STATEMENT OF WORKS

Restoration of Building 149 at Fort Allen Training Center (FATC)

Juana Diaz, Puerto Rico

TABLE OF CONTENTS

PART 1: GENERAL INFORMATION

1.1 ACRONYMOUS
1.2 DEFINITIONS
1.3 BACKGROUND
1.4 PERFORMANCE PERIOD
1.5 FUNDS

PART 2: COST PROPOSAL CONSIDERATION

2.1 SCOPE OF WORKS
2.2 CONDITIONS
2.2.1 UNIFORM GENERAL CONDITIONS FOR PUBLIC WORKS CONTRACT IN PUERTO RICO
2.2.2 ADDITIONAL PROVISIONS
2.2.3 CONTRACT FEDERAL CLAUSES
2.2.4 IMPERATIVE INCLUSION CLAUSES
2.2.5 SECURITY AND PROTECTION REQUIREMENTS
2.2.5.1 Anti-Terrorism/Force Protection
2.2.5.2 iWATCH
2.2.5.3 TARP

ATTACHMENT LIST

ATTACHMENT 1: Uniform General Conditions for Public Works Contract in Puerto Rico

ATTACHMENT 2: Additional Provisions

ATTACHMENT 3: Contract Federal Clauses

ATTACHMENT 4: Imperative Inclusion Clauses

PART 1

GENERAL INFORMATION

1.1 ACRONYMOUS

1.2 DEFINITIONS

1.3 DESCRIPTION

1.4 PERFORMANCE PERIOD

1.5 FUNDS

PART 1: GENERAL INFORMATION

1.1 ACRONYMOUNS

AR Army Regulations
ASG Administración de Servicios Generales
AT/OPSEC Antiterrorism/Operational Security Background Investigation
CFMO Construction and Facilities Management Office
CFR Code Federal Regulation
DA Department of the Army
DD254 Department of Defense Contract Security Classification Specification
DFARS Defense Federal Acquisition Regulation Supplement
DoD Department of Defense
EPA Environmental Protection Agency
FAR Federal Acquisition Regulation
NIOSH National Institute for Occupational Safety and Health
NGB National Guard Bureau
OSHA Occupational Safety and Health Agency
POC Point of Contact
PPE Personal Protective Equipment
PRARNG Puerto Rico Army National Guard
RUL Registro Unico de Licitadores
SAM System for Award Management
US United States

1.2 DEFINITIONS

Change Order - A written order issued by the PRARNG, or its duly authorized representative, to the Contractor, signed by both parties, covering, additions, deletions, and/or revisions in the Work and/or an adjustment in the Contract Price and/or the Contract Time, if any, issued on or after the Effective Date of the Contract. In Unit Price Contracts, a Change Order can also reflect a change in the number of items, as well as an increase or decrease, contained in the proposal. In Lump Sum Contracts, it reflects an order for additional or less work.

Contract - a written agreement, especially concerning with detailed services herein in this document.

Contractor - is an individual or entity that conducts business and is duly organize under the laws of the Government of Puerto Rico or foreign commercial organizations authorized to do business in Puerto Rico, registered in "Registro Unico de Licitadores" under the Puerto Rico General Services Administration (ASG), with: Unique Entity Identifier, CAGE Number and be active in SAM Registry. It will be who be select to perform the services and works described in this request.

Days - this term will be considered as calendar days.

Government - means Government of Puerto Rico, it is inclusive but not limited toother branches, municipalities and instrumentalities that administer Puerto Rico.

PRARNG – means Puerto Rico Army National Guard.

Project Schedule - A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Work within the Contract Time.

Subcontractor - A Subcontractor is an individual or entity that has a direct contract with the Contractor to perform any of the Work at the Site. The term Subcontractor as referred throughout the Purchase Order Documents means the Subcontractor or his authorized representative.

1.3 DESCRIPTION

This effort consists of the construction for the “Restoration of Building 149”, located in Fort Allen, Juana Diaz, PR. The purpose of this project is to restore an existing, unused, and deteriorated 10,661 SF lodging building into a modern, transient training billeting. The construction works shall include the complete replacement of all systems such as mechanical, electrical, and architectural finishes that will serve as a combination of private rooms and 1+1 Rooms with a shared bathroom, that will have the capacity of providing space for 21 soldiers. The facility shall include lounge areas and laundry areas.

1.4 PERFORMANCE PERIOD

Contractor will develop the activities indicated in the scope of work in a term of 540 calendar days (30 calendars day for administrative, access and permits process, 480 calendar days for the execution of the work, and 30 calendar days for the closing of the contract.

1.5 FUNDS

Appropriation funds for the project are 100% Federal.

PART 2

COST PROPOSAL CONSIDERATION

2.1 SCOPE

2.2 CONDITIONS

2.2.1 UNIFORM GENERAL CONDITIONS FOR PUBLIC WORKS CONTRACT IN PUERTO RICO

2.2.2 ADDITIONAL PROVISIONS

2.2.3 CONTRACT FEDERAL CLAUSES

2.2.4 IMPERATIVE INCLUSION CLAUSES

2.2.5 SECURITY AND PROTECTION REQUIREMENTS

2.2.5.1 Anti-Terrorism/Force Protection

2.2.5.2 iWATCH

2.2.5.3 TARP

2.1

SCOPE OF WORKS (Refer to Drawings and SPECS)

2.2
CONDITIONS

2.2 CONDITIONS

2.2.1 Uniform General Conditions for Public Works Contract in Puerto Rico

The Uniform General Conditions for Public Works Contract in Puerto Rico will be part of this bids process and contract. All costs associated and related with the Uniform General Conditions for Public Works Contract in Puerto Rico will be part of the offer. *See Attachment 1*

2.2.2 Additional Provisions

The Additional Provisions will be part of this bids process and contract. All costs associated and related with the Additional Provisions will be part of the offer. *See Attachment 2*

2.2.3 Contract Federal Clauses

The Contract Federal Clauses will be part of this bids process and contract. All costs associated and related with the Contract Federal Clauses will be part of the offer. *See Attachment 3*

2.2.4 Imperative Inclusion Clauses

The Imperative Inclusion Clauses Clause will be part of this bids process and contract. All costs associated and related with the Contract Federal Clauses will be part of the offer. *See Attachment 4*

2.2.5 Security and Protection Requirements

The Bidder, Team and all associated Subcontractor personnel must provide all information required for background checks to comply with the requirements for access to the facilities to be performed by the Provost Marshal Office, Director of Emergency Services or the Office of Security. The Proposing workforce must comply with all personal identity verification requirements (clause FAR 52.204- 9, Verification of personal identification of Contractor personnel) as directed by the Department of Defense, HQDA and / or local policy. In addition to the changes authorized by the change clauses of this Purchase Order, if the Force Protection Condition (FPCON) in any individual installation or insulation change, the Government may require changes in the Contractor's security issues or processes.

The photographs will be limited to the authorized work area with the prior approval of the PRARNG and only for information purposes for the development of the services described in this document. The Contractor must request permission from the PRARNG before taking the photographs and will be governed by the instructions offered for taking them. The use of drone to take is prohibited.

2.2.5.1 Anti-Terrorism/Force Protection

AT Level I training, all awarded Contractor's personnel, to include subcontractor personnel, requiring access PRARNG installations, facilities and controlled access areas shall complete AT Level I awareness training within fourteen (14) calendar days after Purchase Order start date or effective date of incorporation of this requirements into the Purchase Order, whichever is applicable. The awarded Bidder shall submit certificates of completion for each affected Contractor's personnel and subcontractor's personnel to the Contracting Officer Representative (COR) within seven (7) calendar days after completion of training by all personnel. AT Level I awareness training is available at the following website: http://jko.jten.mil The PRARNG can provide the instructions (2 hours) with previous coordination.

- Access and general protection/security policy and procedures. Awarded Bidder and all associated subcontractor's personnel shall provide all information required for background checks to meet installation access requirements to be accomplished by installation Provost Marshal Office, Director of Emergency Services or Security Office. Awarded Bidder workforce must comply with all personal identity verification requirements (FAR clause 52.204-9, Personal Identify Verification of Contractor Personnel) as directed by DoD, HQDA and/or local policy. In addition to the changes otherwise authorized by the changes clause of this Purchase Order, should the Force Protection Condition (FPCON) at any individual facilities or installation change, the Government may require changes in contractor security matters or processes.

- Awarded Bidder and all associated sub-contractor's personnel shall comply with all standards and policies for all PRARNG installations and facilities to include access and local security policies and procedures (provided by government representative). This applies for contractors that do not require CAC but require access to a DoD facilities or installations.

2.2.5.2 iWATCH

iWATCH training, Contractor's personnel, to include subcontractor personnel, requiring access PRARNG installations, facilities and controlled access areas shall complete iWATCH awareness training within fourteen (14) calendar days after Purchase Order start date or effective date of incorporation of these requirements into the Purchase Order, whichever is applicable. The Contractor shall submit certificates of completion for each affected Contractor's personnel and subcontractor's personnel to the Contracting Officer Representative (COR) within ten (10) calendar days after completion of training by all personnel. The PRARNG can provide training in face-to-face to personnel of Contractor and Subcontractor (1 hour) with previous coordination.

2.2.5.3 TARP

Threat Awareness and Reporting Program (TARP) training, Contractor's personnel, to include subcontractor personnel, requiring access PRARNG installations, facilities and controlled access areas shall complete TARP awareness training within fourteen (14) calendar days after Purchase Order start date or effective date of incorporation of these requirements into the Purchase Order, whichever is applicable. The Contractor shall submit certificates of completion for each affected Contractor's personnel and subcontractor's personnel to the Contracting Officer Representative (COR) within ten (10) calendar days after completion of training by all personnel. The PRARNG can provide training in face-to- face to personnel of Contractor and Subcontractor (2 hours) with previous coordination.

Attachment 1

UNIFORM GENERAL CONDITIONS FOR PUBLIC WORKS CONTRACTS IN PUERTO RICO

DEPARTAMENTO DE TRANSPORTACIÓN Y OBRAS PÚBLICAS
DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS
GOBIERNO DE PUERTO RICO

DEPARTAMENTO DE ESTADO

Número: 7998
Fecha: 3 de marzo de 2011
Aprobado: Hon. Kenneth D. McClintock
Secretario de Estado

Por: Eduardo Arosemena Muñoz
Secretario Auxiliar de Servicios

UNIFORM GENERAL CONDITIONS

for

Public Works Contracts in Puerto Rico

UNIFORM GENERAL CONDITIONS

for

Public Works Contracts in Puerto Rico

PUERTO RICO VERDE

UNIFORM GENERAL CONDITIONS FOR PUBLIC WORKS CONTRACTS

INDEX

PART A. INTRODUCTION

Article 1 - LEGAL BASIS; APPLICATION.....1
1.1 Legal Basis
1.2 Application

PART B. UNIFORM GENERAL CONDITIONS

Article 1 - DEFINITIONS AND TERMINOLOGY.....1
1.1 Defined Terms
1.2 Other Terms
1.3 Terminology

Article 2 – CONTRACT DOCUMENTS.....10
2.1 Intent and Interpretation of Contract Documents
2.2 Order of Precedence of Contract Documents
2.3 Written Interpretations
2.4 Execution and Correlation
2.5 Review of Contract Documents and Field Conditions by Contractor
2.6 Amending and Supplementing Contract Documents
2.7 Copies Furnished, Ownership and Reuse of Documents

Article 3 – BONDS AND INSURANCE.....13
3.1 General for Owners with OCIP
3.2 General for Owners without OCIP
3.3 Performance, Payment, and Other Bonds
3.4 Workmen's Compensation Insurance
3.5 Contractor's Liability Insurance
3.6 Business Auto Policy
3.7 Contract Work - Builders Risk Insurance
3.8 Installation Floater Policy

3.9 Subcontractor's and Sub-Subcontractor's Liability Insurance
3.10 Owner's Liability Insurance

Article 4 – SITE....20
4.1 Availability of Lands
4.2 Subsurface and Physical Conditions
4.3 Differing Subsurface or Physical Conditions
4.4 Price and Time Adjustments
4.5 Underground Facilities
4.6 Reference Points
4.7 Hazardous Environmental Condition at Site

Article 5 – OWNER....26
5.1 General
5.2 Information and Services Required of the Owner
5.3 Pay Promptly When Due
5.4 Owner's Right to Stop the Work
5.5 Owner's Right to Carry Out the Work Without Terminating the Employment of the Contractor
5.6 Owner's Right to Clean Up
5.7 Evidence of Financial Arrangements
5.8 Limitations on Owner's Responsibilities

Article 6 – CONTRACTOR....28
6.1 Supervision and Superintendence
6.2 Labor and Working Hours
6.3 Services, Materials, and Equipment
6.4 Progress and Other Schedules
6.5 Submittals for Approvals, Substitutes and or "Equals"
6.6 Review of Contract Documents
6.7 Patent, Fees and Royalties
6.8 Permits
6.9 Laws and Regulations
6.10 Taxes
6.11 Use of Site and Other Areas
6.12 Record Document
6.13 Safety and Protection
6.14 Safety Representative
6.15 Hazard Communication Programs
6.16 Plans and Working Drawings; As-Built Plans
6.17 As Built Record Drawings
6.18 Notice to Proceed
6.19 Contractor's General Warranty and Guarantee
6.20 Indemnification
6.21 Subcontractors, Suppliers and Others

Article 7 – ARCHITECT/ENGINEER AND DESIGNATED INSPECTOR....55
7.1 Administration of the Contract
7.2 Duties of Architect/Engineer and the Owner's Representative

Article 8 – OTHER WORK AND SEPARATE CONTRACTS....58

8.1 Owner's Right to Award Separate Contract, Perform Work with Owners Employees and Utility Workers. Related Work at Site
8.2 Owner's Right to Award Separate Contract
8.3 Mutual Responsibility of Contractors

Article 9 – TIME.....62
9.1 Progress and Completion
9.2 Change of Contract Time
9.3 Delays and Extensions of Time
9.4 Delay Damages
9.5 Liquidated Damages
9.6 Early Completion Incentive

Article 10 – CHANGE OF CONTRACT PRICE, COST OF THE WORK AND UNIT PRICE WORK.....67
10.1 Change of Contract Price
10.2 Cost of the Work
10.3 Cash Allowances
10.4 Unit Price Work
10.5 Contractor's Fee

Article 11 – CHANGES IN THE WORK.....72
11.1 Authorized Changes in the Work
11.2 Unauthorized Changes in the Work
11.3 Execution of Change Orders and Extra Work Orders
11.4 Notification to Surety
11.5 Claims and Disputes

Article 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.....74
12.1 Notice of Defects
12.2 Access to Work
12.3 Tests and Inspections
12.4 Uncovering Work
12.5 Correction or Removal of Deficient Work
12.6 Correction Period
12.7 Acceptance of Non-Compliant Work
12.8 Owner's Right to Correct Deficient Work

Article 13 – PAYMENTS AND COMPLETION.....79
13.1 Proposal Schedule and Schedule of Values
13.2 Progress Payments
13.3 Contractor's Warranty of Title
13.4 Substantial Completion
13.5 Partial Utilization
13.6 Final Inspection
13.7 Final Payment
13.8 Final Completion Delayed
13.9 Waiver of Claims
13.10 Unilateral Liquidation

Article 14 – PROTECTION OF PERSONS AND PROPERTY.....90
14.1 Public Convenience and Safety
14.2 Laws to be Observed
14.3 Sanitary, Health and Safety Provisions
14.4 Labor Relations and Wages
14.5 Environmental Protection
14.6 Construction Over or Adjacent to Navigable Waters
14.7 Traffic Protection Devices
14.8 Use of Explosives
14.9 Protection and Restoration of Property
14.10 Forest Protection
14.11 Responsibility for Damage Claims
14.12 Contractor's Responsibility for Work
14.13 Emergencies

Article 15 – SUSPENSION OF WORK AND TERMINATION.....96
15.1 Suspension of Work
15.2 Owner May Terminate for Cause
15.3 Owner May Terminate the Contract For Convenience
15.4 Contractor's Right to Terminate the Contract

Article 16 – DISPUTE RESOLUTION.....101
16.1 Disputes
16.2 Remedies
16.3 Mediation
16.4 Arbitration

Article 17 – MISCELLANEOUS.....103
17.1 Governing Law
17.2 Federal Funds
17.3 Notice
17.4 Computation of Time
17.5 Ownership of Documents
17.6 Personal Liability of Public Officials
17.7 No Waiver of Legal Rights
17.8 Cumulative Remedies
17.9 Successors and Assigns
17.10 Survival of Obligations
17.11 Language
17.12 Amendments

PART C. ADDITIONAL PROVISIONS

ARTICLE 1: SEPARABILITY CLAUSE; EFFECTIVENESS.....106

1.1 Separability Clause.
1.2 Effectiveness

CERTIFICATION

UNIFORM GENERAL CONDITIONS FOR PUBLIC WORKS CONTRACTS

PART A. INTRODUCTION

ARTICLE 1 –LEGAL BASIS; APPLICATION

1.1 Legal Basis. The Secretary of Transportation and Public Works, in accordance with the powers conferred upon him by Law No. 198 of May 15, 1943, as amended by Law No. 131 of September 2, 2010 and Law No. 170 of August 12, 1988, as amended, hereby enacts the following regulations to establish the applicable legal framework for the contracting and management of all public works.

1.2. Application. The provisions of these Regulations shall be applicable to all contracts for public works executed by all government agencies, departments, public corporations and instrumentalities.

PART B. UNIFORM GENERAL CONDITIONS

ARTICLE 1 -DEFINITIONS AND TERMINOLOGY

1.1 Defined Terms

1.1.1 Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1.1.1.1. Agreement (or Contract) - The written instrument, which is evidence of the agreement between Owner and Contractor covering the Work.

1.1.1.2. Application for Payment - The form acceptable to Owner which is to be used by Contractor during the course of the Work in requesting progress or final payment and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.1.1.3. Architect/Engineer - The Architect or Engineer, referred herein as Architect/Engineer, is the collegiate professional licensed to practice architecture, engineering or surveying in the Commonwealth of Puerto Rico and is referred to throughout the Contract Documents. It is the Architect or Engineer authorized by the Owner for the preparation of all construction documents, plans and specifications and to submit such documents for the approval of the related public agency. The Architect/Engineer may designate an authorized representative. The Architect/Engineer is the individual or entity named as such in the Agreement.

1.1.1.4. Architect/Engineer's Consultant - An individual or entity having a contract with the Architect/Engineer to furnish services as Architect/Engineer's independent professional and collegiate consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

1.1.1.5. Bonds - Performance and Payment bonds and other instruments of surety required in the Contract Documents.

1.1.1.6. Certificate of Final Acceptance - Certificate issued by the Owner, or its duly authorized representative to Contractor indicating the date that the Work reached Final Acceptance.

1.1.1.7. Certificate of Substantial Completion - Certificate issued by the Owner, or its duly authorized representative, to the Contractor indicating the date that Substantial Completion was achieved for the Work.

1.1.1.8. Change in Law – Change in Law shall include: (i) the enactment or adoption by any legislative, regulatory, executive or administrative body of the Commonwealth of Puerto Rico or of the United States of America of any law, or any change or amendment to any law, in force as of the bid opening date, (ii) any change in the interpretation thereof which is final and not subject to administrative or judicial review, which cannot be complied with by a party without incurring in additional costs.

1.1.1.9. Change Order - A written order issued by the Owner, or its duly authorized representative, to the Contractor, signed by both parties, covering, additions, deletions, and/or revisions in the Work and/or an adjustment in the Contract Price and/or the Contract Time, if any, issued on or after the Effective Date of the Agreement. In Unit Price Contracts, a Change Order can also reflect a change in the number of items, as well as an increase or decrease, contained in the proposal. In Lump Sum Contracts, it reflects an order for additional or less work.

1.1.1.10. Claim - A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice and in accordance with Article 11.5. The responsibility to substantiate Claims shall rest with the party making the Claim.

1.1.1.11. Commonwealth - The Commonwealth of Puerto Rico.

1.1.1.12. Construction Change Directive – A Construction Change Directive is a written order signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price or Contract Time, or both. The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Price and Contract Time adjusted accordingly. A Construction Change Directive shall be used only in the absence of total agreement on the terms of the Change Order, Extra Work Order or Work Change Directive, and shall be paid with the monthly Progress Payment according to the method indicated in Article 10.1.2.3.

1.1.1.13. Contract (or Agreement) - The entire and integrated written Agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

1.1.1.14. Contract Documents - The Contract Documents establish the rights and obligations of the parties and include: (i) the Agreement, (ii) addenda (which pertain to the Contract Documents), (iii) Contractor's bid or proposal (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award), (iv) the Notice to Proceed, (v) the Bonds, (vi) these General Conditions, (vii) the Supplementary Conditions, (viii) the Special Provisions, (ix) the Specifications, (x) the Drawings as the same are more specifically identified in the Agreement, including Standard Drawings, if applicable and (xi) Instructions to Bidders. It shall also include: (i) all Written Amendments, (ii) Change Orders and Extra Work Orders, (iii) Work Change Directives, (iv) Field Orders and (v) Architect/Engineer's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this Article are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by Owner to Contractor are not Contract Documents, unless otherwise specified in the bid documents.

1.1.1.15. Contract Item or Pay Item - A portion of Work specifically described and for which a price either unit or lump sum is provided. It includes the performance of all Work and the furnishing of labor, equipment and materials described in the Specifications.

1.1.1.16. Contract/Project Limits - The area, including Site and off-Site, within which the Work is to be performed.

1.1.1.17. Contract Price - See Contract Sum.

1.1.1.18. Contract Sum - It is the Contract Price as stated in the Agreement and is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents subject to additions and deductions, stipulated in the Contract Documents.

1.1.1.19. Contract Time or Time - It is the period of time allotted in the Contract Documents for Substantial Completion of the Work.

1.1.1.20. Contract Unit - A major subdivision of the construction Project identified as such in the Contract Documents.

1.1.1.21. Contracting Officer - The Contracting Officer is the authorized representative of the Owner under the Contract Documents.

1.1.1.22. Contractor - The Contractor is the person or organization that contracts with the Owner for the performance of the Work described in the Contract Documents. The term Contractor, identified as such in the Agreement, means the Contractor or his authorized representative. In cases of Design-Build Contracts, the term Contractor shall also signify the Design-Builder Contractor.

1.1.1.23. Cost of the Work - See section 10.2 for definition.

1.1.1.24. Day - The word "day" shall constitute a calendar day of twenty-four (24) hours measured from midnight to the next midnight.

1.1.1.25. Design-Build Contracts – Shall be those contracts where the Contractor undertakes the duty to design the Work, in addition to performing the duties of Contractor.

1.1.1.26. Design-Builder Contractor – Shall be the Contractor in Design-Build Contracts, who in addition to having all duties of Contractor has the duty to design the Work, as specified in the Contract Documents.

1.1.1.27 Dispute – Any Claim, dispute or other disagreement involving the interpretation of the Contract Documents, a change in the Contract Sum, and or a change in the Contract Time, and other matters in question arising out of, or relating to the Contract or the breach thereof, except for Claims which have been waived by lack of proper notice and/or the making or acceptance of final payment as provided in Articles 13.7.2 and 13.9.1

1.1.1.28. Drawings or Plans - The approved drawings and supplementary drawings showing the location, character, dimensions, and details of the Work to be done which are part of the Contract Documents.

1.1.1.29. Effective Date of the Agreement - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the parties to the Contract.

1.1.1.30. Engineer or Architect - See Architect/Engineer.

1.1.1.31. Equal or Similar and Substitute - "Similar or Equal" or "Substitute", when used in relation to materials, parts, machinery, equipment, formulas of the Project and/or anything to them related, shall mean that they be of substantially the same quality, form, appearance, resistance, endurance, efficiency, capacity, safety, specifications and any other quality inherent, or related, to them as they are indicated in the drawings and/or specifications of the Contract.

1.1.1.32. Equipment - All machinery and implements, together with the necessary supplies for upkeep and maintenance, and all tools and apparatus necessary for the proper construction and acceptable completion of the Work.

1.1.1.33. Extra Work - An item of Work not provided for in the Contract as awarded but found by the Owner or its duly authorized representative necessary for the satisfactory completion of the Contract within its generally intended scope.

1.1.1.34. Extra Work Order - Is a written order issued by the Owner to Contractor and signed by both parties in a unit price contract concerning the performance of the Work or furnishing of materials involving Extra Work. It authorizes a change in the Work, adjustments in the Contract Price and/or Contract Time for services, or Work, for which there is no basis of payment, either direct or indirect, provided in the proposal, or Contract, or if the resulting overruns, or underruns, of any item, or items, exceed certain percentages. Extra Work Orders apply only to unit price contracts. Such Extra Work may be performed at agreed prices or as provided in Section 10.2 of these General Conditions.

1.1.1.35. Federal Agency - Any agency of the government of the United States of America or its succeeding agency.

1.1.1.36. Field Order - A written order issued by the Owner that requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Time.

1.1.1.37. Final Acceptance - Shall mean the acceptance of the Work by the Owner after the final inspection as evidenced by the Certificate of Final Acceptance sent to Contractor by Owner.

1.1.1.38. Force Account Work - Additional Work that is paid for based on the Cost of the Work as defined in Article 10.2.

1.1.1.39. Force Majeure - Means an act of God; earthquake; tidal wave; hurricane; act of the public enemy; war; blockade; public riot; lighting; fire; flood; explosion; a strike, excluding strikes and any other activity or demonstration by Owner's personnel that does not interfere directly with the Work; and any other cause, whether of the kind specifically enumerated herein or otherwise, which is not reasonably within the sole control of Contractor. A rain, windstorm flood or other natural phenomenon of normal intensity for the particular locality shall not be construed as Force Majeure.

1.1.1.40. Hazardous Environmental Condition - The presence at the Site of asbestos, PCBs, petroleum, hazardous waste, or radioactive material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

1.1.1.41. Hazardous Waste - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 U.S.C. §6903) as amended.

1.1.1.42. Holidays - Saturdays, Sundays and the legal holidays listed below on which the Contractor will not be allowed to perform Work under the Contract except as otherwise ordered or authorized in writing by the Owner. All other Holidays not listed below will be considered working days. Also, if any of the listed holidays falls on a Sunday, the following Monday will be considered a holiday.

New Year's Day	January 1
Three Kings Day	January 6
Good Friday	Variable
Independence Day	July 4
Constitution Day	July 25
Labor Day	First Monday of September
Election Day (when occurring)	Tuesday after 1st Monday in November
Thanksgiving	Fourth Thursday in November
Christmas Day	December 25

1.1.1.43. Laboratory - The material testing laboratory of the Owner or any other testing laboratory which may be approved by the Owner or its duly authorized representative.

1.1.1.44. Laws and Regulations; Laws or Regulations - Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

1.1.1.45. Liens - Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

1.1.1.46. Major and Minor Contract Items - Any item having a Contract value equal to or greater than five per cent (5%) of the original Contract amount shall be considered as a major item. All the other Contract items shall be considered as minor items. A minor item may become a major item when the minor item is increased to the extent that the total cost of the item is equal to or greater than five per cent (5%) of the original Contract amount.

1.1.1.47. Materials - Any substances specified for use in the construction of the Project and its appurtenances.

1.1.1.48. Milestone - A principal event specified in the Contract Documents related to an intermediate completion date or time prior to the Substantial Completion of the whole Work.

1.1.1.49. Notice of Award - The written notice by the Owner to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

1.1.1.50. Notice to Proceed - A written notice issued by the Owner to the Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work under the Contract Documents. Such Notice to Proceed shall identify the persons included in article 5.2.2. Unless otherwise agreed by the parties, all permits and/or endorsements to be furnished by the Owner needed to start construction of the Project must be obtained prior to issuance of the Notice to Proceed.

1.1.1.51. OCIP - see Owner-Controlled Insurance Program.

1.1.1.52. Off-Site Work - Work to be performed outside of the of the Project's limits.

1.1.1.53. Owner - The Owner is the Department, Agency, Public Corporations, or any other instrumentality of the Commonwealth of Puerto Rico as identified in the Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or his authorized representative. It shall also mean any person, or entity, named as such in the Contract Documents.

1.1.1.54. Owner-Controlled Insurance Program - also known as "OCIP". An insurance program under which

Commercial General Liability, Excess General Liability, Builder's Risk, and Contractor's Pollution Liability coverage are procured or provided by the Owner for the Contractor, Subcontractors of any tier, who have been properly enrolled, while performing operations at the Project Site.

1.1.1.55. Owner's Representative – One or more persons or entity designated by the Owner, who will perform the functions of the Owner as described in these General Conditions. The Owner's Representative may employ Project Inspectors and/or other assistants to perform any function, duty or responsibility, as delegated by the Owner's Representative, including but not limited to the detailed inspections of performance of any or all portions of the Work.

1.1.1.56. Partial Utilization - Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

1.1.1.57. Pay Item - See Contract Item.

1.1.1.58. Payment Bond - The security required to be furnished by the Contractor and his Surety and approved by the Owner to guarantee the payment of all persons or entities supplying labor, material and equipment in the prosecution of the Work or services required for completion of the Contract.

1.1.1.59. Performance Bond - The security required to be furnished by the Contractor and his Surety and approved by the Owner to guarantee the completion of all the requirements of the Contract.

1.1.1.60. Plans - See Drawings.

1.1.1.61. Project – The total construction of which the Work to be performed under the Contract Documents is the whole, or part.

1.1.1.62. Project Inspector - The professional, duly licensed and collegiate Engineer or Architect, or a legally qualified entity, contracted and/or designated by the Owner and/or the Owner's Representative to perform, as a Project Inspector, the continuous on Site inspection of any or all portions of the Work.

1.1.1.63. Project Manager- The professional licensed and collegiate Engineer or Architect, designated in accordance with the Contract as the Contractor's authorized representative who is made by Contractor responsible for and placed in charge of the Work.

1.1.1.64. Project Manual - The bound documentary information prepared for bidding and constructing the Work.

1.1.1.65.Project Schedule- A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Work within the Contract Times, as required by Article 6.4 of these General Conditions.

1.1.1.66. Reasonable Close Conformity - Compliance with reasonable and customary manufacturing and construction tolerances when working tolerances are not specified. When working tolerances are specified, reasonably close conformity means compliance with such working tolerances. Without detracting from the complete and absolute discretion of the Owner or its duly authorized representative to insist upon compliance with such tolerances, the Owner or its duly authorized representative may, at his sole option and reasonable discretion, accept variations beyond such tolerances when and where they will not materially affect the value or utility of the Work and the interests of the Owner.

1.1.1.67. Reference Specifications - Specifications issued by other official and/or professional organizations that are referred to and made part of the Owner's specifications and other Contract Documents. Unless otherwise specifically indicated in the Contract Documents, references cited shall be the edition of such specifications in effect at the time the Project is advertised for bids/proposals.

1.1.1.68. Right of Way - A general term denoting land, property, easement or interest therein, usually in a strip, acquired for the Project or for the benefit of another project or public utility.

1.1.1.69. Samples - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

1.1.1.70. Shop Drawings or Working Drawings - All drawings, diagrams, schedules, and other data or information, which are specifically prepared or assembled by or for the Contractor and submitted by Contractor to illustrate some portion of the Work.

1.1.1.71. Site - Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner that are designated for the use of Contractor. It shall also mean areas for the performance of off-site work, if same is required in the Contract Documents.

1.1.1.72. Special Conditions - Special requirements, regulations or direction, covering conditions peculiar to a particular project. Special Conditions shall prevail over particular provisions of these General Conditions only when such option is provided in any particular Article of these General Conditions by the use of words such as "unless otherwise indicated in the Contract Documents..." In all other instances these General Conditions shall prevail over any conflicting provision contained in the Special Conditions.

1.1.1.73. Specialty Item - A Contract Item, which is specifically identified in the Contract Documents as exempted from the computations to determine the total amount of the Work that the Contractor may be authorized to subcontract.

1.1.1.74. Specifications - That part of the Contract Documents consisting of written Technical Specifications, descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable to the Work.

1.1.1.75. Standard Drawings - See Standard Plans.

1.1.1.76. Standard Plans (or Standard Drawings) - Drawings approved for repetitive use, showing details to be used where appropriate, included in the Plans or published as a separate document.

1.1.1.77. Standard Specifications - The set of specifications approved by the Owner for general application and repetitive use.

1.1.1.78. Subcontractor - A Subcontractor is an individual or entity that has a direct contract with the Contractor to perform any of the Work at the Site. The term Subcontractor as referred throughout the Contract Documents means the Subcontractor or his authorized representative.

1.1.1.79. Substantial Completion - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of the Owner, or its authorized representative, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

1.1.1.80. Supplemental Agreement - A written agreement executed by the Contractor and Owner supplementing the Contract to cover Extra Work and/or changes and/or changed conditions incidental to and necessary for the acceptable completion or the Project.

1.1.1.81. Supplemental Specifications - Approved additions and/or revisions to the Standard Specifications, including Technical Specifications.

1.1.1.82. Supplementary Conditions - That part of the Contract Documents that amends, or supplements, where allowed, these General Conditions.

1.1.1.83 Supplier - A manufacturer, fabricator, supplier, distributor, materialmen, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work.

1.1.1.84. Surety - The insurance or bonding corporation or other legal entity, other than the Contractor, authorized to do business in Puerto Rico, bound with and for the Contractor for the proposal guaranty and/or the Payment Bond and/or the Performance Bond, or other bonds and insurances required by the Contract Documents.

1.1.1.85. Technical Specifications - The directions, provisions and requirements setting forth, or relating to, the performance of the Work and to the kind and quality of materials and labor to be furnished under the Contract for the execution of the Project. Any entity making changes in the Technical Specifications and/or Plans and Drawings, must perform so complying with all laws, codes, rules and regulations applying to them.

1.1.1.86. Underground Facilities/Utilities - All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any easements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

1.1.1.87. Unit Price Work - Work to be paid for based on unit prices.

1.1.1.88. Utility - A public or privately owned agency or entity and the lines and facilities for producing, transmitting or distributing data or voice communications, power, electricity, gas, oil, gasoline, water, sewer and similar commodities for public or private use.

1.1.1.89. Work - The entire construction referred to in the Agreement and the performance of the services identified to be provided in the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce and make workable such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

1.1.1.90. Work Change Directive - A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by the Owner and recommended by the Architect/Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Time but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time.

1.1.1.91. Work Order - A written order, signed by the Owner, or its duly authorized representative, which requires performance of a specific contractual issue by the Contractor without negotiation of any sort. If Contractor is not in agreement with the Work Order, he may present a Claim as established in Article 11.5.

1.1.1.92. Working Day - A calendar day, exclusive of Saturday and Sunday and designated legal holidays. All periods of time under the Contract Documents shall be measured in calendar days, unless Working Days are specified.

