

**X. SUPPLEMENTARY GENERAL  
CONDITIONS**

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## SUPPLEMENTARY GENERAL CONDITIONS

### ARTICLE 1 ADMINISTRATIVE MATTERS

#### BASIC DEFINITIONS

**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.

**Force Account or Force Account Work** – Additional work that is paid for on the basis of actual cost plus an established fee.

**Inspector** – An authorized representative of the Architect or the Engineer, assigned to make a detailed inspection of performance of any or all portions of the work.

**Laboratory** – The testing laboratory of the Owner or any other testing laboratory approved by the Architect or the Engineer.

**Major and Minor Contract Items** – Any item having a contract value equal to or greater than five (5) per cent 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 is increased to the extent that the total cost of the item is equal to or greater than five (5) per cent of the original contract amount.

**Resident Engineer or Resident Inspector** – the authorized representative of the Architect or Engineer in immediate charge of the inspection force.

**Right of Way** – A general term denoting land, property, or interest therein, usually in a strip, acquired for or intended to a project or public utilities.

**Special Conditions** – Special requirements regulations or directions covering conditions peculiar to a particular project. Special Conditions shall prevail over the General Conditions, Technical Specifications, and Plans. On each sheet of Special Conditions, for positive identification, there shall appear the caption "Special Conditions".

**Supplemental Agreement** – A written agreement executed by the Contractor and the Owner supplementing the Contract to cover changes or changed conditions incidental to and necessary for the acceptable completion of the project.

**Contract Limits** – The portion of the site within which the work is to be performed.

**Off-Site Work** – Work to be performed outside of the contract limits.

#### CONTRACT DOCUMENTS

The Contract consists of the following Contract Documents:

1.2.1 Instructions to Bidders;

1.2.2 The dated Contractor Proposal;

1.2.3 The PHA-Contractor Agreement:

- a. Performance Bond
- b. Payment Bond
- c. Workmen's Compensation Insurance
- d. Employer Liability
- e. Comprehensive General and Automobile Liability Insurance
- f. Builder's Risk all risks form including earthquake
- g. Installation Floater

1.2.4 General Conditions;

1.2.5 Specifications;

1.2.6 Drawings;

1.2.7 Special Conditions;

1.2.8 All addenda issued prior to execution of the Contract;

1.2.9 Any written amendments to any of the foregoing duly executed by PHA and the Contractor.

**ARTICLE 2 THE CONTRACT**

**2.1 DEFINITIONS**

A modification is a written amendment to the Contract signed by both parties covering: (1) A Change Order (2) An Extra Work Order (3) A Supplemental Agreement (4) A Written Interpretation issued by the Architect or Engineer pursuant to Subparagraph 2.2.5 or (5) A Written Order for a Minor Change in the Work issued by the Architect or Engineer, pursuant to Paragraph 13.3. A Modification may be made only after execution of the Contract.

**2.2 EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS**

2.2.1 The Agreement shall be signed in not less than triplicate 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 identified by their authorized representatives.

2.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

2.2.3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Documents is to include all labor, materials, equipment, and other items as provided in Subparagraph 5.4.1 necessary for the proper execution and completion of the Work.

2.2.4 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. Words which

have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

2.2.5 The organization of the Specifications into divisions, sections and articles, and the arrangement to 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.

2.2.6 Written interpretations or Request for Information (RFI) 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 Architect or Engineer and in accordance with any schedule agreed upon. Either party to the Contract may make written request to the Architect or Engineer for such interpretations. Such interpretations shall be consistent with and reasonably inferable from the Contract Documents and may be effected by Field Order. Interpretation drawings are not changes in the Work.

### **2.3 COPIES FURNISHED AND OWNERSHIP**

2.3.1 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, six (6) complete sets of Drawings and Specifications reasonably necessary for the execution of the Work.

## **ARTICLE 3 ARCHITECT OR ENGINEER**

### **3.1 ADMINISTRATION OF THE CONTRACT**

3.1.1 The Architect or Engineer will provide general Administration of the Construction Contract, including performance of the functions hereinafter described.

3.1.2 The Architect or Engineer will be the Owner's representative. The Architect or Engineer will have authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument which will be shown to the Contractor.

