

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201

NOTICE OF CONTRACT AWARD

| | | |
|------------------------------|-----------------------|------------------------|
| PIVOT CONSTRUCTION LLC | DATE ISSUED: | <u>08/10/2019</u> |
| 2024 PEACH ORCHARD DRIVE #11 | CURRENT REFERENCE NO: | <u>19-186-ITB</u> |
| FALLS CHURCH, VIRGINIA 22043 | CONTRACT TITLE: | <u>HENRY CLAY PARK</u> |

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

The contract documents consist of the terms and conditions of AGREEMENT No. 19-186-ITB including any attachments or amendments thereto.

EFFECTIVE DATE: IMMEDIATELY
EXPIRES: 365 DAYS FROM ISSUANCE OF NOTICE TO PROCEED
RENEWALS: NO RENEWALS
COMMODITY CODE(S): 98852
LIVING WAGE: N

ATTACHMENTS:
AGREEMENT No. 19-186-ITB
EXHIBIT A – SPECIFICATIONS, DRAWINGS AND CONSTRUCTION NOTES
EXHIBIT B – PRICE LIST

EMPLOYEES NOT TO BENEFIT:
NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

| | | |
|---|-------------------------|-----------------------|
| <u>VENDOR CONTACT:</u> PEDRAM HATAMI | <u>VENDOR TEL. NO.:</u> | <u>(703) 677-2351</u> |
| <u>EMAIL ADDRESS:</u> PEDRAM@PIVOTCONSTRUCTION.COM | | |
| <u>COUNTY CONTACT:</u> AARON WOHLER (DPR) | <u>COUNTY TEL. NO.:</u> | <u>(703) 228-7928</u> |
| <u>COUNTY CONTACT EMAIL:</u> AWOHLER@ARLINGTONVA.US | | |

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
SUITE 500, 2100 CLARENDON BOULEVARD
ARLINGTON, VA 22201**

AGREEMENT NO. 19-186-ITB

THIS AGREEMENT is made, on the date of execution by the County, between PIVOT Construction LLC, 2024 Peach Orchard Drive #11, Falls Church, Virginia 22043 (“Contractor”) a Virginia Limited Liability Company authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of:

- Agreement No. 19-186-ITB and all modifications properly incorporated into the Agreement, including Arlington County Invitation to Bid No. 19-186-ITB together with the Arlington County Department of Parks & Recreation General Conditions and Specifications, hereby incorporated by reference;
- Exhibit A – Specifications, Drawings and Construction Notes; and
- Exhibit B – Price List.

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the order of precedence of the Contract Documents shall be as follows:

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties’ agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the “Contract” or the “Agreement”.

2. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer who will be appointed by the Director of the Arlington County department or agency requesting the work under the Contract.

3. SCOPE OF WORK

The Contractor will furnish all labor, materials, and equipment for the provision of demolition, site work, playgrounds, basketball court, walkways, signage and landscaping for Henry Clay Park (the “Project”) and all other work shown, described, and required by the Contract Documents (hereinafter “the Work”).

The Work shall be performed according to the standards established by the Contract Documents read together as a single specification. It shall be the Contractor's responsibility, at solely the Contractor's cost, to provide sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of its Work.

4. TIME FOR COMPLETION

Work under this Agreement shall achieve Final Completion no later than three hundred and sixty-five (365) consecutive calendar days after the commencement date given in a Notice to Proceed provided by the County to the Contractor, subject to any modifications made as provided for in the Contract Documents. No Work shall be deemed Finally Complete until it meets the requirements of Final Completion set forth in the General Conditions. No time extensions based on weather will be permitted.

5. CONTRACT AMOUNT

The County will pay the Contractor in accordance with the terms of the Progress Payments and Retainage and Payment Terms sections below and at the prices shown in Exhibit B, but not more than \$1,700,000 for the Contractor's completion of the Work as required by the Contract Documents provided the Work is performed to the satisfaction of and is accepted by the Project Officer. The Contractor will complete the Work for the total amount specified in this section ("Contract Amount") unless such amount is modified as provided in this Agreement. The Contract Amount includes all of the Contractor's costs and fees (profit).

6. PROGRESS PAYMENTS AND RETAINAGE

The County will make monthly progress or partial payments to the Contractor on the basis of an estimate, provided by the Contractor and approved by the Project Officer, of all work performed during the preceding calendar month to the satisfaction of the Project Officer. However, 5% of each progress payment will be retained by the County until Final Completion and acceptance of all Work covered by the Agreement.

All material and work covered by partial payments will become the property solely of the County at the time the partial payment is made. However, the Contractor will have the sole responsibility, care and custody for all materials and work upon which payments have been made until Final Acceptance.

When calculating payment for materials on-site, the County shall not pay for materials which are not scheduled for incorporation into the Work within sixty (60) days from the date of application for payment.

7. PAYMENT TERMS

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within thirty (30) days after approval of an invoice for completed work which is reasonable and allocable to the Contract. The number of the County Purchase Order pursuant to work has been performed must appear on all invoices. Unless otherwise specified herein, payment shall not be made prior to delivery and acceptance of the entire Work by the County.

8. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

9. RELEASE AND REQUEST FOR FINAL PAYMENT

In order to receive final payment upon Final Completion of the Project and before Final Acceptance, the Contractor must submit to the Project Officer a signed original notarized copy of the Arlington County Release and Request for Final Payment form per the General Conditions.

10. LIQUIDATED DAMAGES

Time is of the essence under this Contract. The Work must be completed within the Time for Completion. The County and the Contractor agree that damages for failure to achieve Final Completion of the Work by the date specified under Time for Completion are not susceptible to exact determination but that seven hundred and thirty-three dollars (\$733) per calendar day is in proportion to the loss that the County would suffer from such delay. Therefore, the Contractor will pay the County as liquidated damages seven hundred and thirty-three dollars (\$733) per day for each and every day beyond the time for Final Completion that the County determines Final Completion has not been achieved. The County will be entitled to deduct liquidated damages against any sums owed by the County to the Contractor under this Contract. The Contractor hereby waives any defense as to the validity of any liquidated damages on grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

11. NON-APPROPRIATION

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever occurs first.

12. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk

and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

13. LIEN

It is expressly agreed that after any payment has been made by the County either to the Contractor for work done, or labor or material supplied under the Contract, the County will have a lien upon all material delivered to the site either by the Contractor, or for the Contractor, which is to be used in the performance of the Contract.

14. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

15. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

16. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every

subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

17. PROJECT STAFF

The County has the right to reasonably reject staff or subcontractors whom the Contractor assigns to the Project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's employees and its subcontractors is the sole responsibility of the Contractor.

18. FAILURE TO DELIVER

If the Contractor fails to deliver goods or services in accordance with the Contract terms and conditions, the County, after notice to the Contractor, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. The County shall be entitled to offset such costs against any sums owed by the County to the Contractor. However, if public necessity requires the use of nonconforming materials or supplies, they may be accepted at a reduction in price to be determined solely by the County.

19. UNSATISFACTORY WORK

If any of the work done, or material, goods, or equipment provided by the Contractor, is unsatisfactory to the County the Contractor must, upon notice from the County, immediately remove at the Contractor's expense such unsatisfactory work, material, goods, or equipment and replace the same with work, material, goods, or equipment satisfactory to the County. If the Contractor fails to do so after fifteen (15) days the County shall have the right to remove or replace the rejected work, material, goods, or equipment at the expense of the Contractor and offset the expense and administrative costs against any sums owed to the Contractor. This provision applies during the Contract term and during any warranty or guarantee period. At the Project Officer's discretion, rather than correction or replacement of the work, an appropriate adjustment to the Contract Amount may be made.

20. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. The Contractor must submit any request for termination costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to termination costs, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

21. INDEMNIFICATION

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees, and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

22. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

23. COPYRIGHT

By this Contract, the Contractor irrevocably transfers, assigns, sets over and conveys to the County all rights, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor will execute any documents that the County requests to formalize such transfer or assignment.

The rights granted to the County by this section are irrevocable and may not be rescinded or modified, including in connection with or as a result of the termination of or a dispute concerning this Contract.

The Contractor may not use subcontractors or third parties to develop or provide input into any copyrightable materials produced pursuant to this Contract without the County's advance written approval and unless the Contractor includes this Copyright provision in any contract or agreement with such subcontractors or third parties related to this Contract.

24. OWNERSHIP OF WORK PRODUCT

This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs.

All work product, in any form, that results from this Contract is the property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or allow others to use the work product for any purpose other than performance of this Contract without the written consent of the County.

The work product is confidential, and the Contractor may neither release the work product nor share its contents. The Contractor will refer all inquiries regarding the status of any work product to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all work product, including hard copies of electronic files, to the Project Officer and will destroy all electronic files.

The Contractor must include the provisions of this section as part of any contract or agreement related to this Contract into which it enters with subcontractors or other third parties.

The provisions of this section will survive any termination or cancellation of this Contract.

25. CONFIDENTIAL INFORMATION

The Contractor and its employees, agents and subcontractors will hold as confidential all County information obtained under this Contract. Confidential information includes, but is not limited to, nonpublic personal information; personal health information (PHI); social security numbers; addresses; dates of birth; other contact information or medical information about a person; and information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise. The Contractor must take reasonable measures to ensure that all of its employees, agents and subcontractors are informed of and abide by this requirement.

26. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

27. COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

28. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of

God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

29. AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

30. RELATION TO THE COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

31. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

32. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, proposals must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)
- avoid use of plastic covers or dividers
- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

33. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years, or such period of time required by the County's funding partner(s), if any, whichever is greater, after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the

Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, or such period of time required by the County's funding partner(s), if any, whichever is greater, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

34. ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County.

35. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

36. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

37. DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

38. APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

39. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

40. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

41. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

42. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

43. ATTORNEY'S FEES

In the event that the County prevails in any legal action or proceeding brought by the County to enforce any provision of this Contract, the Contractor will pay the County's reasonable attorney's fees and expenses.

44. SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP OF WORK PRODUCT; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND CONFIDENTIAL INFORMATION.

45. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

46. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

47. NOTICES

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

Contact Information for the Contractor:

Pedram Hatami, Owner
PIVOT Construction LLC
2024 Peach Orchard Drive #11
Falls Church, Virginia 22043

Contact Information for the Department (Department of Parks & Recreation – P&D)

Aaron Wohler, Project Officer
Arlington County Government
2100 Clarendon Boulevard, Suite 414
Arlington, VA 22201

Contact Information for Arlington County (Legal Authorization):

Office of the Purchasing Agent
2100 Clarendon Boulevard, Suite 500

Arlington, VA 22201
Attn: Lucas Alexander

48. ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060.

49. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

50. INSURANCE, PAYMENT AND PERFORMANCE BONDS

The Contractor shall maintain the required insurance coverage and payment and performance bonds through completion of the Contract, including all warranty and guarantee periods.

51. COUNTERPARTS

This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

PIVOT CONSTRUCTION LLC

AUTHORIZED
SIGNATURE: Lucas Alexander

AUTHORIZED
SIGNATURE: 

NAME AND
TITLE: LUCAS ALEXANDER
PROCUREMENT OFFICER

NAME AND
TITLE: Pedram Hatami/ Project Executive

DATE: 08/10/2019

DATE: 8/10/2019

III. ARLINGTON COUNTY DEPARTMENT OF PARKS AND RECREATION
CONSTRUCTION GENERAL CONDITIONS

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A. INTRODUCTION TO TERMS

- 1) The term "Agreement" means the completed and signed Form of Contract Agreement.
- 2) The term "Award Date" means the date of execution of the Agreement by the Purchasing Agent.
- 3) The term "Business Day" shall refer to any day that the County is open for general business.
- 4) The term "Calendar Day" means any day of twenty-four hours measured from midnight to the next midnight. Included are weekends and holidays. When the term "Day" is used, it shall be assumed to refer to a Calendar Day, unless otherwise specified.
- 5) The term "Change Order" means a written order to Contractor, signed by the County and the Contractor, which authorizes a change in the Work, or an adjustment in the Contract Amount, and/or the Time for Completion issued after execution of the Agreement and is incorporated into and becomes part of the Contract Documents.
- 6) The term "Commencement Date" means the date on which the Time for Completion shall commence for the Contractor to begin to perform his obligations under the Contract Documents, as provided in the Notice to Proceed.
- 7) The term "Construction Change Directive" means a written order issued by the County directing a change in the Work prior to agreement on adjustment, if any, in the Contract Amount or Contract Time, or both.
- 8) The term "Contract Documents" means the Agreement and all the documents and Exhibits identified therein, which shall include the Drawings and the Specifications and all modifications thereto properly incorporated in the Contract.
 - 1) The term "Contract Drawings" means all drawings and construction notes which show the locations, character, dimensions, and details of the Work pertaining to the Contract.
 - 2) The term "Specifications" means that part of the Contract Documents that describes the quality of materials, methods of installation, standard of workmanship, and the administrative and procedural requirements for the performance of the Work under the Contract.
 - 3) The term "Special Conditions" means the written statements modifying or supplementing the General Conditions for requirements or conditions particular to the Contract.
- 9) The terms "County" and "Contractor" shall mean the respective parties to the Contract. They shall be treated throughout the Contract Documents as though each were of the singular number and masculine gender. Only one Contractor is recognized as a party to this Contract.

- 10) The term "Critical Path" shall mean the longest sequence of activities in the Project schedule which must be completed on time for the Project to be completed within the Time for Completion. An activity on the critical path cannot be started until its predecessor activity is complete.
- 11) The term "Delay" means an event or condition that results in a work activity starting or being completed later than originally planned.
- 12) The term "Final Acceptance" shall mean the date on which the County issues the final payment for the Work.
- 13) The term "Final Completion" shall mean the condition when all of the requirements, as identified in Project Specifications Section 017700, Closeout Procedures, and conditions specified in paragraph F.4.b. below have been met and accepted by the Project Officer. The date of the Final Completion of the Work under the Contract is the date on which Final Completion is accomplished.
- 14) The term "Landscape Architect" means the County Landscape Architect assigned by the Director of the County Department responsible for the project or a contractor employed by the County to perform design services or design oversight and identified in the Contract Documents or in a written notice to the Contractor from the Project Officer responsible for the project.
- 15) "Notice to Proceed" shall mean a written notice given by the County to the Contractor specifying the Commencement Date.
- 16) The term "Project" means the entire proposed construction to be executed as stipulated in the Contract Documents.
- 17) The term "Project Officer" means the County Project Officer assigned by the Director of the County Department responsible for the project, or the Director's designee. When a designee to act on behalf of the Project Officer is used by the County, the name of the designee and the duties and authority of such designee will be identified in the Contract Documents or in a written notice to the Contractor from the Project Officer responsible for the project. The designee may be a professional architect, landscape architect, engineer or other person employed by or hired by the County to perform construction services administration, design services, or project oversight.
- 18) The term "Punch List" means unfinished items of the construction of the Project. The unfinished items of construction shall be minor or insubstantial details of construction, mechanical adjustment or decoration remaining to be performed, the non-completion of which would not materially affect use of the Project, and which are capable of being completed within the specified limits following Substantial Completion.
- 19) The term "Schedule of Values" means a listing of the Contractor's total contract value by Construction Specifications Institute (CSI) divisions, including Division 1, Contractor's General Conditions.

- 20) The term "Site" refers to that portion of the property on which the Work is to be performed or which has otherwise been set aside for use by the Contractor.
- 21) The term "Stipulated Price Item" involves items of Work, unanticipated or of unknown quantity at the time of issuance of the solicitation for a Bid. The Unit Price for the "Stipulated Price Item", as identified in the "Stipulated Price Items" section of the Bid Form, is predetermined by the County as the current reasonably workable rate for the Item inclusive of all necessary labor, equipment, materials, overheads (provision and installation), and the contractor's profit.
- 22) The term "Subcontractor", as employed herein, shall include only those having a direct contract with the Contractor, and it shall include those who furnish material worked to a special design according to the plans and specifications for this Work but shall not include those who merely furnish material not so worked.
- 23) The term "Time for Completion" shall mean the time period set forth in the Agreement.
- 24) The term "Work" shall mean the services and tasks performed under this Contract including, but not limited to, furnishing labor, and furnishing and installing materials and equipment required to complete the Project as specified in the Contract Documents.

B. DRAWINGS, SPECIFICATIONS AND RELATED DATA

1. INTENT OF THE DRAWINGS AND SPECIFICATIONS

- a. It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, water haulage, light power, transportation, superintendence, temporary construction of all kinds, and other services and facilities of every nature whatsoever that are necessary to execute and deliver the Work, complete and usable within the scope of the Contract with all parts in working order, and all connections properly made.
- b. The general character and scope of the Work are illustrated by the Drawings and listed in the Specifications. Any additional drawings and other instructions deemed necessary by the Project Officer will be furnished to the Contractor when required for the Work and shall become incorporated into the Contract Documents.
- c. Unless otherwise specifically noted, the word "similar" where it occurs in the Drawings, shall be interpreted in its general sense and not as meaning identical, and all details shall be worked out in relation to their locations and their connection with other parts of the Work.
- d. Where "as shown", "as indicated" "as detailed", or words of similar import are used, it shall be understood that the direction, requirements, permission, approval or acceptance of the Project Officer is intended unless stated otherwise. As used herein, "provide" shall be understood to mean "provide complete in place", that is, "furnish and install".

- e. Materials or work described in words which, so applied, have a well-known technical or trade meaning, shall be held to refer to the recognized technical or trade meaning.
- f. Figured dimensions on the plans shall be used; drawings shall not be scaled.

2. DISCREPANCIES AND ERRORS

If the Contractor discovers any discrepancies between the Drawings and Specifications and the site conditions or any errors or omissions in the Drawings or Specifications, the Contractor shall at once, but in no event later than two business days after discovery of the discrepancy or error, report them in writing to the Project Officer. If the Contractor proceeds with any work that may be affected by such discrepancies, errors, or omissions, after their discovery, but before their clarification, such work shall be at the Contractor's sole risk and expense and such work may not be the basis of any Claim for Extra Cost. Issues affecting critical path activities shall be made known to the Project Officer or designee within two business days after discovery.

3. DIFFERING SITE CONDITIONS

The Contractor shall, within twenty-four (24) hours after becoming aware of differing site conditions, and before the conditions are disturbed, give a written notice to the Project Officer of subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents, or previously unknown physical conditions discovered at the site of an unusual nature and which differ materially from those ordinarily expected to be encountered at the site.

The Project Officer will investigate the site conditions within five (5) calendar days after receiving the notice. If the conditions do materially differ to the extent that an increase or decrease would result in the Contractor's cost of the Work, or the time required for performing any part of the Work under the contract, an equitable adjustment may be made under this clause and the Contract modified in writing accordingly.

No request by the Contractor for an adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required. If the Contractor proceeds with any work that may be affected by such differing site conditions before giving notice to the Project Officer as set forth herein, such work shall be at the Contractor's sole risk and expense.

No request by the Contractor for an adjustment to the contract for differing site conditions shall be allowed if made after Final Payment under the Contract.

4. DOCUMENTS ON THE JOBSITE

The Contractor shall keep on the site of the Project a copy of the Drawings, Specifications, Permits, Permitted Drawings, and all other applicable documents including all authorized revisions, and shall at all times give the County and its authorized representatives access thereto.

5. OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

All Drawings and Specifications and copies thereof furnished by the County are the property of the County and shall not be used on other projects. Upon completion of the Project, all copies of the Drawings and Specifications except the signed Contract sets shall be returned to the Project Officer.

6. SUBMITTALS

Submittals shall be processed in accordance with the Specifications.

7. TESTS

The County, through a third party testing agency, will perform any specified laboratory tests of materials and finished articles at the County's expense. Failure of any material to pass the specified tests or any test performed by the third party testing agency will be sufficient cause for refusal to consider, under this Contract, any further materials of the same brand or make of that material. Additionally, the Project Officer, in his discretion, may order that any failed test be re-performed at the Contractor's sole expense. Samples of various materials delivered on the site or in place may be taken by the third party testing agency for testing. Samples failing to meet the Contract requirements will automatically void previous approvals of the items tested. The Contractor is required to coordinate and schedule all testing in a manner that permits the quality control standards to be met, but does not incur unreasonable expenses upon the County. Any charges resulting from the Contractor failing to coordinate testing services will be the responsibility of the Contractor.

8. STANDARDS

Any material specified by reference to the number, symbol or title of a specific standard, such as a Commercial Standard, a Federal Specification, a Trade Association Standard, or other similar standard, shall comply with the requirements in the latest revision of the standards or specification and any amendment or supplement, except as limited to type, class or grade, or as modified in such reference. The standard referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications.

9. SUBSTITUTIONS AFTER CONTRACT AWARD

Requests for substitutions for specified items after the award of Contract will not be considered except with just cause and with the written approval of the Project Officer. Applications for acceptance of substitutions for specified items will be considered only upon request of the Contractor, not of individuals, trades or suppliers, and only for a specific purpose; no blanket acceptance will be granted. No acceptance of a substitution will be valid unless it is in written form and signed by the Project Officer or designee. The Contractor shall use Form CSI 13.1A when requesting a substitution.

If any proposed substitution will affect a correlated function, adjacent construction or the work of other contractors, then the necessary changes and modifications to the affected work shall be considered as an essential part of the proposed substitution, to be accomplished by the Contractor without additional expense or an extension of contract time to the County, if and when accepted. Detail drawings and other information necessary to show and explain the proposed modifications shall be submitted with the request for acceptance of the substitution.

10. SURVEYS AND CONTROLS

Unless otherwise stated, the County will provide horizontal and vertical reference points necessary for the Contractor to proceed with the Work. The Contractor shall carefully preserve all reference points, and in the case of destruction thereof by the Contractor or due to the negligence of the Contractor or of any subcontractor, the Contractor shall be responsible for expense and damage resulting therefrom and shall be responsible for any mistakes or construction errors that may be caused by the loss or disturbance of such reference points. The Contractor shall be

responsible for laying out the Work and shall retain a professional land surveyor licensed in the Commonwealth of Virginia to survey and provide all necessary construction layouts and to establish all control lines, grades, elevations during construction, and signed / sealed as-builts.

11. AS-BUILT DRAWINGS

As-built drawings shall be the responsibility of the Contractor. The Contractor shall maintain and mark up one (1) set of prints of the applicable Contract drawings to portray as-built construction. The prints shall be neatly and clearly marked to show all variations between the Work actually provided and that indicated on the Contract Drawings, and all utilities encountered in the Work. All drafting shall conform to good drafting practice and shall include such supplementary notes, legends and details as may be necessary for legibility and clear portrayal of the as-built construction. A cumulative listing of the plan changes shall be submitted with every payment request. At the completion of the Project and prior to request for Final Payment, the Contractor shall turn over to the Project Officer the final cumulative listing of plan changes and a complete set of signed and stamped As-Built drawings by a licensed Professional Engineer in paper copy and .pdf electronic format.

12. RECORD KEEPING AND PROJECT DOCUMENT FILES

The Contractor shall provide a web based construction management tool acceptable to the County that will allow, but not be limited to, record keeping and document storage of all construction files, including approved shop drawings, change orders, construction progress meeting minutes, warranties, equipment specifications and brochures, record drawings, and Operation and Maintenance (O&M) Manuals. The Contractor shall provide at least six (6) hours of training of use of the construction management tool to the Project Officer as well as to the architect and sub-consultants. Before Final Payment is made, the Contractor shall provide the Project Officer a CD of all the files in the web based construction management tool. The Project Officer and the architect shall have unlimited access to the construction management tool, during the construction period and up to one (1) year after completion of the Project or after Final Payment is made.

C. COUNTY, PROJECT OFFICER, AND CONTRACTOR RELATIONS

1. STATUS OF PROJECT OFFICER

The Project Officer or designee shall be the County's representative during the construction period. The Project Officer or designee shall have authority to suspend the Work whenever such suspension may be necessary in the responsible opinion of the Project Officer. The Project Officer or designee shall also have authority to reject all work and materials that do not conform to the Contract and to decide questions that arise in the execution of the Work. The Project Officer will, within a reasonable time, make decisions on all matters relating to the execution and progress of the Work.

2. LIMITATION ON COUNTY'S RESPONSIBILITIES

Except as modified by the Contract Documents, the County shall not supervise, direct, or have control or authority over, nor be responsible for the Contractor's means, methods, techniques, sequences or procedures of construction; the safety precautions and programs related to safety; or the Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

3. INSPECTION OF WORK

The Project Officer and representatives of any public authority having jurisdiction shall, at all times, have access to the Work while in progress. The Contractor shall provide suitable facilities for such access and for proper observation of the Work and shall conduct all special tests required by the specifications, the Project Officer's instructions, and any laws, ordinances or the regulations of any public authority applicable to the Work. Nothing in this section shall abrogate or otherwise limit or relieve the Contractor's independent duty to inspect the Work.

4. INSPECTION OF MATERIALS

All articles, materials, and supplies purchased by the Contractor for the Work are subject to inspection by the Project Officer upon delivery to the site and during manufacturing or fabrication. The County reserves the right to return for full credit, at the risk and expense of the Contractor, all or part of the articles, materials, or supplies furnished contrary to specifications and instructions. Nothing in this section shall abrogate or otherwise limit or relieve the Contractor's independent duty to inspect the materials.

5. EXAMINATION OF COMPLETED WORK

If the Project Officer requests it, the Contractor, at any time before acceptance of the Work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Specifications. Should the work thus exposed or examined prove acceptable, then the uncovering or removing, and the replacing of the covering or making good of the parts removed shall be paid for as extra work, but should the work so exposed or examined prove unacceptable, then the uncovering, removing, restoration, and/or replacing shall be at the Contractor's expense.

6. RIGHT TO SUSPEND WORK

The County shall have the authority to suspend the Work, in whole or in part, for such periods and such reasons as the County may deem necessary or desirable. Any such suspension shall be in writing to the Contractor and the Contractor shall obey such order immediately and not resume the Work until so ordered in writing by the County. No such suspension of the Work shall be the basis for a claim by the Contractor for any increase in the Contract Amount provided that the suspension is for a reasonable time under the circumstances then existing. If the suspension of Work is caused by the County's belief that non-conforming work is being installed, and subsequent investigation proves that the Work was non-conforming, the Contractor shall not be awarded additional time or costs.

7. RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the County, or such shorter time as may be reasonable under the circumstances, to commence and continue correction of such default or neglect with diligence and promptness, the County may, without prejudice to other remedies the County may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including County's expenses, including additional architect or engineering costs necessary by Contractor's default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the County.

8. SUPERINTENDENCE BY CONTRACTOR

The Contractor shall keep a competent superintendent and any necessary assistants on the Work site at all times during progress of the Work and such persons shall be satisfactory to the Project Officer. The superintendent shall not be changed, except on the Project Officer's determination the superintendent is no longer satisfactory or except with the consent of the Project officer where the superintendent proves to be unsatisfactory to the Contractor or ceases to be in the Contractor's employment. If requested by the County, the superintendent must be replaced within 7 calendar days of Project Officer's written notice. The superintendent shall represent the Contractor in the Contractor's absence and all directions given to him shall be as binding as if given to the Contractor. In general, instructions by the Project Officer shall be confirmed in writing, and always upon written request from the Contractor. The Contractor shall at all times enforce strict discipline and good order among the workers performing under this Contract, and shall not employ any person on the Work not reasonably proficient in the work assigned. Persons permitted to perform Work under Contractor or any subcontractor or sub-subcontractor shall meet all employment eligibility, safety training, security or drug/alcohol testing requirements required by law or by Owner. Any person not complying with all such requirements shall be immediately removed from the Site.

9. DRUG-FREE POLICY

The Contractor is responsible for ensuring that the Site remains a drug-free site. Contractor will require that employees undergo random drug/alcohol screening on a quarterly interval. Any employee who fails the test must be removed from the Site immediately. Random screening shall be performed by a third party licensed to do so in the Commonwealth of Virginia. The Contractor must provide proof that the quarterly drug testing is performed to the Project Officer on a quarterly basis. The Contractor shall provide its random testing schedule to the Project Officer within 30 days of Notice to Proceed. The Contractor shall include this provision in every subcontract relating to this Contract. Any infraction by an employee of the Drug-Free policy shall be reported to the Project Officer within 24 hours and the employee shall be removed from the County project.

10. PERFORMANCE OF WORK BY THE CONTRACTOR

The Contractor shall perform on site, and with its own organization, at least ten percent (10%) of the total direct labor and at least ten percent (10%) of the total work in place to be performed under the Contract. Prior to award, the Contractor must demonstrate to the Project Officer's satisfaction that both of these standards will be met during contract performance. Labor and work to be counted when determining whether the Contractor has met the self-performance requirement shall not include any work that the Contractor performs under the supervision of a subcontractor.