1.1.1.93. Working Drawings - See Shop Drawings.

1.1.1.94. Written Amendment - See Supplemental Agreement.

1.2 Other Terms - The Owner's manuals and sets of regulations contain additional terms, not included above, which are used in the plans and other Contract Documents. Such terms shall be interpreted as defined in the Owner's manuals and sets of regulations.

1.3 Terminology

1.3.1 Intent of Certain Terms or Adjectives.

1.3.1.1. Unless otherwise indicated in the Contract Documents, whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Architect/Engineer as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Architect/Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of these General Conditions and the Contract Documents.

1.3.2 Deficient.

1.3.2.1. The word "deficient," when modifying the word "Work," refers to Work, or part of it, that is unsatisfactory, faulty, or defective in that it does not conform to the Contract Document or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Owner's Representative's recommendation of final payment, unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with these General Conditions.

1.3.3 Furnish, Install, Perform, Provide.

1.3.3.1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use, assembling, or installation and in usable or operable condition.

1.3.3.2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position, said services, materials, or equipment complete and ready for intended use.

1.3.3.3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

1.3.3.4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "install", "perform" and/or, "provide" is implied.

1.3.4 Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 Intent and Interpretation of Contract Documents

2.1.1 The Contract Documents constitutes the Contract. The Contract Documents represent the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral, including the bidding documents. The Contract Documents may be amended or modified as set forth in section 2.6.

2.1.2 The intent of the Contract Documents is to provide for the construction and completion of the Work described.

2.1.3 The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to complete the Work in accordance with the plans, specifications and terms of the Contract Documents.

2.1.4 The relationship which the parties intend to create under the Contract Documents is that of principal and independent Contractor and nothing herein is intended or shall be construed, so as to create a relationship of any kind, form or manner, such as but not limited to partnership, co-venturers, or employment between the Owner and Contractor, unless clearly otherwise expressed in the Contract Documents.

2.2 Order of Precedence of Contract Documents

2.2.1 The Contract Documents for each particular Project shall specify the order of precedence among the diverse documents that form the Contract Documents, except for the order of precedence of the General Conditions which may not be altered unless allowed to be altered by means of the Special Conditions as described in Article 1.1.1.72. If no such order of precedence is established in the Contract Documents for the Project, the following order shall be followed:

2.2.1.1. Agreement (which shall include the Bonds and required insurance policies).

2.2.1.2. Dated Contractor's Proposal

2.2.1.3. All addenda issued prior to Bid Date. Unless no conflict exist between addenda, the issuance of a subsequent addendum will supersede all previously issued addenda.

2.2.1.4. Instructions to Bidders

2.2.1.5. The General Conditions of the Contract, (except where in accordance with Article 1.1.1.72 they are allowed to be changed by the Special Conditions).

2.2.1.6. Special Conditions.

2.2.1.7. Plans or Drawings

2.2.1.8. The Standard Drawings.

2.2.1.9. Specifications.

2.2.1.10. Technical Specifications.

2.2.1.11. Supplemental Specifications.

2.2.1.12. Standard Specifications.

2.3 Written Interpretations

2.3.1 Provided reasonable time is granted to Owner, written interpretations necessary for the proper execution or progress of the Work in the form of drawings, or otherwise, will be issued with reasonable promptness by the Owner, its designated representative, or Architect/Engineer so as not to adversely affect the critical path of the Project Schedule.

2.3.2 Contractor may make written request to the Owner, Owner's Representative, or the Architect/Engineer for such interpretations, when deemed necessary for the proper progress of the Work.

2.3.2.1. Such interpretations shall be consistent with and reasonably inferable from the Contract Documents and may be effected by Field Orders.

2.3.2.2. Interpretation drawings are not necessarily changes in the Work.

2.3.3 Except as may otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

2.3.3.1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

2.3.3.2. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

2.4 Execution and Correlation

2.4.1. The Agreement shall be signed by the Owner and Contractor or their authorized representatives. The other component parts of the Contract Documents, if not signed by the Owner or Contractor, shall be marked by their authorized representative.

2.4.2 By executing the Contract Documents, the Contractor represents that he has visited the Contract Limits within the Site, familiarized himself with the local conditions under which the Work is to be performed, correlated his observations with the requirements of Contract Documents, and accepts the same.

2.4.2.1 The Owner warrants that it has submitted all the necessary documents required of Owner to be submitted to the appropriate governmental agencies needed for the prosecution of the Work, as required by applicable laws and regulations.

2.4.3 The Owner and the Contractor acknowledge that no service or Work under the Contract Documents will be performed until both parties duly sign the Contract and the Notice to Proceed is issued.

2.4.3.1. No payment and/or disbursement will be made or paid for services rendered in violation of this clause.

2.4.4 The Contract Time.

2.4.4.1. The Contract Time must be specifically expressed on the Contract.

2.4.4.2. The Contract Time will be extended by the same number of days in which the term to execute the Work is extended by Change Orders or by any other mean allowed or permitted by the Contract or Contract Documents.

2.4.4.3. Furthermore, the parties agree that no Work or service will be performed or received beyond Final Acceptance of the Contract.

2.4.4.4. No payment and/or disbursement will be made or paid for services rendered in violation of this clause.

2.4.5 The Contract Documents are complementary, and what is required by anyone shall be as obligatory as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment and other items as provided on these General Conditions necessary for the proper execution and completion of the Work.

2.4.5.1. It is not intended that Work not covered under any heading, section, branch, class or trade of the Specifications shall be supplied unless it is required elsewhere in the Contract Documents.

2.4.5.2. The organization of the Specifications in divisions, sections, articles, and the arrangement of drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.

2.5 Review of Contract Documents and Field Conditions by Contractor.

2.5.1 Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents with each other and check and verify pertinent dimensions and quantities therein and all applicable field measurements.

2.5.2 Contractor shall promptly report in writing to Owner any conflict, error, ambiguity, inconsistency, discrepancy, or omission that Contractor may discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected by said conflict, error, ambiguity, inconsistency, discrepancy or omission.

2.5.2.1. However, Contractor shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents, unless Contractor failed to report it to the Owner with sufficient time for the Owner to provide a solution before the critical path of the Project is affected.

2.5.2.2. If the Contractor performs any construction activity in violation of this Article 2.5, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the costs attributed to correction.

2.5.2.3. The Owner shall provide a solution to any reported conflict, error, ambiguity, discrepancy, or omission and if such solution adversely affects cost or the critical path of the Project, Owner will adjust Contract Price and Contract Time accordingly.

2.6 Amending and Supplementing Contract Documents

2.6.1 The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one (1) or more of the following ways:

2.6.1.1. a Written Amendment;

2.6.1.2. a Change Order;

2.6.1.3. an Extra Work Order; or

2.6.1.4. a Work Change Directive.

2.6.2 The requirements of the Contract Documents may be supplemented and minor variations and deviations in

the Work may be authorized, by one (1) or more of the followings ways:

2.6.2.1. a Field Order;

2.6.2.2. Owner's, or his authorized representative's, approval of a Shop Drawing or Sample; or

2.6.2.3. Owner's, his authorized representatives, or Architect/Engineer's written interpretation or clarification.

2..6.3 A modification may be made only after execution of the Contract.

2..7 Copies Furnished, Ownership and Reuse of Documents

2.7.1. The Contractor will be furnished, free of charge, four (4) complete copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction. If Contractor so requests it, Owner will also furnish, free of charge, if available, an electronic file in PLT format (plot to File) so that the Contractor may make the copies of plans and/or drawings that he needs to build the Project. If such electronic files are not available, the Owner shall allow the Contractor to prepare electronic files and to print, at Contractor's cost, but without additional payment to Owner or Architect/Engineer, those copies needed for use by Contractor.

2.7.2. All Drawings, Specifications and copies thereof furnished by the Owner, Architect/Engineer, or Owner's Representative are, and shall remain, property of the Owner.

2.7.2.1. The Contractor can make copies of all the Drawings, Specifications, and other Contract Documents without permission, and without the payment of any fees or royalties, to the Owner, Architect/Engineer, or Owner's Representative as long as they are necessary for use in the execution of the Work.

2.7.3. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with Owner:

2.7.3.1. shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Owner, Architect/Engineer or Engineer's Consultant, including electronic media editions; and

2.7.3.2. shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extension of the Project or any other project without written consent of Owner.

2.7.4 This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 3- BONDS AND INSURANCE

3.1 General- For Owners with OCIP

3.1.1 The Contractor shall not commence work under the Contract until he has obtained the various insurances policies and bonds specified in the Owner's Controlled Insurance Program. Owner shall provide to Contractor an exact copy of the applicable Owner Controlled Insurance Program manual together with the Contract Documents.

3.2 General- For Owners without OCIP.

3.2.1 The Contractor shall not commence work under the Contract until he has obtained the various

insurances and bonds specified in this section and has submitted to the Owner certificates of insurance (and other evidence requested by Owner) evidencing his compliance with the various insurance requirements set forth in this Article.

3.2.1.1. Unless otherwise indicated in the Contract Documents, Contractor must, within ten (10) calendar days from the Notice of Award, provide to Owner, in form satisfactory to Owner as provided in detail in this Article, the following:

3.2.1.1.1. Performance Bond

3.2.1.1.2. Payment Bonds

3.2.1.1.3. Workmen's Compensation Insurance Policy issued by The Puerto Rico State Insurance Fund and all Social Insurances required by law.

3.2.1.1.4. General Liability Insurance

3.2.1.1.5. Business Auto Policy

3.2.1.1.6. Contract Works Policy (Builder's Risk)

3.2.1.1.7. Installation Floater Policy (when applicable)

3.2.2 Notwithstanding the requirements set forth in this Article, the Owner may opt out of part of the requirements included in this Article and require any and all other policies that it understands are needed for its particular construction projects, including other policies not required herein.

3.2.2.1. However, such decision to opt out of part of the requirements of this Article must be written and signed by the Owner stating particularly the reasoning behind it Such written decision must be made part of Owner's Project file.

3.2.3. The insurance and bond policies required herein shall be obtained from insurance and surety companies complying with the requirements of Puerto Rico's Insurance Commissioner.

3.2.3.1. Prior to Bid announcement Date, Owner will publish a list of unacceptable insurance and bonding companies so that Contractor has knowledge of which companies are not authorized to provide insurances or bonds for the Work. Unless otherwise indicated in the Contract Documents, the Contractor must obtain an endorsement naming the Owner as an additional insured in each of the required insurance policies in this Article (as applicable).

3.2.4 The Contractor shall, throughout the performance of Work under the Contract and until the Final Acceptance of the Project, maintain current, and in effect all the required insurance, except the Contract Works Policy (Builder's Risk), which shall terminate on the date of Substantial Completion.

3.2.4.1. If on the termination date of any of the policies, the Project is still under construction and the Contractor has not renewed the policies, the Owner can renew them and deduct the amount paid for the premium, and applicable costs from the next payment, only if Contractor does not remedy and provide timely evidence of coverage.

3.2.5. Insurance coverage in the minimum limit amounts set forth herein shall not be construed to release the

Contractor from liability in excess of such coverage limit. Contractor must give thirty (30) calendar days written notice to Owner before any policy coverage is changed, canceled or not renewed and shall cause the insurance carrier to do the same.

3.2.6 Acceptance of Insurance; Option to Replace. If either Owner or Contractor has any objection to the coverage afforded by or to other provisions of the insurance required to be purchased and maintained by the other party in accordance with this Article on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within twenty (20) days after receipt of the certificates of insurance and bonds (or other such evidence) required by Article 3.1.1.

3.2.6.1. Owner and Contractor shall each provide to the other such additional information with respect to insurance provided as the other may reasonably request.

3.2.6.2. If either party fails to purchase or maintain all of the insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure prior to the start of the Work, or of such failure is to maintain, prior to any change in the required coverage.

3.2.6.3. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent insurance to protect such other party's interest at the expense of the party who was required to provide such coverage, and a Change Order (or Extra Work Order in a unit price Contract) shall be issued to adjust the Contract Price accordingly.

3.2.7. If Owner finds it necessary or convenient to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in section 14.5 no such use or occupancy shall commence before the insurers providing the property insurance pursuant to section 3.6 have acknowledged notice thereof and in writing effected any changes in coverage needed thereby.

3.2.7.1. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

3.2.7.2. If the Owner accepts, occupies, or uses a portion, or portions, of the Work for its intended use, or whatever use he deems necessary or convenient, it is the Owner's responsibility to insure the property comprising said portion, or portions of the Work.

3.2.7.3. If the Contractor obtained the Contract Works Policy (Builder's Risk) for the Work, the Owner may request that Contractor continues to carry said insurance and will pay the cost, as a Change Order, based on the proportion of the occupied area versus the total Project area.

3.2.7.4. If requested by Contractor, the Owner shall supply copy of its insurance policy, and/or certificate of insurance evidencing that said portion, or portions, of the Work now under the Owner's care, custody and control is properly insured.

3.3 Performance, Payment, and Other Bonds

3.3.1. Unless otherwise stated in the Contract Documents, the Contractor must, within ten (10) calendar days from the date of Notice of Award, furnish and file with the Owner, in form satisfactory to, and with Sureties approved by the Owner, the following:

3.3.1.1. Performance Bond to guarantee the faithful performance of the Contract, in an amount equal to at least fifty percent (50%), but not more than one hundred percent (100%) of the Contract Sum, as stated in the Supplementary General Conditions of the Contract. If none is stated, the amount shall be one hundred percent

(100%) of the Contract Sum.

3.3.1.2. Payment Bond, including Labor Bond in an amount equal to at least fifty percent (50%), but not more than one hundred percent (100%) of the Contract Sum, as stated in Supplementary General Conditions of the Contract. If none is stated, the amount shall be one hundred percent (100%) of the Contract Sum.

3.3.1.3. A separate and additional Payment Bond in an amount equal to the requirements of Law No. 111, approved June 22, 1961, as it may be amended in the future, payable to the Secretary of Labor of the Commonwealth of Puerto Rico to guarantee payment to laborers and employees of the Contractor.

3.3.1.4. Contractor shall also furnish such other Bonds as are required by the Contract Documents.

3.3.2. The Payment and Performance Bonds shall remain in effect as follows:

3.3.2.1. Under the Performance Bond: one (1) year after the date when the final payment becomes due for warranty work, as stipulated in the warranty clause, or as provided otherwise by Laws or Regulations or by the Contract Documents.

3.3.2.2. Under the Payment Bond: six (6) months after the retainage is paid in full to the Contractor, except as provided otherwise by Laws or Regulations or by the Contract Documents.

3.3.3 All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations. All Bonds must be signed by an attorney in fact duly authorized by the Commissioner of Insurance of Puerto Rico, and must be accompanied by a certified copy of such power of attorney.

3.3.4 If the Surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of the Puerto Rico's Insurance Commissioner, Contractor shall within twenty (20) days thereafter substitute said Bond and Surety with acceptable substitutes.

3.4 Workmen's Compensation Insurance

3.4.1 The Contractor shall provide Worker's Compensation Insurance as required by the "Workers' Compensation Act of the Commonwealth of Puerto Rico". The Contractor shall furnish the Owner a certificate from the State Insurance Fund Corporation covered by the Workers' Compensation Act of the Commonwealth of Puerto Rico.

3.4.2 The Contractor shall also be responsible for compliance with said "Workers' Compensation Act" by all his subcontractors and agents.

3.5 Contractor's Liability Insurance

3.5.1 Contractor shall purchase and maintain the following liability insurance coverage, in an occurrence format, and other insurance as is appropriate for the Work being performed and will provide protection from claims set forth which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

3.5.1.1. Limits. Unless otherwise stated in the Special Conditions of the Contract, the liability insurance limits shall not be less than:

3.5.1.1.1. General Aggregate Limit	$1,000,000
3.5.1.1.2. Products/Completed Operations Aggregate Limit	$1,000,000
3.5.1.1.3. Personal and Advertising Injury Limits	$ 500,000
3.5.1.1.4. Each Occurrence Limit	$ 500,000
3.5.1.1.5. Fire Damage Limit	$ 50,000
3.5.1.1.6. Medical Expense Limit	$ 5,000

3.5.1.2. Claims for damages because of bodily injury, occupational sickness or disease, or death of any person other than Contractor's employees;

3.5.1.3. Claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (ii) by any other person for any other reason;

3.5.1.4. Claims for damages, other than to the Work itself, because o injury to or destruction of tangible property wherever located, including loss of use resulting there from.

3.5.2 The insurance policies so required by this section 3.4 to be purchased and maintained, unless otherwise specified in the Contract Documents, shall:

3.5.2.1. include at least the specific coverage and be written for no less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater,

3.5.2.2. include complete operations/premises/products insurance;

3.5.2.3. include contractual liability insurance covering Contractor's indemnity obligations under these General Conditions. Unless otherwise specified in the Contract Documents, the indemnity clause shall read as follows:

3.5.2.3.1. The Contractor for itself, agents, employees, successors and assigns agrees to save harmless the Owner, its Officers, Agents, Employees and Architect/Engineer from and against any and all claims, demands and/or suits, except as stated below, whether judicial or extra judicial for any cost whatever arising out or related to the execution of the Contract, and its insurers shall defend the Owner, its officers, agents, Employees and Architect/Engineer from such claims, demands and/or suits and shall bear all the expenses for such defense contemplated within the coverage limits provided by the Contractor's general liability policy, except where such claims, demands and/or suits are due solely to the negligence of the Owner, its Officers, Agents, employees and negligence, errors and/or omissions of the work performed by the Architect/Engineer.

3.5.2.4. include personal & advertising liability.

3.5.2.5 include XCU hazards (Explosion, Collapse, and Underground), as applicable.

3.5.2.6. include Contractor's subcontracted work;

3.5.2.7. include fire damage and medical expenses;

3.5.2.8. remain in effect at least until Final Acceptance and at all times thereafter when Contractor may be correcting, removing or replacing Work; in accordance with section 13.7 and

3.5.2.9. Include Employer's Liability - Stop Gap coverage with a minimum limit of five hundred thousand

dollars ($500,000.00) each personal occurrence and five hundred thousand dollars ($500,000.00) each accident.

3.6 Business Auto Policy

3.6.1 Automobile Liability coverage shall be written to protect the Contractor against all claims for bodily injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operations on or the site of all motor vehicles, whether they are owned, non-owned or hired.

3.6.2 Unless otherwise stated in the Contract Documents, the liability limits shall not be less than:

3.6.2.1. Bodily Injury: two hundred and fifty thousand dollars ($250,000.00) each person and five hundred thousand dollars ($500,000.00) each occurrence.

3.6.2.2. Property Damage: one hundred thousand dollars ($100,000.00) each occurrence or two hundred and fifty thousand dollars ($250,000.00) combined single limit for bodily injuries and property damage liability.

3.7 Contract Work-Builders Risk Insurance

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide a Builder's Risk policy for the amount of coverage set in the Contract Documents. The Builders Risk policy will insure against property damage to the building or structure being constructed or erected during the course of construction.

3.7.1.1. The description of covered property should include all fixtures, materials and supplies to be used in or incidental to, the construction. It should also cover equipment, machinery, materials, etc., not yet installed but destined to become a permanent part of the structure, on the Site or at off Site temporary storage locations.

3.7.1.2. This insurance shall be written under an Inland Marine all risk form, including earthquake, windstorm and flood coverage and shall protect the Contractor, Subcontractors, and the Owner and shall contain a waiver of subrogation clause against the insured parties.

3.7.1.3. Coverage shall be for an amount equal to the Contract Sum, unless otherwise specified in the Contract Documents.

3.7.1.4. Coverage shall include expenses incurred in the repair or replacement of any insured property.

3.7.1.5. Coverage shall include materials and/or equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and/or equipment have been included in an Application for Payment recommended by Owner.

3.7.1.6. Coverage shall allow partial utilization of the Work by Owner, if Owner complies with Article 3.2.7, herein

3.7.1.7. Coverage shall include testing and startup.

3.7.1.8. Coverage shall be maintained in effect until Substantial Completion is achieved unless otherwise agreed to in writing by Owner and Contractor with thirty (30) days written notice to each other additional insured to whom a certificate of insurance has been issued.

3.7.1.9. Unless otherwise stated in the Contract Documents, flood coverage limits shall be for the Contract Sum or up to a maximum of $250,000.00, whichever is lower.

3.7.1.10. Deductibles under this Policy shall be no more than:

3.7.1.10.1. Flooding no more than $5,000.00

3.7.1.10.2. For named windstorms, or hurricanes, no more than two percent (2%) of the Contract Sum.

3.7.1.10.3. For Earthquakes, no more than five percent (5%) of the total Contract Sum.

3.7.2. If the Contract Documents specify that Owner shall purchase the Builders Risk policy, said policy shall be under the same or better terms and conditions, than those indicated in section 3.6. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this section 3.6, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order or Written Amendment.

3.7.2.1. Unless otherwise provided in the contract Documents, Owner shall be responsible for the deductible under this policy.

3.7.2.2. Prior to commencement of the Work at the Site, Owner shall in writing advice Contractor whether or not such other insurance has been procured by Owner.

3.7.3. The Contract Documents shall set forth, whenever applicable, which party shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will insure the interest of Owner, Contractor, and Subcontractors, each of whom is deemed to have an insurable interest and each shall be listed as an insured or additional insured. Unless otherwise set forth in the Contract Documents, said insurance, if needed, shall be purchased and paid for, by the Owner.

3.7.4. Receipt and Application of Insurance Proceeds

3.7.4.1. If Owner purchases said insurance, Owner is authorized and shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing to Owner's exercise of this power within fifteen (15) days after the occurrence of loss.

3.7.4.2. Owner shall settle with the insurers in accordance with what is agreed by the parties who own the insurable interest.

3.7.4.3. If no such agreement among the parties in interest is reached, Owner shall, on behalf of all parties, adjust and settle the loss with the insurers.

3.8 Installation Floater Policy

3.8.1. This policy shall be provided by the Contractor when Builders Risk policy does not apply and coverage is required for only a specific type of property during its installation.

3.8.2. The limit of insurance shall include the aggregate value of the Contractor's, Subcontractor's, or Owner's furnished equipment and materials to be erected or installed by the Contractor.

3.8.3. This insurance shall be written under an Inland Marine all risk form, including earthquake, windstorm and flood coverage and shall protect the Contractor, Subcontractors, and the Owner and shall contain a waiver of subrogation clause against the insured parties.

3.9 Subcontractor's and Subcontractor's Liability Insurance.

3.9.1. Unless otherwise indicated in the Contract Documents, the Contractor shall, throughout the performance of Work under the Contract, procure and maintain in effect, and require all Subcontractors and others performing any such Work to procure and maintain in effect, insurance of the types applicable and with limits no less than the minimum amounts specified above, or insure the activity of his Subcontractors in his own policy.

3.10 Owner's Liability Insurance.

3.10.1 In addition to the insurance required to be provided by Contractor under Article 3.4, Owner, at Owner's option, may purchase and maintain Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

ARTICLE 4-SITE

4.1 Availability of Lands

4.1.1. Unless otherwise stated in the Contract Documents, Owner shall furnish the Site.

4.1.1.1. Owner shall notify Contractor of any known encumbrances or restrictions specifically related to use of the Site with which Contractor must comply in performing the Work.

4.1.1.2. Owner will obtain in a manner that does not adversely affect the critical path of the Work the easements for permanent structures or permanent changes to existing facilities.

4.1.1.3. If Contractor and Owner are unable to agree on the entitlement to or on the amount of any adjustment in the Contract Price or Contract Time, or both, as a result of any delay in Owner's complying with the responsibilities indicated above, Contractor may make a Claim therefore as provided in section 11.5.

4.1.2. Contractor shall secure and provide all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 Subsurface and Physical Conditions

4.2.1. Reports and Drawings. The Supplementary Conditions identify:

4.2.1.1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Architect/Engineer has used in preparing the Contract Documents; and

4.2.1.2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Architect/Engineer has used in preparing the Contract Documents.

4.2.2. Limited Reliance by Contractor on Technical Data Provided. On lineal type projects, Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are

not part of the Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data", Contractor may not rely upon or make any Claim against Owner, Architect/Engineer, or any of Architect/Engineer's Consultants with respect to:

4.2.2.1. the completeness of such reports and drawings for Contractor's construction purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

4.2.2.2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

4.2.2.3. any Contractor interpretation of, or conclusion drawn from, any "technical data" or any such other data, interpretations, opinions, or information.

4.2.3. Reliance by Contractor on Technical Data Provided. On building construction projects, Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, and such reports and drawings are part of the Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data", Contractor may not rely upon or make any Claim against Owner, Architect/Engineer, or any of Architect/Engineer's Consultants with respect to:

4.2.3.1. the completeness of such reports and drawings for Contractor's construction purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

4.2.3.2. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.3 Differing Subsurface or Physical Conditions

4.3.1. Notice: If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

4.3.1.1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in section 4.2 is materially inaccurate; or

4.3.1.2. is of such a nature as to require a change in the Contract Documents; or

4.3.1.3. differs materially from that shown or indicated in the Contract Documents; or

4.3.1.4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then Contractor, shall promptly, in no event later than 3 working days, after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Article 6.16), notify Owner's Representative, Owner and Architect/Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

4.3.2. Architect/Engineer's and/or Owner's Representative Review. After receipt of written notice as required by the preceding Article, Architect/Engineer and/or Owner's Representative will promptly review the pertinent condition and determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advice Owner in writing of Architect/Engineer's and/or Owner's Representative findings and conclusions.

4.4. Price and Time Adjustments

4.4.1. The Contract Price, or the Contract Time, or both will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's costs of, or time required for, performance of the Work; subject, however, to the following:

4.4.1.1. such condition must meet any one or more of the categories described in Article 4.3.1; and

4.4.1.2. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of section 11.3.

4.4.2 Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if:

4.4.2.1. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner in respect of Contract Price and Contract Time by the submission of a Bid or by becoming bound under a negotiated contract; or

4.4.2.2. the existence of such condition could reasonably have been discovered or revealed as a result of any visual examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by Contractor prior to Contractor's making such final commitment; or

4.4.2.3. Contractor failed to give the written notice within the time and as required by Article 4.3.1.

4.4.3 If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price, or Contract Time, or both, a Claim may be made therefore as provided in section 11.5.

4.5 Underground Facilities

4.5.1. Shown or Indicated. The information and/or data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner's Representative, Owner or Architect/Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.5.1.1. Owner and Architect/Engineer shall be responsible for the reasonable accuracy or completeness of any such information or data; and

4.5.1.2. the costs of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

4.5.1.2. 1. reviewing and checking all such information and data;

4.5.1.2.2. locating all Underground Facilities shown or indicated in the Contract Documents;

4.5.1.2.3. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

4.5.1.2.4. the safety and protection of all such Underground Facilities and repairing any damage thereto

resulting from the Work.

4.5.2. Not Shown or Indicated.

4.5.2.1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Article 14.13), notify said findings in writing to the owner of such Underground Facility, Owner's Representative and Architect/Engineer.

4.5.2.2. Architect/Engineer, Owner's Representative and Owner will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility.

4.5.2.3. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

4.5.2.4. If Owner's Representative concludes that a change in the Contract Documents is required, a Work Change Directive, Change Order or Extra Work Order will be issued to reflect and document such consequences.

4.5.2.4.1. An equitable adjustment shall be made to the Contract Price or Contract Time, or both, if warranted under this Article 4.5.

4.5.2.4.2. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Time, Owner or Contractor may make a Claim therefore as provided in section 11.5.

4.6. Reference Points

4.6.1. In projects requiring construction of buildings, at the beginning of the project, the Owner will set construction stakes establishing sufficient property lines, baseline and a bench mark. These stakes and marks will constitute all the surveying work the Owner will provide for the use of the Contractor. From the above-mentioned stakes and marks, the Contractor shall develop and establish all necessary marks and controls to perform his work. The Contractor will be held responsible for the preservation of original stakes and marks provided by the Owner at the beginning of the project, and if any of these stakes or marks are carelessly or willfully destroyed or disturbed by the Contractor, the cost of replacing them will be at Contractor's expense. The Owner will be responsible for the accuracy of the original lines and marks furnished to the Contractor.

4.6.1.1. In lineal projects, Owner shall provide engineering surveys to establish reference points for construction which, in Architect/Engineer's judgment, are necessary to enable Contractor to proceed with the Work.

4.6.2. Contractor shall be responsible thereafter for establishing the reference points and property monuments in accordance with the survey provided by Owner and laying out the Work, shall protect and preserve the reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall be responsible for replacing the established reference points and property monuments, if affected during construction.

4.6.3. Contractor shall report to Owner's Representative and Architect/Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.7. Hazardous Environmental Condition at Site

4.7.1. Reports, Studies and Drawings. Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Architect/Engineer in the Preparation of the Contract Documents.

4.7.2. Limited Reliance by Contractor on Technical Data Provided. On lineal type projects, Contractor may rely upon the general accuracy of the 'technical data" contained in such reports and drawings, but such reports and drawings are not part of the Contract Documents. Such "technical data" is identified in the Technical Specifications. Except for such reliance on such "technical data", Contractor may not rely upon or make any Claim against Owner, Architect/Engineer, or any of Architect/Engineer's Consultants with respect to:

4.7.2.1. the completeness of such reports and drawings for Contractor's construction purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

4.7.2.2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

4.7.2.3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.7.3. Reliance by Contractor on Technical Specifications Provided. On building construction projects, unless otherwise indicated in the Contract Documents, Contractor may rely upon the general accuracy of the "technical data" contained in such Technical Specifications and/or Plans and Drawings. Except for such reliance on such "technical data", Contractor may not rely upon or make any Claim against Owner, Architect/Engineer, or any of Architect/Engineer's Consultants with respect to:

4.7.3.1. the completeness of such reports and drawings for Contractor's construction purposes, including any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

4.7.3.2. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.7.4. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site that was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work.

4.7.5. Contractor shall be responsible for Hazardous Environmental Conditions created due to any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

4.7.6. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately:

4.7.6.1. at Owner's cost, secure or otherwise isolate such condition, if it is not the Contractor's fault; or at Contractor's cost, if it is his fault, or anyone for whom Contractor is responsible;

4.7.6.2. stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by section 6.13 and 14.13); and

4.7.6.3. notify Owner's Representative, Owner and Architect/Engineer and promptly thereafter confirm such notice in writing, no later than 24 hours after the condition has been encountered. Failure to do so shall constituted a waiver of any claim in connection thereto.

4.7.6.3.1. Owner shall promptly consult with Architect/Engineer and/or Owner's Representative concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action.

4.7.7. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner's Representative has obtained any required permits related thereto and delivered to Contractor written notice:

4.7.7.1. specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or

4.7.7.2. specifying any special conditions under which such Work may be resumed safely.

4.7.7.3. If Owner, through Owner's Representative, and Contractor cannot agree as to entitlement to, or on the amount or extent, if any, of any adjustment in Contract Price or Contract Time, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefore as provided in Article 11.5.

4.7.8. If after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner's Representative may order the portion of the Work that is in the area affected by such condition to be deleted from the Work.

4.7.8.1. If Owner, through Owner's Representative, and Contractor cannot agree as to entitlement to, or on the amount or extent, if any, of an adjustment in Contract Price or Contract Time as a result of deleting such portion of the Work, then either party may make a Claim therefore as provided in Article 11.5.

4.7.8.2. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

4.7.9. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition:

4.7.9.1. was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and

4.7.9.2. were not created by Contractor or by anyone for whom Contractor is responsible.

4.7.9.3. Nothing in this Article shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

4.7.10. To the fullest extent permitted by Laws or Regulations, Contractor shall indemnify and hold harmless Owner's Representative, Owner, Architect/Engineer, Architect/Engineer's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible.

4.7.10.1. Nothing in this Article shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

4.7.11. The provisions of sections 4.2, 4.3 and 4.4 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5-OWNER

5.1 General

5.1.1. Owner's responsibilities and obligations are expressed throughout these General Conditions and are not limited to the ones contained in this Article.

5.1.2. All functions of the Owner will be performed by the Contracting Officer, unless delegated to others in the Contract Documents.

5.1.3. The Contracting Officer may delegate his full authority to another person, and to that effect shall notify the Contractor by written communication.

5.1.4. Unless otherwise specified in the Contract Documents, the person signing this Contract shall be interpreted to mean the Contracting Officer.

5.2 Information and Services Required of the Owner

5.2.1. The Owner shall furnish all available information describing the Project including, but not limited to, physical characteristics, legal limits and utility locations for the Project.

5.2.1.1. Said information should have been made available with reasonable time, and, unless otherwise specified in Bid Documents, prior to bid opening.

5.2.2 Before commencement of the Work, as specified in the Notice to Proceed, the Owner shall inform the Contractor in writing the name of the Owner's Infrastructure Area Director, Architect/Engineer, Contracting Officer, Owner's Representative and Project Inspector, if applicable. Owner reserves the right to change, from time to time, the designated persons or entities and any other designated representative who will perform the functions of the Owner. The Notice to Proceed shall also indicate the day of the week on which Contractor and Owner's Representative shall hold their weekly meeting to discuss matters related to the Project. The Owner's Representative may, from time to time, change said date of the week.

5.2.3 Furnishing of Right of Way - The Owner will be responsible for obtaining the necessary rights-of-way in advance of construction. Any exceptions will be indicated in the Contract Documents.

5.2.4 Information or services to be provided by Owner shall be furnished by the Owner with reasonable promptness so as to avoid any delay in the orderly programmed progress of the Work.

5.3 Pay Promptly When Due

5.3.1. Owner shall make payments to Contractor promptly when they are due.

5.4 Owner's Right to Stop the Work

5.4.1. The Owner's Representative and/or Owner may in accordance with Article 15.1.2 order the Contractor to stop the Work, or any portion thereof if the Contractor:

5.4.1.1. fails to start (and expeditiously continues) correcting defective work promptly after Contractor is notified in writing by the Owner;

5.4.1.2. persistently fails to supply materials or equipment in accordance with the Contract Documents; or

5.4.1.3. for any other significant reason deemed necessary to insure the proper execution of the Contract until the cause for such order has been eliminated.

5.5 Owner's Right to Carry Out the Work Without Terminating the Employment of the Contractor

5.5.1. If the Contractor persistently neglects to carry out the Work in accordance with the Contract Documents or persistently fails to comply with any provision of the Contract, the Owner, through the Owner's Representative, may, after ten (10) days written notice to the Contractor and Surety, if any, and without prejudice to any other remedy he may have, perform said Work and/or, remedy such deficiencies.

5.5.1.1. In such case, an appropriate deduction for the cost of performing said Work and/or correcting such deficiencies shall be made from the payments then, or thereafter, due the Contractor. If the payments then, or thereafter, due the Contractor are not sufficient to cover such amount, the Contractor and/or surety shall pay the difference to the Owner.

5.5.2. The cost to be charged to Contractor of such Work, repairs or replacement, will be the actual cost incurred by Owner.