3.1.3 The Architect or Engineer will be, in the first instance, the interpreter of the requirements of the Contract Documents. The Architect or Engineer will, within a reasonable time, render such interpretations as he may deem necessary for the proper execution or progress of the Work.

3.1.4 Claims, disputes and other matters in question relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Architect or Engineer for decision which he will render in writing within a reasonable time.

3.1.5 All interpretations and decisions of the Architect or Engineer shall be consistent with the intent of the Contract Documents. In his capacity as interpreter and judge, he will exercise his best efforts to insure faithful performance.

3.1.6 All disputes under this contract shall be decided by the Architect or Engineer whose decision shall be final and binding, except disputes concerning the cost or amount of claims involving change in contract price, which shall be decided by the Architect or Engineer subject to claims procedure included in the Contract Documents. Arbitration to resolve any dispute arising from the Construction Agreement is not accepted herein.

3.1.7 The Architect or Engineer will not be responsible for any acts or omissions of the Contractor, any Subcontractor or any Sub-Subcontractor, or any of their agents or employees, or any other persons performing any of the Work.

3.1.8 The Architect or Engineer shall have the right to stop the Work, in whole or in part, in an emergency or when such stoppage is necessary to insure the proper execution of the Contract.

- 3.1.9 The Architect or Engineer will have authority to reject Work which does not conform to the Contract Documents. Whenever, in its reasonable opinion, it considers it necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work, whether such Work shall be then fabricated, installed or completed in accordance with Paragraph 8.9 weather or not such Work then fabricated, installed or completed. However, neither the Architect or Engineer to act under this Subparagraph 3.2.10, 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 Architect or Engineer to the Contractor, any Subcontractor, or any Sub-Subcontractor, or any of their agents or employees, or any other person performing any of the Work, nor will the Contractor be relieved from any of its obligations under the Contract.
- 3.1.10 The Architect or Engineer may designate one or more assistants or representatives to represent him as Resident Engineers or Inspectors for the work, fully empowered to represent the Architect or Engineer in all matters pertaining to inspection of work done and materials furnished by the Contractor and Subcontractors. Such inspection may extend to all or any part of the work, the Resident Engineer 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 Architect or Engineer. Resident Engineers and Inspectors are not authorized to alter or waive any requirements of the Contract.

#### **ARTICLE 4 OWNER**

##### **4.1 DEFINITION**

- 4.1.1 The Owner is the Department, Agency, Public Corporation or any other Instrumentality of the Government of the Commonwealth of Puerto Rico as identified in the Agreement. It shall also include the Government of the Municipalities when these General Conditions are made part of their Contract Documents. The term Owner means the Owner or the Contracting Officer, as defined in Subparagraph 4.1.2.
- 4.1.2 The Contracting Officer is the person who may officially be designated by the Owner as his authorized representative for signing the Agreement and providing the functions hereinafter described.

##### **4.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

- 4.2.1 The Owner shall furnish all available information describing the physical characteristics, legal limits and utility locations for the Project.
- 4.2.2 Unless otherwise specified, the Owner will set construction stakes establishing property lines, slopes, continuous profile-grade, centerline, and bench marks for the project, and will furnish the Contractor with all necessary information relating to lines, slopes and grades. These stakes and marks shall constitute the field control by and in accordance with which the Contractor shall establish other necessary controls and perform the work. The Contractor shall be held responsible for the preservation of all stakes and marks, and if any of the construction stakes or marks have been carelessly or willfully destroyed or disturbed by the Contractor, the cost of replacing them will be charged against him and will be deducted from the payment for the work. The Owner will be responsible for the accuracy of lines, slopes grades and other engineering work which is set forth under this section. When the Contractor is required to perform the stake out operations, he shall furnish and set all construction stakes and marks with his own personnel and he shall assume all responsibility for the accuracy of staking and for its preservation and replacing until the work is completed. The Owner will provide information regarding references points for location and construction and may, at any time, check the stakes and marks set by the Contractor which, if found in error, shall be reset in the correct location by the Contractor at the Contractor's expense.
- 4.2.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

#### **ARTICLE 5 CONTRACTOR**



## **5.1 SUPERVISION**

The Contractor shall supervise and direct the Work competently and efficiently, devoting such attention and applying such skills and expertise as are necessary to perform the Work in accordance with the Contract. The Contractor shall be solely responsible for the means, methods, techniques and procedures employed in the Construction of the Work, except to the extent otherwise expressly provided in the Contract Documents. The Contractor shall give the work full attention necessary to facilitate the progress thereof, and shall cooperate with the Architect or Engineer, the Inspectors and other Contractors in every way possible, in order to comply with the Contract Documents.