The self-performance percentage may be reduced by an Amendment to the Contract, if during performance of the Work, the Contractor requests a reduction and the Project Officer determines that the reduction would be to the advantage of the County.

11. LANDS BY COUNTY

The County shall provide the lands shown on the Drawings upon which the Work under the Contract is to be performed and to be used for rights-of-way and for access. In case all of the lands, rights-of-way or easements have not been obtained as herein contemplated before

construction begins, the Contractor shall begin its work on such lands and rights-of-way as the County may have previously acquired.

12. LANDS BY CONTRACTOR

If the Contractor requires additional land for temporary construction facilities and for storage of materials and equipment other than the areas available on the site or right-of-way, or as otherwise furnished by the County, the Contractor shall provide such other lands and access thereto entirely at the Contractor's own expense and without liability to the County. The Contractor shall not enter upon private property for any purpose without written permission. The Contractor shall provide copies of all agreements to the County and shall include language in the agreement indemnifying and holding harmless the County for any damages, repairs, restoration or fees associated with the use of the property. Upon termination of the agreement, the Contractor shall provide to the County, a fully executed release from the property owner.

13. PROTECTION OF WORK AND PROPERTY

- a. The Contractor shall continuously maintain protection of all its work from damage and shall protect the County's property from damage or loss arising in connection with this Contract. The Contractor shall make good any such damage or loss, except such as may be caused by agents or employees of the County.
- b. The Contractor shall not place upon the Work, or any part thereof, any loads which are not consistent with the design strength of that portion of the Work.
- c. The Contractor shall be responsible for the preservation of all public and private property, trees, monuments, etc., along and adjacent to the street and/or right-of-way, and shall use every precaution to prevent damage to pipes, conduits and other underground structures, curbs, pavements, etc., except those to be removed or abandoned in place and shall protect carefully from disturbance or damage all monuments and property markers until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed. Any damage which occurs by reason of the operations under this Contract shall be completely repaired by the Contractor at the Contractor's expense.
- d. The Contractor shall shore, brace, underpin, secure, and protect, as may be necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site that may be affected in any way by excavations or other operations connected with the work required under this Contract. The Contractor shall be responsible for giving any and all required notices to owners or occupants of any adjoining or adjacent property or other relevant parties before commencement of any work. The Contractor shall indemnify and save the County harmless from any damages on account of settlements or loss of all damages for which the County may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- e. In an emergency affecting the safety of life or of the Work, or of adjoining property, the Contractor, without special instruction or authorization from the Project Officer or designee, or County, is hereby permitted to act, at the Contractor's discretion, to prevent such threatened loss or injury, and the Contractor shall so act without appeal, if so instructed or authorized.

14. SEPARATE CONTRACTS

- a. The County reserves the right to let other contracts in connection with this Project. The Contractor shall afford other contractors reasonable access to the Project, including the opportunity for the delivery and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with the work of other such contractors.
- b. If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the Project Officer any defects in such work that renders it unsuitable for such proper execution and results. The Contractor's failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's work, except as to defects which may develop in other contractor's work after its execution.
- c. If the Contractor or any of the Contractor's subcontractors or employees cause loss or damage to any separate contractor on the Work, the Contractor agrees to settle or make every effort to settle or compromise with such separate contractor. If such separate contractor sues the County on account of any loss so sustained, the County shall notify the Contractor, who shall indemnify and save the County harmless against any expense, claim or judgment arising therefrom, including reasonable attorney's fees.

15. SUBCONTRACTS

- a. Unless otherwise specified, the Contractor shall, within fifteen (15) calendar days after written notification by the Project Officer, provide the names of all subcontractors proposed for the principal parts of the Work and for such others as requested by the Project Officer and shall not employ any subcontractor that the Project Officer may, within a reasonable time, object to as incompetent or unfit after an appropriate determination of the subcontractor's ability. No proposed subcontractor will be disapproved except for cause.
- b. The Contractor shall make no substitutions for any subcontractor previously selected and approved unless first submitted to the County for approval.
- c. The Contractor shall be as fully responsible to the County for the acts and omissions of the Contractor's subcontractors as the Contractor is for the acts and omissions of persons directly employed by the Contractor.
- d. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind subcontractors to the Contractor by the terms of the General Conditions of the Contract, Special provisions and other documents comprising the Contract insofar as such documents are applicable to the work of subcontractors.
- e. Nothing contained in the Contract shall be construed to create any contractual relation between any subcontractor and the County, nor shall it establish any obligation on the part of the County to pay to, or see to the payment of any sums to any subcontractor.

- f. If requested by the County, the Contractor shall replace any subcontractor at no cost to the County within 7 calendar days of the Project Officer's written notice. No additional time or compensation will be provided in the event a subcontractor is removed due to non-compliance of the requirements outlined within the Contract.

16. ELIMINATED ITEMS

The Project Officer may, upon written notice to the Contractor, eliminate item(s) from the Contract. Payment shall not be made for such item(s) so eliminated; except that the Contractor will be compensated for the actual cost of any work performed for the installation of such item(s) and the net cost of materials purchased before the item(s) was eliminated from the Contract, including freight and tax costs, as evidenced by invoice. If the County notifies the Contractor of such elimination at least fifteen (15) calendar days prior to scheduled installation of such item(s), then no additional compensation will be made for overhead or anticipated profit.

D. MATERIALS AND WORKMANSHIP

1. MATERIALS FURNISHED BY THE CONTRACTOR

Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new. All workmanship shall be accomplished by persons qualified in the respective trades.

2. IBC AND VUSBC REQUIREMENTS

The Contractor certifies that all material supplied or used under this Contract meets all current International Building Code (IBC) requirements and the requirements of the Virginia Uniform Statewide Building Code (VUSBC); and further certifies that, if the material delivered or used in the performance of the Work is found to be deficient in any of the applicable state or national code requirements, all costs necessary to bring the material into compliance with the requirements shall be borne by the Contractor. The County shall be entitled to offset such costs against any sums owed by the County to the Contractor under this Contract.

3. ADA COMPLIANCE

The Contractor shall ensure that all Work performed under this Agreement is completed in accordance with the Contract Documents, including Work intended to meet the accessibility requirements of the Americans with Disabilities Act (ADA).

The Contractor is not required to ascertain whether the Contract Documents meet ADA design standards and guidelines. However, should the Contractor discover any non-conformity with such requirements, the Contractor shall immediately inform the County and its design consultant, if applicable, to allow for corrective action.

The Contractor shall defend and hold the County harmless from any expense or liability arising from the Contractor's non-compliance in meeting its obligations herein. The Contractor shall be responsible for all costs related to permitting delays, redesign, corrective work, and litigation relating to such non-compliance.

4. MANUFACTURER'S DIRECTIONS

Manufactured articles, material, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's directions, as approved by the Project Officer, unless herein specified to the contrary.

5. WARRANTY

Unless otherwise specified, all material provided to the County shall be fully guaranteed by the Contractor against manufacturing defects within the period of the manufacturer's standard warranty. Such defects shall be corrected by the Contractor at no expense to the County.

The Contractor shall provide all manufacturer's warranties to the Project Officer by the date of Final Completion.

Unless otherwise specified by the Contract Documents, all work is guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials, or inferior or faulty workmanship, or work not in accordance with the requirements of the Contract Documents for one (1) year from the date of Final Acceptance of the work by the County in addition to and irrespective of any manufacturer's or supplier's warranty. No date other than the date of Final Acceptance shall govern the effective date of the Guaranty or Warranty, unless that date is agreed upon by the County and the Contractor in advance and in a signed writing. The Contractor shall promptly correct any defective work or materials after receipt of a written notice from the County to do so. If the Contractor fails to proceed promptly or use its best efforts and due diligence to complete such compliance as quickly as possible, the County may have the materials or work corrected and the Contractor and its Sureties shall be liable for all expenses and costs incurred by the County.

Nothing in this section shall be construed to establish a period of limitations with respect to other obligations the Contractor may have under this Contract.

6. INSPECTION, ACCEPTANCE AND TITLE OF MATERIALS

Inspection and acceptance of materials by the County will be at the work site in Arlington County, Virginia, and within ten (10) calendar days of delivery unless otherwise provided for in the Contract. The County will not inspect, accept, or pay for any materials stored off-site by the Contractor. Title and risk of loss or damage to all items shall be the responsibility of the Contractor until Final Acceptance by the County. The County's right of inspection shall not be deemed to relieve the Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use. The County reserves the right to conduct any tests or inspections it may deem advisable to assure that goods or services conform to the specification. The Contractor shall be responsible for maintaining all materials and supplies in the condition in which they were accepted until they are used in the Work.

7. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the Work shall be purchased by the Contractor or any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to, and that it shall require all subcontractors to warrant that they have good title to, all materials and supplies for which the Contractor invoices for payment.

8. TITLE TO MATERIALS AND WORK COVERED BY PARTIAL PAYMENTS

All material and work covered by partial payments made by the County shall become the property solely of the County at the time the partial payment is made. However, risk of loss or damage to all items shall be the responsibility of the Contractor until Final Acceptance by the County. This provision shall not be construed as relieving the Contractor from having sole responsibility for all materials and work upon which payments have been made and for the restoration of any damaged work or replacement or repair at the County's option of any damaged materials. This provision shall not be construed as a waiver of the County's right to require fulfillment of all terms of the Agreement, including full rights under the terms of the Warranty provisions of the Agreement, nor shall payment indicate acceptance of the materials or Work.