5.6 Owner's Right to Clean Up

5.6.1. If a dispute arises between the separate contractors in the Project as to their responsibility for cleaning up as required by these General Conditions, the Owner may, after written notice to Contractor, clean up and charge the cost thereof to the several contractors in the proportion that the Architect/Engineer, or the Owner's Representative, determines equitable. If the Contractor is not in agreement with the cost distribution, he may make a claim as provided in Article 11.5.

5.7 Evidence of Financial Arrangements

5.7.1. Upon Contractor's request, Owner will furnish Contractor reasonable evidence that financial arrangements have been made for the payment of Owners' obligations under the Contract, and that all documentation for said purpose has been filed pursuant to applicable Laws and Regulations.

5.7.1.1. If requested in writing by Contractor, Owner shall supply reasonable written evidence that Owner has complied with these requirements.

5.8 Limitations on Owner's Responsibilities

5.8.1. Unless otherwise provided in the Contract Documents the Owner, through Owner's Representative, shall have no authority over, nor responsibility for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or shall not be held responsible for any failure of Contractor to comply with Laws or Regulations applicable to the performance of the Work. Owner's Representative, or Owner, will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

ARTICLE 6 - CONTRACTOR

6.1 Supervision and Superintendence

6.1.1. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

6.1.1.1. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but Contractor shall not be responsible for the negligence of Owner or Architect/Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction, which is shown or indicated in and expressly required by the Contract Documents.

6.1.1.1.1. When the Contract Documents specify the use of a specific means, method, technique, sequence, or procedure of construction, which is shown or indicated in and expressly required by the Contract Document, such means, method, technique, sequence, or procedure of construction shall be used unless others are authorized by the Owner's Representative.

6.1.1.1.2. If the Contractor desires to use a means, method, technique, sequence, or procedure of construction other than specified in the Contract Documents, he shall request authority from the Owner's Representative to do so.

6.1.1.1.2.1. The request shall be in writing and shall include a description of the methods and equipment proposed and of the reasons for desiring to make the change.

6.1.1.1.2.2. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with the Contract Documents.

6.1.1.1.2.3. If, after trial use of the substituted methods or equipment, the Owner's Representative determines that the Work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining Work with the specified methods and

equipment.

6.1.1.1.2.4. The Contractor shall remove the deficient Work and replace it with Work of specified quality, or take such other corrective action as the Owner's Representative may direct.

6.1.1.1.2.5. No change will be made in the Contract amount for the construction items involved or in Contract Time as a result of authorizing a change in methods or equipment under these provisions.

6.1.1.1.3. Contractor shall be responsible to ascertain that the completed Work complies accurately with the Contract Documents.

6.1.2. Project Manager. Unless otherwise indicated in the Contract Documents, the Contractor shall employ a competent licensed and collegiate architect or engineer, as the Project Manager, and necessary assistants to direct the Work. These assistants shall be in attendance at the project site at all times during the prosecution of the Work. The Project Manager shall be satisfactory to the Owner or his representatives and shall not be changed except with the consent of the Owner, unless the Project Manager proves to be unsatisfactory to the Contractor (and Contractor gives Owner written notice of the specific reason for removal as Project Manager) or ceases to be in Contractor's employ.

6.1.2.1. The Project Manager will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. The Contractor, prior to the start of the Project, will inform the Owner's Representative, if already assigned, or the Owner, if not assigned, the name, authority and responsibilities of the Project Manager and/or Superintendent.

6.1.2.1.1. All communications given or received from the Project Manager shall be binding on Contractor. All communications related to the Contract directed to the Contractor and/or proceeding from the Owner, Architect/Engineer, Owner's Representative and other representatives of the Owner shall be made thru the Project Manager.

6.2 Labor and Working Hours

6.2.1. Contractor shall provide competent, suitably qualified personnel to survey, layout, and construct the Work as required by the Contract Documents.

6.2.1.1. The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ in relation to the Project or the Work any unfit person or anyone not skilled in the task assigned to him.

6.2.1.1.1. The Contractor shall be responsible to the Owner for the acts and omissions of all of his employees and all subcontractors, their agents and employees and all other persons performing any work under a contract with the Contractor.

6.2.1.2. The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the Work to full completion in the manner and within the time required in the Contract Documents.

6.2.1.2.1. Workers engaged in special work or skilled work shall have sufficient experience in the performance of such work and in the operation of the equipment and tools to perform it properly and satisfactorily.

6.2.1.2.2. Any person employed by the Contractor or by a subcontractor who, as determined by the Owner's Representative, does not perform his work in a proper and skillful manner, or is disrespectful, intemperate, disorderly or otherwise objectionable shall, at the written request of the Owner's Representative, be removed forthwith by the Contractor or Subcontractor employing such employee, and such person shall not be employed again on any portion of the Work without the written consent of the Owner's Representative. Owner's Representative shall specify, in writing, the reason for the removal of such person from the jobsite.

6.2.1.2.2.1. Should the Contractor fail to remove such person or persons as required herein, the Owner may withhold payment of estimates which are or may become due, or may suspend the Work by written notice until such orders are complied with.

6.2.2. Except as otherwise required for the safety or protection of persons or the Work or property at the Site, or adjacent thereto, or for completion of daily Work as provided in Article 9.1.2.2.2. or as otherwise stated in the Contract Documents, all Work shall be performed during regular working hours and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without Owner's Representative's written consent (which will not be unreasonably withheld).

6.2.2.1. The Contractor shall comply with all the applicable Federal and Commonwealth laws, rules and regulations concerning fair labor practices including minimum wages, work hours, equal employment opportunities, non-discrimination, civil rights, employment of minors, and other labor relation matters.

6.2.2.2. The Contractor shall pay weekly, in lawful money of the United States of America, including payment by check or direct deposit, the entire amount of wages, less legally authorized or mandated deductions, earned by each of the laborers and employees engaged in the work.

6.2.2.2.1. The Contractor shall make available the Project payrolls to the Owner's Representative for inspection and shall submit copies of such payrolls to the Owner's Representative when required.

6.2.2.2.1.1. Any irregularities noted in the Project's payrolls will be brought to the attention of the Contractor by the Owner's Representative for appropriate corrective action and payment of any pending wages. Should the Contractor fail to take the necessary action, he will be subject to such civil and criminal proceedings as provided by law and regulations.

6.2.2.2.1.2. Payment of wages to laborers and employees of the Contractor for their work shall have preference over the payment of other debts of the Contractor, except as otherwise established by law.

6.3 Services, Materials, and Equipment

6.3.1. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

6.3.2. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents.

6.3.2.1. All warranties and guarantees required by the Contract Documents shall expressly benefit Owner.

6.3.2.2. If required by Owner's Representative, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

6.3.2.3. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.4 Progress and Other Schedules

6.4.1. Measurement and payment.

6.4.1.1. Unless otherwise specified in the Contract Documents, all costs in connection with the preparation and maintenance of schedules, workplans, submittals and other work specified in this Article 6.4 are to be included and form part of the project's general administrative expenses. Contractor's Cost for said work required in Article 6.4 shall not be paid as a separate pay item in Unit Price contracts or as a Schedule of Values item, in Lump Sum contracts.

6.4.2. General.

6.4.2.1. Progress schedules shall represent a practical plan to complete the Work within the Contract Time, and shall convey the Contractor's intent as to the manner of prosecuting the progress of the Work.

6.4.2.2. The scheduling and execution of construction in accordance with the Contract Documents are the responsibility of the Contractor. The Contractor shall involve and coordinate all Subcontractors and Suppliers in the development and updating of progress schedules.

6.4.2.3. The submittal of progress schedules shall be understood to be the Contractor's representation that the progress schedule meets the requirements of the Contract Documents and that the Work is expected to be executed in the sequence and duration indicated in the progress schedule.

6.4.3. Scheduling format.

6.4.3.1. The Project Schedule shall be computer produced using the Critical Path Method ("CPM") format. The schedule shall be computer generated utilizing an Owner approved project scheduling software, as indicated in the Contract Documents, such as Primavera, Microsoft Project, or SureTrak. The project scheduling software selected shall be used consistently from commencement to Final Acceptance of the Project. If the Contractor desires to use a project scheduling software other than the one specified in the Contract Documents, he shall request authorization from the Owner's Representative to do so, prior to the issuance of the Notice to Proceed. If the Contract Documents do not indicate a specific scheduling program, the Contractor may use any of the three mentioned herein, at his sole option.

6.4.3.2. The Project Schedule shall be updated monthly and submitted as indicated in Article 6.4.4. .

6.4.3.3. The schedule shall show Contract tasks, percent complete, progress bars, baseline schedules, milestones, start and finish dates, and other breakdowns as required by the Owner's Representative. The schedules shall show clearly the sequence of activities and shall list specifically the following activities:

6.4.3.3.1. interim milestones completion dates. Phasing and staging of the Work as specified shall be prominently identified;

6.4.3.3.2. submittals and the Owner's Representative review of submittals;

6.4.3.3.3. acquisition of permits;

6.4.3.3.4. any long lead time (over 60 days) orders for material and equipment;

6.4.3.3.5. work to be performed by other contractors and agencies;

6.4.3.3.6. delivery of Owner's furnished equipment and materials indicated for incorporation in the Work.

6.4.3.4. Descriptions of scheduled activities shall include sufficient detail to identify the work that is to be accomplished.

6.4.3.4.1. The schedule shall contain sufficient activities to clearly show the sequence and interdependencies of the Work. The Owner's Representative may request that additional activities and information be added and from time to time may also require reasonable amendments to the schedule format that result in more clarity as to how the information is presented.

6.4.3.4.2. Activity durations shall be expressed in whole days. Work that is to be performed by Subcontractor shall be clearly defined.

6.4.3.4.3. Critical path activities are those activities with a total float equal to or less than zero. Schedules with negative total float may be found to be impractical by the Owner's Representative.

6.4.3.4.4. A schedule showing that Work that is completed in less than the completion time specified, shall be considered to have float. The float shall be the time between the scheduled completion of the Work and the Contract completion date. Float time shall not be for the exclusive benefit of either the Owner or the Contractor. Float shall be a resource available to both parties.

6.4.3.4.4.1. If according to the critical path of the originally approved Project Schedule any party that generates a float in said critical path, then said float shall belong exclusively to the party generating said float.

6.4.3.4.5. A schedule found to be impractical for the preceding reasons or any other reasons shall be revised by the Contractor and resubmitted.

6.4.4 Submittals.

6.4.4.1. Within thirty (30) days after the effective date of the Notice to Proceed (unless otherwise specified in the Contract Documents), Contractor shall submit to Owner's Representative for its timely review:

6.4.4.1.1. a preliminary progress schedule indicating the times (numbers and days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

6.4.4.1.2. a preliminary schedule of Shop Drawings and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

6.4.4.1.3. a preliminary schedule of values for all of the Work, as specified on Article 13, herein.

6.4.4.2. Submit one (1) electronic copy and the number of hard copies of the Submittals required in Article 6.4 which the Contractor requires to be returned, plus three (3) hard copies which will be retained by the Owner.

6.4.4.3. Schedule submittals will be reviewed by the Owner's Representative, and shall be updated and revised as indicated in section 6.4.6. Re-submittals shall conform to the same requirements as original submittals.

6.4.4.4. The Contractor shall prepare and submit all schedules and schedule analysis reports in electronic as well as hard copies.

6.4.4.5. All progress schedule submittals are subject to review and approval by the Owner's Representative.

6.4.4.5.1. Unless otherwise provided in the Contract Documents, at least ten (10) days before submission of the Application for Payment, a conference, to be attended by Contractor, Owner's Representative, Architect/Engineer, and others as appropriate, will be held to review for purposes of acceptability to Owner's Representative, as provided below, the progress schedules submitted in accordance to Article 6.4.4.1. If said meeting is not held, for reasons other than due to the fault of the Contractor, or if the Owner's Representative does not provide timely approval, or corrections, to the submitted submittals specified in Article 6.4.1., all the previously submitted submittals shall be considered approved, provided Contractor has given notice directly to Owner as required in Article 17.3.2.

6.4.4.5.1.1. Contractor shall have an additional ten (10) days to make corrections and adjustments and to complete and resubmit the schedules. Owner's Representative shall approve said corrections within a period of ten (10) days from the date of re-submittal otherwise they shall be considered approved, provided Contractor has given notice directly to Owner as required in Article 17.3.2.

6.4.4.5.1.1.1. The third progress payment shall not be paid to Contractor until acceptable schedules are submitted to Owner's Representative, or until schedules are considered approved as specified herein.

6.4.4.5.1.1.2. The Progress Schedule will be acceptable to Owner's Representative if in accordance with the Agreement it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Time.

6.4.4.5.1.1.3. Contractor's schedule of Shop Drawings and Sample submittals will be acceptable to Owner's Representative if it provides, in Owner's sole discretion, a workable arrangement for reviewing and processing the required submittals.

6.4.4.6. The first schedule submitted by the Contractor will be reviewed for format, as well as content. The Owner's Representative may request format changes. Once the format has been approved, all subsequent schedules shall be submitted in the approved format.

6.4.5 Four-week work plan.

6.4.5.1. A schedule in calendar time-scaled bar chart format depicting the Contractor's intended work activities for the upcoming four (4) week period shall be submitted on a monthly basis and shall be due on the day of the project's weekly meeting. Each activity of one (1) day or more in duration shall be indicated.

6.4.5.2. Any deviations, such as sequences of work, timing, and durations of activities from the approved Project Schedule, shall be noted and explained in writing.

6.4.5.3. The four (4) week work plan shall be submitted on sheets not less than 8 ½ inches by 11 inches, or as approved by the Owner's Representative.

6.4.6. Review, updates and revisions

6.4.6.1. The Owner's Representative will review and return to Contractor the schedule submittals, with written comments, within the following deadlines counted from the date of receipt.

6.4.6.1.1. Project CPM schedule: 14 calendar days.

6.4.6.1.2. Four (4) week work plan: 8 calendar days.

6.4.6.2. The Contractor shall make all corrections to the Project Schedule requested by the Owner's Representative and resubmit the schedule for approval. If the Contractor does not agree with the Owner's Representative's comments, the Contractor shall provide written notice of disagreement within five (5) days from the receipt of the Owner's Representative's comments. The Owner's Representative's comments on the four (4) week work plan for which the Contractor disagrees shall be resolved in a meeting held for that purpose, if necessary.

6.4.6.3. At least once each month, or often if indicated in the Contract Documents, the Contractor shall submit an updated schedule showing the progress of the Work to date and anticipated activities to be worked on. All updated schedules must comply with Article 6.4.

6.4.6.4. If, according to the approved Project Schedule, the Contractor is thirty (30) or more days behind as to the completion date of any milestone, or the schedule contains thirty (30) or more days of negative float, considering all approved time extensions, the Contractor shall submit a revised schedule, showing a practical plan to complete the Work within the Contract Time.

6.5 Submittals for Approval, Substitutes and/or "Equals"

6.5.1. Submittal for Approval of Materials, Shop Drawings and Samples; Plans and Working Drawings; As-Built Plans.

6.5.1.1. The Contractor shall submit all submittals for approvals of Materials, Shop Drawings and Samples to the Owner's Representative. The Owner's Representative will either perform the review and approval, or forward the Contractor's submittal to the Architect/Engineer's for his review and approval, in accordance with the accepted itinerary for Shop Drawings and Sample submittals.

6.5.1.2. All submittals will be identified as required by Owner's Representative and presented with the number of copies specified in the Contract Documents. If a number is not mentioned, seven (7) copies will be submitted. Of these seven (7) copies, four (4) shall be returned, duly evaluated, to the Contractor.

6.5.1.3. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Owner's Representative the services, materials, and equipment Contractor proposes to provide and to enable Owner's Representative to review the

information for the limited purposes of complying with the requirements of Article 6.17.

6.5.1.4. The Architect/Engineer or the Owner's Representative shall have the following deadlines within which to approve, request additional information or reject any Submittal for Approval of Materials, Shop Drawings and Samples:

6.5.1.4.1. For Materials, Shop Drawings or Samples which are the ones specified in the Contract Documents or are, in the opinion of the Owner's Representative, non-complex Shop Drawings or Materials, the Architect/Engineer or Owner's Representative shall have a period of ten (10) working days.

6.5.1.4.2. For Materials, Shop Drawings or Samples not complying with the requirements indicated in the previous Article, the period shall be twenty (20) working days.

6.5.1.4.3. If no comment by the Architect/Engineer or Owner's Representative is made within said period of time, the Contractor will have the right to Claim if said delay impacts the critical path.

6.5.1.4.4. The above mentioned deadlines can be extended if requested in writing by the Architect/Engineer and/or Owner's Representative as long as approval is made within a time period that does not alter the critical path. Such request for extension shall not be unreasonably denied.

6.5.1.5. Each Sample will be identified clearly as to material, supplier, pertinent data such as catalog numbers, and the use for which it is intended or otherwise as Owner's Representative may require, to enable the Architect/Engineer or the Owner's Representative to review the submittal for the limited purposes of complying with the requirements of Article 6.17.

6.5.1.5.1. The numbers of items each Sample to be submitted will be as specified in the Specifications. If no number of items is mentioned, three (3) samples will be submitted. Of these, three (3) samples, two (2) shall be returned, duly evaluated, to the Contractor.

6.5.2. Where an approval of Materials, Shop Drawing or Samples is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals, any related Work performed, including materials purchases, prior to Owner's Representative or Architect/Engineer's review and approval of the pertinent submittal will be at the sole responsibility of Contractor.

6.5.3. Submittal Procedures.

6.5.3.1. Before delivering each submittal for approvals of Material, Shop Drawing or Sample, Contractor shall have:

6.5.3.1.1. verified that all shop drawing measurements, quantities, shop drawing dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information are in accordance with the Contract Documents and if not in accordance, ascertained that all variations are indicated in the submittal;

6.5.3.1.2. verified all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

6.5.3.1.3. verified all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

6.5.3.1.4. Contractor shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings or Samples and with the requirements of the Work and the Contract Documents.

6.5.3.2. Each submittal shall bear a stamp or specific written indication that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal. If required in the Special Conditions, submittals for Materials and Samples must bear a notarized certificate of compliance.

6.5.3.3. At the time of each submittal, Contractor shall give Owner's Representative specific written notice of such variations, if any, that the submittal for approvals of material, Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication included with the submittal.

6.5.4. The Architect/Engineer or Owner's Representative's Review.

6.5.4.1. Owner's Representative, either himself or through the Architect/Engineer, will perform a timely review, evaluation and comment of Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to Owner's Representative. If no comment by the Owner's Representative is made within the time stated in this Article 6.5 the Contractor will have the right to claim pursuant the provisions of Article 11.5, if said delay impacts the critical path.

6.5.4.1.1. The Architect/Engineer or the Owner's Representative review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

6.5.4.1.2. The Architect/Engineer or the Owner's Representative's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto.

6.5.4.1.2.1. The review and approval of a separate item, as such, will not indicate approval of the assembly in which the item functions.

6.5.4.1.3. The Architect/Engineer or the Owner's Representative's review and approval of Shop Drawings or Samples shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has in writing called the Architect/Engineer or the Owner's Representative attention to each such variation at the time of each submittal as required by Article 6.17 and the Architect/Engineer or the Owner's Representative has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by the Architect/Engineer or the Owner's Representative relieve Contractor from responsibility for complying with the requirements of Article 6.17.

6.5.5. Re-submittal Procedures.

6.5.5.1. Contractor shall make corrections required by the Architect/Engineer or the Owner's Representative and shall return the required copies of materials submittals, the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval.

6.5.6 Substitutes and "Or-equals".

6.5.6.1. Whenever an item or material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Owner's Representative for review under the circumstances described below. The Contractor will present his submittal for approval, indicating whether the item of material or equipment proposed is an Or Equal or a Substitute.

6.5.6.2. "Or-Equal" Items: If in Owner's Representative's sole discretion an item, or material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it will be considered by Owner's Representative as an "or-equal" item, in which case review and approval of the proposed item be accomplished without compliance with the special requirements for approval of the proposed substitute items and be acceptable or acceptable with comments. Owner's Representative's basis for rejection of the item of material or equipment as an "or equal" material shall be written and may be subject to appeal, as specified in Article 11.5 of these General Conditions, by Contractor. For the purposes of this Article, a proposed item of material or equipment will be considered functionally equal to an item so named if:

6.5.6.2.1. In the exercise of reasonable judgment, Owner's Representative determines that:

6.5.6.2.1.1. it is at least equal in quality, durability, appearance, strength, and design characteristics;

6.5.6.2.1.2. it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

6.5.6.2.2. Contractor certifies that:

6.5.6.2.2.1. there is no increase in cost to the Owner; and

6.5.6.2.2.2. it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

6.5.6.2.2.3. Owner's Representative shall make the decision on the "or equal" material with sufficient time so as not to alter the Contractor's Programmed Schedule of the Work. If no comment by the Owner's Representative is made within said period of time, the Contractor will have the right to Claim pursuant the provisions of Article 11.5 if said delay impacts the critical path.

6.5.6.3. Substitute Items

6.5.6.3.1. If in Owner's Representative's sole discretion an item or material or equipment proposed by Contractor does not qualify as an "or-equal" item under Article 6.5.6, it will be considered a proposed substitute item.

6.5.6.3.2. Contractor shall submit sufficient information as provided below to allow Owner's Representative to determine that the item or material or equipment proposed is essentially equivalent to that specified and an acceptable substitute therefore.

6.5.6.3.2.1. Requests for review of proposed substitute items, material or equipment will not be accepted by

Owner's Representative from anyone other than Contractor.

6.5.6.3.3. The procedure for review by Owner's Representative will be as set forth in Article 6.5.6, as supplemented in these General Conditions and as Owner's Representative may decide is appropriate under the circumstances.

6.5.6.3.4. Contractor shall first make written application to Owner's Representative for review of a proposed substitute item, material or equipment that Contractor seeks to furnish or use.

6.5.6.3.4.1. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified.

6.5.6.3.4.2. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's timely achievement of Substantial Completion, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

6.5.6.3.4.3. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated.

6.5.6.3.4.4. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by Owner's Representative in the evaluation of the proposed substitute item.

6.5.6.3.4.5. Owner's Representative may require Contractor to furnish additional data about the proposed substitute item.

6.5.6.3.5. Owner's Representative shall make the decision on the "substitute" material with sufficient time so as not to alter the critical path. If no comment by the Owner's Representative is made within said period of time, the Contractor will have the right to Claim pursuant the provisions of Article 11.5 if said delay impacts the critical path.

6.5.6.3.6. Owner's Representative's basis for rejection of a "substitute" material shall be written and may be subject to appeal and Claim by Contractor, as specified in Article 11.5.

6.5.6.4. If a Substitute item is approved by the Owner and such change affects the Contract Price, then the Contract Price shall be equitably adjusted.

6.5.7. Substitute Construction Methods or Procedures.

6.5.7.1. If a specific means, method, technique, sequence, or procedure of construction is shown, or indicated in, or expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Owner's Representative.

6.5.7.1.1. Contractor shall submit sufficient information to allow Owner's Representative, in Owner's

Representative's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. Such submittal shall be made with sufficient time as to allow the Owner's Representative to review it.

6.5.7.1.1.1. The procedure for review by Owner's Representative will be similar to that provided in section 6.5.6 but no Claim may be made by contractor due to untimely evaluation by Owner.

6.5.8. Owner's Representative's Evaluation.

6.5.8.1. Owner's Representative or Architect/Engineer will be allowed a reasonable time, which will not unreasonably delay the critical path of the Work, within which to evaluate each proposal or submittal made pursuant to Article 6.5.

6.5.8.2. Except as provided above. Owner's Representative will be the sole judge of acceptability.

6.5.8.3. No "or-equal" or substitute will be ordered, installed or utilized until Owner's Representative's review is complete, which will be evidenced by written approval by Owner for a substitute or an approved Shop Drawing or an "or-equal."

6.5.8.4. Owner's Representative will advise Contractor in writing of any negative determination.

6.5.8.5. Owner's Representative will charge Contractor for any overtime expenses and other costs incurred in the evaluation of a proposed substitute, similar, or equal materials, unless said proposal was submitted by Contractor with reasonable time as to afford the Owner the time necessary to analyze the submittal without affecting the Project Schedule.

6.5.9. Special Guarantee.

6.5.9.1. Owner's Representative may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

6.5.10. Contractor's Expense.

6.5.10.1. Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.5.11. Approval of Submittals.

6.5.11.1. If within the periods of time provided under this Article 6 for approval of submittals made by the Contractor, the Owner's Representative fails to render his decision as to any submittal and the critical path is adversely affected, the Contractor shall require in writing the approval of the Owner's Representative, who shall have ten (10) working days to issue his decision. If no decision is forthcoming from the Owner's Representative within the stated time, for reasons other than due to the fault of Contractor, the submittal shall be considered approved, provided Contractor has also given the same timely notice directly to Owner required in Article 17.3.2

6.6 Review of Contract Documents

6.6.1. The Contractor shall carefully study and compare the Contract Documents with each other and with

information furnished by the Owner and shall at once report to the Owner, Architect/Engineer, and Owner's Representative any error, inconsistency or omission he may discover.

6.6.1.1. The Contractor shall not be liable to the Owner for any errors, inconsistencies or omissions in the Contract Documents.

6.6.1.2. The Contractor shall not take advantage of any such errors, inconsistencies, or omissions.

6.6.1.3. The Owner's Representative after being notified by the Contractor of such errors, inconsistencies or omissions will make the corrections and interpretations deemed necessary for fulfilling the intent of the Contract Documents, within a reasonable time so as not to alter the programmed progress of the Work. If no comment by the Owner's Representative is made within said time the Contractor will have the right to Claim pursuant the provisions of Article 11.5 if said delay impacts the critical path.

6.7 Patent, Fees and Royalties

6.7.1. Contractor shall pay all license fees and royalties and assume all costs incident to the use, in the performance of the Work or the incorporation in the Work, of any invention, design, process, product, or device which is the subject or patent rights or copyrights held by others.

6.7.2. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Architect/Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

6.7.3 To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Architect/Engineer, Architect/Engineer's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges or engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.8 Permits

6.8.1. Unless otherwise indicated in the Contract Documents, the responsibilities for securing and paying for permits, governmental fees and licenses for work to be performed are as follows:

6.8.1.1. To obtain the Construction Permit, the Contractor shall pay the premiums to secure the State insurance Fund policy and the Municipal Construction Taxes, at the rate that is in effect at bid date, unless the Contractor is explicitly not obligated to pay said taxes under the terms and provisions of the Contract Documents, in which case, shall so be specifically stated in the Contract Documents. The Owner shall secure all the Architect or Engineer's and Owner's Representative's certificates necessary and pertinent needed to secure the Construction Permit as well as submit applications and secure the permits for the Plan CES and for the Federal Storm Water Drainage plan, if same is required for the Project.

6.8.1.2. To obtain the Use Permit, the Contractor shall secure the endorsements required for said Use Permit from all government agencies, unless one or more of these cannot be obtained due to circumstances beyond the control of the

Contractor. The Owner must ascertain that the reports required for the Use Permit from the Architect or Engineer and Owner's Representative are duly filed with "Oficina de Gerencia de Permisos" and must also obtain any of the above mentioned endorsements that cannot be obtained due to circumstances beyond the control of Contractor.

6.8.1.3. All payments due, or to become due, to any agency, public or private, for connection to, or improvement of any of said agencies' infrastructure (Impact Fees) shall be paid by the Owner with sufficient time so as not to adversely affect the critical path of the Work.

6.8.1.4. The Contractor shall secure and pay for all incidental permits required for the completion of the Work, unless such incidental permits deviate from the normal procedures, or costs, of the requiring agency and shall do so in a timely manner so as not to adversely affect the critical path of the Work.

6.8.1.5. Any other fees or charges related to permitting to be paid by the Contractor will be indicated in the special conditions.

6.8.1.6. The duties of Owner and of Contactor stated in this Article 6.8 shall be performed in a timely manner as to not adversely affect the critical path of the Work.

6.9 Laws and Regulations

6.9.1. Contractor shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work.

6.9.1.1. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner, nor Owner's Representative nor Architect/Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

6.9.1.2. Should the Contractor observe that the Contract Documents are at variance with any Federal, Commonwealth and Municipal laws, ordinances, rules, regulations, by-laws, and all orders or decrees, he shall promptly notify the Owner's Representative in writing and the Owner's Representative shall instruct the Contractor, also in writing, as to how Contractor is to proceed. Any additional cost and /or extra time incurred by the Contractor to comply with Laws and Regulations enacted after the bid opening date, it may file a claim for equitable adjustment of the Contract Price or the Contract Time or both, as shall any decrease in cost or time resulting therefrom.

6.9.1.3. If the Contractor performs any work knowing it to be contrary to Federal, Commonwealth and Municipal laws, ordinances, rules, regulations, by-laws, orders or decrees, the Contractor shall assume full responsibility therefore, and shall bear all cost arising there from.

6.9.1.4. The Contractor shall save the Owner and its authorized representatives harmless from any claim or liability arising from or based on the infraction or violation of any such laws, ordinances, rules, regulations, by-laws, all orders or decrees, except if the infractions or violations are caused by acts of the Owner, or of Owner's authorized representatives.

6.9.1.5. If Contractor performs any Work knowing or having reason to know that he is acting contrary to said Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred as a consequence thereof. It shall not be Contractor's primary responsibility to make certain

that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not release Contractor of Contractor's obligations hereunder.

6.10 Taxes

6.10.1. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work and which were in effect at the bid opening date.

6.10.1.1. Among said taxes, the Contractor shall pay the municipal construction taxes applicable to the Project in a timely fashion, but no later than fifteen (15) calendar days after the first partial (certification) payment is made by the Owner to Contractor.

6.10.1.2. If specifically stated in the Contract Documents, the Municipal Construction tax rate may be determined between Owner and the municipal government where the project is to be located, in such case a specific rate shall be established by the mayor and the municipal legislature, and notified to the Contractor before bid time. If no such rate is indicated in the Contract Documents regarding such arrangement between Owner and the municipal government, then the Contractor shall pay at the rates prevailing at the time of the bid.

6.10.1.1.1. The Contractor shall furnish and deliver to the Owner written evidence that said payment(s) was made before the second partial (certification) payment is made by the Owner to Contractor.

6.10.1.1.2. In case that the Contractor does not furnish and deliver said evidence of payment, the Owner shall deduct from said partial (certification) payments the undisputed amount of municipal tax plus any penalties and fines and pay it directly to the municipality.

6.10.1.1.2.1. If the amount of the second partial (certification) payment is not enough to cover the total amount of the municipal tax, the Owner shall continue to deduct from the following partial (certification) payments until the undisputed amount is paid in full.

6.10.1.1.2.2. The direct payment provided for in Article 6.10.1.1.2 shall be effected after the retainage required in Article 13.2.2 is deducted.

6.11 Use of Site and Other Areas

6.11.1. Limitation on Use of Site and Other Areas.

6.11.1.1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment.

6.11.1.1.1. Contractor shall assume full responsibility for any damage to any such land or area, or to the Owner or occupant thereof, or of any adjacent land or areas, resulting from the performance of the Work.

6.11.1.1.2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly resolve the dispute with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

6.11.1.1.3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold Owner, Architect/Engineer, Architect/Engineer's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them harmless from and against all claims, costs, losses, and damages (including but not limited to all fees and charges or engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Architect/Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

6.11.2. Removal of Debris during Performance of the Work.

6.11.2.1. During the progress of the Work, Contractor shall keep the Site and other areas free from excessive accumulations of waste materials, rubbish, and other debris caused by his operations on the Site.

6.11.2.1.1. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

6.11.3. Cleaning.

6.11.3.1. Prior to Substantial Completion of the Work Contractor shall clean the Site and make it ready for utilization by Owner.

6.11.3.1.1. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

6.11.3.1.1.1. If the Contractor fails to clean up as indicated above, the Owner may do so and the cost thereof shall be charged to the Contractor.

6.11.4. Loading Structures.

6.11.4.1. Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.11.4.2. Owner's Representative shall not permit any of the Owner's Other Contractors, his personnel, or any other entity performing work for him directly at the Site, to load any part of any structure in any manner that will endanger the structure, nor shall Owner's Representative subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.11.5. Rights To and Use of Materials Found On the Work.

6.11.5.1. The Contractor, with the prior written approval of the Owner's Representative, may use to perform the Work materials obtained from existing structures at the Site which are to be removed that are determined by the Owner's Representative to be acceptable for a use approved in writing by Owner's Representative.

6.11.5.2. Unless otherwise provided in the Contract Documents, material from any existing structures to be removed may be used temporarily by the Contractor in the erection of new structures.

6.11.5.2.1. If the material is to be salvaged for the Owner, its modification will not be permitted except as approved by the Owner's Representative.

6.11.5.2.2. Unless otherwise specified in the Contract Documents, all soil existing at the Project Site will be considered fit to be used as fill in the performance of the Work if such soil meets the Project's field fill criteria.

6.12 Record Document

6.12.1. Contractor shall maintain in a safe place at the Site one (1) record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Extra Work Orders, Work Change Directives, Field Orders, permits, and written interpretations and clarifications in good order and annotated showing changes made during construction.

6.12.1.1. Said documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Architect/Engineer and the Owner's Representative.

6.12.1.2. If not previously submitted, prior to Final Acceptance, said documents, Samples, and Shop Drawings will be delivered to Owner's Representative for delivery to Owner.

6.13 Safety and Protection

6.13.1. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.13.1.1. all persons on the Site or who may be affected by the Work;

6.13.1.2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

6.13.1.3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

6.13.2. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

6.13.2.1. Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

6.13.2.2. All damage, injury, or loss to any property referred to in Articles 6.13.1.2 or 6.13.1.3 caused, directly or indirectly, in whole or in part, by Contractor any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Architect/Engineer or Architect/Engineer's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or

indirectly employed by any of them).

6.13.2.3. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Owner's Representative has issued a notice to Owner and Contractor of Final Acceptance of the Work (except as otherwise expressly provided in connection with Substantial Completion).

6.13.3. If so provided in the bid documents, the Owner has the right to establish any reasonable monetary penalties for violations of this Section 6.13.

6.14 Safety Representative

6.14.1. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. The safety representative at the Site may have other duties assigned to him.

6.15 Hazard Communication Programs

6.15.1. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available at the Site in accordance with Laws or Regulations.

6.16 Plans and Working Drawings; As-Built Plans.

6.16.1. Plans and Working Drawings.

6.16.1.1. The detail Plans and Specifications for the Project have been prepared by licensed and collegiate competent Architect/Engineer exercising reasonable care and are intended to show as clearly as is practicable the Work required to be performed. Contractor will rely on the accuracy of said drawings, specifically in their compliance with all applicable codes and regulations in effect on the bid opening date.

6.16.1.1.1. The Contractor realizes, however, that construction details cannot always be accurately anticipated and that in executing the Work, field conditions may require reasonable minor modifications in the details of plans and quantities of Work.