## **5.2 ACCEPTANCE OF CONTRACT DOCUMENTS AND SITE**

The Contractor represents that it has reviewed all Applicable Laws and the Contract Documents carefully and is satisfied with the same, and acknowledges that it can perform the Work as required under the Contract Documents and can achieve completion of the Work within the Contract Time. The Contractor agrees that the Owner has not made, and shall not be deemed to have made, any representations or warranties whatsoever with respect to the Contract Documents, whether as to the adequacy, completeness or sufficiency thereof, or otherwise. The Contractor shall be responsible for identifying and promptly resolving or correcting any conflicts, ambiguities, errors, omissions and defects in the Contract Documents which should reasonably have been detected through the bidding and construction process. All such conflicts, ambiguities, errors, omissions or defects shall be promptly brought to the attention of the Architect or Engineer. The Contractor further represents that the Contractor has examined and understands all of the Contract Documents, has visited the Site and examined and become familiar with local conditions under which the Work is to be performed, has verified to its satisfaction the nature and quality of the Work involved, and has correlated its personal observations with the requirements of the Contract Documents.

The Architect or Engineer after being notified by the Contractor of such errors, inconsistencies or omissions will make the corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract Documents.

## **5.3 TAXES**

5.3.1 The Contractor shall, at its sole cost, be responsible for, and shall pay all sales consumers, use and any other taxes required by law and necessary for the execution and completion of this Contract.

## **5.4 SUPERINTENDENT**

5.4.1 The Contractor shall contract a Professional Engineer or a License Architect as a construction superintendent and necessary assistants who shall be in attendance at the project site at all times during the prosecution of the work. The superintendent shall be satisfactory to the Owner or his representatives and shall not be changed except with the consent of the Owner, unless the Superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The Superintendent shall be invested with authority to act for the Contractor on all matters that may arise during the prosecution of the work and all the instructions given to him by the Owner or his authorized representative shall be as binding as if given to the Contractor. Important communications will be so confirmed in writing. Other communications will be so confirmed on written request in each case. Such superintendence shall be furnished by the Contractor irrespective of the total amount of the work. The Contractor shall, before commencing operations submit to the Owner the name and qualifications of the Superintendent.

## **5.5 RESPONSIBILITY FOR THOSE PERFORMING THE WORK**

5.5.1 In case of a temporary suspension of the Work, from any cause whatsoever, the Contractor shall be responsible for the Work and shall take such reasonable precautions as may be necessary to prevent damage to the Work, provide suitable drainage and erect necessary temporary structures, signs or other facilities, at its expense.

5.5.2 The Contractor shall, at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him.

## **5.6 PROSECUTION AND PROGRESS**

5.6.1 Immediately after being awarded the Contract, the Contractor shall deliver to the Owner a construction progress schedule in form satisfactory to the Owner showing the proposed dates of commencement and completion of each of the various items of the work. This schedule after approved by the Owner shall become a part of the Contract Documents and shall be revised as required by the conditions of the work, subject to the Owner's approval.

5.6.2 The Contractor shall start work on the part of the project set forth in the progress schedule, Special Provisions or Drawings, and the work shall be conducted in such a manner and with sufficient materials, equipment and labor as considered necessary to insure its completion in accordance with the Contract Documents within the time set forth in the Contract.

## **5.7 CUTTING AND PATCHING**

5.7.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Other Contractors by cutting, patching or otherwise altering such construction, or by excavation.

## **5.8 INDEMNIFICATION**

5.8.1 The policy shall be specifically endorsed to cover the liability assumed by the named insured under the contract, and shall quote the above "Save Harmless" clause.

