants to the Government that, for a period beginning on the date Contractor commences the Services and terminating one (1) year from acceptance of the final





product, materials and equipment furnished by Contractor and all subcontractors under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that, for a period beginning on the date Contractor commences work and terminating one year from the date of Substantial Completion of all applicable Site, the Services will conform to the requirements of the Contract Documents. Services, work, materials, or equipment not conforming to these requirements may be considered "Defective Work." The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Government, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

To the extent that Contractor hands over the Project in stages (mutually agreed upon by the Government and Contractor during the course of the project), the warranty period shall begin on the date Contractor hands over each such phase and relative to such phase shall end one (1) year thereafter.

37.2 Upon written notice from the Government of Defective Work, the Contractor shall either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Defective Work has been rejected by the Government, remove it from the applicable Site(s) and replace it with conforming work. The Contractor shall bear all direct and indirect and related costs of such correction or removal (including, but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby, and shall hold the Government harmless for same.

37.3 Should the Government determine, at its sole discretion, it is in its best interest to accept Defective Work, the Government may do so. Contractor shall bear all direct and indirect and related costs attributable to the Government's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such Defective Work, incorporating the necessary revisions in the Contract Documents and, if appropriate and justified, reflecting an appropriate decrease in the Contract Amount. If the Government accepts such Defective Work after final payment, the Parties shall negotiate in good faith in an attempt to agree upon an appropriate amount to adequately compensate the Government for its acceptance of the Defective Work.

### **38. FORCE MAJURE**

Neither Party shall be liable to the other for any delays or failure to perform under this Contract, as a result of conditions reasonably beyond the Party's control including but not limited to war, terrorist acts, riot, strikes, fire, earthquakes, hurricanes, floods, pandemics or endemics, or any act of God, discovery or uncovering of hazardous or toxic materials or historical artifacts at the Project sites, unusually severe weather, the effect of any named storm, acts of terrorism, sabotage, embargo, energy shortage, wreck or delay in transportation, accidents in the handling and rigging of heavy equipment, explosion, riot, war, court injunction or order, delays by or acts or orders of any





governmental body or changes in laws or government regulations, acts or omissions of the other Party or its other contractors, consultants, or representatives.

### **39. CHANGES TO TEAM MEMBERS-**

Except as provided in this section, Contractor is not permitted to change its Prime Team Members as designated in the Solicitation Documents, or its designated representative stated above, without Government's prior written consent. If there is any change in a Prime Team Member, a change in Control of any Prime Team Member (as defined in the Solicitation Documents), or a change in the Contractor's designated representative, Contractor must provide written notice to Government within five (5) business days after such change. Contractor may provide Government with the basis for such change, if such change was beyond the control of Contractor or such change was necessary due to contractual or legal reasons. Government may, in its sole discretion, terminate this Agreement with Contractor if Government reasonably determines that the change has a materially adverse impact on the Project and such change was not the result of death, retirement or resignation of an employee of Contractor or its team members. If Government elects not to terminate this Agreement, Government shall permit Contractor to propose a substitution for the applicable Contractor Prime Team Member which replacement shall be subject to the Government's approval which approval shall not be unreasonably delayed, conditioned or withheld. Notwithstanding the foregoing, the Government acknowledges and approves those changes in the Prime Team Members described in Exhibit A.

**[THIS AREA IS INTENTIONALLY LEFT BLANK]**

Contract No.: P151DOET22





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

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

Victor Somme III, Acting Commissioner  
Department of Education

07/22/2022  
Date

Anthony D. Thomas, Commissioner  
Department of Property and Procurement

7/28/2022  
Date

Lisa M Anders

CONTRACTOR

Joseph Khoury

Joseph Khoury, Ex. VP  
MCN Build, Inc.

\_\_\_\_\_  
Date

(Corporate seal, if Contractor is a corporation)

APPROVED:

Honorable Albert Bryan Jr.  
GOVERNOR OF THE U.S. VIRGIN ISLANDS

Date: 7/21/22

APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE BY:

Assistant Attorney General

Date 7/29/2022

PURCHASE ORDER NO. \_\_\_\_\_