6.16.1.1.1.1. Therefore, all Work must be carried out taking into account the mentioned considerations as well as field conditions, to the satisfaction of the Owner's Representative, and in accordance with his instructions and with the Contract Documents.

6.16.2 Working Drawings

6.16.2.1. The Plans will be supplemented by such Working Drawings as are necessary to adequately control the Work.

6.16.22. Working Drawings for structures shall be furnished by the Contractor and shall consist of such detailed Plans as may be required to adequately control the Work and to complement the Plans furnished by the Owner.

6.16.2.3. They shall include, among others, stress sheets, shop drawings, erection plans, false work plans,

cofferdam plans, bending diagrams for reinforcing steel or any other supplementary plans or similar data required of the Contractor.

6.16.3. Working Drawings and related documents submitted for manufactured and shop-fabricated products shall be accompanied by a certification from the manufacturer that the materials and/or equipment meet all the requirements of the Specifications.

6.16.3.1. In the event that any item is not exactly in accordance with the requirements of the Plans and Specifications, the certificate shall identify and explain each such difference.

6.16.4. Unless otherwise indicated, all Working Drawings are subject to review and acceptance by the Owner's Representative.

6.16.4.1. Such review and acceptance shall not release the Contractor from any of his responsibilities for the safe and successful completion of the Work.

6.16.4.2. The cost of preparing and furnishing all required Working Drawings is included in the Contract Price and no separate payment will be made for such Drawings.

6.17 As Built Record Drawings

6.17.1. The Contractor shall keep at the Site a copy of the Drawings marked in a neat manner that record all changes made during construction.

6.17.1.1. The set of provisional record Drawings shall be kept up to date and submitted for the inspection and approval of the Owner's Representative, at least five (5) days prior to any partial monthly payment, unless otherwise required in the Contract Documents.

6.17.2. Prior to Final Acceptance, the Contractor shall deliver the as built Drawings to the Owner's Representative.

6.17.2.1. These Drawings will be used as the draft for the preparation of the final As Built Drawings for the Project by Architect/Engineer.

6.17.3. The Architect/Engineer will, with the full cooperation of Contractor and of the Owner's representative prepare final as-built record drawings in reproducible form as reasonably required by Owner, to be delivered to the Owner.

6.17.3.1. The Owner will cause the Architect/Engineer to submit, with enough time so as not to adversely alter the critical path of the Work, the revised as-built drawings to the required governmental entities and obtain the approval of an amended Construction Permit, if same is required, and deliver the same to Owner and Contractor. This amended Construction Permit will be used to obtain the Use Permit for the project.

6.18 Notice to Proceed.

6.18.1. After the Agreement has been executed, the Contractor will be formally notified to proceed with the Work or service provided in the Contract Documents.

6.18.1.1. The Notice to Proceed will stipulate the date on which Owner expects the Contractor will begin construction and the date on which Contract Time will commence to run.

6.18.1.2. Pre-Construction Conference.

6.18.1.2.1. Prior to the start of the Project the Owner will summon all interested parties to a Pre-construction Conference in order to organize the start of the work and other matters. If no such conference is summoned by the Owner, and in any event, the Contractor may start the Work on the date stated in the Notice to Proceed.

6.18.2. Prosecution and Progress.

6.18.2.1. After obtaining written permission issued by the Owner, the Contractor may assemble materials and equipment and start preliminary Work as soon as he is notified of the award, but no responsibility for acceptance and payment of the Work so performed shall be assumed by the Owner until and unless the Contract has been executed and the order to proceed issued.

6.18.2.2. The rate of progress in the prosecution of the Work shall be compared in accordance with Articles 4.2 and 4.3 with approved Progress Schedule as the Work progresses.

6.18.2.2.1. If the Contractor is at fault for falling thirty (30) working days or more behind the approved schedule or ten percent (10%) of Contract Time, whichever is less, Contractor shall submit a revised schedule for completion of the Work within the Contract Time and modify his operations, including, but not limited to, working overtime and on Saturdays, Sundays and legal holidays, to providing such additional materials, equipment and labor as necessary to comply with the revised schedule. Any additional cost caused by the modified schedule will be at Contractor's expense.

6.18.2.3. Should the prosecution of the Work be discontinued for any reason, the Contractor shall notify the Owner's Representative at least twenty-four (24) hours in advance of resuming operations.

6.18.3. Conformity with Plans and Specifications.

6.18.3.1. All work performed and materials furnished shall be in reasonably close conformity with the Plans and other Contract Documents requirements.

6.18.3.2. Plan dimensions and Contract Specification values are to be considered the target values to be strived for and complied with as the design values to which any allowed tolerances are applied.

6.18.3.2.1. Materials and workmanship shall be uniform in character and shall be reasonably close to the prescribed target value or to the middle portion of the tolerance range.

6.18.3.3. When the Specifications include an acceptance plan for any construction or characteristic of materials, the acceptance plan will be used by the parties to determine the attainment of Reasonably Close Conformity with plans and specifications and to assign a value to the non-conforming work which does not meet that standard.

6.18.4 Cooperation with Utilities.

6.18.4.1. The Owner will notify all utility companies, all pipe line owners, or other parties affected, and endeavor to have all necessary adjustments of the public or private utility fixtures, pipe lines, and other

appurtenances within or adjacent to the limits of construction, which are not to be performed by the Contractor, made in accordance with the Project construction schedule.

6.18.4.2. Water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals, and all other utility appurtenances within the limits of the proposed construction which are to be relocated or adjusted, are to be moved by their respective owners except for those to be moved by the Contractor as specifically provided in the Contract Documents.

6.18.4.3. It is understood and agreed that the Contractor has considered in his proposal all of the permanent and temporary utility appurtenances in their present or relocated positions as if same are shown on the plans and that no additional compensation will be considered for any delays, inconvenience, or damages sustained by Contractor due to any interference from the said known utility appurtenances or the operations of moving them, except in the case of failure by a utility to reasonably comply with its responsibility in relocating or adjusting its facility as required.

6.18.4.4. Prior to commencing Work, the Contractor shall make arrangements to protect the properties of all public and private utilities and other property within and adjacent to the Work area, if indicated in the Contract Documents, from damage by his construction operations.

6.18.4.5. Contractor shall cooperate with the utility owners in the removal and rearrangement of any underground or overhead utility lines or facilities to minimize interruption to service and duplication of work by the utility owners.

6.18.4.6. In the event of interruption to water or other utility services as a result of accidental breakage, or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authorities and shall cooperate with them in the restoration of service as promptly as possible.

6.18.4.7. Fire hydrants shall be kept accessible to the Fire Department at all times and no Work shall be undertaken near fire hydrants until provisions for continued service have been made.

6.18.4.8. Contractor shall be responsible for the repair costs of any damage to utility facilities caused by his equipment or operations, except for underground facilities whose existence or approximate location was previously unknown.

6.18.5. Materials.

6.18.5.1. Source of Supply and Quality Requirements.

6.18.5.1.1. The materials used in the Work shall meet all quality requirements of the Contract Documents.

6.18.5.1.2. Unless otherwise provided in the Contract Documents, all materials used in the Work shall be furnished by the Contractor from sources selected by the Contractor.

6.18.5.1.3. Materials will be tested and approved when delivered to the Project or in their final position after incorporation to the Work as provided by the individual specifications.

6.18.5.1.4. At the option of the Owner's Representative, sources of materials may be given preliminary approval before delivery is started.

6.18.5.2. Procurement and Delivery of Materials.

6.18.5.2.1. The Contractor shall schedule the delivery at the Site of all materials and equipment required for the execution and completion of the Work at a time convenient to him so as to avoid delays in the prosecution of the Work and to allow completion of the Work within the Contract Time specified in the Contract Documents.

6.18.5.3. Earthwork Material Sources.

6.18.5.3.1. Designated Sources.

6.18.5.3.1.1. Specific sources of materials from offsite or onsite locations may be designated on the Plans and described in the Contract Documents.

6.18.5.3.1.2. Unless otherwise provided in the Contract Documents, direct payment will be made for development, preparation, erosion control, hauling and restoration of material sources or related work areas and sites.

6.18.5.3.2. Contractor Sources.

6.18.5.3.2.1. When no materials sources are designated in the Contract Documents, or if the Contractor desires to use materials from sources other than those designated, the Contractor shall be responsible for acquiring the necessary rights to take materials from the sources selected, for determining that the materials meet the specified requirements, and he shall bear all expenses for the exploration, development, erosion control and restoration of such sources, and for all costs of hauling the materials. Contractor will make sure that his sources of materials have the required permits.

6.18.5.4. Contractor's Quality Control.

6.18.5.4.1. The Contractor is responsible for the quality of all materials and workmanship furnished in the construction of the Project.

6.18.5.4.1.1. If specifically required in the Supplementary General Conditions, the Contractor shall provide his own quality control system and procedures including all personnel, equipment, supplies and facilities necessary to obtain samples, perform tests, evaluate test results and adequately control his work in order to insure that all such materials and workmanship meet the Contract requirements.

6.18.5.4.2. The Contractor shall, in all instances, perform his own process control sampling, testing and inspection during all phases of the Work as often and at a rate sufficient to assure that the Work conforms to the Contract requirements.

6.18.5.4.2.1. The Contractor shall insure that all of the testing equipment to be used is properly calibrated and meets the specifications applicable to each specified test procedure.

6.18.5.4.3. The cost of complying with Contractor's quality control obligations referred to in Article 6.18.5.4 is included in the Contract Price and no additional payment will be made therefore.

6.18.5.5. Storage of Materials.

6.18.5.5.1. Materials shall be so stored as to assure the preservation of their quality and fitness for incorporation to the Work.

6.18.5.5.1.1. Stored materials, even though approved before storage, may again be inspected at any time prior to or during their incorporation to the Work.

6.18.5.5.1.2. Stored materials shall be located so as to facilitate their prompt inspection.

6.18.5.5.2. When authorized by the Owner's Representative, portions of the Project Site may be used for storage purposes and for the placing of the Contractor's plant/facilities and equipment provided that they are located so as not to constitute a hazard to the construction of the Project or otherwise.

6.18.5.5.2.1. Any additional space required therefore must be provided by the Contractor at his expense.

6.18.5.5.3. Private property may be used for storage purpose with written permission of the Owner or lessee, and, if requested by the Owner's Representative, copies of such written permission shall be furnished to him.

6.18.5.5.4. All temporary storage areas and plant sites shall be restored to their original condition by the Contractor, at his expense, in a manner acceptable to the Owner's Representative.

6.18.5.6. Handling of Materials.

6.18.5.6.1. All materials shall be handled in such manner as to preserve their quality and fitness for incorporation to the Work.

6.18.5.7. Materials Furnished by the Owner.

6.18.5.7.1. The Contractor shall furnish all materials required to complete the Work, except those indicated in the Contract Documents to be furnished by the Owner.

6.18.5.7.2. Except as provided in Article 6.18.5.7.4, if the material to be furnished by the Owner is to be delivered to the jobsite, the Owner, unless specified otherwise in the Contract Documents, will furnish the material to the Contractor at no cost to the Contractor and the Owner will pay for all transportation, insurance, taxes and other cost related to the furnishing of the material to the jobsite. Cost of unloading is included in the Contract Price and Contractor shall receive no additional compensation for unloading.

6.18.5.7.3. If the material to be furnished by the Owner is to be delivered to the jobsite, the Contract Documents will indicate the delivery schedule. If no such schedule is indicated, the delivery will be made as agreed by the parties. Owner shall program the delivery schedule as not to adversely affect the critical path.

6.18.5.7.4. If the material to be furnished by the Owner is not to be delivered to the jobsite the Contract Documents will indicate the terms and conditions of said delivery. If no terms and conditions are included in the Contract Documents then the cost of delivery to the jobsite is not included in the Contract Price.

6.18.5.7.5. If the material to be furnished by the Owner is not to be delivered to the jobsite the Contract Documents will indicate the date and time of availability of the material. If no such date and time is indicated, the material will be available by agreement as not to impact the critical path.

6.18.5.7.6. The material to be furnished by the Owner will include all ancillary items included in the Technical Specification that describes the material to be furnished by the Owner, unless indicated otherwise in the Contract Documents.

6.18.5.7.7. The Owner warrants that the materials furnished by the Owner to the Contractor are of a quality sufficient for the purpose of their use. The Owner further warrants that the material to be furnished is Equal or Similar to that specified in the Technical Specification that describes the material to be furnished by the Owner.

6.18.5.7.8. The material furnished by the Owner will be of sufficient quantity including normal construction breakage, waste and shrinkage to complete the Work, unless the Contract Documents indicate otherwise.

6.18.5.7.9. The Contractor will be responsible for all Owner furnished materials delivered or made available to him in accordance with the terms and conditions of this section. If due to the fault of the Contractor, the Owner has to supply more material to the Contractor than indicated in the Contract Documents, the Owner may deduct this cost from any Partial Payment or Retainage due to the Contractor.

6.18.5.7.10. If the Owner's Representative has informed in a timely manner, the date or schedule of delivery of the material, the Contractor will be liable for all demurrage charges if he fails to receive the Owner furnished material within the time limit or schedule specified.

6.18.5.7.11. Unless otherwise indicated in the Contract Documents, all costs at jobsite including unloading, handling, warehousing and Installation of the Owner furnished material are included in the Contract Price and Contractor shall not receive additional compensation therefore.

6.18.5.8. Certification of Compliance.

6.18.5.8.1. When a certification of a material or assembly is required by the Contract, each lot of such materials or assemblies delivered to the Site shall be accompanied by certificate of compliance in which the delivered material or assembly is clearly identified.

6.18.5.8.2. Commercially manufactured products shall be accompanied by certificates signed by the manufacturer and, when required, supported by tests performed by the manufacturer. Certified copies of such test results shall be furnished to the Owner's Representative.

6.18.5.8.3. Materials or assemblies accompanied by certificates of compliance may be sampled and tested at any time and if found not to be in conformity with Contract Documents will be subject to rejection at any time whether incorporated to the Work or not.

6.18.5.8.3.1. Removal of such rejected materials will be at the Contractor's expense, unless such materials have been supplied by the Owner and it was Owner's duty to test for conformity with the Contract Documents.

6.18.6 Contractor shall carry on the Work and adhere as reasonably as possible to the Progress Schedule during all Disputes or disagreements with Owner.

6.18.6.1. If the Dispute or disagreement hinders the ability of the Contractor to carry on the Work, the Contractor shall so inform the Owner.

6.18.6.2. If the Dispute allows more than one course of action to be followed in the prosecution of the Work, the Owner's Representative may instruct the Contractor on the course of action to be followed.

6.18.6.3. No Work shall be delayed or postponed pending resolution of any Disputes or disagreements, except as permitted in section 15.4 or as Owner's Representative and Contractor may otherwise agree in writing.

6.18.7. Limitations on Operations.

6.18.7.1. Unless otherwise specified in the Contract Documents, the Contractor shall not open up new Work to the prejudice or detriment of Work already started.

6.18.7.1.1. In lineal projects, the Owner's Representative may require the Contractor to finish a section on which Work is in progress before Work is started on any additional section, if the opening of such section is essential to public safety or convenience.

6.18.7.1.2. If said order causes the Project to be delayed, the Contract Price and/or Contract Time shall be equitable adjusted.

6.19 Contractor's General Warranty and Guarantee

6.19.1. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be deficient. Contractor's warranty and guarantee hereunder excludes defects or damage after substantial, or partial completion and occupancy caused by:

6.19.1.1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

6.19.1.2. normal wear and tear under normal usage by Owner or individuals or entities for whom Owner is responsible.

6.19.2. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

6.19.2.1. observations by Architect/Engineer and/or Owner's Representative;

6.19.2.2. recommendation by Owner's Representative or payment by Owner of any progress or final payment;

6.19.3. the issuance of a certificate of Substantial Completion by Owner's Representative or any payment related thereto by Owner;

6.19.4. use or occupancy of the Work or any part thereof by Owner;

6.19.3. The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be free from faults and defects and in conformance with the Contract Documents for the time periods specified in the Contract Documents or for one (1) year, whichever is

longer, unless otherwise specified in the Contract Documents.

6.19.3.1. If required by the Owner's Representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

6.20 Indemnification

6.20.1. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Architect/Engineer, Architect/Engineer's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

6.20.1.1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting there from; and

6.20.1.2. only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

6.20.2. The indemnification obligations of Contractor under section 6.20.1 shall not extend to the Architect/Engineer and Architect/Engineer's Consultants or to their officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

6.20.2.1. errors and/or omissions in the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

6.20.2.2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 Subcontractors, Suppliers and Others

6.21.1. Award of Subcontracts for Portions of The Work.

6.21.1.1. Unless otherwise specified in the Contract Documents the Contractor, as soon as practicable after the signing of the Contract, shall furnish to the Owner's Representative in writing for his acceptance a list of the names of the main Suppliers and Subcontractors proposed for the principal portions of the Work.

6.21.1.1.1. The Owner's Representative shall promptly notify the Contractor in writing if he, after due investigation, has reasonable objection to any Supplier or Subcontractor on such list and does not accept him. Said reasonable objection may include, but are not limited to, previous default by said Subcontractor or Supplier with Owner, a record of flagrant safety violations or an unsatisfactory past performance with Owner.

6.21.1.1.1.1. The Owner's Representative shall specify in writing the reasons for such objection

6.21.1.1.1.2. If within fifteen (15) calendar days from submittal by the Contractor, the Owner's Representative fails to make objections to any Supplier or Subcontractor on the list, the Contractor shall request the approval of the list by the Owner's Representative who shall have ten (10) days to issue his decision. If no reply is forthcoming from the Owner's Representative within the stated time, the list of Suppliers or Subcontractors shall be deemed approved.

6.21.1.1.2. The Contractor shall not contract with any Supplier or Subcontractor or any person or organization (including those who are to furnish materials or equipment fabricated to a special design) that has been rejected by the Owner's Representative in the manner indicated in Article 6.21.1.1.1, above.

6.21.1.1.3. If the Owner's Representative refuses to accept any Supplier, Subcontractor, person, or organization on a list submitted by the Contractor in response to the requirements of the Contract Documents, the Contractor shall submit an acceptable substitute.

6.21.1.1.3.1. No increase in the Contract Sum shall be allowed for any such substitution of a rejected Subcontractor and/or Supplier or other in accordance with Article 6.21.

6.21.1.1.3.2. No acceptance by Owner's Representative of any such Subcontractor, Supplier, or other individual or entity, whether initially, or as a replacement, shall constitute a waiver of any right of Owner's Representative or Engineer to reject defective Work.

6.21.1.1.4. Unless otherwise specified in the Contract Documents, the Contractor shall execute, with his own forces and organization, Work amounting to not less than twenty-five percent (25%) of the original total Contract Price.

6.21.1.1.4.1. Any items designated in the Contract Documents as "Specialty Trades or Items" shall be deducted from original total cost before computing the amount of the work required to be performed by the Contractor with his own forces and organization

6.21.2. Payments to Subcontractors.

6.21.2.1. The Contractor shall pay each Subcontractor for work performed in the Project in accordance with the terms and conditions stipulated in the contract executed by and between the Contractor and the Subcontractor.

6.21.2.1.1. The Contractor shall also require the Subcontractor to make similar payments to his Sub-Subcontractors.

6.21.3. Flow Down of Applicable Agreement Provisions.

6.21.3.1. The Contractor shall cause the inclusion, in all agreements executed by contractor with Subcontractors and Suppliers, of all applicable provisions of the Agreement with which Subcontractors and Suppliers need to comply for their proper performance on behalf of Contractor, of the duties and obligations imposed by the Contract Documents. Contractor shall also cause Subcontractor and Suppliers to include in their respective agreements with Sub-Subcontractors, and Sub-Suppliers the same duties to flow down to all lower tier agreements such applicable Agreement provisions.

6.21.4. The Contractor shall be considered as an independent contractor for all purposes under the Contract, and no persons engaged or contracted by the Contractor for the performance of Contractor's obligations shall be considered an employees or agents of the Owner.

6.21.5. Contractor shall be fully responsible to Owner's Representative, Owner and Architect/Engineer for all acts and omissions of the Subcontractors, Suppliers, and other such individuals or entities performing or furnishing any of the Work.

6.21.5.1. Nothing in the Contract Documents shall create for the benefit of any Subcontractor or Supplier a contractual relationship between Owner's Representative, Owner or Architect/Engineer, nor shall it create any obligation on the part of Owner's Representative, Owner or Architect/Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws or Regulations.

6.21.6. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other such individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

6.21.7. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Owner's Representative only through Contractor.

6.21.8. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner's Representative, Owner and Architect/Engineer, including required contract provisions applicable to Federal Agency funded projects.

6.21.8.1. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in section 3.6, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights (including subrogation) against Owner, Contractor, Architect/Engineer, Architect/Engineer's Consultants, and all other individuals or entities identified in the Contract Documents to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to Work.

6.21.8.1.1. If the insurers underwriting any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

ARTICLE 7 - ARCHITECT/ENGINEER AND DESIGNATED INSPECTOR

7.1 Administration of the Contract

7.1.1. The Owner will provide general Administration of the Construction Contract, including performance of the functions hereinafter described, through the Owner's Representative.

7.1.2. The Owner, prior to the start of the Project, will inform the Contractor in writing the name of the Owner's Representative. If the Owner's Representative is changed during the course of the project the Owner will inform the Contractor in writing the name of the new Owner's Representative. If the Contractor has valid reasons for objecting said designation, Contractor shall so inform the Owner in writing and, if Owner deems Contractor's reasons valid, a different Owner's representative shall be chosen by the Owner.

7.1.3. The Owner may from time to time change the person or entity designated as Owner's Representative, or may

assume and/or change the functions of the Owner's Representative, and the Architect/Engineer by notifying the Contractor in writing.

7.2 Duties of Architect/Engineer and the Owner's Representative

7.2.1. The Architect/Engineer is the person or entity who prepares the Drawings and Specifications for the Owner and is responsible for the analysis, design, and code compliance of the Project.

7.2.1.1. The Architect/Engineer will make periodic visits to the site to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents.

7.2.1.1.1. Based on on-Site observations, the Architect/Engineer will keep the Owner informed of the progress of the Work, and will endeavor to safeguard the Owner against defects and deficiencies in the Work.

7.2.1.1.2. The Architect/Engineer will be the Owner's representative for technical matters related to the Contract.

7.2.1.1.3. The Architect/Engineer will be the primary interpreter of the plans and specifications.

7.2.1.1.4. The Architect/Engineer and Owner's Representative will not be responsible for the acts or omissions of the Contractor, or any Subcontractor and vice-versa, or any of their agents or employees, or any other persons performing any of the Work.

7.2.2. The Owner's Representative will represent the Owner in the interpretation of all contractual and non-technical matters. The Owner's Representative will have authority to act on behalf of the Owner to the extent provided in the Contract Documents.

7.2.2.1. All communications related to this Contract between the Contractor and Architect/Engineer shall be made thru the Owner's Representative, except that any party may directly communicate orally or by written communication with the others if authorized by the Owner's Representative, or in case of an Emergency.

7.2.2.2. The Owner's Representative may delegate some or all of his functions to Project Inspectors and/or Inspectors.

7.2.2.2.1. The Owner's Representative will inform the Contractor the name of the Project Inspectors and/or Inspectors. If the Contractor has a valid reason for not accepting the designated Project Inspector, he shall so inform the Owner in writing and if Owner deems the reason valid a different Owner's representative shall be chosen by the Owner.

7.2.2.2.2. Inspectors employed by the Owner, the Architect/Engineer and/or the Owner's Representative are authorized to inspect all work done and materials furnished, including the preparation, fabrication or manufacture of the materials to be used.

7.2.2.2.3. Inspectors also have the authority to reject any materials and work until any questions at issue can be resolved.

7.2.2.3. Owner's Representative and/or inspectors are not authorized to alter or waive the provisions of the

Contract, to issue instructions contrary to the plans and specifications, or to act as foremen for the Contractor.

7.2.2.4. Based on his observations and the Contractor's Application for Payment, the Owner's Representative will determine the amount owed to the Contractor and will recommend approval of Payment in such amount.

7.2.2.4.1. If the Owner so requires, Architect/Engineer will also review, and approve, the Contractor's Application for Payment.

7.2.2.5. The Owner's Representative will prepare Change Orders, and Extra Work Orders, in accordance with these General Conditions.

7.2.3. The Owner's Representative, the Architect/Engineer and/or the Owner shall at all times have access to the Work either in preparation or in progress. The Contractor shall provide access to the Work so that at all times Owner's Representative may perform his duties under the Contract Documents, and Contractor shall provide such information and assistance, as is required, to make a complete and detailed inspections.

7.2.3.1. If the Owner's Representative, and/or the Owner, request it, the Contractor, at any time before Final Acceptance of the Work, shall remove or uncover such portions of the finished Work as instructed . After examination, the Contractor shall restore said portions of the Work to the standard required by the specifications.

7.2.3.1.1. Should the Work so exposed and examined prove acceptable, the uncovering, or removing, and the replacing of the covering will be paid by the Owner as extra work; but should the Work so exposed or examined prove unacceptable, the uncovering, removing, remediation and the replacing of the covering will be at the Contractor's expense.

7.2.3.1.2. Any Work done or materials used without supervision or inspection by an authorized Owner's representative may be ordered removed and replaced at the Contractor's expense unless the Owner representative failed to inspect after having been given a written notice of at least two (2) Working Days prior to the date in which Work was performed.

7.2.3.1.3. When any government agency or any utility is to accept or pay for any portion of the Work, its respective representatives shall have the right to inspect the Work. Such inspection shall not make the government agency or utility a party to the Contract. Contractor and Owner shall diligently perform all necessary actions to promote the timely inspection of the Work in a manner that does not affect the critical path.

7.2.3.1.4. The inspection of the Work and materials by the Owner shall not release the Contractor of any of his obligations under the Contract as prescribed in the plans, specifications and other Contract Documents.

7.2.3.1.5. The Owner's Representative will conduct inspections to determine the dates of Substantial Completion and final completion and will receive and review written guarantees and related documents submitted by the Contractor.

7.2.3.1.6. In case of any dispute between the Contractor and any one Project Inspector or Inspector as to materials furnished or the manner of performing the Work, the Project Inspector or the Inspector shall have the authority to reject materials or suspend the work until the question at issue can be referred to and decided by the Owner's Representative, within reasonable promptness, so at not to alter the critical path or modify substantially the float and the programmed progress of the job.

7.2.4. The Owner's Representative will be, in the first instance, the interpreter of the requirements of the Contract

Documents, except as indicated in Article 7.2.1.3. The Owner's Representative will, within a reasonable time, render such interpretations that he, or the Contractor, if so requested, may deem necessary for the proper execution or progress of the Work.

7.2.4.1. All interpretations and decisions of the Owner's Representative shall be consistent with the intent of the Contract Documents. In his capacity as interpreter, he will exercise his best efforts to insure faithful performance under the Contract.

7.2.4.2. Claims, disputes and other matters in question relating to the execution or progress of the Work or the interpretations of the Contract Documents shall be submitted initially to the Owner's Representative for a decision in accordance with Article 11.

7.2.5. The Owner's Representative will have authority to reject work only when such work does not conform to the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable, to insure the proper implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Article 12.3 whether or not such Work is then fabricated, installed or completed.

7.2.5.1. However, neither the Owner's Representative's authority to act under this Article, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Owner, Owner's Representative or Architect/Engineer to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work, nor will the Contractor be released from any of his obligations under the Contract.

7.2.5.1.1. The Owner's Representative shall have the authority to stop the Work in whole or in part when such stoppage is necessary to insure the proper execution of the Work and compliance by contractor with the Contract.

ARTICLE 8 - OTHER WORK AND SEPARATE CONTRACTS

8.1 Owner's Right to Award Separate Contract, Perform Work with Owner's Employees and Utility Workers. Related Work at Site

8.1.1. Owner's Right to Award Separate Contract, Perform Work with Owner's Employees and Utility Workers.- Owner may perform other work related to the Project at the Site with Owner's employees, or by awarding separate contracts, or by having the work performed by utility workers. Written notice thereof will be given to Contractor prior to starting any such other work.

8.1.1.1. If the terms and conditions of the work to be performed by Owner's employees, separate contractors or by others, are not described in the Contract Documents prior to the bid, the Contract Time and Sum will be equitably adjusted as a result of said work and any other work to the extent that such work performed by Owner's employees, separate contracts or by others affects the Contractor's Work.

8.1.1.2. If the terms and conditions of the work to be performed by Owner's employees, separate contractors or by others are described in the Contract Documents prior to the bid, then the Contract Time and Sum will be equitably adjusted but only to the extent that said work differs from the work indicated in the Contract Documents that is to be performed by Owner's employees, separate contractors or by others.

8.1.1.3. Should the performance of other work related to the Project at the Site by Owner's employees,

separate contractors, utility workers, that was not indicated in the Contract Documents, cause damages, delays or interferes with the Work being performed by the Contractor, the Owner will assume full responsibility and pay for all costs, expenses, and delays to which the Contractor is subjected caused by the execution and/or performance of said other work described herein if the critical path is adversely affected.

8.1.1.4. In the event one or more contracts are awarded related to the Project, the "contractor" in the contract document in each case, will be the contractor who signs each separate contract.

8.1.1.5. If there is under construction other work for Owner,by written contract or otherwise, adjacent to the limits of the site, the Contractor, if so ordered by the Owner, shall permit access to others performing such work through the Site.

8.1.1.5.1. If Owner authorizes the other contractors performing work adjacent to the Site to use said access Owner shall prescribe limitations and conditions for such use as required to protect Contractor's operations and the Work.

8.1.1.5.1.1. In accordance with this Article 8.1, the Owner will be responsible for any damages, costs, or delays caused to the Contractor by such order.

8.1.1.6. If Owner and Contractor are unable to agree on entitlement to or on the amount or time, if any, of any adjustment in the Contract Price or Contract Time necessary as a result of such other work, a Claim may be made therefore as provided in Article 11.5.

8.1.2. Coordination of the Separate Contracts and Work by Others.

8.1.2.1. Unless otherwise specified in accordance with Article 8.1.2.4, Owner shall be responsible for the coordination of the Work between the Contractor, Owner's employees, the separate contractors and any others, as to the interaction and scheduling of the various work and the proper and safe access to the Site and storage of the equipment and materials of the Contractor, the Owner's employees, the separate contractors and others contracted by Owner.

8.1.2.2. Contractor shall fully cooperate with the Owner in the coordination of the Contractor's Work with that of the Owner's employees, the separate contractors and any work by others as to the interaction and scheduling of the various work and the proper and safe access to the Site and storage of the equipment and materials of the Contractor, the separate contractors and others.

8.1.2.3. The Owner may delegate this coordination, in whole or in part, to a Construction Manager or separate contractor and must give prior notice to Contractor in writing, containing the terms and conditions of this delegation.

8.1.2.3.1. The Construction Manager or the separate contractor will act on behalf of Owner strictly within the limits of such delegation.

8.1.2.4. The Owner may delegate this coordination responsibility in whole or in part to one of the separate contractors or to the Contractor as follows:

8.1.2.4.1. If prior to the bid opening date, the Owner requires that the Contractor be responsible for the coordination of the Owner's employees, separate contracts or any work by others, the Owner will indicate the

terms and conditions of such obligation in the bid documents and it shall be the Contractor's responsibility to include in the Contract Price whatever costs are required for this coordination of the work.

8.1.2.4.2. If the Owner requires that Contractor be responsible for the coordination of Owner's employees, separate contracts or work by others after the bid has been awarded, the Owner will indicate the terms and conditions of such obligation as a Change Order.

8.1.2.5. Contractor Coordination Meetings:

8.1.2.5.1. If the Owner, or the party with the coordinating responsibility so requires it, the Contractor shall attend coordination meetings with the Owner's employees, separate contractors or others performing work at a site to be determined by the coordinator.

8.1.2.5.1.1. The purpose of the coordination meeting shall be for the Contractor and all separate contractors and/or others performing work to coordinate schedules and construction activities to enable the construction of the different work under the separate contracts to occur on a coordinated, efficient and expeditious manner.

8.1.2.5.1.2. The coordination meeting shall also serve as forum for the Contractor and all separate contractors and/or others performing work at the site to discuss, and try to avoid and try to resolve between and among themselves any conflicts in their respective schedules or construction activities and prevent delays in one contractor's activities caused by another.

8.1.2.5.2. If the different contractors cannot reach an agreement on the coordination of the construction activities and schedule to be followed, the Owner, or his designated coordinating representative, will decide on the course of action to be followed and shall provide the necessary instructions to the Contractor, Owner's employees, separate contractors and others performing work on how to proceed, as a Field Order or, if required, as a Change Order.

8.1.3. Contractor, and any other entity contracted by the Owner to perform direct work related to the Project, shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate such other work with the work of the Contractor or any other entity contracted by the Owner to perform related work on the Project.

8.1.3.1. Contractor, or any other entity contracted by the Owner to perform related work on the Project, shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Owner and the others whose work will be affected.

8.1.4. The duties and responsibilities of Contractor under this Article are for the benefit of such utility owners and separate contractors to the extent that there are comparable provisions for the benefit of Contractor, including general, supplemental and special conditions, as well as similar insurance and hold harmless clauses, in said direct contracts between Owner and such utility owners and separate contractors.

8.1.4.1. Furthermore, the Owner will verify that the schedule of others contracted to perform related work on the Project does not interfere with the Project Schedule.

8.1.4.1.1. If in order to accommodate the work performed by others contracted by the Owner to perform related work in the Project, the critical path is adversely affected and/or any damage to the Work occurs, the Owner will compensate the Contractor in time and/or adjustment to Contract Price.

8.1.5. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article, Contractor shall promptly inspect such other work and, within ten (10) working days, report to Owner in writing any delays, defects, or deficiencies in such other work that, in his opinion, render it unavailable or unsuitable for the proper execution and results of the Work.

8.1.5.1. Contractor's failure to report will constitute acknowledgement that said work is suitable, except for hidden latent defects in such work.

8.1.5.2. The same rules stated herein will apply if other entities contracted by the Owner to perform related work in the Project depend on Work performed by the Contractor.

8.2 Owner's Right to Award Separate Contract.

8.2.1. The Owner may award separate contracts in connection with other portions of the Project or additional work to the Work covered by the Contract, and if such work affects the Work, Contractor will be notified by Owner in a timely manner of the award of such separate contract.

8.2.1.1. The Owner may assign these separate contracts, as a Change Order, to the Contractor for a fee, as indicated on Article 10.5.

8.2.2. When Separate Contracts are let within the limits of any project, the Owner shall coordinate the work of each contractor so as not to interfere with or hinder the progress or completion of the Work being performed by Separate Contractors.

8.2.2.1. Contractors working on the same Project shall fully cooperate with each other.

8.2.2.2. Furthermore, the Owner will be responsible to verify that the schedule of the Separate Contractors contracted to perform Work on the Project does not interfere with the Contractor's Project Programmed Schedule previously approved for the Project.