5.8.2 The limits of insurance for this coverage shall be the same as for the Comprehensive General Liability Policy.

## **ARTICLE 6 SUBCONTRACTORS**

### **6.1 AWARD OF SUBCONTRACTS FOR PORTIONS OF THE WORK**

6.1.1 Unless otherwise specified in the Contract Documents the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner in writing for his acceptance a list of the names of the Subcontractors proposed for the principal portions of the Work. The Owner shall promptly notify the Contractor in writing if he, after due investigation, has reasonable objection to any Subcontractor on such list and does not accept him. If within fifteen (15) days from submittal by the Contractor, the Owner or Architect or Engineer fails to make objection to any Subcontractor on the list, it shall constitute acceptance of such Subcontractor.

6.1.2 If the Owner refuses to accept any Subcontractor or 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. No increase in the Contract Sum shall be allowed for any such substitution.

6.1.3 The Contractor shall not make any substitution for any Subcontractor who has been accepted by the Owner, unless the substitution is acceptable to the Owner.

6.1.4 Unless otherwise specified the Contractor shall execute with his own organization work amounting to not less than fifty (50) percent of the original total contract cost. Any items designated in the Contract Documents as "Specialty 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 organization.

## **6.2 SUBCONTRACTUAL RELATIONS**

- 6.2.1 By written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner.
- 6.2.1 Each Subcontract shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights.
- 6.2.2 The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors.
- 6.2.3 Require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 10.
- 6.2.4 Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contracts Documents for like claims by the Contractor upon the Owner.
- 6.2.5 Waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Paragraph 12.3, except such insurance held by the Owner as trustee under Paragraph 12.3.
- 6.2.6 Obligate each Subcontractor specifically to consent to the provisions of this Paragraph 6.3.

## **6.3 PAYMENTS TO SUBCONTRACTORS**

- 6.3.1 The Contractor will be responsible for payment to each Subcontractor upon receipt of payment from the Owner, of an amount equal to the percentage of completion allowed to the Contractor on account of such Subcontractor's Work, less the percentage retained from such payments, and shall provide to the Owner evidence of such payments with each Application for Payment. The Owner shall not have any obligation to pay or to see to the payment of any monies to any Subcontractor, or Sub-Subcontractor except as may otherwise be required by law. If the Owner fails to issue a Certificate for Payment due to the fault of the Contractor and not the fault of a particular Subcontractor, the Contractor shall pay the Subcontractor on demand, made at any time after the Certificate for Payment should otherwise have been issued, for its Work to the extent completed, less the retained percentage. The Owner may, on request and at its discretion, furnish to any Subcontractor, if practicable, information regarding the percentage of completion certified by the Contractor on account of Work done by such Subcontractor.
- 6.3.2 The Contractor shall be responsible for prompt payment to each Subcontractor of a just share of any insurance moneys received by the Contractor.

## **ARTICLE 7 SEPARATE CONTRACTS**

### **7.1 MUTUAL RESPONSIBILITY OF CONTRACTORS**

- 7.1.1 If part of the Work depends for proper execution or results upon construction or operations by other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect or Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that other Contractors' completed or partially completed construction is fit and proper to receive the Work, except as to defects not then reasonably discoverable

Whenever the Work is dependent upon the work of an Other Contractor, the Contractor shall:

7.1.1.1 Coordinate its dependent Work with such other work;

7.1.1.2 Provide the Other Contractor with all necessary dependent data and requirements;

7.1.1.3 Examine the drawings and specifications of the work of the Other Contractor;

7.1.1.4 Notify the Other Contractor, with a copy of the notice delivered to the Owner of all improperly installed work which would prevent satisfactory installation of the dependent Work; and

7.1.1.5 Take all other steps as are necessary to ensure that the dependent Work is properly constructed and installed.

- 7.1.2 Should the Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor shall, upon due notice, settle with such other contractor by agreement or arbitration, if he will so settle. If such separate contractor sues the Owner or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceedings at the Owner's expense; and if 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 or arbitration costs which the Owner has incurred.

### **7.2 CUTTING AND PATCHING UNDER SEPARATE CONTRACTS**

- 7.2.1 Each contractor under separate contracts shall be responsible for any cutting, fitting and patching that may be required to complete his Work except as otherwise specifically provided in the Contract Documents. A Contractor shall not endanger any work of any other contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other contractor except with the written consent of the Architect or Engineer.

- 7.2.2 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore.