9. CUTTING, PATCHING, AND DIGGING

The Contractor shall do all cutting, fitting, or patching of the Contractor's work that may be required to make its several parts come together properly and to receive or be received by work of other contractors as shown upon or reasonably implied by the Drawings and Specifications for the completed project, as the Project Officer may direct. The Contractor shall not endanger any work by cutting, digging, or otherwise, and shall not cut or alter the work of any other contract except with the consent of the Project Officer.

10. REJECTED WORK AND MATERIALS

- a. Any of the Work or materials, goods or equipment which do not conform to the requirements of the Contract Documents, are not equal to samples approved by the Project Officer, or are in any way unsatisfactory or unsuited to the purpose for which they are intended, shall be rejected and replaced at the Contractor's expense and to the satisfaction of the County. Any defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, shall be removed and the work shall be re-executed by the Contractor at no cost to the County. The fact that the Project Officer may have previously overlooked such defective materials or work shall not constitute acceptance of any part of it.
- b. If the Contractor fails to proceed at once with the replacement of rejected materials and/or the correction of defective workmanship, when notified to do so by the Project Officer, the County may, by contract or otherwise, replace such material or correct such workmanship and charge the cost to the Contractor. At its discretion, the County shall be entitled to offset such expenses against any sums owed by the County to the Contractor under the Contract. This clause applies during the Contract and during any warranty or guarantee period.
- c. If the Project Officer and County deem it expedient not to require correction of work which has been damaged or not done in accordance with the Contract, an appropriate adjustment to the Contract Price may be made therefor.

11. HAZARDOUS MATERIALS

Arlington County is subject to the Hazard Communication Standard, 29 CFR §1910.1200 (Standard). The Contractor agrees that it shall provide or cause to be provided Safety Data Sheets ("SDS") required under the Standard for all hazardous materials supplied to the County or used in the performance of the Work. Such SDS information shall be delivered to the County no later than the time of actual delivery of any hazardous materials to the County or use of such material in the performance of Work under the Contract by the Contractor or its subcontractors, whichever

occurs first. Container labeling meeting the requirements of the Standard shall be appropriately affixed to the shipping or internal containers. The County reserves the right to refuse shipments of hazardous materials not appropriately labeled, or when SDS information has not been received prior to or at the time of receipt of the shipment for use by the County or for use by the Contractor in the performance of the Contract, or whenever the material is delivered in a manner inconsistent with any applicable law or regulation. Any expenses incurred due to the refusal or rejection of SDS information are the responsibility of the Contractor. The Contractor shall comply with all federal, state, and local laws governing the storage, transportation, and use of toxic and hazardous materials. The Contractor shall maintain on site an up to date and complete SDS binder for all materials used and delivered to the Project. The County Project Officer or designee shall be allowed access to the SDS book at all times.

12. HAZARDOUS WASTE

Hazardous Waste Generator/Hazardous Waste Disposal: The County Board of Arlington County, Virginia and the Contractor shall be listed as Co-generators. The Contractor shall assume all the duties pertaining to the Waste Generator, including signing the Waste Shipment Record ("WSR") and manifest. The Contractor shall supply the County Project Officer with the executed original Owner's Copy of the WSR, as required by applicable regulatory agencies within 35 days from the time the waste was accepted by the initial waste transporter, and prior to request for final payment. A separate WSR shall be submitted for each shipment to the disposal site.

Delayed Waste Shipment Records: The Contractor shall report in writing to the EPA Region III office within 45 days if an executed copy of the WSR is not received from the operator of the disposal site. The report to the Environmental Protection Agency (EPA) regional office shall include a copy of the original WSR and a cover letter signed by the Contractor stating the efforts taken to locate the hazardous waste shipment and the results of those efforts.

Temporary Hazardous Waste Storage Prohibited: The Contractor shall not temporarily store hazardous waste unless pre-approved by the County in writing. If so approved, hazardous waste stored off-site in a temporary facility shall be monitored and records shall be kept on the number of containers, size, and weight. The Contractor shall inform the County when the hazardous waste is to be transported to the final disposal site. The County has the right to inspect the temporary site at any time. The Contractor shall submit copies of all relevant manifests, Waste Shipment Record(s), and landfill receipts to the County Project Officer prior to the request for final payment. All paperwork shall be signed by the Contractor and disposal site operator as required.

13. ASBESTOS

Whenever and wherever during the course of performing any Work under this Contract the Contractor discovers the presence of asbestos or suspects that asbestos is present, the Contractor shall stop work immediately, secure the area, notify the County Project Officer immediately and await positive identification of the suspect material. During the downtime in such a case, the Contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. Work shall not proceed without an Asbestos-Related Work Authorization executed by the County Asbestos Program Manager.

14. PROHIBITION AGAINST ASBESTOS CONTAINING MATERIALS

No goods or equipment provided to the County or construction material installed shall contain asbestos. If a Contractor or supplier provides or installs any goods, equipment, supplies, or

materials that contain asbestos in violation of this prohibition, the Contractor shall be responsible for all costs related to the immediate removal and legal disposal of the goods, equipment or materials containing asbestos and replacement with a County-approved alternate. The Contractor shall be responsible for all goods, equipment, supplies or materials installed or provided by any of its employees, agents or subcontractors in connection with the work under this Contract. The Contractor shall also reimburse to the County all costs of such goods, equipment, supplies or materials installed if not corrected by the Contractor. If the Contractor fails to remove and legally dispose of the asbestos-containing goods, equipment or construction materials within ninety (90) days from the date of notice by the County, the County shall remove and dispose of the asbestos-containing goods, equipment or construction materials at the Contractor's expense. The County shall be entitled to offset such expenses against any sums owed by the County to the Contractor under this Contract.

E. LEGAL RESPONSIBILITY AND PUBLIC SAFETY

1. MAINTENANCE OF TRAFFIC

The Contractor shall conduct its operations in a manner that will ensure that all modes of traffic (vehicular, bicycle, pedestrian) will be uninterrupted except as approved by the County. At the close of each work day, the area of work shall be confined to the smallest area possible, but in no event larger than the area designated in the Construction Documents, so that the maximum use of the street and sidewalk will be restored and the hazard to traffic reduced to the minimum. No excavation shall remain open within the roadway or sidewalk without the approval of the County except when the excavation can be safely bridged with the use of steel plates or other materials acceptable to the County. When areas of excavation do remain open, the area shall be barricaded and warning signs shall be posted. Approved safety barriers may be required.

At all times the Contractor shall use the personnel and traffic control signs and devices necessary to comply with Part VI of the "National Manual on Uniform Traffic Control Devices, latest edition." During the progress of the work when the street may be obstructed to any extent by construction equipment or construction operations, in addition to the signs and barricades, special workers, equipped with VDOT required "STOP\SLOW" double sided traffic control paddles, shall be designated by the Contractor to direct traffic. These workers so designated shall not be assigned to any other duties while engaged in directing traffic. The Contractor has sole responsibility for ensuring that its operations are conducted in a safe manner and notwithstanding any other provision to the contrary, shall fully indemnify Arlington County, its officers, agents and employees for any damage or injury related to traffic operations which is caused by negligent or otherwise improper or deficient performance under the Contract or nonperformance of the terms of the Contract. All personnel, signs, barricades and any other items necessary for the maintenance of traffic and safety shall be provided by the Contractor. No separate payment shall be made by the County for Maintenance of Traffic, unless otherwise specified.

2. SAFETY AND ACCIDENT PREVENTION

The Contractor shall comply with, and ensure that the Contractor's employees and subcontractors comply with, all current applicable local, state and federal policies, regulations and standards relating to safety and health, including, by way of illustration and not limitation, the U.S. Department of Labor's Occupational Safety and Hazard Administration (OSHA) 29 CFR, 1926, Construction Industry Regulations, the standards of the Virginia Occupational Safety and Health

program of the Department of Labor and Industry for General Industry and for the Construction Industry, the Federal Environmental Protection Agency Standards, and the applicable standards of the Virginia Department of Environmental Quality.

The Contractor shall provide, or cause to be provided, all technical expertise, qualified personnel, equipment, tools, and material to safely accomplish the Work specified to be performed by the Contractor and subcontractor(s).

The Contractor shall identify to the County Project Officer at least one on-site person who is the Contractor's competent, qualified, and authorized person on the worksite and who is, by training or experience, familiar with policies, regulations, and standards applicable to the work being performed. The competent, qualified, and authorized person must be capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees; shall be capable of ensuring that applicable safety regulations are complied with; and shall have the authority and responsibility to take prompt corrective measures, which may include removal of the Contractor's personnel from the work site.

The Contractor shall provide to the County, at the County's request, a copy of the Contractor's written safety policies and safety procedures applicable to the scope of work. Failure to provide this information within seven (7) calendar days of the County's request may result in cancellation of the Contract.

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all injuries to persons and damage to property either on or off the site, which occur as a result of the Contractor's performance of the Work.

The Contractor shall take or cause to be taken such additional safety and health measures as the County may determine to be reasonably necessary. Machinery, equipment, and all hazards shall be guarded in accordance with the safety provisions of the current version of "Manual of Accident Prevention" published by the Associated General Contractors of America, Inc., to the extent that such provisions are not in conflict with applicable local laws. The Contractor is directed to the "Rules and Regulations Governing Construction, Demolition and All Excavation" and adopted by the Safety Codes Commission of Virginia, 1966, or latest edition, covering requirements for shoring, bracing, and sheet piling of trench excavations.