8.2.2.2.1. Owner will compensate the Contractor, in time and/or adjustment to Contract Price, if his schedule has to be varied, and/or any damage occurs, to accommodate the work performed by other entities contracted by the Owner to perform related work in the Site.

8.3 Mutual Responsibility of Contractors

8.3.1. Each Contractor involved shall assume all liability, financial or otherwise, in connection with his Contract and shall protect and save harmless the Owner from any and all damages or claims that may arise out of the performance of the Contractor's Work.

8.3.1.1. The Owner will require from each Separate Contractor and other entities working on the Project, Contract Documents, including General, Supplemental and Special Conditions, similar to those executed with the Contractor and to include similar insurance clauses and hold harmless clauses.

8.3.1.2. The Owner will also be responsible to verify that the schedule of the Separate Contractors) and other entities working on the project do not interfere with the Contractor's Project Programmed Schedule previously approved for the Project.

8.3.2. Should the Contractor cause damage to the work or property of any separate contractor and/or others working on the Project, the Contractor shall, be liable for said damage.

8.3.2.1. If such other separate contractor files a claim against Owner on account of any such damage alleged to have been so sustained, Contractor shall have the right to defend Owner, either by itself or in conjunction with Owner, and Contractor shall compensate Owner for damages, costs and expenses sustained therefore by Owner which are attributable to Contractor.

8.3.2.1.1. If the Contractor is found to be responsible for the alleged defects claimed by the separate contractor and any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and court, arbitration costs or other costs which the Owner has therefore incurred.

8.3.2.1.2. If the Contractor is found not to be responsible for the alleged defects claimed by the separate contractor, then the Owner shall pay for any judgment or award against him as well as reimburse the Contractor for all attorney's fees and court or arbitration costs incurred in defending the Owner.

ARTICLE 9-TIME

9.1 Progress and Completion

9.1.1 All time limits stated in the Contract Documents are of the essence of the Contract.

9.1.2 The time limit for the execution of this Contract has been figured out based on the Architect/Engineer and/or Owner's estimate.

9.1.2.1. Such time limit to into consideration all Sundays, legal holidays indicated in Article 1.1.1.4,1, included within the said time limit.

9.1.2.2. The Contractor will be entitled to work premium time (overtime) as required to comply with the schedule of the Project.

9.1.2.2.1. No work shall be performed on Saturdays, Sundays or legal holidays, except in cases of emergency, or unless prior written permission has been granted by the Owner's Representative.

9.1.2.2.1.1. Except in cases of emergency, request for permission to Work on Saturdays, Sundays or legal holidays shall be filed with the Owner's Representative not less than twenty four (24) hours in advance of said date, if the activity affects the critical path and not less than forty eight (48) hours if the proposed activity does not affect the critical path.

9.1.2.2.1.2. Said permission shall not be unreasonably denied.

9.1.2.2.2. Premium time (overtime) necessary in case of emergency, or for completion of daily work, or to comply with the Project schedule, shall be notified to the Project Inspector during the course of the day that said premium time will be worked.

9.1.3. The date of commencement of the Work shall be stated in the Notice to Proceed.

9.1.3.1. The Contractor shall begin the Work on such date of commencement fixed by the Notice to Proceed.

9.1.3.2. The Contractor shall carry out the Work expeditiously with adequate forces and shall complete it within the Contract Time

9.1.3.3. A Notice to Proceed issued without the Owner having furnished all required permits and/or endorsements necessary to commence the Work which fixes a commencement date which cannot be complied with due to the lack of such permits shall constitute a valid basis for a claim by Contractor under Article 11.5 if such act adversely affects the Project's critical path and no concurrent cause of delay by the Contractor is present.

9.1.4. The Contract Time limit to execute the Work until it is substantially complete shall be that number of calendar days resulting from the sum of the original Contract Time and the authorized extensions to the original Contract Time. Said Contract Time shall start to run on the date fixed in the Notice to Proceed (the commencement date) and shall end on the date of Substantial Completion. If the work is Substantially Completed prior to said time limit, the Contractor will have achieved early completion, if Work is not Substantially Completed within said time limit, the Contractor will not have completed the Work on time in accordance with the Contract.

9.1.4.1. Time under the Contract will, stop running on the date of Substantial Completion.

9.2 Change of Contract Time

9.2.1. The Contract Time (or Milestones) may only be changed with a Change Order, Extra Work Order or by a Written Amendment.

9.2.1.1. Any Claim for an adjustment in the Contract Time (or Milestones) shall be based on a written notice submitted by the party making the claim to the Owner in accordance with the provisions of Article 11.5.

9.2.2. Any adjustment of the Contract Time (or Milestones) due to any delay beyond the control of Contractor, will be made in an amount equal to the time lost due to such delay, including its consequences, if a Claim is made therefore as provided in Article 11.5 only if such delay affect the critical path, as reflected in the monthly Progress Schedule.

9.2.2.1. Delays beyond the control of Contractor shall include, but are not limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated on these General Conditions, lack of, or lapse, of any permit, or endorsement, issued by the governmental entities having jurisdiction in the Project which are the responsibility of Owner, fires, floods, epidemics, weather conditions, or acts of God.

9.3 Delays and Extensions of Time

9.3.1. No extension of the Contract Time will be allowed for any reason except as provided below:

9.3.1.1. If satisfactory fulfillment of the Contract with authorized extension and increases requires the performance of Work in greater quantities than those set forth in the proposal so that the total final payment is

greater than the total original Contract Price, then the time allowance will be equitably adjusted taking into account the amount and difficulty of the additional Work and only if the scope of the Work is increased or the critical path of the Project Schedule is affected.

9.3.1.2. In case of total suspension ordered by the Owner and not due to any fault of the Contractor, the total number of calendar days during which the Work is suspended shall be added to the Contract Time. In case of suspension of part of the Work ordered by the Owner not due to any fault of the Contractor, the Contract Time shall be extended to the extent that the effect that such suspension has on the Contract Time, and only to the extent the critical path of the Project Schedule is affected.

9.3.1.2.1. After Contractor has taken all reasonable steps to minimize Project overhead during the suspension, the Project fixed overhead costs incurred during the suspension by the Contractor will be reimbursed to Contractor by the Owner.

9.3.1.3. In case of damage to the Work due to Force Majeure, the Owner shall equitably adjust Contract Time based on the time required to repair the damage, provided the critical path is affected.

9.3.1.4. In case of delays or interruptions to the Work caused by any act of the Owner, or by any separate Contractor employed by the Owner or by any other cause not attributable to the fault or negligence of the Contractor, then the Contract Time shall be equitably adjusted.

9.3.1.4.1. The Project reasonable fixed overhead costs incurred by the Contractor due to the time extension caused by the acts described in Article 9.3.1.4 ,will be reimbursed to the Contractor by the Owner.

9.3.1.5. Every Change Order, Extra Work Order or Supplemental Agreement, if any, shall include all adjustments to Contract Time and to Contract Price related thereto, if any.

9.3.1.6. Unless otherwise specified in the Contract Documents, additional Contract Time will be allowed due to weather conditions, and their consequences, which render the performance of Work impossible.

9.3.1.7. Except as otherwise stated in this Article 9, where Contractor is prevented from completing any part of the Work within the Contract Time (or Milestones) due to delays beyond the control of both Owner and Contractor, if the critical path of the Project Schedule is affected, an extension of the Contract Time (or Milestones) for a period of time equal to the time lost due to such delay shall be Contractor's sole and exclusive remedy for such delay.

9.3.2. Extension in Contract Time shall not be considered or allowed for the following reasons:

9.3.2.1. Suspensions of Work ordered by the Owner or Owner's Representative due to the fault of the Contractor or his Subcontractor.

9.3.2.2. Unauthorized suspensions of Work by the Contractor.

9.3.2.3. Delays within the control of Contractor.

9.3.2.3.1. Delays attributable to or within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

9.3.3 All notifications of claims for extension of time shall be made in writing by the Contractor to the Owner's Representative not more than thirty (30) working days after acquiring knowledge of the occurrence of the delay. Once made, the Contractor must supplement such claim by notice to Owner within thirty (30) working days after the event that caused the delay has concluded. If proper notification of a claim or subsequent supplemental notice is not given to Owner, then all related claims regarding increases to Contract Time, and Contract Price will be deemed waived by Contractor.

9.3.3.1. Claims for extension of time shall include:

9.3.3.1.1. the reasons for the time extension as required by the Owner's Representative;

9.3.3.1.2. the operation(s) alleged to have been delayed;

9.3.3.1.3. the calendar dates on which the operation(s) were delayed;

9.3.3.1.4. the number of calendar days by which Contractor requests Contract Time be extended;

9.3.3.1.5. a complete and detailed statement as to how the critical path was affected; and

9.3.3.1.6. a complete and detailed breakdown of adjustment to Contract Price to be claimed due to the claimed time extension, if adjustment to Contract Price is to be claimed.

9.4 Delay Damages

9.4.1. In no event shall Owner or Architect/Engineer be liable to Contractor, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

9.4.1.1. delays caused by or within the control of Contractor; or

9.4.1.2. delays caused by Force Majeure and/or beyond the control of both Owner and Contractor .

9.4.1.3. delays not notified within the time specified in Article 9.3.3 or contrary to Article 9.3.3.1.

9.4.2. Nothing in this Article 9 bars a change in Contract Price to compensate Contractor due to delay, interference, or disruption directly attributable to actions or inactions of Owner or anyone for whom Owner is responsible, provided Contractor complies with the requirements of Articles 9.3.3. and 9.3.3.1.

9.5 Liquidated Damages

9.5.1. Unless otherwise specified in the Contract Documents should the Contractor or, the Surety in case of Termination for Cause, fail to complete all the Work within the time specified in the Contract or as extended by the written authorization of the Owner, a deduction of the amount stipulated herein will be made for each and every calendar day that the Work is not completed after the expiration of the time limit to execute the Work described in Article 9.1.4:

SCHEDULE OF LIQUIDATED DAMAGES		
Original Contract Price		Daily Charge
From More Than	To and Including	
$ 0.00	$ 99,999.99	$ 300.00
$ 100,000.00	$ 499,999.99	$ 400.00
$ 500,000.00	$ 999,999.99	$ 800.00
$ 1,000,000.00	$ 1,999,999.99	$ 1,000.00
$ 2,000,000.00	$ 4,999,999.99	$ 2,000.00
$ 5,000,000.00	$ 9,999,999.99	$ 3,000.00
$ 10,000,000.00	$19,999,999.99	$ 4,000.00
$ 20,000,000.00	$29,999,999.99	$ 5,000.00
$ 30,000,000.00	$39,999,999.99	$6,000.00
$ 40,000,000.00	$49,999,999.99	$7,000.00
Over $50,000,000.00	Unlimited	$8,000.00 or as otherwise indicated in the Special Conditions

9.5.2. This amount will be deducted from any money due or that may become due the Contractor or his Surety by Owner.

9.5.3. The Original Contract Price in the above schedule of Liquidated Damages for unit price projects refers to the total original contract amount including all the units in a multi-unit contract. Liquidated damages will be applied on multi-unit contracts based on the daily charges applicable to the total original contract amount.

9.5.4. The amount stipulated in Article 9.5.1, or otherwise if otherwise specified in the Contract Document, as the case may be, shall be considered and treated not as a penalty, but as a total, fixed, and agreed upon liquidated damages due the Owner by the Contractor or, by the Surety in case of Termination for Cause, for and including but not limited to, public inconvenience, obstruction to traffic, interference with and/or loss of business, increase of engineering, inspection and administrative cost to the Owner; and other costs and expenses which have caused an expenditure of public funds, resulting from the Contractor's, or in case of Termination for Cause of the Surety's, failure to complete the work within the time specified in the Contract.

9.5.5. Permitting the Contractor to continue and finish the Work or any part thereof after expiration of the time limit for Substantial Completion described in Article 9.1.4 shall in no way operate as a waiver of any right or remedy available to Owner under this Contract or at law.

9.6 Early Completion Incentive

9.6.1. Unless otherwise stated in the Contract Documents, should Contractor Substantially Complete the Work before expiration of the Contract Time as extended by the Owner, the Contractor shall receive an incentive pay from the Owner equal to one half (1/2) of the stipulated liquidated damages for each calendar day the Work is Substantially Completed prior to the time limit to complete the Work described in Article 9.1.4.

ARTICLE 10 - CHANGE OF CONTRACT PRICE, COST OF THE WORK AND UNIT PRICE WORK

10.1 Change of Contract Price

10.1.1. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Owner in accordance with Article 11.5.

10.1.2. The value of the Work covered by a Change Order or covered by a Claim for an adjustment in the Contract Price will be determined as follows:

10.1.2.1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of section 10.4); or

10.1.2.2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with section 10.5) or by newly agreed unit prices; or

10.1.2.3. where the Work involved is either: (a) not covered by unit prices contained in the Contract Documents, or (b) agreement as to a lump sum is not reached (under Article 10.1.2.2,) the value of the work shall be computed on the basis of the Cost of the Work (determined as provided in Article 10.2) plus a Contractor's fee for overhead and profit (as provided in Article 10.5).

10.2 Cost of the Work

10.2.1. Costs Included: The term Cost of the Work means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of a change in the Work. When the value of any Work covered by a Change Order, Extra Work Order or Construction Change Directive or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work. Except as otherwise agreed in writing by Owner's Representative, such costs shall be in amounts no higher than those prevailing in the locality of the Project and shall include only the items indicated below:

10.2.1.1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classification agreed upon by Owner's Representative and Contractor.

10.2.1.1.1. Such employees shall include without limitation engineers, superintendents, foremen, and other supervisory, safety, security and clerical personnel employed full time at the Site.

10.2.1.1.2. Payroll costs for employees not working exclusively in connection with the Work shall be apportioned based on their time spent working on the Work.

10.2.1.1.3. Payroll costs shall include, but shall not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, union, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto.

10.2.1.1.4. The expenses of performing Work outside the regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above mentioned costs, to the extent authorized by Owner's Representative.

10.2.1.2. Actual cost of all necessary materials and equipment furnished and incorporated in the Work, including costs of transportation, taxes and reasonable and necessary storage thereof, and Suppliers' field services required in connection therewith.

10.2.1.2.1. All cash discounts with regard to the purchase by Contractor of materials and equipment shall accrue for the benefit of Contractor unless Owner deposits funds with Contractor with which to purchase the materials and equipment, in which case the cash discounts shall accrue to Owner.

10.2.1.2.2. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that these discounts etc. may be obtained.

10.2.1.3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors.

10.2.1.3.1. If required by Owner's Representative, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Architect/Engineer, which bids, if any, will be acceptable.

10.2.1.3.2. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Article 10.2.

10.2.1.4. Reasonable and necessary costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services exclusively related to the Work.

10.2.1.5. Supplemental costs including the following:

10.2.1.5.1. The proportion of reasonable and necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work. Airplane travel shall be on coach class and the car transportation, hotel and subsistence shall be at moderate cost.

10.2.1.5.2. Reasonable cost, including transportation, taxes and maintenance, of all materials, supplies, equipment, machinery, appliances, computers, office, warehousing and temporary facilities exclusively related to the Contract, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

10.2.1.5.3. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner's Representative with the advice of Architect/Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and

removal thereof.

10.2.1.5.3.1. All such costs shall be in accordance with the terms of said rental agreements.

10.2.1.5.3.2. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

10.2.1.5.4. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

10.2.1.5.5. In such instances (only) where Contractor is insured under OCIP, or where the Owner assumes responsibility for some part of the required projects insurances (such as Builder's Risk) losses and damages (and related expenses) caused by damage to the Work, not compensated by said insurance, sustained by Contractor in connection with the performance of the Work, provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

10.2.1.5.5. 1. Such losses shall include settlements made with the written consent and approval of Owner's Representative. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

10.2.1.5.6. The cost of all utilities, telephone, data, fax, internet, security services, fuel, and sanitary facilities within the Site.

10.2.1.5.7. When the Cost of the Work is used to determine the value of a Change Order, or Construction Change Directive, Extra Work Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work.

10.2.1.5.8. An amount of the Contractor's main office overhead costs, when applicable, reached by mutual accord between the parties. If no mutual accord can be reached, the cost for main office overhead shall be computed using the Eichleay case and subsequent case law. If the Contractor does not have financial statements prepared externally by a recognized CPA, he must prepare them in order to be able to present a claim for this purpose.

10.2.2 Costs Excluded: The term Cost of the Work shall not include any of the following items:

10.2.2.1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor who work at Contractor's principal, branch or other office, other than Contractor's office at the Site, for general administration of the Work, all of which are to be considered administrative costs covered by the Contractor's fee, and not specifically included in the agreed upon schedule of job classifications referred to in Article 10.2.1.1 or specifically covered by Article 10.2.1.4.

10.2.2.2. Expenses of Contractor's principal, branch or other offices, other than Contractor's office at the Site.

10.2.2.3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed

for the Work and charges against Contractor for delinquent payments.

10.2.2.4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, or making good any damage to property.

10.2.2.5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Articles 10.2.1.1 and 10.2.1.2, unless proven as a valid reasonable and necessary expense directly and exclusively related to the Project.

10.2.3. Contractor's Fee. When the value of any Work covered by a Change Order/Extra Work Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Article 10.5.

10.2.4 Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to Articles 10.2.1 and 10.2.2, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Architect/Engineer, or Owner's Representative, an itemized cost breakdown together with supporting documentation and data.

10.2.5 Time Extension: Whenever additional time is required to perform extra work, said time allotment shall be included as part of the Change Order.

10.2.6 If the requirement specified in Article 10.1.2.3, above, causes a delay in the project completion, the costs of said delays, including project and main office overhead shall be added to the cost of the Work and a reasonable time extension provided under the Contract.

10.3 Cash Allowances

10.3.1 Unless otherwise stated in the Contract Documents, it is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents.

10.3.2 Items covered by allowances shall be supplied for such amount and by such persons or entities as the Owner's Representative may direct, but the contractor shall not be required to employ persons or entities against which the Contractor makes written reasonable objections.

10.3.3 If the allowance covers the cost of only furnishing material or , the allowance should include:

10.3.3.1. The cost to Contractor (less any applicable discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

10.3.3.2. Contractor's costs for unloading and handling on the Site. Labor and installation costs, have been included in the Contract Price.

10.3.4 If the allowances include the cost of furnishing and installing material or equipment to be furnished and installed by the Contractor the allowances include the cost to Contractor (less any applicable discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes plus the total cost of installation including unloading and handling.

10.3.5 If the allowances include the cost of furnishing and installing material or equipment to be furnished and installed by a Subcontractor the allowances include the cost to the Contractor of the subcontractor's price.

10.3.6 Unless otherwise provided in the Contract Documents, insurances and bonds do not form part of the allowance price, but are included as part of the Contract Price.

10.3.7 An appropriate Change Order/Extra Work Order will be issued to reflect any difference in the actual cost of the allowance versus the amount specified in said allowance in the Contract Documents. Said amount will be due to Contractor, or credited to Owner as the case may be, on account of Work covered by allowances, and the Contract Price, and Contract Time, if necessary, shall be correspondingly equitably adjusted. Said Change Order/Extra Work Order will include the costs of bonds, insurances and fee stated in Article 10.5. If the change order is a credit, the amount credited will be the net amount due the Owner.

10.4 Unit Price Work

10.4.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include, for all Unit Price Work, an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

10.4.1.1. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price.

10.4.1.1.1. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Owner's Representative subject to the provisions of Article 13.2.1.

10.4.2 Each unit price will be deemed to include an amount considered by Contractor in the proposal to be adequate to cover Contractor's overhead and profit for each separately identified item.

10.4.3 Owner and Contractor may make a Claim for an adjustment in the Contract Price in accordance with Article 11.5 if:

10.4.3.1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

10.4.3.2. there is no corresponding adjustment with respect any other item of Work; and

10.4.3.3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

10.5 Contractor's Fee: The Contractor's fee for overhead and profit for Work performed under a Change Order/Extra Work Order shall be determined as follows:

10.5.1. a mutually acceptable fixed fee; or

10.5.2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

10.5.2.1. for costs incurred under Articles 10.2.1.1 and 10.2.1.2, the Contractor's fee shall be fifteen (15) percent;

10.5.2.2. for costs incurred under Article 10.2.1.3, 10.2.1.4 and 10.2.1.5, the Contractor's fee shall be ten (10) percent;

10.5.2.3. where one (1) or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Article 10.5.2.1 is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of fifteen (15) percent of the costs incurred by such Subcontractor under Articles 10.2.1.1 and 10.2.1.2 and that any higher tier Subcontractor and Contractor will each be paid a fee often (10) percent of the amount paid to the next lower tier Subcontractor;

10.5.2.4. no fee shall be payable on the basis of costs itemized under Articles 10.1.2.1 and 10.1.2.2;

10.5.2.5. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost; and

10.5.2.6. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed based on the net change in accordance with Article 10.5.2.1 through 10.5.2.5, inclusive.

ARTICLE 11 - CHANGES IN THE WORK

11.1 Authorized Changes in the Work

11.1.1 Without invalidating the Agreement and without notice to any surety, Owner, through the Owner's Representative, may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, an Extra Work Order, Work Change Directive, or a Construction Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved, which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

11.1.2 If there is agreement that said request will include an adjustment either in the Contract Sum, the Contract Time, or both, the adjustment shall be based on one of the following methods:

11.1.2.1. Mutual acceptance of a lump sum properly itemized and supported with sufficient substantiating data and documentation to permit evaluation and mutually acceptance of adjustment to Contract Time, and Contract Price if necessary;

11.1.2.2. Contract Price and Contract Time to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage Contractor's fee; or

11.1.2.3. As provided in Articles 9.2 and 10.

11.1.3 The Owner's Representative shall have authority to order minor changes in the Work not involving any adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents.

11.1.3.1. Such changes shall be made by a written Field Order, or by other written orders.

11.1.3..2. Such changes shall be binding on the Owner and the Contractor.

11.1.3.2.1. If the Contractor is not in agreement that such order does not increase either the Contract Sum or the Contract Time, the Contractor shall promptly present his Claim in the method specified in Article 11.5, herein.

11.1.4. The Owner's Representative may issue written Field Orders covering minor changes in the Work without change in Contract Sum or Contract Time.

11.1.4.1. If the Contractor is not in agreement that such Field Order does not increase either the Contract Sum or the Contract Time, he shall promptly present his claim in the method specified in Article 11.5, herein.

11.1.5. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Time, or both, that should be allowed as a result of a Work Change Directive or a Construction Change Directive, a claim may be made therefore as provided in Article 11.5.

11.2 Unauthorized Changes in the Work

11.2.1. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified, or supplemented, except in the case of an emergency as provided in Article 14.13 or in the case of testing and/or uncovering Work as provided in Articles 12.3 and 12.4.

11.3 Execution of Change Orders and Extra Work Orders

11.3.1. Owner and Contractor shall execute appropriate written Change Orders and/or Extra Work Orders (or Written Amendments) recommended by Owner's Representative covering:

11.3.1.1. changes in the Work, which are:

11.3.1.1.1. ordered by Owner's Representative pursuant to Article 11.1;

11.3.1.1.2. required because of acceptance of defective Work under Article 12.7.1 or Owner's Representative's correction of defective Work under Article 12.8; or

11.3.1.1.3. agreed to by the parties;

11.3.1.2. changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive or a Construction Change Directive; and

11.3.1.3. changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by Owner's Representative pursuant to Article 11.5; provided that in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws or Regulations, but during any such appeal of the Dispute, Contractor shall carry on the Work and adhere to the Progress Schedule and the Owner shall pay for such work performed subject to final resolution of the Dispute.

11.3.1.4. Owner, with the approval of the Change Order/Extra Work Order, shall submit written evidence to the Contractor that the money to pay for said Change Order Work has been assigned to make payment under the Contract.

11.4 Notification to Surety

11.4.1. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The penal sum of each applicable Bond will be adjusted to reflect the effect of any such change..

11.4.1.1. Owner shall submit to the pertinent government agencies any documentation required by law or regulation to be submitted for the validity or enforceability of any Change Order Work, and shall provide proof of the proper submittal of said documentation if requested in writing by the Contractor.

11.5 Claims and Disputes

11.5.1. Written notice stating the general nature of each Claim, Dispute, or other matter shall be delivered by Contractor to Owner, through Owner's Representative, promptly (but in no event later than 30 days) after the start of the event giving rise thereto.

11.5.1.1. Notice of the amount or extent of the Claim, Dispute, or other matter with supporting data shall be delivered to the Owner within sixty (60) days after the end of such event (unless Owner's Representative allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter).

11.5.1.2. A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Article 11.1.2.

11.5.1.3. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Article 9.2.2.

11.5.1.4. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event.

11.5.2. If the Dispute is not decided by the Owner's Representative, or said decision notified to Contractor within thirty (30) days following the receipt of the notice of Dispute by the Owner's Representative, the Claim shall be deemed rejected.

11.5.3. Owner's Representative's Decision: Owner's Representative will render a formal decision in writing within thirty (30) days after receipt of the submittal of the Claim. Owner's Representative's written decision regarding the Dispute, or other matter, will be final and binding upon Owner and Contractor unless:

11.5.3.1. An appeal from Owner's Representative's decision is taken within the time limits and in accordance with the dispute resolution procedure set forth in Article 16.

11.5.4. No Claim for an adjustment in Contract Price or Contract Time (or Milestones) will be valid if not submitted in accordance with this section 11.5.

ARTICLE 12 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.1 Notice of Defects

12.1.1. Prompt notice of all defective Work of which Owner, Owner's Representative and Architect/Engineer has actual knowledge will be given to Contractor. If no notice is promptly given to Contractor of previously known defective Work, it shall be deemed acceptable to Owner.

12.1.2. All defective Work may be rejected, corrected, or accepted as provided in this Article.

12.2 Access to Work

12.2.1. Owner, Owner's Representative, Architect/Engineer, Architect/Engineer's Consultant, other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Said access shall be previously coordinated with Contractor.

12.2.1.1. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

12.3 Tests and Inspections

12.3.1. Inspection of Materials

12.3.1.1. Unless otherwise specified in the Contract Documents, all materials are subject to inspection, sampling, testing, retesting and rejection by the Owner's Representative as provided in the specifications and prior to acceptance of the Work.

12.3.1.2. Any work in which untested and unaccepted materials are used without the approval of the Owner's Representative, except if said material is the one specified in the Contract Documents, will be performed at the Contractor's risk.

12.3.1.1.2.1. Material found to be unacceptable will not be paid for and, if directed by the Owner's Representative, shall be removed at the Contractor's expense.

12.3.1.3. Unless otherwise indicated in the Contract Documents, the sampling of materials for testing will be performed by Owner's Representative personnel or by other personnel designated by the Owner, at Owner's expense.

12.3.1.1.3.1. Where sampling by the Contractor is specified, the samples shall be taken using approved Contractor furnished sampling devices, under the supervision of the Owner's Representative, and at such times or intervals as directed.

12.3.1.1.3.2. When materials are tested by the Owner, copies of the test reports will be furnished to the Contractor. Unless otherwise required in the Contract Documents, tests may or may not be performed by Owner and the Contractor shall not rely on the results of the Owner testing being available for process control.

12.3.1.4. Plant Inspection: Owner's Representative may undertake the inspection of materials at the production plant. In the event plant inspection is undertaken the following conditions shall be met:

12.3.1.1.4.1. The Owner's Representative shall have the cooperation and assistance of the Contractor and the producer with whom he has contracted for materials.

12.3.1.1.4.2. The Owner's Representative shall have full entry at all times to such parts of the plant as may

concern the manufacture or production of the materials being furnished.

12.3.1.1.4.3. Adequate safety measures shall be provided and maintained.

12.3.2 Contractor shall give Owner's Representative timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspections and testing personnel to facilitate required inspections or tests. No delays, or hindrance in the performance of the Work, shall be caused by tardiness in Owner's Representative's inspection of the Work.

12.3.2.1. The Contractor shall submit to the Owner's Representative, within twenty (20) calendar days following the date of Notice to Proceed, the name of the local testing laboratory (ies) proposed for use with respect to the Work.

12.3.2.1.1. The Owner's Representative shall, within ten (10) calendar days after receipt of the submittal of the proposed testing laboratory(ies), approve said laboratory (ies), or submit written reasons for his disapproval.
12.3.2.1.2. If no notice of approval or disapproval is received within said period of time, Contractor shall submit the request for approval to the Chief of Construction or equivalent division head of Owner who shall have ten (10) calendar days to issue his decision. If the Chief of Construction or equivalent division head of Owner does not render his decision within said time, the testing laboratory (ies) will be deemed approved by the Owner's Representative.

12.3.3. Unless otherwise provided in the Contract Documents, Owner's Representative shall employ and pay for the services of independent testing entities to perform all inspections, tests, or approvals required by the Contract Documents except for inspections, tests, or approvals covered by Article 12.3.4. The costs incurred in connection with tests or inspections conducted pursuant to Article 12.4.2.1 shall be paid as provided in Article 12.4.

12.3.3.1 Whenever Contractor is responsible for arranging, obtaining and paying for costs in connection with any inspection, test, or approval required for Owner's Representative's or Architect/Engineer's acceptance of materials, mix designs, or equipment, the inspecting or testing entity shall be submitted for approval by Owner's Representative and the inspection or test shall be performed prior to Contractor purchasing such materials, mix designs, or equipment for incorporation to the Work.

12.3.3.1.1. Unless otherwise indicated in the Contract Documents, such inspections, tests, or approvals shall be performed by organizations acceptable to Owner, Owner's Representative and Architect/Engineer, whose acceptance shall not be unreasonably denied.

12.3.4. If Laws or Regulations of any public body having jurisdiction, at bid opening date, require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner's Representative the required certificates of inspection or approval. If said Laws and Regulations are enacted after bid opening date, the costs for said inspections shall be borne by the Owner.

12.4 Uncovering Work

12.4.1. If a portion of the Work, whether or not inspected, tested or approved is covered contrary to the Owner's Representative written request or to requirements specifically expressed in the Contract Documents,

it must, if required in writing by the Owner's Representative be uncovered for the Owner's Representative observation and be replaced or reconstructed at the Contractors expense without change in the Contract Time and Amount.

12.4.2. If a portion of the Work whether or not inspected, tested or approved has been covered and the Owner's Representative had not specifically required its inspection in writing prior to being covered, the Owner's Representative may required its inspection and it shall be uncovered by the Contractor.

12.4.2.1. If it is found that such Work is defective, Contractor shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others.)

12.4.2.2. If however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

12.5 Correction or Removal of Deficient Work

12.5.1. Contractor shall correct all deficient Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Owner's Representative's, remove it from the Project and replace it with Work that is not deficient. Contractor shall bear, exclusively, the cost of correcting such deficient Work.

12.6 Correction Period

12.6.1. If within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be deficient; or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations, at the Effective Date of the Agreement, as contemplated in Article 6.11.1 is found to be deficient, in all such instances Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

12.6.1. 1. repair such deficient land or areas; or

12.6.1.2. correct such deficient Work or, if the deficient Work has been rejected by Owner, remove it from the Project and replace it with Work that is not deficient, and

12.6.1.3. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or other's land or areas resulting therefrom.

12.6.1.3.1. If Contractor does not, after a ten (10) day written notice from Owner, promptly start complying and diligently comply with the terms of such instructions, (or in an emergency where delay would cause serious risk of loss or damage), Owner may have the deficient Work corrected or repaired or may have the rejected Work removed and replaced, and all costs, arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

12.6.2. In special circumstances where a particular item of equipment is placed in continuous service, at the request of the Owner's Representative, before Substantial Completion of all the Work, the correction period for that item shall start to run from the date that said equipment is placed on service.

12.6.3. Where deficient Work (and damage to other Work resulting there from) has been corrected or removed and replaced under this section 12.6, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.

12.7 Acceptance of Non-Compliant Work

12.7.1. If both parties agree, instead of requiring correction or removal and replacement of deficient Work, and Owner (prior to Architect/Engineer's recommendation of final payment) prefers to accept it, Owner may do so.

12.7.1.1. If both parties cannot reach agreement on acceptance of deficient work, then the Contractor shall correct such deficient Work to Owner's satisfaction or either party may make a Claim as provided in Article 11.5.

12.7.2. If any such acceptance occurs prior to Owner's Representative's recommendation of final payment, a Change Order/Extra Work Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted.

12.7.2.1. If the parties are unable to agree as to the amount thereof, either party may Claim as provided in Article 11.5.

12.8 Owner's Right to Correct Deficient Work

12.8.1. If Contractor fails within a reasonable time after written notice from Owner's Representative to start correction of deficient Work or to diligently prosecute correction or to remove and replace rejected Work as required by Engineer in accordance with Article 12.6.1, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to substantially comply with any other provision of the Contract Documents, Owner may, after seven (7) days written notice to Contractor, correct and remedy any such deficiency.

12.8.2. In exercising the rights and remedies under this paragraph. Owner shall proceed expeditiously.

12.8.2.1. In connection with such corrective and remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere.

12.8.2.2. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Architect/Engineer and Architect/Engineer's Consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

12.8.3. All costs incurred or sustained by Owner in exercising the rights and remedies under this Article 12.8 will be

charged to Contractor.

12.8.3.1. If the parties are unable to agree as to the amount of the adjustment, a Claim therefore may be made as provided in Article 11.5.

12.8.3.1.1. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's deficient Work.

12.8.4. Contractor shall not be allowed an extension of the Contract Time (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Article 12.8.

ARTICLE 13 - PAYMENTS AND COMPLETION

13.1 Proposal Schedule and Schedule of Values

13.1.1. Proposal Schedule (Unit-Price Contracts)

13.1.1.1. In Unit-Price Contracts, the quantities in the proposal schedule are approximate only and the actual quantities to be paid for cannot be determined until the work is performed and accepted. Increases or decreases in the proposal schedule quantities will be considered as normal overruns or underruns, and the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract unit prices for the accepted quantities of work performed.

13.1.1.2. Payments to the Contractor shall be made only for the actual quantities of each contract item, performed and accepted in accordance with the plans and specifications and, if upon completion of the construction, these actual quantities shall show either a decrease or increase from the quantities in the proposal schedule, the contract unit prices will prevail.

13.1.1.2.1. In Unit-Price Contracts, the Contractor will submit for approval to the Owner's Representative a schedule of values for those Lump-Sum bid items only.

13.1.1.2.2. This schedule, when approved by the Owner's Representative, shall be used solely as a basis for the monthly partial payments.

13.1.1.3. If the "Basis of Payment" in the specifications relating to any unit price in the bid schedule requires that said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured or paid for under any other pay item which may appear elsewhere in the Contract Documents.