### **7.3 OWNER'S RIGHT TO CLEAN UP**

- 7.3.1 If a dispute arises among the Contractor and other Contractors as to their respective responsibilities for maintaining the Site and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible as the Architect or Engineer determines to be just.

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

### **8.1 GOVERNING LAW**

- 8.1.1 The Contract shall be governed by the laws of the Commonwealth of Puerto Rico and federal laws.

## **8.2 SUCCESSORS AND ASSIGNS**

- 8.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the 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.

## **8.3 WRITTEN NOTICE**

- 8.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known by the person who gives the notice.

## **8.4 NOTICE OF INJURIES OR DAMAGES**

- 8.4.1 Should either party to the Contract suffer injury or damage to person or property because of any of his employees, agents or others for whose acts he is legally liable, a notice shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

## **8.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND**

- 8.5.1 Unless otherwise specified in the Contract Documents, the Contractor shall furnish a Performance Bond in an amount equal to one hundred (100) percent of the Contract Sum as security for the faithful performance of this Contract and also Labor and Material Payment Bond in an amount not less than one hundred (100) percent of the Contract Sum as security for the payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with this Contract. The Performance Bond and the Labor and Material Payment Bond shall be delivered to the Owner not later than the date of execution of the Contract.

## **8.6 RIGHTS AND REMEDIES**

- 8.6.1 Duties and obligations imposed by the Contract Documents and rights and remedies available there under shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or in equity.

## **8.7 PROCUREMENT AND DELIVERY OF MATERIALS**

- 8.7.1 The Contractor shall procure with reasonable diligence and deliver to the job site all materials required to insure timely execution and completion of the work.
- 8.7.2 Within a period of ten (10) calendar days after the owner's approval, the Contractor will be required to place with the manufacturer or manufacturer's representative all orders for materials and or equipment not commercially produced or available in Puerto Rico.
- 8.7.3 Delivery at the site of all materials and equipment required for the execution and completion of the work shall be scheduled at a convenient time within the limits fixed for the termination of the contract so as to avoid delays in the prosecution and completion of the work.

## **8.8 FEDERAL AID PROVISIONS**

- 8.8.1 When the United States Government pays all or any portion of the cost of a project, the Federal laws and the rules and regulations made pursuant to such laws must be observed by the Contractor, and the work shall be subject to the inspection of the appropriate Federal Agency.

8.8.2 Such inspection shall in no sense make the Federal Government a party to this Contract and will in no way interfere with the rights of either party hereunder.

8.8.3 The Contractor shall extend the same courtesies to the representatives of the Federal Government as are required to be extended to representatives of the Government of Puerto Rico.

## **8.9 MAINTENANCE DURING CONSTRUCTION**

8.9.1 The Contractor shall maintain the Work during construction and until the Work is completed in full. This maintenance shall constitute continuous and effective work prosecuted Day by Day, with adequate equipment and forces to the end that all Work covered by the Contract is kept in satisfactory and acceptable conditions at all times.

8.9.2 All cost of maintenance during construction and before the Work is accepted shall be included in the unit prices bid on the various pay items and the Contractor will not be paid an additional amount for such work.

8.9.3 If the Contractor at any time fails to comply with the provisions of Paragraph 8.9, the Architect or Engineer will immediately notify the Contractor of such non-compliance. If the Contractor fails to remedy unsatisfactory maintenance within twenty-four (24) hours after receipt of such notice, the Architect or Engineer may immediately notify the Contractor of such non-compliance. If the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the Architect or Engineer may immediately proceed to maintain the Work, and the entire cost of this maintenance will be deducted from monies due or to become due to the Contractor under the Contract.

## **ARTICLE 9 TIME**

### **9.1 DEFINITIONS**

9.1.1 The Contract Time is the period of time allotted in the contract documents for completion of the work.

9.1.2 The date commencement of the work is the date established in the Notice to Proceed.

9.1.3 The date of substantial completion of the work or designated portion thereof is the date certified by the Architect or Engineer when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner may occupy the work or designated portion thereof for the use for which it is intended.

9.1.4 The term day as used in the Contract Documents shall mean calendar day.

9.1.5 Acts of God are events in nature so extraordinary that the history of climate variations and other conditions in the particular locality affords no reasonable warning of them. Such as an earthquake, hurricane or other cataclysmic phenomenon. A rain, windstorm, flood or other natural phenomenon of normal intensity for the particular locality shall not be construed as an Act of God.