3. OVERHEAD HIGH VOLTAGE LINES SAFETY ACT

If any work required herein will be performed within ten (10) feet of an overhead high voltage line, the provisions of Virginia Statute 59.1-406, et. seq., "Overhead High Voltage Line Safety Act" (Act) shall apply. The "person or contractor responsible for the work to be done", as that term is used in the Act, will be interpreted to mean the Contractor. The Contractor shall notify the owner or operator of the high voltage line in the manner prescribed in Section 59.1-411 of the Act in sufficient time prior to the time work is to be commenced to avoid any delays in the work. The County will not pay for lost time, profits, or permit any extension of the work for any delays caused by the failure of the Contractor to make such arrangements in a timely manner. All costs for the work shall be paid by the Contractor. The County shall reimburse the Contractor for the actual reasonable cost paid to the owner or operator of the high voltage line by the Contractor on presentation to the County by the Contractor of original invoices from the owner or operator of

the high voltage line in the same manner as for other Contractor invoices submitted for work performed. Retention, if applicable to the Contract, shall not be withheld from the payment to the Contractor by the County. No processing, administrative, or other charges above the actual amount charged by the owner or operator of the high voltage line shall be paid to the Contractor by the County.

4. SANITARY PROVISIONS

The Contractor shall provide and maintain such sanitary accommodations for the use of the Contractor's employees and those of its subcontractors as may be necessary to comply with the requirements and regulations of the local and state departments of health and where additional accommodations are necessary to maintain a reasonably sanitary environment, then such additional accommodations shall be made as determined by the Project Officer.

5. DAMAGES CAUSED BY WORK

Any damage resulting from Work performed by the Contractor under this Contract shall be repaired to the County's satisfaction at the Contractor's expense.

6. CLEANING UP

The Contractor shall remove and legally dispose of, as frequently as necessary, all refuse, rubbish, scrap materials and debris from the site to the extent they are the result of the Contractor's operations to the end that the site of the Work shall present a neat, orderly, and workmanlike appearance at all times. At completion of the Work, but before Final Acceptance, the Contractor shall remove and legally dispose of all surplus material, falsework, temporary structures, including foundations thereof, and debris of every nature resulting from the Contractor's operations or resulting from any activity on the site related to the Contractor's operations, and put the site in a neat, orderly condition; if the Contractor fails to do so, the County shall have the right to remove and legally dispose of the surplus material, falsework, temporary structures, including foundations thereof, and debris, put the site in a neat, orderly condition, and charge the cost to the Contractor.

F. PROGRESS AND COMPLETION OF THE WORK

1. NOTICE TO PROCEED

The Project Officer will issue a written Notice to Proceed (NTP) to the Contractor after issuance of the Purchase Order. The work commencement date shall be (7) calendar days from the date of issuance of Notice to Proceed. The date of the NTP will be the first day of the timeframe in which the work is to be completed.

2. TIME FOR COMPLETION

It is hereby understood by the Contractor and the County that the Commencement Date, the rate of progress, and the Time for Completion of the Work to be done hereunder are essential conditions of the Contract. The Contractor agrees that the Work shall be started promptly upon the Commencement Date and the Work shall be performed regularly, diligently, and uninterruptedly at a rate of progress that will ensure full completion thereof in the shortest length of time consistent with good workmanship, within the Time for Completion specified in the Contract Documents.

3. SCHEDULE OF COMPLETION

Unless otherwise specified, the Contractor shall within five (5) calendar days prior to the pre-construction meeting, submit schedules which show the order in which the Contractor proposes to carry on the Work in accordance with the Specifications. When the Work is behind the schedule, the County may require the Contractor to prepare and submit, at no extra cost to the County, a recovery schedule indicating by what means the Contractor intends to regain compliance with the schedule. The recovery schedule must be submitted to the County for review within five (5) calendar days of the County's written demand.

4. CONDITIONS FOR COMPLETION

- a. SUBSTANTIAL COMPLETION: The Work shall be considered Substantially Complete when the provisions of the Closeout Procedures Section of Project Specifications have been met, in addition to the following:
- 1) The Project Officer has agreed that the condition of the Work warrants Substantial Completion; and
 - 2) All hazards, including, but not limited to, electrical, structural, mechanical or plumbing, shall be removed. Site has been cleaned of construction material and equipment has been removed from site. All subsurface structures are in place; and
 - 3) All entrances and site walkways have been completed and can remain clear of construction activities.
- b. FINAL COMPLETION: The Work will be considered Finally Complete when the provisions of Project Specifications Section 017700, Closeout Procedures, have been met, in addition to the following:
- 1) The Project Officer has agreed that the condition of the Work warrants Final Completion; and
 - 2) All construction deficiencies and punch list items have been closed and all construction deficiencies corrected and accepted by the Project Officer; and
 - 3) All spare parts and attic stock have been delivered, stored in an orderly manner in a space designated by the Project Officer, and a complete inventory list has been verified and accepted by the Project Officer; and
 - 4) All warranty certificates and contact information for parties providing warranties have been delivered and accepted by the Project Officer; and
 - 5) All final Operating and Maintenance manuals have been delivered and accepted by the Project Officer; and
 - 6) All final As-Built Drawings in .PDF format on a CD and one full-size paper copy have been delivered and accepted by the Project Officer.

5. USE OF COMPLETED PORTIONS

The County shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or such portions may not have expired; but taking such possession and use shall not be deemed an acceptance of any work not done in accordance with the Contract Documents. If the Contractor claims that such prior use increases the cost or delays the completion of remaining work, or causes refinishing of completed work, the Contractor may submit a claim for compensation or extension of time or both.

G. PAYMENT, CHANGES, CLAIMS, DELAYS

1. PAYMENTS TO CONTRACTOR

The County will make monthly partial payments, less retainage, to the Contractor based upon the Schedule of Values and the work performed during the preceding calendar month as approved by the Project Officer.

The Contractor shall submit a monthly payment application using AIA Form G-702 "Application and Certification for Payment" or equivalent form acceptable to the Project Officer or designee.

The Contractor's application for payment will not be reviewed or processed unless an updated Construction Schedule is attached. The pay application shall also contain a certification by the Contractor that due and payable amounts have been paid by the Contractor, including payments to subcontractors and suppliers, for work which previous payment was received by the Contractor from the County.

The Contractor's application for payment shall indicate the amount of work completed to date in a format consistent with the accepted bid and as indicated below:

- a. Lump Sum: If required by this Contract, the Contractor shall provide to the Project Officer a Schedule of Values for each Lump Sum item in the Contract, and the application for payment shall reflect the schedule of values and the amount of work completed in those units.

Otherwise, the application for payment shall reflect the percentage of work completed for each lump sum item.

- b. Unit Price: The schedule of unit prices in the accepted bid shall be used as the basis for preparing the estimates, and each partial payment shall represent the total value of all units of work completed, computed at the unit prices stated in the Contract, less the aggregate of previous payments.

In addition to the amount of work completed to date, the application for payment shall indicate the aggregate of all previous payments for each line item, the retainage previously withheld, and the total payment requested this period.

2. PAYMENT FOR MATERIALS ON SITE

When requested in writing by the Contractor, payment allowances may be made for material secured for use on the Project and secured at the project site. Such payments will only be made for materials scheduled for incorporation into the work within sixty (60) calendar days.

3. STIPULATED PRICE ITEMS

Work on Stipulated Price Items shall be carried out only upon written order by the Project Officer. The payment for a Stipulated Price Item shall be made by the County to the Contractor at the related Unit Price specified in the 'Stipulated Price Items' section of the Bid Form on the same basis as the payment for any other regular Bid Item.

4. PAYMENTS WITHHELD

The Project Officer may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate for payment to the extent necessary to protect the County from loss on account of defective work not remedied or withhold payment for violation of any contract term or condition not remedied after sufficient notice given to the Contractor.

Any such withholding shall not result in any liability to the Contractor for damages.

5. COUNTY ORDERED CHANGES IN WORK

The County, without invalidating the Contract, may order extra Work or make changes by addition, deletion, or revision in the Work, with the total Contract Amount being adjusted accordingly if applicable. Any change amount or aggregate change amount that will increase the total Contract Amount more than 100% will require notice to sureties and require that Performance and Payment bonds be increased by the Contractor. All such work shall be executed under the conditions of the original Contract, except that modification of the Time for Completion caused thereby shall be made at the time of approving such change.

- a. The Project Officer or designee shall have authority to make minor changes in the Work by verbal order when such changes do not involve extra cost and are not inconsistent with the purpose of the Project. Otherwise, except in an emergency endangering life or property, no extra Work or change shall be made unless in pursuance of a written Construction Change Directive or Change Order from the County signed or countersigned by the Project Officer or designee, and no claim for an addition to the Contract Amount of Time for Completion shall be valid unless so ordered.
- b. The Contractor shall review any County requested or directed change and shall respond in writing within ten (10) calendar days after receipt of the proposed change, or such other reasonable time as the County may direct, stating the effect of the proposed change upon Contractor's work, including any increase or decrease in Contract time and price. The Contractor shall furnish the County an itemized breakdown of the quantities and prices used in computing the proposed change.
- c. Unit Price Items: The County expressly reserves the right, except as may be otherwise specifically limited, to increase or decrease quantities of work for which the Contractor provided a unit price in the bid form, as the County deems necessary or desirable to complete the Work covered in this Contract. Increases in such quantities shall be performed by the Contractor at the cost provided in the bid form.
- d. Other Work: Any change in Work which is not covered by Unit Prices in the bid form shall be determined in one or more of the following ways: (a) by estimate and acceptance by

the County in a lump sum; (b) by cost and fixed fee; (c) by time and materials; or (d) by any other method permitted under the Arlington County Purchasing Resolution.