13.1.2. Schedule of Values (Lump-Sum Contracts)

13.1.2.1. In Lump-Sum Contracts, the Contractor, within fifteen (15) days after the date of the Notice to Proceed, will submit for approval, to the Owner's Representative, a schedule of values prepared in approved forms of the various portions of the Work aggregating the total Contract Sum, divided so as to facilitate monthly partial payments.

13.1.2.2. Each item in the schedule of values shall include its proper share of overhead and profit. Initial disbursements items such as mobilization, temporary facilities, premiums for insurance, and bonds and all cost of government fees and permits required for work, shall be separately itemized to facilitate first partial payment.

13.1.2.3. This schedule, when approved by the Owner's Representative, shall be used solely as a basis for the monthly partial payments and not as unit prices for changes in the Work.

13.1.2.4. The schedule of values shall be approved, or rejected in writing for cause notified to Contractor within fifteen (15) calendar days after receipt by Owner's Representative.

13.1.2.4.1. Any individual item on the schedule of values that is rejected by the Owner's Representative must be properly identified and reason for rejection substantiated and notified to the Contractor within said time period.

13.1.2.4.2. The Owner's Representative may allow certain individual items to appear in the schedule of values as lump sum items. These items must be broken down into individual items prior to request any partial payment regarding said individual item.

13.1.2.5. If the Owner's Representative does not reject the schedule of values as specified herein, then the same shall be deemed approved.

13.2 Progress Payments

13.2.1. Applications for Payments

13.2.1.1. The Progress Payment Period shall be one (1) month long unless otherwise indicated in the Contract Documents. The end of the Progress Payment period shall be the last day of the month unless otherwise established in the Contract Documents. The Contractor does not have to submit an application for payment every month if he so chooses.

13.2.1.2. At least twenty (20) days before the date established for each progress payment, Contractor shall submit to Owner's Representative for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

13.2.1.3. The determination of quantities of acceptable completed Work under the terms of the Contract Documents will be jointly made by the Owner's Representative and Contractor. It will be based on measurements made by them, or their assistants, according to the units of measurement for each item as shown in the schedule of values and by the method indicated in the corresponding specification, if so indicated in said specification for said item.

13.2.1.4. If the requested payment is based on materials and equipment not incorporated in the Work, but delivered and suitably stored at the Site, or at another location, agreed to in writing, the Application for Payment shall also be accompanied by: (i) a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and (ii) evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein. All evidence required herein shall be in form satisfactory to Owner.

13.2.1.4.1. Such advance payment may be made to the Contractor for the cost of materials that are to be incorporated into the work, provided the materials meet the requirements of the plans and specifications and are on hand at the Site or stored in acceptable storage places.

13.2.1.4.1.1. No advance payment will be made on living or perishable plant materials.

13.2.1.4.1.2. In the case of materials that have been purchased by the Contractor, the cost shall be determined by the vendors invoice.

13.2.1.4.1.3. In the case of materials manufactured or obtained by the Contractor through the use of his own workmen or equipment, the cost will be determined by the Owner's Representative in accordance with and based upon that particular unit of the Project in which the materials are to be utilized.

13.2.1.4.2. The Contractor shall present signed receipts or other documentary evidence to prove that the cost of the materials for which he is to receive advance payment has been paid in full or, if the materials have not been paid for, the invoice shall be accompanied by a release from the materials dealer expressing his agreement with the payment for such materials to the Contractor by the Owner.

13.2.1.4.3. If at any time after the Contractor has received advance payment for materials on hand at the Site, the Owner or Owner's Representative obtains evidence indicating that said materials, or any part or parts thereof, are defective, or that said materials, or parts thereof, do not conform to the specifications, the Owner will proceed to deduct from any of the succeeding partial payments due the Contractor for work actually performed, a sum sufficient to cover the cost of the materials, or part or parts thereof, found to be defective.

13.2.1.4.4. Materials for which the Contractor has received advance payment shall be properly housed at the Site or in acceptable storage places in the vicinity of the Project in a secure manner that will insure the preservation of their quality and fitness for the Work.

13.2.1.4.4.1. Moreover, the Contractor shall not withdraw said materials for any purpose other than incorporation into the Project, unless he has written consent from the Owner or Owner's Representative to do so.

13.2.1.4.4.2. Storage and protection costs and the cost of replacing lost or damaged materials shall be borne by the Contractor.

13.2.1.4.5. Approval of partial payments for stockpiled materials will not constitute acceptance of such materials for use in completing items of Work.

13.2.1.4.6. An amount equal to the value of materials incorporated into the Work and for which an advance payment has been made, shall be deducted from the partial estimates.

13.2.1.4.7. Unless otherwise specified in the Contract Documents, Payment shall be made to the Contractor for materials fabricated, pre-cast or otherwise produced for the Project and stored at an approved site in Puerto Rico other than in the immediate vicinity of the Project, provided the Contractor furnish and file with the Owner insurance which shall protect the Contractor and the Owner from all risk of physical loss or damage to these materials.

13.2.1.4.7.1. The amount of such insurance shall not be less than the value of such materials.

13.2.2. Retainage

13.2.2.1. The amount of retainage with respect to progress payments shall be as stipulated in the bid documents.

13.2.2.1.1. Unless otherwise specified in the Contract Documents, such retainage shall be five percent (5%) of each partial payment made to the Contractor.

13.2.2.1.1.1. In cases in which a ten percent (10%) Retainage is required by Owner, then after fifty percent (50%) of the Work has been completed to the Owner's Representative's satisfaction and the Project is on schedule and the quality of Work is satisfactory to the Owner's Representative, all the remaining payments may be made in full.

13.2.2.1.2. Immediately after the Owner's Representative, on the basis of an inspection, has determined and certified that the Work is sufficiently complete, or the Work has been occupied for the use for which it was intended, the Owner will release to the Contractor fifty percent (50%) of the amount previously retained provided the following conditions are met.

13.2.2.1.2.1. A written consent of Surety to make such payment is submitted.

13.2.2.1.2.2. There are no claims to be settled from the Owner to the Contractor.

13.2.2.1.2.3. There are no liquidated damages due.

13.2.2.1.2.3.1. However, at Owner's discretion, the Owner may release to Contractor the difference between fifty percent (50%) of the retainage and the amount of liquidated damages.

13.2.3. Review of Applications

13.2.3.1. The Owner's Representative will review the Application for Payment as soon as it is received and will notify the Contractor within five (5) working days of any exceptions he may have. The Contractor will make the necessary corrections and resubmit the Application.

13.2.3.2. The Owner's Representative will, within seven (7) days of the Contractor's date of submittal or five (5) days from the date of resubmission, if the corrections are acceptable, submit the approved Application for Payment to the Owner with all required documentation and approvals from the Architect/Engineer and the Owner's Representative.

13.2.3.3. Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative to Owner, based on Owner's Representative's observations on the Site of the executed Work as an experienced and qualified professional and on Owner's Representative's review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Representative's knowledge, information and belief.

13.2.3.3.1. the Work has progressed to the point indicated

13.2.3.3.2. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent test called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work, and to any other qualifications stated in the recommendation); and

13.2.3.3.3. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled

in so far as it is Owner's Representative's responsibility to observe the Work.

13.2.3.4. By recommending any such payment, Owner's Representative will not thereby be deemed to have represented that:

13.2.3.4.1. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Owner's Representative in the Contract Documents; or

13.2.3.4.2. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

13.2.3.5. Neither Owner's Representative's review of Contractor's Work for the purposes of recommending payments nor Owner's Representative's recommendation of any payment, including final payment, will impose responsibility on Owner's Representative to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work.

13.2.3.5.1. Additionally, said review or recommendation will not impose responsibility on Owner's Representative to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

13.2.3.6. Owner's Representative may refuse to recommend in whole or in part of any payment if, in Owner's Representative's reasonable opinion, it would be untruthful to make the representations to Owner referred to in Article 13.2.3.3.

13.2.3.6.1. Owner's Representative may also (i) refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, (ii) revise or (iii) revoke any such payment recommendation previously made, to such extent as may be necessary in Owner's Representative's reasonable opinion to protect Owner from loss because:

13.2.3.6.1.1. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

13.2.3.6.1.2. the Contract Price has been reduced by Written Amendment, Change Orders or Extra Work Orders to the extent that justifies withholding payment;

13.2.3.6.1.3. Owner has been required to correct deficient Work or complete Work and has not yet done so; or

13.2.3.6.1.4. Owner's Representative has actual knowledge of the occurrence of any of the events enumerated in Article 15.2.1.

13.2.4. Payments Becomes Due

13.2.4.1. Unless otherwise specified in the Contract Documents, forty (40) days after Owner's approval of the Application for Payment, with Owner's Representative's recommendation, the amount recommended will become due, and when due, shall be paid by Owner to Contractor.

13.2.5. Reduction in Payment

13.2.5.1. The Owner's Representative, without incurring in liability, may decline to approve any Application for Payment or, because of subsequently discovered evidence or subsequent inspection, he may nullify the whole or any part of any Application for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

13.2.5.1.1. Deficient Work not remedied; or

13.2.5.1.2. Failure of the Contractor to comply with any requirements of the Contract Documents.

13.2.5.2. Owner may refuse to make payment of the full amount recommended by Owner's Representative because:

13.2.5.2.1. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

13.2.5.2.2. Liens have been filed in connection with the Work, except where Contractor has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

13.2.5.2.3. there are other items entitling Owner to a set-off against the amount recommended; or

13.2.5.2.4. Owner has actual knowledge of the occurrence of any of the events enumerated in Article 13.2.3.6 or 15.2.1.

13.2.5.3. If Owner refuses to make payment of the full amount recommended by Owner's Representative, Owner must give Contractor immediate written notice (with a copy to Owner's Representative) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld.

13.2.5.3.1. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's Representative's satisfaction the reasons for such action.

13.2.5.3.2. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Article 13.2.4.

13.2.5.4. Partial payments may be suspended when in the judgment of the Owner the Work has not proceeded according to the terms of the Contract Documents.

13.2.5.5. If at any time during the construction of the Project, the Owner receives proper notice from a third party stating a claim under Civil Code Article 1489, the Contractor shall settle the claim with the third party within fifteen (15) calendar days from the notice to the Owner and inform the Owner of said settlement or otherwise if Contractor disputes the validity of said claim, post a bond, acceptable to Owner, for the benefit of Owner to protect Owner against liability for payment to the third party under Civil Code Article 1489 in which case partial payment therefore will not be withheld. This will apply in any project where there is no Payment or Performance Bond, or the penal sum of such bond is an amount less than one hundred (100) percent of the Contract Sum.

13.2.5.5.1. If no settlement is reached or a bond is not posted and accepted, the Owner, the Contractor, and the claimant third party shall meet within thirty (30) days after the expiration of the fifteen (15) calendar days to ascertain the amount of the alleged debt.

13.2.5.5.2. Contractor shall then pay within five (5) calendar days the undisputed amount. If no payment is made, the Owner shall retain said amount from the next partial payment and proceed to pay directly the undisputed amount to the third party. If the Contractor posts a bond as provided in Article 13.2.5.5 the Owner will not withhold said amount from Contractor and will not pay the amount to the third party claimant until the Contractor or the third party claimant notify Owner that the dispute among them has been resolved at which time Owner will act accordingly.

13.2.6. Scope of Payment

13.2.6.1. The payment of any partial estimate or of any retained percentage, in no way shall release the obligation of the Contractor to renew or repair any deficient materials used in the construction, or to be responsible for all damage due to such deficiencies.

13.2.6.2. No payment will be made for any unauthorized work.

13.2.6.3. No certificate for a progress payment, nor any progress payment, or any partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

13.3 Contractor's Warranty of Title

13.3.1. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment, and will pass free and clear of all Liens, Claims, security interests or encumbrances. Contractor also warrants and guarantees that no Work, materials, or equipment covered by an Application for Payment has been acquired by the Contractor, subject to an agreement under which an interest therein, or an encumbrance thereon, is retained by the seller or otherwise imposed by the Contractor or such other person. This will also apply to any other person performing the Work for the Project on behalf of Contractor , or furnishing materials and equipment for the Project.

13.4 Substantial Completion

13.4.1. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Owner's Representative in writing that the entire Work is Substantially Complete (except for items specifically listed by Contractor as incomplete) and request that Owner's Representative issue a Certificate of Substantial Completion. Owner may, at its sole option, request that part of the Work be declared Substantially Complete as provided in Article 13.5.1.

13.4.1.1. Within five (5) working days after such request, Owner, Contractor and Owner's Representative shall make an inspection of Work to determine the state of completion. If within this time period, the Owner's Representative fails to make objections or respond, the Contractor shall request the approval of the Chief of Construction or equivalent division head of Owner which shall have fifteen (15) working days to issue its approval or disapproval of the Certificate of Substantial Completion.

13.4.1.1.1. If Owner's Representative does not consider the Work substantially complete, Owner's Representative will notify Contractor in writing, within five (5) working days after the inspection, giving the reasons therefore.

13.4.1.1.2. If Owner's Representative considers the Work substantially complete, Owner's Representative will prepare and deliver to Owner, within ten (10) working days after the inspection, a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion.

13.4.1.1.3. There shall be attached to the certificate a tentative list of items (punch list) to be completed or corrected before final payment.

13.4.1.2. Owner shall have ten (10) working days after receipt of the tentative certificate during which to make written objection to Owner's Representative as to any provisions of the certificate of Substantial Completion or attached list.

13.4.1.3. If, after considering such objections, indicated on Article 13.4.1.2, Owner's Representative concludes that the Work is not substantially complete, Owner's Representative will within fifteen (15) working days after submission of the tentative certificate of Substantial Completion to Owner notify Contractor in writing, stating the reasons therefore.

13.4.1.4. If, after consideration of Owner's objections, indicated on Article 13.4.1.2, Owner's Representative considers the Work Substantially Complete, Owner's Representative will, within said fifteen (15) working days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised final punch list of items to be completed or corrected). Such final certificate will reflect such changes from the tentative certificate as Owner's Representative believes justified, after consideration of any objections from Owner.

13.4.1.5. At the time of issuance of the certificate of Substantial Completion, Owner will assume all responsibilities with respect to security, operation, safety, and protection of the Work, maintenance, utilities, insurance, and Contractor warranties and guarantees periods will start to run.

13.4.1.6. Unless Owner and Contractor agree otherwise in writing and inform Owner's Representative also in writing prior to Owner's Representative's issuing the definitive certificate of Substantial Completion, Owner's Representative's aforesaid recommendation will be binding on Owner and Contractor until final payment is made.

13.4.2. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion, but Owner shall allow Contractor reasonable access to complete or correct items on the final punch list.

13.5 Partial Utilization

13.5.1 Use by Owner, at Owner's option, of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Owner's Representative, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose, without significant interference with Contractor's performance of the remainder of the Work, may be effected (put to such use) prior to Substantial Completion of all the Work subject to the following:

13.5.1.1. Owner at any time may request Contractor in writing to permit Owner to use any such part of the Work which Owner believes to be ready of its intended use and substantially complete.

13.5.1.1.1. If Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Owner's Representative that such part of the Work is substantially complete and request Owner's Representative to issue a certificate of Substantial Completion for that part of the Work.

13.5.1.1.2. Contractor at any time may notify Owner and Owner's Representative in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Owner's Representative to issue a certificate of Substantial Completion for that part of the Work.

13.5.1.1.2.1. Within a reasonable time (not more than fifteen (15) days) after either party's request, Owner, Contractor, and Owner's Representative shall make an inspection of that part of the Work subject to the request to determine its state of completion.

13.5.1.1.2.2. If Owner's Representative does not consider that part of the Work to be substantially complete, Owner's Representative will notify Owner and Contractor in writing giving the reasons therefore.

13.5.1.1.2.3. If Owner's Representative issues a certificate of Substantial Completion for said part of the Work thereupon all applicable provisions of Article 13.4 shall apply.

13.5.1.1.3. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Article 13.4.1.5 regarding property insurance.

13.6 Final Inspection

13.6.1. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Owner's Representative will, within five (5) working days, make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars this inspection reveals with regard to incomplete or deficient Work.

13.6.1.1. Contractor shall immediately take measures to complete such Work and remedy such deficiencies.

13.7 Final Payment

13.7.1. Application for Payment

13.7.1.1. After Contractor has, in the opinion of Owner's Representative, satisfactorily remedied all incomplete and deficient Work identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents, and other documents required by the Contract, Contractor may make application for final payment following the procedure for progress payments.

13.7.1.2. The final Application for Payment shall be accompanied, except if previously delivered to Owner's Representative, by:

13.7.1.2.1. all documentation, guarantees, Bonds and insurance called for in the Contract; and.

13.7.1.2.2. consent of the surety, if any, to final payment; and

13.7.1.2.3. complete and legally effective releases, or waivers, (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

13.7.1.3. In lieu of the releases or waivers of Liens specified in Article 13.7.1.2.3, if approved by Owner, Contractor may furnish payment receipts or releases in full as part of an affidavit executed by Contractor to the effect that:

13.7.1.3.1. the releases and receipts include all liabilities related to labor, services, material, and equipment for which a Lien could be filed; and

13.7.1.3.2. all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner and Owner's property might in any way be responsible, have been paid or otherwise satisfied.

13.7.1.3.3. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against liability related to any such Lien.

13.7.2 Review of Final Application for Payment and Acceptance of the Work.

13.7.2.1. If, on the basis of Owner's Representative's observation of the Work during construction and final inspection, and Owner's Representative's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Owner's Representative will, within fifteen (15) days after receipt of the final Application for Payment, indicate to Owner in writing Owner's Representative's recommendation regarding payment and if payment is recommended present the Application for Payment to Owner, for payment.

13.7.2.1.1. At the same time, Owner's Representative will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Article 13.9.

13.7.2.1.2. Otherwise, within the time specified in Article 13.7.2.1, Owner's Representative will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment. If within said fifteen (15) days after submittal of the final Application for Payment by Contractor the Owner's Representative fails to make objections or respond, the Contractor shall request approval directly from the Owner who shall have fifteen (15) working days to issue approval or disapproval, provided Contractor has also given the same timely notice directly to Owner as required in Article 17.3.2. If no reply is forthcoming from the Owner within the stated time, the final Application for Payment shall be deemed approved.

13.7.3. Final Payment Becomes Due

13.7.3.1. Unless otherwise specified in the Contract Documents, forty (40) days after Owner's approval of the Application for Final Payment, with accompanying documentation, the amount recommended by Owner's Representative will become due, and when due, shall be paid by Owner to Contractor.

13.7.3.2. If payment is not made within the time stated in Article 13.7.3.1., thereafter Owner will pay Contractor interest at the legal rate on the amount due.

13.8 Final Completion Delayed

13.8.1. If, through no fault of the Contractor, final completion of the Work is significantly delayed, and if Owner's

Representative so confirms, Owner shall, upon receipt of Contractor's final Application for Payment and recommendation of Owner's Representative, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted.

13.8.2. If the remaining balance to be held by Owner for Work not fully completed, or corrected, is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in Article 3, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Owner's Representative with Application for such payment.

13.8.2.1. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of any claim or of any right under the Contract.

13.9 Waiver of Claims

13.9.1. The making and acceptance of final payment will constitute:

13.9.1.1. a waiver of all Claims by Owner against Contractor, except for Claims arising from unsettled Liens, from deficient Work appearing after final inspection as the result of failure to comply with the Contract Documents, from special guarantees or from Contractor's continuing obligations under the Contract Documents; and

13.9.1.2. a waiver of all other unsettled Claims by Contractor against Owner, other than those previously made in a timely manner in writing.

13.10 Unilateral Liquidation

13.10.1. The procedures established in this section will be applicable whenever the Contractor is not available in order for the Owner to issue the final payment in accordance with Article 13.7.

13.10.1.1. For purposes of this section, the term "unavailable" shall meant that the Contractor repeteadly fails to answer Owner's requests to meet with the Owner and/or to submit the required documentation under Article 13.7 in order to proceed with the final payment and Project liquidation.

13.10.2. If Contractor is unavailable, Owner shall proceed to issue and process the final application for payment. In order to accomplish this, whenever possible, the Owner will seek to obtain the documentation required under Article 13.7.1.2 and 13.7.1.3.

13.10.2.1. When Owner can not obtain documentation required under Article 13.7.1.2 and 13.7.1.3 such documentation it may be waived by Owner in order to proceed to the issuance of final payment. However, in case of such waiver, Owner may impose those reasonable conditions Owner deems relevant in order to protect Owner's interests and safeguard against claims by third parties.

13.10.3. If after finalizing liquidation of the Contract, payment is due Contractor and Contractor remains unavailable, Owner will retain such payment until Contractor is available to collect such payment. If the Final Payment is negative (i.e., the balance is in favor of the Owner), the Owner shall compensate such amount from any other payment in favor of Contractor, if any, and/or proceed to collect it by any means available.

ARTICLE 14 - PROTECTION OF PERSONS AND PROPERTY

14.1 Public Convenience and Safety

14.1.1. The Contractor shall at all times conduct the Work in a manner that insures the public safety and convenience and the protection of persons and property.

14.1.1.1. Contractor shall perform the Work in a manner that will not cause unreasonable inconvenience to the general public.

14.1.2. The Contractor shall comply with all laws, rules, codes and regulations applicable to the class of work being performed pertaining to public safety and the protection of persons and property.

14.2 Laws to be Observed

14.2.1 It is the Contractor's responsibility to be fully informed of and comply with all Federal, Commonwealth and municipal laws, ordinances, safety codes and regulations, and all such orders or decrees presently in effect or that may be enacted prior to Final Acceptance or which in any way affect the prosecution of the Work.

14.2.1.1. The Contractor shall at all times observe and comply with all such laws, ordinances, safety codes, regulations, orders and decrees; and shall protect Owner and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by himself, his employees, his subcontractors, his suppliers, his agents, or the employees of any of them or by anyone for whom Contractor is responsible.

14.2.1.2. When the United States Government pays all or any portion of the cost of the Work, the federal laws and the rules and regulations pursuant to such laws, if applicable, must be observed by the Contractor, and the Work may be subject to the inspection by any appropriate federal agency.

14.2.2. All costs related to compliance with all laws, rules and regulations enacted after bid opening date, shall be paid for by the Owner and any resulting adjustment to the Contract Price or the Contract Time shall be made by a Change Order to the Contract.

14.2.2.1. If Owner's Representative and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in Article 11.5.

14.2.2.2. Payment under this paragraph is contingent to those situations not covered under Article 14.4.4.

14.3 Sanitary, Health and Safety Provisions

14.3.1. The Contractor shall comply with all Federal, Commonwealth and local laws, rules and regulations concerning construction safety and health standards and shall admit without delay any inspector from such health and safety agencies upon presentation of proper credentials.

14.3.2. Contractor shall provide and maintain in orderly sanitary condition such facilities as necessary for the use of his employees, in compliance with the Commonwealth Departments of Health and Labor and other bodies having jurisdiction.

14.3.3. The Contractor shall not require work to be performed under unsanitary, hazardous or dangerous conditions.

14.4 Labor Relations and Wages

14.4.1. The Contractor shall comply with all the applicable Federal and Commonwealth laws, rules and regulations concerning fair labor practices including minimum wages, work hours, equal employment opportunities, non-discrimination, civil rights, employment of minors, and other labor relation matters.

14.4.2. The minimum wage rates to be paid shall be according to the regulations of the Minimum Wage Board of the Puerto Rico Department of Labor as indicated in the latest issue of its mandatory decree at any time during the execution of the Project.

14.4.3. The Contractor shall pay weekly, in lawful money of the United States of America, including payment by check or direct deposit, the entire amount of wages, less legally authorized or mandated deductions, earned by each of the laborers and employees engaged in the Work.

14.4.3.1. The Contractor shall make available to the Owner for inspection the project payrolls and shall submit copies of such payrolls to the Owner when required.

14.4.3.2. Any irregularities noted will be brought to the attention of the Contractor by the Owner for appropriate corrective action and payment of any pending wages.

14.4.3.2.1. Should the Contractor fail to take the necessary action, he will be subject to such civil and criminal proceedings provided by law and regulations.

14.4.3.3. Payment of wages to laborers and employees of the Contractor for their work shall have preference over the payment of other debts of the Contractor, except as otherwise established by law.

14.4.4. If during the term of the Contract, federal minimum wages are increased and said increase is applied to Puerto Rico, or if labor costs and/or fringe benefits are increased by local legislation, the cost of the increase in the Work shall be considered as a Change Order and proven cost increases, including fringe benefits and insurance costs, shall be paid to the Contractor, unless those increases have been legislated, or included as part of a resolution, by either the Commonwealth or Federal Legislative chambers prior to the bid opening date. If after the bid opening date, new local legislation or regulation is imposed which directly increases Contractor's costs of materials or transportation, the Contractor may present a Claim under Article 11.5 for such increases. Such increases in costs must be evidenced and substantiated by the Contractor.

14.4.4.1. If Owner's Representative and Contractor are unable to agree as to entitlement, amount or extent, if any, of any such adjustment under Article 14.4.4, a Claim may be made therefore as provided in Article 11.5.

14.5 Environmental Protection

14.5.1. Contractor shall comply with all Federal, Commonwealth and local environmental laws and regulations.

14.5.1.1. Contractor shall take all necessary precautions to prevent pollution of streams, lakes, ponds, and reservoirs with fuels, oil, bitumen, chemicals, or other harmful materials and to prevent pollution of the

atmosphere with particulate or gaseous matter.

14.5.2. Unless otherwise approved in writing by the Owner, construction operations in rivers, streams, lakes and other bodies of water shall be restricted to those areas where channel changes are shown on the plans and to those areas which must be entered for the construction of temporary or permanent structures.

14.5.2.1. Rivers, streams, lakes and reservoirs shall be promptly cleared of all false work, piling, debris, or other obstructions placed therein or caused by the construction operations.

14.5.3. Frequent fording of live streams with construction equipment will not be permitted. Temporary bridges or other structures shall be used wherever an appreciable number of stream crossings are necessary.

14.5.3.1. Unless otherwise approved in writing by the Owner, mechanized equipment shall not be operated in live streams except as may be required to construct channel changes and temporary or permanent structures.

14.5.4. Contractor shall comply with all the requirements regarding soil erosion and water pollution control included in the Environmental Quality Board's regulations, the Owner's other standard specifications, the Plans and other Contract Documents.

14.5.5. If the Contractor should encounter or expose during construction operations any abnormal condition, which may indicate the presence of a hazardous and/or toxic waste, the Contractor shall proceed in accordance with Article 4.7.

14.5.5.1. Abnormal conditions shall include, but shall not be limited, to the following, presence of barrels, discolored earth, metal or wood; obnoxious or unusual odors; visible fumes; excessively hot earth; smoke; or any other condition which appears to be a possible indication of hazardous and/or toxic waste.

14.6 Construction Over or Adjacent to Navigable Waters

14.6.1. All Work and related activity, over, on or adjacent to navigable waters shall be conducted so that free navigation of the waterways will not be interfered with and that the existing navigable depths and clearances will not be impaired except as allowed by permit issued by the U.S. Coast Guard and/or the U.S. Army Corps of Engineers, as applicable.

14.7 Traffic Protection Devices

14.7.1. The Contractor, when applicable, shall provide, erect and maintain all necessary advance warning signs, barricades, suitable and sufficient lights, danger signals, signs, and other traffic control devices; shall provide a sufficient number of watchmen and flag persons, and shall take all necessary precautions for the protection of the Work and the safety of the public in accordance with the plans and other Contract Documents.

14.8 Use of Explosives

14.8.1. When the use of explosives is necessary for the prosecution of the Work, the Contractor shall comply with all the Laws and Regulations concerning the use, storage, transporting, handling and detonating of explosives.

14.8.1.1. The Contractor shall exercise the utmost care with the explosives so as not to endanger life and

property and he shall be responsible for any and all damages that may result from his use of explosives.

14.8.2. Prior to initiating the use of explosives, the Contractor shall submit to the Owner evidence that his comprehensive general liability insurance required under Article 3 provides coverage for the use of explosives and blasting.

14.8.3. Blasting operations shall be conducted under the most careful and experienced supervision. The Contractor shall keep the Owner informed as to his drilling, blasting and demolition operations.

14.8.4. The Contractor shall furnish and erect special signs to warn the public of his blasting operations.

14.8.4.1. Such signs shall be placed at appropriate points within the Project limits, shall be maintained so as to be clearly evident to the public during all critical periods of the blasting operations and, if blasting is by means of electric detonators, shall include a warning statement to have radio transmitters turned off.

14.8.5. The Contractor shall notify each property owner and public utility company having structures in the proximity to the Site and the Work of his intention to use explosives.

14.8.5.1. Such notice shall be given sufficiently in advance to enable the parties being warned to take steps necessary to protect persons and property from injury.

14.9 Protection and Restoration of Property

14.9.1. The Contractor shall be responsible for the preservation of all public and private property, and shall carefully protect from disturbance or damages all land monuments and property marks until the Owner has witnessed or otherwise referenced their location, and shall not move them until directed.

14.9.2 When the Contractor's excavating operations encounter items of archeological interest such as remains of pre-columbine people's dwelling sites or artifacts of historical, paleontological or archeological significance, operations in the vicinity of such findings shall be temporarily discontinued and the Owner notified.

14.9.2.1. The Owner will contact the proper authorities to determine the disposition thereof.

14.9.2.2. When directed by the Owner, the Contractor shall excavate the site in such a manner as to preserve the artifacts encountered and shall remove them for delivery to the custody of the proper authorities.

14.9.2.2.1. Such specialized excavation and time delay costs, if any, will be considered and paid for as Extra Work unless the Owner elects to undertake such recovery work by other means.

14.9.2.2.2. If the Owner elects to perform this work by other means, he shall be responsible to the Contractor for costs associated with delay to the Work, only if said delay affects the critical path.

14.9.3 Contractor shall be responsible for all damages or injury to property of any character during the prosecution of the Work resulting from any act, omission, neglect or misconduct in the Contractor's manner or method of executing the Work, or at any time due to deficient work or materials. The Contractor's responsibility will not be released until the Project has been completed and accepted.

14.9.4 When any direct or indirect damage or injury is caused to public or private property by or on account of an

act, omission, neglect or misconduct in the execution of the work, or as a consequence of the non-execution thereof, by Contractor, such property shall be restored at the Contractor's expense to a condition similar or equal to that existing before such damage or injury was caused by repairing, rebuilding or otherwise restoring the same, or Contractor shall make good such damage or injury in a manner acceptable to owner.

14.9.5 Contractor shall comply with all necessary soil erosion and water pollution control measures, as indicated in the Contract Documents, and shall exercise due care in their implementation, to avoid causing erosion and drainage problems in all areas inside and outside the Project construction limits.

14.10 Forest Protection

14.10.1. In carrying out Work or related activity within or adjacent to Commonwealth or National Forests, the Contractor shall comply with all regulations of the Commonwealth Fire Service, Puerto Rico Department of Agriculture, United States Forest Service or other authority having jurisdiction, governing the protection of forests and the carrying out of Work within forests, and shall observe all sanitary laws and regulations with respect to the performance of work in forest areas.

14.10.1.1. Contractor shall keep all areas affected by construction related activities in an orderly condition, dispose of all refuse, obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures in accordance with the requirements of the agency having jurisdiction of the forest.

14.10.2 The Contractor shall take all reasonable precautions to prevent and suppress forest fires and shall require his employees and subcontractors, both independently and at the request of forest officials, to do all that is reasonably within their power to prevent and suppress and to assist in the prevention and suppressing forest fires. They shall make every possible effort to notify a forest official at the earliest possible moment of the location and extent of any fire seen by them.

14.11 Responsibility for Damage Claims

14.11.1. The Contractor shall indemnify and save harmless the Owner as follows:

14.11.1.1. The Contractor for itself, agents, employees, successors and assigns agrees to save harmless the Owner, its Officers, Agents, Employees and Architect/Engineer from and against any and all claims, demands and/or suits, except as stated below, whether judicial or extra judicial for any cost whatever arising out or related to the execution of the Contract, and it's insurers shall defend the Owner, its Officers, agents, Employees and Architect/Engineer from such claims, demands and/or suits and shall bear all the expenses for such defense contemplated within the coverage limits provided by the Contractor's general liability policy, except where such claims, demands and/or suits are due solely to the negligence of the Owner, its Officers, Agents, employees and negligence, errors and/or omissions of the work performed by the Architect/Engineer. In case that the amount to be paid exceeds the policy amount, then the Contractor shall be responsible for the exceeding amount.

14.12 Contractor's Responsibility for Work

14.12.1. Until the final written acceptance of the Work by the Owner, the Work shall be under the charge and care of the Contractor. He shall take every necessary precaution to protect it from injury or damage to any part thereof by the action of the elements or from any other cause whether arising from the execution or non-execution of the Work.

14.12.2. The Contractor shall rebuild, repair, restore and make good any damages to any portion of the Work occasioned by any of the causes indicated in paragraph 14.12.1, above, before its completion and acceptance, and shall bear the expense thereof, except damages to the Work due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor, including but not restricted to acts of God, such as earthquake, hurricane, tidal wave, major flooding or other cataclysmic phenomenon of nature, acts of the public enemy or of the government.

14.12.3. In case of suspension of Work from any cause whatsoever, the Contractor shall be responsible for the Work under the Contract and shall take such precautions as may be necessary to prevent damage to the Project, provide suitable drainage and erect necessary temporary structures, signs or other facilities.

14.12.3.1. During such period of suspension of work, the Contractor shall properly and continuously maintain in acceptable growing conditions all living material in newly established plantings, seeding, and sodding furnished under his contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury.

14.12.3.2. All costs for the work described above attributable to a suspension by the Owner shall be reimbursed to the Contractor by the Owner.

14.12.3.3. If the temporary suspension of Work is caused by the Contractor, then he will bear the expenses in such event.

14.12.4. When Work is suspended by the Contractor without authorization from the Owner, or is suspended by the Owner due to the fault of the Contractor, the costs of providing the protective measures specified in paragraph 14.12.3, above, during the period of suspension shall be borne by the Contractor.

4

14.13 Emergencies

14.13.1. In any emergency affecting the safety of persons or property, the Contractor shall act at his discretion to prevent damage, injury, or loss.

14.13.1.1. Any additional compensation or extension of time claimed by the Contractor on account of emergency Work shall be determined as provided in Article 11. Additional costs incurred by the Contractor in a case of an emergency need not be authorized by the Owner's Representative when there is insufficient time to seek Owner's authorization.

14.13.2. If an emergency affects the safety of persons or property at the Site or property adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Either the Owner or the Contractor can declare an emergency.

14.13.2.1. Contractor shall give Owner's Representative prompt notice if Contractor believes that any significant changes in the Work or variations from what is provided by the Contract Documents have been caused by the emergency or are required as a result thereof.

14.13.2.1.1. If Owner's Representative determines that an amendment to the Contract Price or Contract Time is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive, a Change Order or an Extra Work Order will be issued.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.1 Suspension of Work

15.1.1. At any time and without cause, Owner may, with a minimum of seven (7) calendar days written notice, suspend the Work or any portion thereof for a period of not more than ninety (90) consecutive days by notice in writing to Contractor and Architect/Engineer. Said notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be allowed an adjustment in the Contract Price or an extension of the Contract Time, or both, directly attributable to any such suspension if Contractor makes a timely Claim therefore as provided in Article 11.5. Said adjustment shall be computed based on the following factors:

15.1.1.1. Fixed Project expenses (after all reasonable reduction and mitigation of expenses) for the period of the Work stoppage, such as: (i) the Contractor's and subcontractor's supervisory, administrative, and operations personnel salaries, together with their corresponding fringe benefits and insurance costs if this personnel has been kept in the Contractor's payroll and are not gainfully utilized by Contractor or someone else elsewhere, (ii) utilities, (iii) Project's fixed equipment, and (iv) miscellaneous expenses such as safety, and vigilance.

15.1.1.1.1. At any time during the suspension, the Owner may order the Contractor to demobilize, paying the Contractor the de-mobilization costs and any future mobilization costs to re-start the Project.

15.1.1.1.2. Cancellation costs and cost increases for materials already ordered which had to be canceled and reordered, provided that such costs are not in excess of reasonable market prices.

15.1.1.1.3. Differential increases in labor costs, and its corresponding fringe and insurance benefits, in the Project for the period that the work is stopped.

15.1.1.1.4. Construction equipment use costs for the stoppage period if said equipment remains stationed at the site (idle equipment rates), or transportation costs if the Owner orders in writing that it be removed from the site. If the equipment is owned by the Contractor, he will be paid the cost (depreciation) of said equipment.

15.1.1.1.5. Insurance costs whose rates are based on the time such insurance is in effect, such as Builder's Risk Insurance, for the period that the work is stopped.

15.1.1.1.6. Contractor's overhead and profit in the amount equivalent to fifteen percent (15%) of all expenses detailed above.

15.1.1.1.7. An amount of the Contractor's main office overhead costs (exclusively in this instance and solely related to suspension) reached by mutual accord between the parties or if no mutual accord can be reached, the cost for main office overhead shall be computed using the Eichleay formula using as base the previous two (2) years of Contractor's main office overhead cost taken from the previous two (2) years financial statements which have been externally audited by a recognized CPA. If the Contractor does not have financial statements prepared externally by a recognized CPA, he must prepare them in order to be able to present a claim for this purpose.

15.1.1.1.8. Contractor shall exert his best effort to mitigate the costs included in this Article 15.1.1.

15.1.2. At any time, the Owner's Representative may, with a minimum of seven (7) calendar days written notice, for the following causes suspend the Work or part of the Work due to:

15.1.2.1. the repeated and persistence failure of the Contractor to perform his contractual obligations;

15.1.2.2. the repeated and persistent failure of the Contractor to have sufficient labor and the trades necessary to maintain the quality and progress required in the Contract Documents;

15.1.2.3. the repeated and persistent failure of the Contractor to have sufficient material necessary to maintain the quality and progress required in the Contract Documents;

15.1.2.4. the repeated and persistent failure of the Contractor to have sufficient equipment and type of equipment necessary to maintain the quality and progress required in the Contract Documents.

15.1.3. The Contractor will be responsible for all of his costs due the suspension of the Work indicated in Article 15.1.2 and there will be no increase in Contract Price or extension to the Contract Time as a result of such suspension for cause.

15.1.3.1. The suspension for cause under Article 15.1.2 will last until the Contractor remedies the situation or until termination.

15.1.3.2. The Contractor shall also be responsible for the inspection costs made necessary by overtime work to restore the project to its intended schedule due to delays caused by the actions mentioned in Article 15.1.2. Said costs will consist of the actual cost paid therefore by and to the inspector, if his presence is required or necessary.

15.1.4. At any time, the Owner's Representative or the Contractor may suspend the work or part of the work without advanced notice due to any danger or potential danger that may exist to life, limb or property or any emergency whether on the Site or off the Site.

15.1.4.1. The Contractor will be responsible for all of his costs due the suspension and there will be no time extension to the Contract Time if the suspension is due to the failure of the Contractor to perform his contractual obligations.

15.1.4.2. The Owner will compensate the reasonable costs incurred by Contractor if the suspension is due to causes other than the failure of the Contractor to perform his contractual obligations and such causes are attributable to Owner.

15.1.5. In case of suspension of Work for any cause whatsoever, the Contractor shall be responsible for the Work under the Contract and shall take such precautions as may be necessary to prevent damage to the Project, provide suitable drainage and erect necessary temporary structures, signs or other facilities.

15.1.5.1. During such period of suspension, the Contractor shall properly and continuously maintain in acceptable growing conditions all living material in newly established plantings, seeding, and sodding furnished under his contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury.

15.1.5.2. When Work is suspended by the Contractor without authorization from the Owner, or is suspended by the Owner due to the causes specified in Article 15.1.2, the costs of providing the protective measures specified in Article 15.1.5. and 15.1.5.1, during the period of suspension shall be borne by the Contractor.

15.1.5.3. The Contractor will be responsible for all of its costs due to the suspension and there will be no time extension to the Contract Time if the suspension is due to the failure of the Contractor to perform its contractual obligations, or other causes attributable to Contractor.

15.1.5.4 The Owner will compensate the reasonable costs incurred by Contractor if the suspension is due to causes other than the failure of the Contractor to perform his contractual obligations and such causes are attributable to Owner.

15.2 Owner May Terminate for Cause

15.2.1. The occurrence of any one or more of the following events will justify termination for cause:

15.2.1.1. Contractor's persistent or repeated failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under the Contract, as adjusted from time to time); or

15.2.1.2. Contractor's egregious disregard of Laws or Regulations of any public body having jurisdiction; or

15.2.1.3. Contractor's persistent or repeated disregard of the authority of Architect/Engineer, Owner or Owner's Representative; or

15.2.1.4. Contractor's persistent and repeated violation of any substantial provisions of the Contract Documents; and does not start curing and without interruption continues to cure same prior to termination.

15.2.1.5. Contractor is adjudged bankrupt, or is a party to a fraud; or

15.2.1.6. Contractor should make a general assignment for the benefit of his creditors; or

15.2.1.7. A receiver be appointed on account of the Contractor's insolvency; or

15.2.1.8. An attachment is made upon a substantial amount the Contractor's properties utilized to perform the Work, and it is not lifted, or the claim otherwise secured, within five (5) working days thereafter; or

15.2.1.9. Contractor persistently fails to make prompt payment to subcontractors, as per Article 6.21.2, or for materials, services, or labor already paid to Contractor by the Owner; or

15.2.1.10. Contractor abandons or discontinues the prosecution of the Work without Owner's written authorization.

15.2.1.10.1 Nevertheless, Contractor may discontinue the prosecution of the Work during: (i) Holy Thursday; (ii) the Friday after Thanksgiving; and (iii) the time period commencing on the Saturday before Christmas Day (December 25) and ending on the Sunday after Three Kings' Day (January 6) without incurring in an event of default due to discontinuance of the Work.

15.2.2. If one or more of the events identified in Article 15.2.1 occur, Owner may, after giving Contractor (and the surety, if any) seven (7) days written notice to cure such default, terminate the services of Contractor, exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools and appliances at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished.

15.2.3. In Lump Sum contracts, if the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor.

15.2.4. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Owner's Representative as to their reasonableness and, when so approved by Owner's Representative, incorporated in a Change Order or Extra Work Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed, but shall assume all reasonable means to complete the work at a reasonable cost.

15.2.5. When Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

15.2.5.1. Termination of the Contract, as stated above, will not release the Contractor of his responsibilities for the Work completed, nor shall said termination release surety from its obligations.

15.3 Owner May Terminate the Contract For Convenience

15.3.1. Upon seven (7) days written notice to Contractor and Architect/Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract for convenience.

15.3.2. After receipt of notice of termination for convenience from the Owner, the Contractor shall submit, within sixty (60) calendar days of the effective termination date, a Claim for compensation damages and/or costs. In such Claim, if presented, Contractor shall be paid, without duplication of any items, the following:

15.3.2.1. In lump sum contracts, the work performed and accepted by the Owner shall be paid in accordance with the schedule of values approved by the Owner.

15.3.2.2. The actual cost of all acceptable materials for which orders have been placed by the Contractor for use under this Contract, provided that, if required by the Owner, the Contractor shall make every reasonable effort to cancel such orders. If said orders can be canceled, the Owner shall pay for all restocking, or other charges, associated with said cancellation.

15.3.2.3. The actual cost of acceptable raw material ordered or purchased for fabrication, or materials already fabricated, whether those materials are located in the shop, the project, or in transit.

15.3.2.4. The actual amounts paid by the Contractor for construction equipment rentals up to the time of termination, plus any amounts accrued, or payable, under written contracts for the rental of such equipment. Contractor shall make every possible effort to cancel any such contracts. In the event that the rental contracts can be canceled by the Contractor, the Owner shall pay for all reasonable costs incurred directly caused by the rental cancellation. If the equipment is owned by the Contractor, he will be paid the cost (depreciation) of said equipment.

15.3.2.5. The actual costs disbursed by to the Contractor of bonds, insurance, taxes, and deposits required under the Contract, unless previously paid by Owner.

15.3.2.6. Contractor's overhead and profit in the amount equivalent to fifteen percent (15%) of all payments made under Articles 15.3.2.2 to 15.3.2.5.

15.3.2.7. Contractor shall exert his best effort to mitigate the costs mentioned in Articles 15.3.2.2 to 15.3.2.5.

15.3.2.7.1. From the total sum of all the costs indicated in Articles 15.3.2.2 to 15.3.2.6. there shall be deducted all payments therefore previously made and all proper charges to the Contractor in relation therewith.

15.3.3. In the event that the Work is suspended under Article 15.1, thereby stopped for a period of time, and after said suspension is cancelled, the amounts due to the Contractor under the Contract will be first calculated for the suspension period as per Article 15.1 hereunder and then calculated for the cancellation afterwards as per Article 15.3, hereunder. The total amount due the Contractor will be the sum of both.

15.3.4. If the Contract is terminated for convenience, the Owner shall assume all security, and insurance of the project on the effective date of the termination, or cancellation.

15.3.5. Termination of the Contract for convenience, as stated above, will not release Contractor from his responsibilities for the Work completed, nor shall it release his surety of its obligations.

15.3.6. Contractor shall not be entitled to payment on account of loss of anticipated or expected profits or revenues or other economic loss arising out of or resulting from such termination for convenience under this Article 15.3.

15.4 Contractor's Right to Terminate the Contract

15.4.1. The Contractor has the right to Terminate the Contract and recover from the Owner payment for all work executed as specified in Article 15.3.2, herein, if the Owner:

15.4.1.1. substantially stops the work for any reason whatsoever through no act, or fault, of the Contractor for a period of ninety (90) days starting from the written stoppage notice of the Owner and/or the Owner's Representative, or

15.4.1.2. fails to pay the duly approved Request for Payments within eighty (80) calendar days after the same was due.

15.4.2 The foregoing provisions are in addition to, and not in limitation of the rights of the Contractor under any other provisions of the Contract.

ARTICLE 16 - DISPUTE RESOLUTION

16.1 Disputes

16.1.1. In case of any timely Claim, Dispute or other matter involving the interpretation of the Contract Documents, a change in the Contract Sum, and or an Extension of Contract Time, and other matters in question arising out of, or relating to this Contract or the breach thereof, except for Claims which have been waived by the acceptance of final payment, shall be submitted to and decided first by the Owner's Representative as provided in Article 11.5.

16.1.2. If the Dispute submitted to the Owner's Representative as provided for in Article 11.5 is not decided by him within the thirty (30) day period established therein, the Claim shall be deemed rejected.

16.1.3. If the party establishing the Claim is not satisfied with the decision or automatic rejection by the Owner's Representative, the party will have fifteen (15) days to appeal the decision to the Chief of Construction, or equivalent division head, of the Owner.

16.1.4. The Chief of Construction shall have a period of thirty (30) days from the date of receipt of the notice of appeal during which he must render a decision.

16.1.4.1. However, if the Chief of Construction requires additional time to review the Claim, because of the nature or complexity of the Claim or if additional documents and/or information are needed from the Contractor to make a determination, the Chief of Construction shall submit, within five (5) calendar days of receipt of the notice of appeal, a written notice with an estimate of the additional time needed to review said claim and its justification. This additional time, shall not exceed thirty (30) days, unless more time is agreed upon by the parties.

16.1.4.2. If the Chief of Construction does not render a decision within the time allotted, including extensions, then the Claim shall be deemed rejected.

16.1.5. If the Contractor is not satisfied with the decision or automatic rejection by the Chief of Construction, the Claim shall be referred to the Owner and the Contractor. The parties will meet for negotiations within ten (10) working days of the notice of referral of said Claim. If the Dispute has not been resolved within thirty (30) days after said referral (which may be extended by mutual agreement) and subject to any rights to injunctive relief and unless otherwise specifically provided for herein, the parties shall proceed in accordance with Article 16.2.

16.1.6 Contractor shall carry on the Work and adhere to the progress schedule during all Disputes or disagreements with Owner. The Owner will continue making payments under the Contract for Work performed that is not in Dispute.

16.1.7. No Work shall be delayed or postponed pending resolution of any Disputes or disagreement unless Owner and Contractor otherwise agree in writing.

16.2 Remedies

16.2.1. All Disputes not resolved by the method indicated in Article 16.1, upon written agreement of the parties, shall be submitted to non-binding mediation as indicated in Article 16.3. Either party may, at any time, give written notice to the other party that it does not wish to mediate or to continue to mediate a Dispute. Such notice shall conclude the mediation process.

16.2.2. If the parties fail to agree to submit the Dispute to mediation, or one party decides to cancel the mediation after the mediation has started, or if the mediation process does not resolve all Disputed matters, then the remaining Disputes shall be decided by arbitration, upon timely demand for arbitration, notified by one party to the other within ten (10) days after the mediation process has concluded, if the amount of the claim does not exceed the limits established in Article 16.4.1. The mediation process shall conclude on the date notice is delivered by one party to the other stating that the party does not wish to mediate or to continue to mediate. Any undecided Disputes that exceed the limits established in Article 16.4.1, will be decided by the General Court of Justice of Puerto Rico.

16.3 Mediation

16.3.1. If the parties agree to mediate the Dispute they may chose between:

16.3.1.1. a mutually agreed mediation procedure; or

16.3.1.2. a mediation procedure under the supervision of the Bureau of Claim Resolution by Alternate Methods the Office of the General Court of Justice; or

16.3.1.3. a mediation procedure administered by the American Arbitration Association under its Construction Industry Mediation Rules.

16.3.2. All costs incurred as a result of the mediation shall be borne equally by the parties, unless the mediator orders otherwise in accordance to Article 16.3.4.

16.3.3. The parties will be required to exchange their positions as to the Dispute, fully and in good faith, with a detailed description of the facts and of the applicable law and shall fully exchange supporting documents. If after agreeing to mediate a Dispute a party is substantially unprepared to participate in the proceedings, or fails to participate in good faith, the Mediator at his discretion may require said party to pay all or part of the costs of the mediation incurred by the other party due to the non-compliance with this Article.

16.4 Arbitration

16.4.1. Disputes to be arbitrated shall be limited to those Disputes, which when all sums claimed therefore under the Contract are added, total an aggregate sum of five percent (5%) or less of the Contract Price or $500,000.00 or less, whichever is lower. Only such Disputes where the aggregate amount claimed is below said threshold shall be resolved through the arbitration procedures established in this Article 16.4. The aggregate sum shall be determined on the date of the notice of the demand for arbitration taking into consideration all pending Disputes regarding the Contract submitted by the Contractor pursuant to Articles 11.5 and 16. In order to qualify for resolution thru arbitration, all issues and Claims regarding liability and damages relating to a particular Dispute must be submitted together, within the same arbitration proceeding. The parties are specifically prohibited from submitting the issue of liability to arbitration and thereafter submitting the issue of damages (regarding the same Dispute) to another arbitration proceeding or to the court.

16.4.1.1. The $500,000.00 threshold will be adjusted every five (5) years. The adjustment will be based on the Consumer Price Index (CPI) published by the Government of Puerto Rico. The base year for such adjustment shall be the year 2010.

16.4.1.2. If Contractor invokes the provisions of this Article 16.4, but at a later date submits additional Claims to the Owner under the same Contract, pursuant to Article 11.5 and/or Article 16, for an additional sum which, if added to the amount claimed under the original Dispute(s), surpasses the threshold amount established in Article 16.4.1, then said additional Disputes that surpass the threshold may not be submitted to arbitration and shall be decided by the General Court of Justice of Puerto Rico. Nevertheless, the already pending arbitration proceedings under Article 16.4 shall continue until concluded. If additional Disputes are submitted after the arbitration proceedings are concluded and final award has been entered, then the amounts of the original Claims that were arbitrated and concluded shall not count towards the threshold stated in Article 16.4.1.

16.4.2. **Procedure For Binding Arbitration.**

16.4.2.1. Contractor shall submit to the Owner, together with the notice of demand for arbitration of a Dispute, a list of no less than five (5) proposed arbitrators, together with their respective curriculum vitae and a disclosure statement from each as to possible conflicts of interest.

16.4.2.2. Within five (5) working days of receipt of the notice of demand for arbitration, Owner shall either: (i) select one (1) arbitrator from the Contractor's list, or (ii) if all arbitrators proposed by Contractor are unacceptable to Owner, submit to Contractor a list of no less than five (5) proposed arbitrators, together with their respective curriculum vitae and a disclosure statement from each as to possible conflicts of interest.

16.4.2.3. Within five (5) working days of receipt of the Owner's list, contractor shall either: (i) select one (1) arbitrator from such list or (ii) reject all arbitrators from the Owner's list. If within the following ten (10) days the parties cannot agree as to an arbitrator or a panel of arbitrators, then each party within the following five (5) days will unilaterally appoint and notify to the other one arbitrator, and the two (2) arbitrators so appointed shall within ten (10) days after the appointment of both arbitrators select a third arbitrator and notify the Owner and the Contractor of said selection, and the three (3) arbitrators shall constitute the panel of arbitrators that shall decide the Dispute. The arbitrators so appointed or selected need not be on the original lists of arbitrators. Within ten (10) days of the selection of the third arbitrator, each arbitrator shall notify Owner and Contractor their respective curriculum vitae and statement as to possible bias or conflict of interest.

16.4.2.4. The arbitration proceedings shall be conducted under the provisions of the Puerto Rico Arbitration Act, Act No. 376 of May 8, 1951, as amended.

16.4.3. **Award**

16.4.3.1. The award entered need not include written determinations of fact and conclusions of law and the award shall be final and not be reviewable or appealable due to errors of fact or of law. Nevertheless, the arbitrators will endeavor to ascertain the facts and follow the law.

ARTICLE 17 -MISCELLANEOUS

17.1 Governing Law. The Contract Documents, and all questions relating to their validity, performance, interpretation and enforcement, shall be governed by and construed in accordance with the laws of the

Commonwealth of Puerto Rico. Any legal action brought concerning the above shall be brought in accordance with the contract and thereafter exclusively in the courts of the Commonwealth of Puerto Rico.

17.2 Federal Funds

17.2.1. When the United States government or any of its agencies finances or pays for all or any portion of the cost of the Work, federal laws and the applicable rules and regulations must be observed by the Contractor. The Owner will identify in the bid documents the program providing such funds.

17.2.2. If the Contract Documents include a specific provisions issued by such federal funding agency in case of conflict with other provisions of the Contract Documents, said federally issued provisions shall govern.

17.2.3. Unless specified elsewhere in the Contract Documents, the funding federal agency is not a party to this Contract.

17.2.4 When the United States government funds Work covered by the Contract Documents, the Work shall be under the supervision of the Owner but subject to the inspection by the appropriate Federal agency and in accordance with the applicable Federal statutes and rules and regulations.

17.2.4.1. Such inspection shall in no way make the Federal Government a party to this Contract and will in no way interfere with the rights of either party hereunder.

17.2.4.2. The Contractor shall extend the same courtesies to the representatives of the Federal government as required to be extended to representatives of the Commonwealth government.

17.3 Notice

17.3.1. Unless otherwise specified in the Agreement or in the Contract Documents, written notice shall be deemed to have been duly served if delivered:

17.3.1.1. to Contractor if delivered in person to the individual, to a member or partner of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

17.3.1.2. to Owner if delivered in person to the Owner's Representative or to the Project Inspector; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice with the requirements established in Article 17.3.2.

17.3.2. All notices whereby a consent, approval or action is required to be performed by the recipient within a specific period shall include, in bold and capitalized font, at the top of the transmittal communication the following legend: "IMPORTANT RIGHTS MAY BE LOST BY FAILURE OF [NAME OF PARTY] TO ACT PROMPTLY. SPECIFIC ACTION(S) AND/OR APPROVAL(S) ARE HEREIN REQUESTED. IN CASE OF AUTOMATIC APPROVAL DUE TO FAILURE TO ACT BY THE RECIPIENT THE NOTICE MUST STATE: THIS SUBMISSION WILL BE DEEMED APPROVED _____ BUSINESS DAYS AFTER RECEIPT BY [NAME OF PARTY] IF REJECTION IS NOT NOTIFIED TO [NAME OF SENDER]."

17.4 Computation of Time. When a period of time is to be computed for any purposes under the Contract Documents, the number of days within such period will exclude the first and include the last day. If the last day of

any such period falls on a Saturday, a Sunday or on a Holiday listed in Article 1.1.1.41, such day will be excluded from the computation.

17.5 Ownership of Documents. Any reports, information, findings, data, or any other documents prepared or assembled by the Contractor regarding the Contract will be the sole property of the Owner and shall not be made available by Contractor to any individual or organization without the prior written approval of the Owner, unless required by court order.

17.6 Personal Liability of Public Officials. In exercising rights or carrying out duties under the Contract, the Owner's Representative, the Contracting Officer, and their authorized representatives shall not be personally liable, it being understood that they act as the agents and representatives of Owner.

17.7 No Waiver of Legal Rights

17.7.1. In Unit Price Contracts, the Owner shall not be precluded or stopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the Work (and payment made therefore), from showing the true amount and character of the Work performed and materials furnished by the Contractor, nor from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, nor from showing that the work or materials do not in fact conform to the Contract.

17.7.2. The Owner shall not be precluded or stopped, notwithstanding any such measurement, estimate or certificate and payment in accordance therewith, from recovering from the Contractor or his sureties, or both, such damage as Owner may have sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the Owner or any representative of the Owner nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by the Owner, shall operate as a waiver by Owner of any right hereunder.

17.7.3. A waiver by the Owner, or Contractor, of any breach of the Contract shall not be held to be a waiver as to any other breach.

17.7.4. The Contractor, shall be liable to the Owner for latent defects, fraud, (or such gross mistakes as may amount to fraud), and every contractual warranty or guaranty.

17.8 Cumulative Remedies. The duties and obligations imposed by these General Conditions and the rights and remedies available thereunder are in addition to, and are not to be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.9 Successors and Assigns. The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

17.10 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in,

required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work and termination or completion of the Agreement.

17.11 Language. These Uniform General Conditions were enacted by the Secretary and approved by the Governor of Puerto Rico in the English language, according to the Legislative authorization found in Law No. 1 of January 28, 1993.

17.12 Amendments. These Uniform General Conditions shall be amended whenever the Secretary deems it necessary in order to fulfill its purpose.

PART C. ADDITIONAL PROVISIONS

ARTICLE 1: SEPARABILITY CLAUSE; EFFECTIVENESS

1.1 Separability Clause. If any provision authorized in these regulations is declared unconstitutional or void by a Court of Competent jurisdiction, the remaining provisions of this Uniform General Conditions shall continue in effect.

1.2 Effectiveness. These Uniform General Conditions shall enter into effect thirty (30) days after having been filed and enacted by the Department of State, except with regard to Contracts whose Contract Price is paid by one or more Federal Agency in which case these Uniform General Condition, with regard to such Contracts, shall enter into effect immediately after said Federal Agencies, which provide such funds, consent in writing to their use as part of the Contract Documents. At the time of said effectiveness and from that moment forward, general conditions used and issued by a government agency, department, public corporation and instrumentality, may no longer be validly incorporated in Contracts for public works, with the exception of these Uniform General Conditions.

APPROVED ON February 22, 2011, IN SAN JUAN, PUERTO RICO.

Eng. Rubén Hernández Gregorat, MEM, PE
Secretary
Department of Transportation and Public Works

GOVERNMENT OF PUERTO RICO

CERTIFICATION

Pursuant to Law No. 198 of May 15, 1943, as amended, and Law No. 1 of January 28, 1993 and after compliance with the Puerto Rico Uniform Administrative Procedure Act, Law No. 170 of August 12, 1988, as amended, I hereby approve the final version of the Uniform General Conditions for Public Contracts of the Government of Puerto Rico, as prepared by the Secretary of Transportation and Public Works and submitted for my consideration on February 22, 2011.

In San Juan, Puerto Rico, this 23rd -day of February of 2011.

Luis G. Fortuño
Governor

OFICINA DEL PROCURADOR DEL CIUDADANO

OMBUDSMAN
1977
Gobierno de Puerto Rico

Hon. Iris Miriam Ruiz Class
Procuradora

8 de febrero de 2011

Hon. Rubén A. Hernández Gregorat
Secretario
Departamento de Transportación y Obras Públicas
PO Box 41269
San Juan, Puerto Rico 00940-1269

Re: NEG-11-00061
Proyecto de Condiciones Generales Uniformes para Obras Públicas

Estimado secretario Hernández Gregorat:

La Procuraduría de Pequeños Negocios, luego de analizar y hacer varias recomendaciones para el ***Proyecto de Condiciones Generales Uniformes para Obras Públicas***, presentado por el Departamento de Transportación y Obras Públicas, entiende que el mismo no tiene impacto sustancial que pueda afectar a los pequeños negocios.

Por otra parte, le recordamos que el Artículo 5 de la Ley Núm. 454 del 28 de diciembre de 2000, según enmendada, Ley de Flexibilidad Administrativa y Reglamentaria para el Pequeño Negocio (LFAR), impone a las agencia a deber de hacer públicas las copias del Análisis de Flexibilidad Reglamentaria en el Registro de Reglamentos del Departamento de Estado.

La falta de publicación del Análisis de Flexibilidad podría inducir que cualquier asociación de comerciantes y/o dueño de negocio radique en el Tribunal la impugnación del reglamento por no cumplir con los aspectos procesales establecidos en la LFAR. Este tipo de acción judicial requeriría que el pequeño negocio demuestre al Tribunal el impacto negativo que le puedan causar tanto el nuevo reglamento como la falta de un Análisis de Flexibilidad. El término para impugnar el referido reglamento es de un (1) año a partir de la fecha en que el mismo entre en vigor.

Por lo cual, la Procuraduría de Pequeños Negocios da un aval condicionado al reglamento propuesto y exhorta que el nuevo reglamento sea promulgado cumpliendo con todas las disposiciones en ley. Le exhortamos también a comunicarse con nuestra Procuraduría de tener alguna duda al respecto.

Respetuosamente,

Lcdo. Edison Negrón Ocasio
Procurador de Pequeños Negocios

Minillas Station PO Box 41088 San Juan, Puerto Rico 00940-1088
Tel. (787) 724-7373 • Fax (787) 724-7386
irismiriam.ruiz@opc.gobierno.pr

GOBIERNO DE PUERTO RICO
DEPARTAMENTO DE TRANSPORTACIÓN Y OBRAS PÚBLICAS

ANALISIS DE FELIXIBILIDAD ADMINISTRATIVA Y REGLAMENTARIA PARA PEQUEÑOS NEGOCIOS

UNIFORM GENERAL CONDITIONS FOR PUBLIC WORKS CONTRACTS

10 DE DICIEMBRE DE 2010

ANÁLISIS SOBRE FLEXIBILIDAD ADMINISTRATIVA Y
REGLAMENTARIA PARA PEQUEÑOS NEGOCIOS

UNIFORM GENERAL CONDITIONS FOR PUBLIC WORKS

I. BASE LEGAL, NECESIDAD Y OBJETIVOS DEL REGLAMENTO PROPUESTO

A. Base legal y necesidad de adoptar reglamentación

La Ley Núm. 198 del 15 de mayo de 1943, según enmendada, 22 L.P.R.A. §59, et seq., autorizó y ordenó al Secretario de Transportación y Obras Públicas preparar un pliego de condiciones generales para la contratación de obras públicas en Puerto Rico. Mediante esta Ley se creó el marco jurídico aplicable a la contratación de toda obra pública y se estableció un procedimiento para su promulgación.

Habiendo transcurrido ya varios años desde la aprobación del último pliego de condiciones generales, el Departamento de Transportación y Obras Públicas (DTOP) y la Autoridad de Acueductos y Alcantarillados (AAA), con el insumo y cooperación del Asociación de Contratistas Generales (AGC), Capítulo de Puerto Rico, se dieron a la tarea de confeccionar un nuevo pliego de condiciones generales mediante el cual se pretendió cobijar uniformemente a todas las agencias gubernamentales que realizan obra pública, además de crear unas nuevas reglas que se atemperaran a la experiencia adquirida colectivamente por las distintas agencias gubernamentales a través de años de contratación.

Para canalizar el proceso y poder alcanzar las metas resultó indispensable enmendar la referida Ley Núm. 198. A estos efectos se preparó un ante proyecto de Ley el cual luego de ser evaluado por distintas Comisiones (Comisión de Gobierno, Urbanismo e Infraestructura) y aprobado por el Senado y la Cámara de Representantes, fue aprobado por el Gobernador, convirtiéndose en la Ley Núm. 131 del 2 de septiembre de 2010.

Las enmiendas que trajo la referida Ley 131 fueron, en esencia, las siguientes:

(a) la actualización de conceptos contenidos en la Ley 198 para conformarlos a la realidad jurídica actual;

(b) la inclusión de disposiciones específicas para establecer que el Pliego de Condiciones Generales Uniformes regiría las relaciones contractuales en la construcción de toda obra pública que realicen las agencias, departamentos, corporaciones públicas y demás instrumentalidades gubernamentales con excepción de los Municipios; y

(c) disponer que el proceso de aprobación del las condiciones generales uniformes se haría de conformidad con las disposiciones de la Ley de Procedimiento Administrativo Uniforme, Ley Núm. 170 de 12 de agosto de 1988, según enmendada.

Las enmiendas realizadas a la Ley 198 sentaron las bases legales que permiten la aprobación de este pliego de Condiciones Generales Uniformes.

La contratación, coordinación y supervisión de obras públicas presenta problemas y situaciones de carácter recurrentes tanto para las agencias como para los contratistas. Para atender estos problemas era necesaria la creación y aprobación de un conjunto de disposiciones que especificaran cuales son las responsabilidades, obligaciones y poderes de cada una de las partes contratantes y sus competencias en los campos de actuación respectivos.

B. Propósito del reglamento

El Pliego de Condiciones Generales Uniformes pretende uniformar la contratación y administración de toda la obra de construcción pública en Puerto Rico y eliminar el desfase que existe en la contratación en las diferentes agencias. Por ser el resultado de un esfuerzo común y de la experiencia de las partes contratantes, el nuevo pliego de Condiciones Generales Uniformes busca proveer soluciones o avenidas de acción a problemas contractuales, administrativos y legales comunes o similares y sirve de instrumento para nivelar el terreno para todas las partes de manera que se protejan adecuadamente los intereses de cada uno de los contratantes.

II. APLICABILIDAD

Las disposiciones contenidas en el Pliego de Condiciones Generales Uniformes son de aplicación a cualquier persona natural o jurídica que suscriba un contrato con cualquier agencia de gobierno, departamento, corporación pública o cualquier instrumentalidad del Gobierno de Puerto Rico en el cual el objeto del contrato sea la consecución de obra pública. Sin embargo, las Condiciones Generales Uniformes no sólo son de aplicación al contratista principal de la obra que contrata con una agencia sino que existen clausulas que son aplicables a los subcontratistas y materialistas que trabajan en dicha Obra. El trabajo que un subcontratista o suplidor realice para el contratista general del Proyecto deberá ser de conformidad a un acuerdo en el que se le obligue al Subcontratista a cumplir con los términos y condiciones de seguridad, y otros de las Condiciones Generales y de los Documentos Contractuales que le sean aplicables.

III. POSIBLES IMPACTOS DE LA REGLAMENTACIÓN

A. Pequeños negocios impactados

Este Reglamento tiene un impacto en toda entidad que contrate para la ejecución de una obra pública sin importar el tamaño que tenga esa operación comercial. El factor determinante no es el tamaño del negocio sino el objeto del contrato, o sea que el contrato conlleve la ejecución de una obra pública incluyendo pero sin limitarse a trabajos de construcción, restauración y reparación de edificios o construcciones existentes o nuevas, así como la conservación y mantenimiento de los elementos construidos y los proveedores de diferentes servicios contratados para trabajar en Obras.

Para que un contratista principal pueda hacer negocios con el Gobierno Federal de Los Estados Unidos y con el Gobierno de Puerto Rico este debe estar inscrito en el Registro Único de Licitadores. Este requisito no es de aplicación a los sub-contratistas y materialistas del contratista principal del Proyecto ya que la relación contractual de los materialistas o subcontratistas no es con el gobierno o la agencia, sino que su relación contractual es con el Contratista Principal. El Registro de Licitadores o proveedores le brinda la oportunidad legítima a las corporaciones o entidades de participar del proceso de compra gubernamental "procurement" y la participación de las subastas como contratista principal. En Puerto Rico existen varios

registros de licitadores o proveedores siendo el más importante el Registro Único de Licitadores que es dirigido por la Administración de Servicios Generales (ASG). Este Registro es respaldado por la Ley 85 de Junio 2002, mejor conocida como "Ley Registro Único de Licitadores". Uno de los propósitos principales de este Registro es que el Gobierno puede asegurarse de lo siguiente: Adquirir bienes y servicios de empresas que cumplan con todas las requisiciones fiscales; Contratar empresas bonafides debidamente autorizadas para hacer negocios en Puerto Rico; Contratar Individuos que estén al día en sus obligaciones fiscales; Contratar individuos y empresas que cumplan con solvencia ética y moral; Contratar empresas que puedan cumplir con los bienes o servicios solicitados.

Muchos de los contratistas registrados en el Registro Único de Licitadores no cualifican como pequeños negocios ya que emplean a más de quince (15) personas, por tanto estos contratistas, aunque están impactados por el Reglamento de Condiciones Generales Uniformes, no están dentro del marco de los negocios cubiertos por este análisis. No empece lo anterior, existen algunos contratistas que sí cualifican como pequeños negocios, estos contratistas en su mayoría son corporaciones dedicadas a proyectos de construcción que envuelven construcción de carreteras, puentes edificios y otros. Por otro lado, los sub-contratistas y materialistas de los proyectos de construcción de obra pública si son usualmente pequeños negocios, sin embargo, a estos no les aplica el requisito de pertenecer al Registro Único de Licitadores pues su relación contractual no es con el gobierno o la agencia sino con el contratista general de la obra.