- e. If none of the aforementioned methods is agreed upon, the Contractor shall proceed with the Work without delay provided the Contractor receives a Construction Change Directive. In such case, the Contractor shall keep and present in such form as the Project Officer or designee may direct, a correct account of the cost, together with vouchers. The Project Officer or designee shall be permitted to verify such records on a daily basis and may require such additional records as are necessary to determine the cost of the change to the Work. The Project Officer or designee shall certify to the amount due to the Contractor, including a reasonable lump sum allowance for overhead and profit. A complete accounting of the extra cost shall be made within fifteen (15) days after completion of the Work involved in the claim.
- f. A cost proposal for a change in the Work shall provide a complete breakdown itemizing the estimated quantities and costs of labor, materials, and equipment (base cost) required in addition to any markup used. The cost proposal for the change in the Work and the Contractor's signature on the cost proposal is its agreement that the adjustments in Contract Price and/or Time stipulated in this change order proposal constitutes full, complete and final compensation for all costs and time associated (direct and indirect), impacts and/or delays arising out of, or incidental thereto, the applicable work as indicated herein. The Contractor further agrees to waive all rights to make any further claim arising out of or as a result of this change. All terms and conditions of the Contract shall remain unchanged and in full force and effect.
- g. The allowable percentage markups for overhead and profit in the cost proposal for a change to the Work performed by the Contractor's own forces or performed by the Subcontractor shall be negotiated based on the nature, size, and complexity of the Work involved, but shall not exceed the percentages for each category listed below:
 - 1) Subcontractor's markup for overhead and profit for the work it performs in a change to the Work shall be a maximum of fifteen (15%).
 - 2) Contractor's markup for overhead and profit on the Subcontractor's base cost in a change to the Work shall be a maximum of ten percent (10%).
 - 3) Contractor's markup for overhead and profit, including bonds and insurance, for work it self-performs in a change to the Work shall be a maximum of fifteen percent (15%).
 - 4) The markup for overhead and profit of a Sub-contractor to a Subcontractor of the Contractor at any tier on a change to the Work it performs shall be a maximum of fifteen percent (15%). The Contractor and all intervening tiers of Subcontractors' markups on such Sub-subcontractor's base cost in the change to the Work shall not exceed a total of ten percent (10%).
- h. Base Cost is defined as the total of labor, material, and equipment costs. It does not include markup for overhead and profit. The labor costs include only the costs of

employees directly constructing or installing the change in the Work and exclude the costs of employees coordinating or managing the Work.

- i. The allowable percentage markups for overhead and profit stated above shall compensate the Contractor, Subcontractor, and Sub-subcontractor for all other costs associated with or relating to the change to the Work, including by way of illustration and not limitation, general conditions, supervision, field engineering, coordination, insurance, bond(s), use of small tools, incidental job costs, and all other general and administrative home and field office expenses.
- j. Allowable costs for changes in the Work shall not include Home Office expenses, including payroll costs for the Contractor's officers, executives, administrators, project managers, estimators, clerks timekeepers, and other administrative personnel employed by the Contractor, whether at the Site or in the Contractor's principal or branch office for general administration of the Work. These costs are deemed overhead included in the percentage markups in Subsection (d) above.
- k. If the change to the Work also changes the Time for Completion, by adding days to perform the Work, an itemized accounting of the following Site direct overhead expenses for the change to the time may be considered as allowable costs for compensation in addition to the base cost indicated above.
 - 1) Site superintendent's pro-rata salary; and
 - 2) Temporary site office trailer expense; and
 - 3) Temporary site utilities, including basic telephone service, electricity, heat, water, and sanitary/toilet facilities.

All other direct and indirect overhead expenses are considered covered by and included in Subsection (d) markups above.

- l. If the Contractor requests an extension to the Time for Completion due to changes in the Work, it must provide to the Project Officer adequate documentation substantiating its entitlement for the time extension. The documentation must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior changes to the Work, not just an increase or decrease in the time needed to complete a portion of the total Work. In the event a Critical Path Method (CPM) schedule is required by the Contract, no extension to the Time for Completion shall be granted unless, and then only to the extent that, the additional or change to the Work increases the length of the critical path beyond the Time for Completion as demonstrated on the approved CPM schedule or bar chart schedule.

6. CLAIMS FOR EXTRA COST

If the Contractor claims that any event will give rise to a claim for an increase in the Contract Amount or that instructions from the Project Officer, by drawings or otherwise, will incur the Contractor extra cost under this Contract, then, except in emergencies endangering life or property, the Contractor shall give written notice thereof before proceeding to execute the work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than ten (10) calendar days after the event or receipt of such instruction. The Contractor's notice

must provide to the Project Officer the amount of additional compensation claimed, together with the basis therefor and documentation supporting the claimed amount. No such claim shall be valid unless so made. If the Project Officer agrees that such instructions involve extra cost to the Contractor, any additional compensation will be determined by one of the methods provided in "Changes in Work" section of these General Conditions. Except as otherwise specifically provided, no claims for extra cost shall be allowed unless timely notice is given by the Contractor, as required by this Section.

7. DAMAGES FOR DELAY; EXTENSION OF TIME FOR COMPLETION OTHER THAN FOR WEATHER

The Contractor's relief for any claim for delay which is unreasonable, and caused by the acts and omissions of the County, or due to causes within the County's control shall be an extension of the Time for Completion and/or the Contractor's direct costs which result from the delay, but only to the extent any damages for delay were actually caused by the County. The Contractor must give the Project Officer written notice of such delay and damages at the time they were incurred, but in no event later than three calendar days following the perceived onset of the delay. The Contractor's written notice shall specify the nature of the delay claimed by the Contractor, the cause of the delay, and the impact of the delay on the Contractor's work schedule.

If the Contractor is entitled to compensation for delay which is unreasonable, or caused by the acts and omissions of the County, or due to causes within the County's control, and where there is no change in the Work, an itemized accounting of the following direct site overhead expenses will be considered as allowable costs to be used in determining the compensation due the Contractor:

- a. Site superintendent pro-rata salary, temporary site office expense, temporary site facilities, and temporary site utilities including basic telephone service, electricity, heat, water, and sanitary/toilets.
- b. A fifteen percent (15%) markup of these expenses will be allowed to compensate the Contractor for home office and other direct or indirect overhead expenses.

If the Contractor submits a claim for damages pursuant to this Section, the Contractor shall be liable to the County for a percentage of all costs incurred by the County in investigating, analyzing, negotiating and litigating the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim that is determined through litigation to be false or to have no basis in law or fact. (Virginia Code §2.2-4335).

The Contractor's sole relief on any claims for delay which is reasonable, or not caused by the acts or omissions of the County, or due to causes not within the County's control, or Force Majeure, shall be an extension of the Time for Completion, provided the Contractor gave the Project Officer timely written notice at the inception of such delay.

No extension of the Time for Completion or additional compensation if applicable will be granted for any delay unless the Contractor demonstrates the claimed delay directly impacts the critical path of the Work, and any float has been consumed. Claims for compensation for direct costs which result from delay must be substantiated by adequate documentation clearly showing that the Work delayed was on the critical path, and that the additional costs incurred by the Contractor are directly attributable to the delay in the Work claimed.

No extension of the Time for Completion shall be granted for any delay if the Contractor failed to give timely written notice to the Project Officer at the inception of the delay and at the time the damages were incurred. The Contractor's complete submittal for a time extension shall be submitted no later than thirty (30) calendar days after cessation of the delay or within such longer period as the County may agree in writing to allow. The Contractor's notice to the County shall specify the nature of the delay claimed by the Contractor, the cause of the delay, and the impact of the delay on the Contractor's Work schedule.

8. TIME EXTENSIONS FOR WEATHER

The Time for Completion will not be extended due to inclement weather conditions that are normal to the general locality of the Work site.

The Contractor's sole relief on any claims for delay which is caused by abnormal weather shall be an extension of the Time for Completion provided the Contractor gave the Project Officer timely written notice at the inception of such delay and provided the weather affected the critical path. A fully-documented claim for a time extension under this section must be submitted no later than thirty (30) calendar days after the cessation of the delay. It shall be the Contractor's responsibility solely to provide the necessary documentation to satisfy the Project Officer that the weather conditions claimed were encountered.

9. RELEASE OF LIENS

The County, before making any payment including Final Payment, shall require the Contractor to furnish a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof, and if required in either case, an affidavit that so far as the Contractor has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed. The Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the County, to indemnify him against any lien. If any lien remains unsatisfied after all payments have been made, the Contractor shall refund to the County all money that the latter may be compelled to pay in discharging such lien. However, the County may make payments in part or in full to the Contractor without requiring the releases or receipts, and the payments so made shall not impair the obligations of any Surety or Sureties on any bond or bonds furnished under this Contract.

10. FINAL PAYMENT

After the Contractor has completed all Work and corrections to the satisfaction of the Project Officer and delivered all maintenance and operating instructions, schedules, quantities, bonds, certificates of inspection maintenance record documents, and other items required as final payment submittal documents, the Contractor may make application for final payment following the procedure for progress payments. The Final Application for Payment shall be accompanied by all documents required in the Contract, including a complete and signed copy of the Final Payment Release Form as follows:

RELEASE AND REQUEST FOR FINAL PAYMENT

CONTRACT NUMBER: _____ CONTRACTOR NAME: _____

FINAL PAYMENT AMOUNT: _____

The Contractor hereby requests final payment in the amount indicated on the above referenced Contract. The Contractor agrees that its acceptance of final payment releases and forever discharges Arlington County and its officers, employees, servants and agents from any and all actions, claims, demands and liability of whatever nature now existing or which may hereafter arise as a result of or in connection with the above referenced Contract.

The Contractor certifies that all of the debts for labor, materials, and equipment incurred in connection with the above referenced Contract have been fully paid.

AUTHORIZED SIGNATURE: _____ DATE: _____

COMMONWEALTH OF VIRGINIA

COUNTY OF ARLINGTON

On this the ____ day of _____, 20____, before me, personally appeared _____, who acknowledged himself/herself to be _____ in the above instrument, and that he/she, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing his/her name by himself/herself as _____.