A pesar de no requerir que el sub contratista pertenezca al registro único de licitadores las Condiciones Generales Uniformes si establecen que el dueño podrá objetar la contratación de un subcontratista o materialista si existen razones validas. Las Condiciones Generales Uniformes le requieren al Contratista Principal de la obra presentarle al gobierno o agencia con la cual contrata un listado en el que se detallen el nombre de los subcontratistas y materialistas principales que pretende utilizar en las porciones principales del Proyecto. Por su parte la agencia o gobierno tiene el deber de investigar y notificar al Contratista si objeta alguno de los subcontratistas o suplidores contenidos en la lista provista por el contratista principal. La objeción por parte de la agencia no podrá ser arbitraria, la misma deberá ser una razonable y los fundamentos para la misma deberán constar por escrito. Las causas para objetar a un subcontratista, suplidor o materialista pueden incluir, entre otras: record de incumplimientos previos de un subcontratista o materialista con la agencia, record flagrante de violaciones de seguridad o desempeño insatisfactorio en pasados Proyectos con la agencia. Este procedimiento tiene el propósito de garantizar algún control sobre los contratistas o suplidores de Proyectos de manera que se evite que subcontratistas o materialistas ineficientes y de alto riesgo trabajen en la obra retrasándola y aumentando los costos los cual al fin y al cabo termina siendo pagado con fondos públicos. Por ende, esta es una medida de control que pretende asistir a la mejor utilización de fondos públicos.

B. Impacto económico al pequeño negocio

Las Condiciones Generales Uniformes son el resultado de un esfuerzo interagencial dirigido por el DTOP y la AAA, agencias que por su vasta experiencia en la contratación de obras públicas tomaron la iniciativa de crear un conjunto de disposiciones que regularan y uniformaran la contratación de Obra. Durante la redacción de las Condiciones Generales Uniformes se contó con la participación y colaboración activa de la ACG, Capítulo de Puerto Rico. La ACG es una asociación que agrupa a más de 350 compañías que generan un 80% de la construcción en nuestra Isla. Entre los propósitos y objetivos de la ACG se encuentra el combatir las prácticas injustas, apoyar al contratista y sus asociaciones para verificar condiciones insatisfactorias y estimular métodos de contratación que no expongan al contratista a riesgos.

El proceso de redacción de la Condiciones Generales Uniformes incluyó la celebración de innumerables reuniones para la discusión de las disposiciones. En dichas reuniones las partes presentaban sus posiciones en cuanto a cada disposición. Por ende el borrador que resultó del ejercicio contó con la aprobación del ACG. Debido a que la participación de la ACG en este proceso fue esencial para la redacción de las Condiciones Generales Uniformes, los derechos de los contratistas al igual que impacto económico de estas condiciones generales fueron escuchados para que dicho impacto a los contratistas fuera mínimo.

No obstante, por tratarse de fondos públicos que van a ser desembolsados para la construcción de obras públicas, el Gobierno tiene que tener unas garantías de que dicho dinero será invertido de manera eficiente. Por tal razón siempre que la agencia suscribe un contrato con un contratista general para construcción de obra pública a este se le requiere la prestación de ciertas fianzas y seguros que garanticen que los fondos resultaran en la construcción de la obra. Las Condiciones Generales Uniformes también exigen la prestación de estas garantías, sin embargo, las mismas fueron redactadas para nivelar el campo del juego y salvaguardar los derechos de todas las partes envueltas.

C. Zonas geográficas de mayor impacto

Las disposiciones de las Condiciones Generales Uniformes impactan directamente a los contratistas principales que contratan con el gobierno o agencia. Estos contratistas, los cuales tienen que ser licitadores autorizados, se encuentran ubicados a través de todo Puerto Rico. Las estadísticas de la ASG demuestran que la mayoría de los licitadores autorizados se encuentran ubicados en la zona metropolitana. Sin embargo, como mencionamos anteriormente la mayoría aunque no todos estos contratistas principales no se consideran pequeños negocios. La mayoría de los pequeños negocios que están en alguna manera impactados por la Condiciones Generales son los subcontratistas, suplidores o materialistas los cuales se encuentran distribuidos por toda la Isla aunque en su mayoría también están ubicados en el área metropolitana.

IV. CUMPLIMIENTO CON EL REGLAMENTO

A. Personal que fiscalizará su cumplimiento

El personal encargado de hacer cumplir las disposiciones Condiciones Generales Uniformes consiste de los funcionarios de las agencias o instrumentalidades de gobierno contratantes que están a cargo de la contratación, supervisión y sobreseimiento de la construcción de la obra.

B. Sanciones y penalidades

El incumplimiento con las disposiciones del Reglamento de Condiciones Generales Uniformes puede conllevar la imposición de daños líquidos, cancelación de contratos, radicación de demanda por incumplimiento, imposición de multas y cancelación de autorizaciones o licencias.

Las Condiciones Generales Uniformes disponen que en caso de que el contratista o su aseguradora no completen el trabajo dentro del tiempo especificado por el contrato o según extendido se le impondrá al contratista una suma de daños líquidos por cada día calendario que el trabajo no sea completado en tiempo. Los daños líquidos fluctúan desde $300.00 dólares diarios en Contratos de $0 hasta $99,999.99 hasta $8,000.00 diarios en proyectos de $50 Millones en adelante (aunque esto puede variar según la

Provisión Especial que se incluya en el contrato. Por otro lado, las Condiciones Generales Uniformes también disponen de un incentivo equivalente a la mitad de los daños líquidos estipulados por cada día que la obra este sustancialmente completada antes de la fecha de terminación estipulada en el Contrato.

Lo anterior no impide que el Gobierno de Puerto Rico pueda, por los mismos hechos, iniciar un procedimiento criminal contra cualquier contratista que se identifique que ha cometido delitos relacionados con fraude en la construcción o cualquier otro delito tipificado en el Código Penal de Puerto Rico.

C. Otros requisitos para cumplimiento

Las Condiciones Generales Uniformes son un conjunto de disposiciones que definen los deberes y derechos del contratista principal y de las agencias en el proceso de contratación y construcción de obras públicas. Estas Condiciones Generales Uniformes también disponen los términos para actuar o presentar reclamaciones. Debido a su carácter regulador las Condiciones Generales Uniformes establecen múltiples requisitos a los contratistas a quienes se les adjudica la construcción de una obra pública y discutirlos todos seria vertir el contenido de las condiciones generales en este escrito. Sin embargo, entendemos que los requisitos más significativos en cuanto al impacto económico del Reglamento en aquellos pocos contratistas principales que cualifican como pequeños comerciantes es el asunto de la obtención de las fianzas y pólizas de seguros requeridas en el Articulo 3 de las Condiciones Generales Uniformes.

La Condiciones Generales Uniformes disponen que el contratista principal que haya recibido la buena pro en una subasta y contraté con el gobierno o agencia para la construcción de una obra pública no podrá comenzar trabajos hasta no haber obtenido ciertas pólizas de seguros y fianzas requeridas en las Condiciones Generales Uniformes. En el caso de las agencias que no tienen un "Owner's Controlled Insurance Program" el contratista principal de la obra deberá, dentro de los diez (10) días de haber recibido la notificación de adjudicación de subasta, proveer lo siguiente: (1) fianza de pago y fianza de cumplimiento en una suma de al menos 50% hasta 100% del monto del contrato; (3) pólizas del Fondo de Seguro de Estado y todas las pólizas de seguros social y laborales necesarias; (4) seguro de responsabilidad general; (5) póliza choferil para negocios; (6) builders risk; (7) instalation floater policy; (8) "contractors liability insurance" con un límite agregado general de $1 Millón, límite agregado de productos o operación de $1,000.00, límite de "advertising and injury", limite por ocurrencia de $5,000,000.00 limite de daños por fuego $50,000.00 límite de gastos médicos de $5,000.00. Estos requisitos son aplicables al contratista general porque su relación contractual es con la agencia pero no al subcontratista o suplidor ya que relación contractual es con el contratista general. A pesar de lo antes expresado al subcontratista le aplican algunas clausulas de las condiciones generales sobre calidad de trabajo, seguridad y otros relacionados al trabajos que contrate.

Otro requisito de impacto económico para aquellos contratistas generales que sean pequeños negocios es que el contratista general vendrá obligado al pago de todos los impuestos incluyendo impuesto de ventas, consumo, uso y otros de carácter similar necesarios para la consecución de de la Obra. Estos impuestos deben pagarse de acuerdo con las leyes, reglamentos y ordenanzas del lugar donde ubique la Obra que sean aplicables durante el periodo en de duración de la Obra y que estuvieran en efecto al momento de la subasta. Estos impuestos incluyen los impuestos municipales. Véase Art. 6.10.

Las pólizas de seguros y fianzas así como los impuestos y otros costos son gastos que el contratista general toma en consideración al momento de someter su propuesta ante la agencia o sea al momento de

licitar. Por tanto, estos gastos se encuentran absorbidos en el precio de licitación que el contratista general somete, a saber, en el Precio del Contrato. Los requisitos para las diferentes fianzas y seguros tienen el propósito de garantizarle a la agencia que el contratista principal será responsable. Estas disposiciones garantizan la ejecución de la obra y la mejor utilización de los fondos públicos que se desembolsan para pagar la Obra.

Por otro lado el impacto que tiene el Reglamento de Condiciones Generales Uniformes en los subcontratistas, materialistas y suplidores no es un impacto de carácter económico sino un impacto de carácter regulatorio ya que algunas disposiciones de las Condiciones Generales Uniformes como las de seguridad y otras que no son las de fianzas se incorporaran a los contratos que estos suscriben con el contratista general.

V. RELACIÓN CON OTROS REGLAMENTOS

Este Reglamento guarda relación con todos los reglamentos relacionados a las subastas, compras y contrataciones en obras de gobierno y con la ley y reglamentación de agencias federales que proveen subsidio a varias obras, este Reglamento deberá contar con la anuencia de esas agencias federales. Por tal razón las agencias que reciben ayuda federal notificarán el reglamento a las agencias federales concernidas y obtendrán su posición en cuanto al mismo.

VI. SEÑALAMIENTOS DEL PROCURADOR DE PEQUEÑOS NEGOCIOS

Los representantes del Departamento de Transportación y Obras Publicas se reunieron con el Procurador de Pequeños Negocios y el personal que analizó las disposiciones del propuesto Reglamento con el propósito de recibir el insumo y recomendación del Procurador y discutir y aclarar dudas sobre las clausulas del Reglamento. Las partes discutimos la sección 3.2.1. y 3.2.2 del propuesto Reglamento. Estas Clausulas en esencia requieren (i) que el contratista principal provea lo siguiente antes de dar comienzo a la obra: (1) fianza de cumplimiento; (2) fianza de pago; (3) póliza de compensación a trabajadores; (4) Fondo de Seguro de Estado y seguro social; (5) Seguro de Responsabilidad General; (6) Póliza de Chóferil; (7) Builders Risk; (8) Installation Floater (cuando sea aplicable); y (ii) que el contratista le conceda a las agencias y al gobierno discreción para eximir o solicitar pólizas o seguros de otra naturaleza a las antes mencionadas, según lo entienda necesario. Luego de analizar las disposiciones del Reglamento sobre este particular y atender las preocupaciones determinamos que la discreción que el Reglamento le concede a la agencia es razonable y necesaria. La clausula que permite se exima de algunas pólizas o seguros o que se requieran pólizas o seguros adicionales (sección 3.2.2) ya había sido previamente considerada y discutida el AGC. Precisamente con el propósito de atender la preocupación de posibles decisiones arbitrarias por parte de las agencias en cuanto a eximir o requerir más seguros se creó la Sección 3.2.2.1. Dicha sección obliga a la agencia a exponer por escrito y hacer formar parte del expediente del Proyecto las razones para no solicitar ciertas pólizas o para solicitar pólizas de diferente naturaleza. El propósito de la clausula 3.2.2 es darle cierto grado de flexibilidad al gobierno y agencias que construyen obras públicas para atender casos que ameriten que en bienestar de la consecución de la obra o para la protección de los fondos públicos haya que hacer modificaciones en las pólizas requeridas o en la naturaleza de las mismas. La flexibilidad que provee esta sección es necesaria toda vez que los proyectos de construcción de obra pública varían en complejidad y naturaleza. A pesar de que en general las pólizas requeridas son las mencionadas en la clausula 3.2.1 existen Proyectos que por su alto riesgo, peligrosidad o tecnicismo pueden requerir una modificación en el tipo de póliza. También existen Proyectos de Obra Pública tan sencillos que solicitar todas las pólizas nombradas en la clausula 3.2.1

resultaría innecesario y oneroso para el contratista lo cual haría la obra más costosa para el gobierno o la agencia. La construcción de obra pública requiere la flexibilidad de pólizas que se ajusten a la obra que se construye. El Reglamento pretende que no se haga más costosa una obra sencilla o que se que al descubierto una obra altamente compleja solo por la rigurosidad de una clausula. En fin el propósito es proteger y asegurar los fondos públicos y lograr la construcción de obras de manera rápida y eficaz pero segura. No empece lo anterior, el propio reglamento limita la flexibilidad de la agencia al tomar esta determinación requiriéndole que si se modifican las pólizas solicitadas en la seccion3.2.1.1 para eximir o aumentar de alguna póliza la agencia presente su justificación por escrito y haga que la misma obre en el expediente.

La segunda recomendación del Procurador de Pequeños Negocios se refiere al grado de control que la agencia o entidad gubernamental contratante tiene sobre la elección de los suplidores, materialistas y/o subcontratistas que se contrataran para el Proyecto. Para atender esta recomendación revisamos las disposiciones de la sección 6.21 del Reglamento y sus subincisos. De la sección antes mencionada surge que el Contratista general del Proyecto u Obra es quien determina cuales serán los subcontratistas, suplidores y materialistas que trabajaran en la Obra. En esa determinación inicial de quienes serán los que trabajaran la agencia no tiene ninguna intervención. Una vez el contratista principal hace su selección, entonces el Reglamento le requiere notificarle a la Agencia un listado de los subcontratistas y suplidores principales que el contratista ha escogido para las porciones principales del Proyecto. Nótese que solo se requieren los subcontratistas y suplidores principales de porciones principales del Proyecto o sea que el contratista no tiene que notificar a la agencia todos los subcontratistas sino solo los principales. La agencia hará una investigación y de tener una objeción justificada y razonable a los suplidores o subcontratistas principales que se le notificaron, entonces, lo expresará por escrito y ese subcontratista no podrá ser contratado para la Obra. Entre las razones que la agencia puede levantar para objetar la contratación de un subcontratista o suplidor se encuentra: (1) que el subcontratista haya incurrido en incumplimientos previos con la agencia; (2) que haya tenido record de violaciones de seguridad; o (3) que tenga historial de desempeño deficiente en sus funciones. Las razones que la agencia exprese para objetar tienen que ser razonables no pueden ser arbitrarias, injustas o ilegales. Esta clausula va dirigida a velar porque se logre la construcción rápida y eficiente de obras y sin exponer a la agencia o gobierno a riesgos innecesarios por subcontratistas riesgosos e ineficientes. Las objeciones de la agencia deberán estar fundamentadas en una investigación y constar por escrito y formar parte del expediente de modo que los derechos de un subcontratista o suplidor que quiera impugnar esta decisión pueda llevar la acción que en derecho estime. Por tanto, de lo anterior surge que la agencia no escoge los subcontratistas o materialistas de un Proyecto sino que si luego de una investigación surge que alguno de los que el contratista general pretende utilizar tiene un historial que puede afectar la obra, la agencia puede rechazarlo por el bienestar de la obra y la protección de los fondos.

VII. CONCLUSION

Luego de este análisis, se puede concluir que el reglamento de las Condiciones Generales Uniformes no tendrá un impacto económico adverso en los pequeños negocios que contraten con las diferentes agencias gubernamentales o corporaciones públicas para la construcción de obras públicas.

Attachment 2

ADDITIONAL PROVISIONS

ADDITIONAL PROVISIONS

1. The proposal must include the payment of all applicable state and municipal taxes and patents as require by Law. The Contractor shall be paid taxes prior to start the works and will be required to present evidence of these payments.
2. Along the duration of contract, Contractor must comply with Federal Non-Discrimination policy and Drug-Free Workplace Policy.
3. Any waste generated as part of the contract must be disposed outside of PRNG facilities and in accordance with applicable laws and regulations.
4. The Contractor is responsible for provide to PRNG copy permits hauling vehicle that transport material generated as part of the proposed activities.
5. If applicable the Fuel Oil and Gas (F.O.G.) shall be no more than 25% of the equipment charges.
6. If applicable the Fringe Benefits shall be no more than 30% of the payroll.
7. Working hours at the facility are Monday to Friday from 7:30a.m. to 4:00p.m. Any activities to be developed off working hours must be coordinated with PRNG and the execution will be pending approval from PRNG and without additional charges.
8. All the provide information as part of this acquisition process, including but not limited to: drawings, technical specifications, plans, reports, and photography, is for the exclusive use of this acquisition process. Any reproduction and distribution of the material for other use is prohibit.
9. FAR 52.219-14 Limitations on Subcontracting only apply for contracts performed by Small Business Administration or 8(a) Bidders.
10. Portable Toilet Facilities: Contractor shall be responsible for providing sanitary services for its employees throughout the duration of the activities of the contract. Toilets shall be regularly cleaned and emptied as required by Health regulations.
11. Any person who as part of the activities of the contract, will access the facilities on behalf of the Contractor should be have at all times a photo ID. Accepted identifications are: passport, driver's license, or ID card issued by the Department of Transportation and Public Works (DTOP).
12. As part of the evaluation process of bid proposals personnel of ASG or PRNG verify the amount of the Bid Bond with Surety Company.
13. As-built plans shall be required for the final closeout documents.
14. Article 9.1.4 of Uniform General Conditions for Public Works Contract does not apply.
15. Article 9.6 of Uniform General Conditions for Public Works Contract does not apply.
16. The amount retainage with respect of each progress payment is ten percent (10%).
17. Article 13.2.2.1.1.1 of Uniform General Conditions for Public Works Contract does not apply.
18. Article 13.2.2.1.2 of Uniform General Conditions for Public Works Contract does not apply.
19. During construction works the Contractor cannot close the main street and personnel or vehicle transit cannot be interrupt at any time during the development of the works.
20. PRNG's representative and inspection's representative should have access to the job site at all times.
21. The Contractor is responsible of the project Quality Control. The Quality Control Manager is required by the PRNG. The Quality Control Manager and their personnel will not have an other function and roles in the project.
22. The Project Schedule shall be updated monthly and submitted.

23. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility and utilities services in site.

24. The Contractor is responsible to obtain all permits and certifications of approval required in connection with this statement of works, and requires to develop the activities of the SOW.

25. The Contractor is responsible to keep clean the site works at all times and the removal of debris during performance of the Work.

26. The Contractor shall keep the grass in the project site.

27. If the Contractor fails to clean up and keep the grass, as indicated above, the Owner may do so and the cost thereof shall be charged to the Contractor.

28. All materials and equipment acquired by the Contractor as part of the contract must meet with the Build American Buy American (BABA).

29. The Contractor is responsible for the collection and disposal of all waste generated as part of the activities under contract.

30. Bidders are responsible of notifying to ASG and PRNG any discrepancy that exists in the plans, specifications, and bidding documents during the bidding process.

31. The Contractor is responsible of the quality of all materials and workmanship furnished in the construction of the project and is included in the bid price and no additional payment will be made by PRNG.

32. The Contractor will be allowed to store materials and equipment used in the project within the facility. It is the Contractor's responsibility to provide the storage, security materials, and equipment.

33. The Contractor shall include in their proposal the costs for the tests, analysis, exploration, reports, and results need to perform the SOW and be indicated in the plans, drawings, and specifications.

34. All cost in connection with the preparation and maintenance of schedules, work plans, submittals, request for information, and other work and task have to be included and be part of the project's general administrative expenses.

35. The Contractor is responsible for preparation and implementation of a recycling plan in accordance with Act. No. 70 of September 18, 1992 (Law to reduce and recycle solid waste, as amended) and the Regulations for the reduction, reuse, and recycling of solid waste (Regulation No. 6825, as amended), and lie in the Solid Waste Authority (ADS) Recycling Plan and monthly reports.

36. The Contractor shall submit two (2) sample of each item, when applied.

37. The Contractor will be responsible for submitting a "Site Safety & Health Plan" for approval by the staff of the PRNG, according to the date scheduled. Mobilization to the site cannot be made until the plan is approved.

38. It is the responsibility of the Contractor to assign a "Safety Manager" must have credentials issued by OSHA to perform the Safety Manager roles and responsibility. The Safety Manager will not have an other function and roles in the project.

39. It is up to PRNG's discretion to approved and recognize payment shall be made to the Contractor for material and equipment on site.

40. Perimeter fence details shall comply with approved Plan CES specifications. Project limit fence shall be 4' silt fence and 3.5' HDPE Orange plastic mesh safety fence barrier, reinforced with 2 "x 4" wood stakes.

41. PRNG requires the Contractor to use a software or platform for Construction and Project Management.

42. PRNG requires the Contractor provides a Project Manager at all times in the site project.

43. The Contactor shall be responsible for providing hand wash station for its employees throughout the duration of the activities of the contract.

44. During demolition, construction, and development of the works the daily operation performed in the PRNG's facilities cannot be interrupted at any time during the development of the work.

45. Installation Floater Policy apply for this project.

46. Terrorism Coverage and Terrorism Risk is required.

47. The Contractor is responsible to provide monthly report about the amount and types of debris generated as part of the development of works and activities.

48. The Contractor must report to the PRDNER the corresponding waste generated by the activities of earthwork, demolition activities, and construction activities. Copy of "manifiestos" thereof must be delivered to the CFMO.

49. The Contractor must within five (5) calendar days from signed of the contract to provide to PRNG the insurances, policies, and coverage required.

50. The Contractor is responsible for the preparation and establishment of the "Permiso Unico Incidental" (PUI); including the preparation of the documents required by the OGPe for filling of permits.

51. Construction Permit and Demolition Permit doesn't apply for this project.

52. The Contractor shall submit one (1) original and two (2) hard copies of the submittal. All submittals shall be identified.

53. The Contractor shall prepare and submit all schedules and schedules analysis reports in digital form as well as hard copies.

54. Davis Bacon Act apply for this project.

Attachment 3

CONTRACT FEDERAL CLAUSES

GOBIERNO DE PUERTO RICO
Guardia Nacional de Puerto Rico

Rev. 7/2023

Contract Clauses Required in Purchases and Contracts under a Federal Award

Any acquisition to be paid with partial or completely federal funds must comply with all the terms and conditions included as part of this quote request. Any supplier interested in participating in this process agrees to comply with each of the terms and conditions set forth herein. The Contractor certifies that follows the requirements established by state laws and regulations and federal regulations established in 2 CFR §200.

1. **Record Retention and Access to Records:** The Contractor and the Agency shall afford any authorized representative of NGB, DoD or the Comptroller General of the United States access to and the right to examine all records, books, papers, and documents that are parts of this contract. The Agency and the contractor agree to comply with the record retention and provide, as is required, all intact records for at least ten (10) years following the closeout of the Federal award. *2 CFR 200.334, DoD Regulation 7000.14R Vol. 1, Chapter 9, 2 CF 200.337R.*

2. **Environmental Protection Clauses:** Resources Conservation and Recovery Act; Comprehensive Environmental Response; Compensation and Liabilities Act; National Environmental Policy Act; Clean Air Act and Water Pollution Control Act. The Contractor and the Agency agrees to comply with all applicable standards, order or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act *(42 U.S.C., Section 7401 t 7671 and 33 U.S.C. Section 1318*), violations should be reported to NGB and Environmental Protection Agency (EPA). The Resources Conservation and Recovery Act (RCRA) *Public Law 94-580*, disposal of solid waste and hazardous waste. The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA), *Public Law 96-510.* The National Environmental Policy Act (NEPA), *Public Law 91-190*, use of practical means to create and maintain conditions man/nature coexistent. The Solid Waste Disposal Act, *Public Law 89-272*, dissemination of information on waste collection, and related health & environmental concerns. Also, the Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Federal Energy Policy and Conservation Act.

3. **Use of US Flags Carriers and the Cargo Preference Act of 1954:** The Contractor agrees to use US Flag Air Carriers for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (*49 U.S.C. 40118*), and their intraoperative guideline by the Comptroller General of the United States. Also agrees that it will comply with the Cargo Preference Act of 1954 as implemented by the Department of Transportation, requiring that cargo and agricultural cargo be carried on US Flag Vessels (*46 CFR Part 381)*. The Contractor agrees to comply with the **Fly America Act**, which requires that all air travel and cargo transportation services funded by the federal government use a "U.S. Flag" air carrier service. This requirement applies to: Federal government employees and their dependents, consultants, contractors, and grantees; and other travelers whose travel is paid for by the federal government. If the travel does not comply with the Fly America Act, the government will not reimburse your airline ticket.

4. **Debarment and Suspension:** Executive Orders 12549 and 12689. The Contractor agrees to comply with *2 CFR Part 180* by certifying than neither it, subcontractor nor its principals or its affiliates are excluded or disqualified from the System for Awards Management (SAM), at the current General Services Administration (GSA) website. This certification is a material representation of the fact upon which the agency relies in entering into this contract. The Contractor will include a provision requiring such compliance in its lower tier transactions. This verification shall be documented on the Contract File and shall be subject to audit *(31 U.S.C. 1352*). The Contractor and or bidder will provide the require certification as part of the bid and the contract. The SAM and Unique Entity ID (UEI), *Public Law 109-282, 2 CFR Part 25*. SAM is a government-wide registry for vendors doing business with the Federal government and the UEI is the official identified for doing business with the US Government, assigned through SAM.gov.

5. **Byrd Anti-lobbying Act:** (Applies to Construction from the Bid). The Contractor certifies that each tier to the tier above will not and has not used Federal appropriated funds to pay any organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an officer of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other awards covered by federal actions. The Contractor must file the required Certification. *48 CFR 52.203-12.*

6. **Buy American Act and Build America Buy America Act:** The Contractor agrees to comply with the Buy American Act (*41 U.S.C. 10a etseq.*), *Public Law 117-58,* which requires that all of the iron, steel, manufactured products, and construction materials used in an infrastructure project be produced in the US (*Executive Order 14005*) giving preference to domestic end products and domestic construction material. Domestic Preferences for Procurement, *2 CFR 200.322*. The non-non-Federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the U.S. (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all contracts and purchase orders for work or products under an award. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States and "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7. **False or Fraudulent Statement of Claims:** The Contractor acknowledges that *31 U.S.C. Chapter 38*, applies to its actions pertaining to this contract. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this contract. The Contractor agrees to include the above language in each subcontract under this contract, modified only to identify the subcontractor that will be subject to these provisions.

8. **Contract Work Hours and Safety Standards Act:** The Contractor will comply with the contracts work hours and Safety Standard Act (*40 USC Sections 3701-3708*) as supplemented by the Department of Labor Regulations (*29 CFR Part 5*).

9. **Davis–Bacon Act and Copeland Anti-kickback Act:** (Applies to construction, maintenance and repairments) The Contractor agrees to comply with the Davis-Bacon Act (*40 U.S.C. & 3141-3148*). That establishes the requirement for paying the local prevailing wages on public works projects for laborers and mechanics. Contracts in excess of $2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Annual updates/prevailing wages can be found in the Federal Register, www.federalregister.gov/prevailing-rate-system (*Executive Order 13658*). The Contractor or Sub-recipient will comply with the Copeland Anti-kickback Act (*40 U.S.C. 3145*). By this means the Contractor acknowledges and certifies that will not induce any person employed in the construction, completion, or repair of any public work, to give up any part of the compensation to which he or she is otherwise entitled.

10. **Seat Belt Use:** In accordance with the Executive Order 13043 the Contractor will enforce Seat Belt use policies and programs for its employees/contractors when operating agency cars, rented or personally owned vehicles operated on Military Bases.

11. **Compliance with Federal Law, Regulations and Executive Orders:** The Contractor will comply with all applicable federal laws, regulations and executive orders and National Guard policies, procedures, and directives.

12. **No Obligation by Federal Government:** The federal government is not a party to this contract and is not subject to any obligations or liabilities to the Agency, contractor, or any other party pertaining to any matter resulting from this contract.

13. **Privacy Act:**

The Contractor agrees to:

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under

(2) the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies-
   a. The systems of records; and
   b. The design, development, or operation work that the contractor is to perform.
   c. Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this paragraph,

(4) in all subcontracts awarded under this contract which requires the design, development, or operation of sucha system of records.

In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to

accomplish an agency function. For the purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplishan agency function, the Contractor is an employee of the agency.

"Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records. "Record," as used in this clause, means any item, collection, or grouping of information about an individual thatis maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or otheridentifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph. "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying assigned to the individual.

14. **Procurement of Recovered Materials**: (Contracts of $10,000 or more) The Contractor agrees to provide a preference for products and services that conserve natural resources that protect the environment and maximizes energy establishing an affirmative program for procurement of recovered materials identified as EPA guidelines.

15. **Equal Employment Opportunity (EEO):** The Contractor agrees to obey all laws and regulations regarding discrimination for reasons of race, color, gender, natural origin or social condition, sexual orientation, age, political or religious belief or any other discriminatory cause in the provision of services contained in this contract. It will also have the responsibility to avoid creating a hostile environment, free of all types of harassment, to include sexual harassment; having the responsibility of notifying the Executive Officer for State Affairs or the person designated by PRNG immediately of any situation that arises to this effect. Failure to comply in this regard will cause the contract to be terminated without further notice. *Executive Order No. 11246, Amendment No. 11375; 41 CFR Part 60; Americans with Disabilities Act of 1990 (ADA); and 2 CFR Part 200.*

16. **Termination for Cause and Convenience:** Any of the parties may rescind the contract at any moment, Through written notification to the other party, fifteen (15) days in advance to the date on which the contractual resolution shall be effective. However, the requirement of prior notification will not apply when probable cause for arrest is determined against the Contractor, for any State or Federal crime, and for any of the grounds established in the contract. PRNG will be able to immediately terminate the contract in the event of negligence, abandonment of duties or non-fulfillment of any of the contractual obligations. Non-fulfillment, among other things, will include the Contractor not providing services required by PRNG after having requested them in writing or by any other approved means of communications.

NO services are to be paid for that are in violation to this clause, since it is understood that any official that request and/or accepts services from another part that is in violation to this disposition, is doing so without any appropriate legal authority

17. **<u>Contractual Legal Remedies Controversies and Pertinent Laws</u>:** This contract will be governed by the laws of the Government of Puerto Rico and the United States of America. Should any disposition, cause or part of this contract be contested for any reason before a Court of Law and declared unconstitutional or null, such determination will not affect, undermine, or invalidate the remaining dispositions or clauses of this contract, rather, in its effect will limit only to the disposition declared unconstitutional or null. Both parties accept that the San Juan Superior Court (Court of First Instance) will be the court with pertinent jurisdiction to elucidate any judicial action originating from this contract.

18. **<u>Drug Free Workplace Act of 1988</u>:** The Contractor certifies that it will maintain a drug free working environment. It also certifies the publication and distribution of material related to the prohibition of controlled substances and the penalties that these are subject to, and that prevention and detection of drug programs have been established. The Contractor will inform PRNG in case of a conviction for drugs in the workplace area and the disciplinary actions that will be taken against any employee convicted for criminal offenses related to the use and abuse of controlled substances according to the "Drug Free Workplace Act of 1988".

19. **<u>Police Record Check</u>:** The Contractor agrees to submit to a background check prior to providing services to PRNG. The background check will be completed by PRNG and includes a criminal record check, verification against the national sex offenders register and any other verification that deem necessary in relationship with the services to be provided by the Contractor. The background checks must show no convictions or pending criminal charges that would render the Contractor to provide the services requested in the contract.

20. **<u>Prohibition of Certain Telecommunications & Video Surveillance Services or Equipment</u>:** Recipients are prohibited from obligating or expending grant funds to procure/obtain; extend/renew a contract; enter into a contract to procure/obtain equipment, services, or systems that uses covered telecommunications equipment/services as a substantial or essential component of a system. Public Law 115-232 identifies covered telecommunication equipment produced by HUAWEI TECHNOLOGY COMPANY or ZTE CORPORATION or any subsidiary/affiliate; HYTERA COMMUNICATIONS CORPORATION, HANGZHOU HIKVISION DIGITAL TECHNOLOGY COMPANY, DAHUA TECHNOLOGY COMPANY or subsidiary/affiliate. *2 CFR 200.216; Public Law 115-232.*

We certify that we will comply with the clauses and conditions established by the precedent clauses, laws, and regulations.

_____
Compañía

_____
Nombre

_____ _____
Firma **Sello Corporativo de la Compañía**

Attachment 4

IMPERATIVE INCLUSION CLAUSES

CLÁUSULAS DE INCLUSIÓN IMPERATIVA EN TODO CONTRATO DE SERVICIOS PROFESIONALES O COMPRADOS (Carta Circular 001-2021)

Todos los contratos de servicios profesionales o comprados cuya cuantía exceda diez mil dólares ($10,000) deberán contener textualmente las siguientes cláusulas:

a. Cláusula de servicios interagenciales: Ambas partes contratantes reconocen y acceden a que los servicios contratados podrán ser brindados a cualquier entidad de la Rama Ejecutiva con la cual la entidad contratante realice e1 acuerdo interagencial o por disposición directa de la Secretaría de la Gobernación. Estos servicios se realizarán bajo los mismos términos y condiciones en cuanto a horas de trabajo y compensación consignados en este contrato. Para efectos de esta cláusula, el término entidad de la Rama Ejecutiva incluye a todas las agencias del Gobierno de Puerto Rico, así como a las instrumentalidades y corporaciones públicas y a la Oficina del Gobernador.

b. Cláusula de terminación: La Secretaría de la Gobernación tendrá la facultad para dar por terminado el presente contrato en cualquier momento.

c. Política de Revisión de Contratos de la Junta de Supervisión y Administración Financiera para Puerto Rico: Las Partes reconocen que el CONTRATISTA ha presentado la certificación titulada "Requisito de Certificación del Contratista, requerida de conformidad con la Política de Revisión de Contratos de la Junta de Supervisión y Administración Financiera para Puerto Rico, vigente a partir del 6 de noviembre de 2017 y según enmendada el 30 de octubre de 2020, firmada por el Director Ejecutivo del Contratista (u otro funcionario con una posición o autoridad equivalente para emitir tales certificaciones). Se incluye como anejo a este Contrato, copia firmada del "Requisito de Certificación del Contratista".

_____ _____

Nombre del Representante Autorizado del Contratista Fecha

_____

Firma del Representante Autorizado del Contratista