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

Notary Public

My Commission Expires: _____

IV. INSURANCE REQUIREMENTS

Review this section carefully with your insurance agent or broker prior to submitting a bid or proposal. See the Insurance Checklist (part of the Bid or Proposal Forms) for specific coverages applicable to this Contract. The term "Contract," as used in this section, shall mean the fully executed Agreement covering the work entered into between the County and the Contractor.

1. General

- 1.1 The Contractor shall provide insurance as specified in the Insurance Checklist found on the last page of the bid or proposal form.
- 1.2 The Contract with the Contractor will not be executed by the County until the Contractor has obtained, at its own expense, all of the insurance called for hereunder and such insurance has been approved by the County; additionally, the Contractor shall not allow any subcontractor to start work on any subcontract until all insurance required of the subcontractor has been so obtained and approved by the Contractor. The Contractor shall submit to the County Purchasing Agent copies of all required endorsements and documentation of coverage consistent with the requirements herein or, alternately, at the County's request, certified copies of the required insurance policies in compliance with the insurance requirements. All endorsements and documentation shall state this Contract's number and title.
- 1.3 The Contractor shall require all subcontractors to maintain during the term of this Agreement, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation, Employers' Liability insurance, or any other insurance required by the Contract in the same manner and form as specified for the Contractor. The Contractor shall furnish subcontractors' evidence of insurance and copies of endorsements to the County Purchasing Agent immediately upon request by the County and/or prior to the subcontractor's performance of work related to this Contract.
- 1.4 If there is a material change or reduction in coverage, nonrenewal of any insurance coverage or cancellation of any insurance coverage required by this contract, the Contractor shall notify the Purchasing Agent immediately. It is the Contractor's responsibility to notify the County upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be immediately replaced with another policy consistent with the terms of this Contract and in such a manner that there is no lapse in coverage, and the County immediately notified of the replacement. Not having the required insurance throughout the Contract is considered a material breach of this Contract and grounds for termination. The Contractor shall also obtain an endorsement providing to the County thirty (30) days advance notice of cancellation or nonrenewal (ten days for nonpayment of premium. A copy of that endorsement shall be provided to the County Purchasing Agent prior to the execution of this Contract or any Contract extension thereafter.
- 1.5 No acceptance and/or approval of any insurance by the County shall be construed as relieving or excusing the Contractor, any surety, or any bond, from any liability or obligation imposed under this Agreement.

1.6 Arlington County, and its officers, elected and appointed officials, employees, and agents are to be named as additional insureds under all coverages except Workers' Compensation, Professional Liability, and Automobile Liability, and the endorsement must clearly identify the County as an additional insured permitted to enjoy all the benefits under the applicable policy of insurance. The certified policy, if requested, must so state coverage afforded under this paragraph shall be primary as respects the County, its officers, elected and appointed officials, agents and employees. The following definition of the term "County" applies to all policies issued under the Contract and to all applicable endorsements:

"The County Board of Arlington County and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the County Board of Arlington County, Virginia, or one in which controlling interest is vested in Arlington County; and Arlington County Constitutional Officers."

1.7 The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

1.8 The insurance coverage required shall remain in force throughout the Contract or as otherwise stated in the Contract Documents or these Insurance Requirements. If the Contractor fails to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract, the County shall have the absolute right to terminate the Contract without any further obligation to the Contractor.

1.9 Contractual and other liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising or inspecting the work as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any persons employed by the subcontractor.

1.10 If any policy contains a warranty stating that coverage is null and void (or words to that effect) if the Contractor does not comply with the most stringent regulations governing the work, such policy shall be modified so that coverage shall be afforded in all cases except for the Contractor's willful or intentional noncompliance with applicable government regulations.

1.11 All policies shall include the following language: "The insolvency or bankruptcy of the insured or of the insured's estate will not relieve the insurance company of its obligations under this policy."

1.12 All policy forms must "Pay on behalf of" rather than "Indemnify" the insured.

- 1.13 Nothing contained in these Insurance Requirements or the Contract Documents shall be construed as creating any contractual relationship between any subcontractor and the County. The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
- 1.14 Precaution shall be exercised by the Contractor at all times for the protection of persons, (including employees) and property. All existing structures, utilities, roads, services, trees and shrubbery shall be protected against damage or interruption of service at all times by the Contractor and its subcontractors during the term of the Contract, and the Contractor shall be held responsible for any damage to property occurring by reason of its work under the Contract.
- 1.15 For any claims related to this work, The Contractor's insurance shall be deemed primary and non-contributory to all other applicable coverage and in particular with respect to Arlington County, its representatives, officials, employees, and agents. Any insurance or self-insurance maintained by Arlington County shall be excess and noncontributory of the Contractor's insurance. The Contractor shall waive its right of subrogation for all insurance claims.
- 1.16 If the Contractor does not meet the insurance requirements set forth by the Contract Documents, alternate insurance coverage or self-insurance, satisfactory to the Purchasing Agent, may be considered. Written requests for consideration of alternate coverages including the Contractor's most recent actuarial report and a copy of its self-insurance resolution to determine the adequacy of the insurance funding must be received by the County Purchasing Agent at least ten (10) working days prior to the date set for receipt of bids or proposals. If the County denies the request for alternate coverages, the specified coverages will be required to be submitted. If the County permits alternate coverage, an amendment to the Insurance Requirements will be prepared and distributed prior to the time and date set for receipt of bids or proposals.
- 1.17 All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia and acceptable to the County. The insurers must also have a policyholders' with a rating of "A-VII" in the latest edition of the A.M. Best Co.'s Insurance Reports, unless the County grants specific approval for an exception, in the same manner as described in 1.16 above.
- 1.18 The Contractor shall be responsible for payment of any deductibles applicable to the coverages.
- 1.19 The Contractor must disclose the amount of any deductible or self-insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies, if any. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the County may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure additional protection for the County.

2. Contractor's Insurance:

- 2.1 The Contractor shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Insurance Checklist.

2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:

- i. General aggregate limit is to apply per project;
- ii. Premises/Operations;
- iii. Actions of Independent Contractors;
- iv. Products/Completed Operations to be maintained for five (5) years after completion of the Work;
- v. Contractual Liability, including protection for the Contractor from claims arising out of liability assumed under this Contract;
- vi. Personal Injury Liability including, including but not limited to, coverage for offenses related to employment and copyright infringement;
- vii. Explosion, Collapse, or Underground (XCU) hazards.

2.1.2 Business Automobile Liability, including coverage for any owned, hired, or non-owned motor vehicles, Uninsured Motorists coverage, and automobile contractual liability.

2.1.3 Workers' Compensation - statutory benefits as required by Virginia law or the U.S. Longshoremen's and Harbor Workers' Compensation Act, or other laws as required by labor union agreements, including standard Other States coverage; Employers' Liability coverage. The policy shall not contain any provision or definition which would serve to eliminate third party action over claims, including exclusion for bodily injury to an employee of the insured, employees of the premises owner, or employees of the general contractor to which the insured is subcontracted; or employees of the insured's subcontractor.

2.2 The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, its employees on the job, and others. The Contractor shall comply with all applicable provisions of federal, state and municipal safety laws, insurance requirements, standard industry practices, the requirements of the operations and this contract, the Contractor, directly through its subcontractors, shall effect and properly maintain at all times, as required by the conditions and progress of the work, necessary safeguards for safety and protection of the public, including securing areas, posting danger signs, placarding, labeling or posting other forms of warning against hazards.

3. Commercial General or other Liability Insurance - Claims-made Basis:

3.1 If Commercial General or other liability insurance purchased by the Contractor has been issued on a claims-made basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described in the Insurance Checklist remain the same. The Contractor must either:

- i. Agree to provide insurance, copies of the endorsement and certified documentation evidencing the above coverages and naming the County as an additional insured for a period of five (5) years after final payment under the Contract. Such documentation shall evidence a retroactive date, no later than the beginning of the Contractors or subcontractors' work under this Contract, or
- ii. Purchase an extended (minimum five [5] years) reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a copy of the endorsement itself. The extended reporting period will begin upon final payment under the Contract.

4. Builder's Risk Insurance

- 4.1 The Contractor shall purchase and maintain builders risk insurance with a limit equal to the initial Contract Amount and any amendments to the Contract which affect the project cost on a replacement cost basis. Builder's risk insurance shall be maintained until Final Payment under the Contract has been made or until no person or entity other than the County has an insurable interest in the covered property, whichever is earlier. The builders risk insurance shall include the County as defined in Section 1.6, Contractor, subcontractors and sub-subcontractors as named insureds.
- 4.2 Insurance shall be on an all-risks policy form including the perils of fire, theft, vandalism, malicious mischief, lightning, wind, force majeure, collapse, and earthquake. Coverage is to apply for demolition occasioned by enforcement of any applicable legal requirements, and Architect's fees. Coverage for the peril of flood shall not be required unless otherwise required in the Contract Documents.
- 4.3 Unless otherwise provided in the Contract Documents, the builders risk insurance shall also cover materials to be incorporated into the project which are stored off the site.
- 4.4 The Contractor shall purchase and maintain Boiler and Machinery insurance, if required by the contract documents or by law, with a limit satisfactory to the County. The Boiler and Machinery insurance shall cover objects during installation and until Final Acceptance by the County. The County shall be included as a named insured.
- 4.5 Any loss under builders risk insurance shall be payable to the County as fiduciary for the insureds, as their interests may appear, subject to any mortgagee clause. The Contractor shall pay subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require subcontractors to make payments to their sub-subcontractors in similar manner. The County, as fiduciary, shall have the right to adjust and settle a loss with insurers.
- 4.6 The insurance company providing the builders risk coverage shall grant permission for the County to partially occupy or use the premises under construction prior to final acceptance without removing or affecting the coverage.