### **9.2 PROGRESS AND COMPLETION**

9.2.1 All time limits stated in the Contract Documents are of the essence of the Contract. The time limit for the execution of this Contract has been figured out on the basis that work on the premises will be carried out only during regular working week of eight (8) hours working day nor more than forty four (44) hours per week, and taking into consideration all Sundays and legal holidays included within the said time limit. No work shall be performed on extra hours, Sundays or holidays, except in cases of emergency, or unless prior written permission has been granted by the Architect or Engineer. Except in cases of emergency, request for permission to work extra hours, Sundays or legal holidays shall be filed by the Contractor with the Architect or Engineer not less than forty-eight (48) hours in advance. In case of emergency, for completion

of the daily work, permission for extra hours should be arranged with the Resident Engineer or Resident Inspector. Work that is not expected to be completed in the course of the working day should not be started.

9.2.2 It is understood that the legal holidays mentioned in subparagraph 9.2.2 are the following:

- New Year's Day
- Three Kings Day
- Good Friday
- Independence Day
- Labor Day
- Commonwealth of Puerto Rico Constitution Day
- Election Day (When occurring)
- Thanksgiving Day
- Christmas Day

9.2.3 Time extensions due to inclement weather which affects the project progress will be considered only if they are over and above that what are normally expected in this locale. To avoid misunderstanding during the construction, the following normal amount of delay caused by the inclement weather which affects critical work in the project is to be expected each calendar month of the Project schedule. The hours described below are total hours of work delay based on an eight (8) hour working day.

- January: 48 hours
- February: 40 hours
- March: 32 hours
- April: 32 hours
- May: 48 hours
- June: 48 hours
- July: 48 hours
- August: 56 hours
- September: 56 hours
- October: 48 hours
- November: 48 hours
- December: 48 hours

- 9.2.4 Only time lost for weather related occurrences over and above the monthly tally mentioned in subparagraph 9.2.3, as certified by the Owner, with each month considered individually, will be granted as time extension without consideration of any additional cost to the Owner whatsoever.
- 9.2.5 The Contractor shall commence the Work promptly upon receipt of the Notice to Proceed, and shall prosecute the Work expeditiously with adequate forces and equipment and shall complete it within the Contract Time.
- 9.2.6 The date or time of completion included in the Contract, shall be the date of Substantial Completion as defined in Subparagraph 9.1.3, including authorized extensions.

### **9.3 DELAYS AND EXTENSION OF TIME**

- 9.3.1 No extensions of the completion date will be allowed for any reason except as provided below:
- 9.3.1.1 If satisfactory fulfillment of the Contract with authorized extensions and increases shall require 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 may be increased on a basis commensurate with the amount and difficulty of the added work.
- 9.3.1.2 In case of total suspension ordered 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 partial suspension ordered by the Owner not due to any fault of the Contractor, the Contract Time may be extended to the extent of the effect that such suspension may bear on the Contract, as determined by the Owner.
- 9.3.1.3 In case of damages to the work due to unforeseeable causes such as Acts of God or by the public enemy, the Owner may make allowance of Contract Time for the time required to repair the damage. If the Contractor is allowed to recover the expense to repair the damage and an allowance of Contract Time has been made for the cost therefore, said amount shall not be considered in the total cost of the contract for the purpose of time extension.
- 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 labor disputes, fire, unusual delay in transportation, unavoidable casualties, by any other cause not attributable to the fault or negligence of the Contractor, then the Contractor, then the Contract Time shall be extended by written order for reasonable time as the Architect or Engineer may determine.
- 9.3.1.5 Additional time will be allowed if at the time of executing a Change Order, Extra Order, Extra Work Order of Supplemental Agreement, a time extension is agreed upon and so stipulated in the written order or agreement, in which case the added cost of such work will not be considered for time extension. If no time extension is stated, any added cost resulting thereof will be considered for time extension.
- 9.3.1.6 As certified by the Resident Engineer or Resident Inspector, additional time will be allowed due to weather conditions which render the performance of work impossible.
- 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, Architect or Engineer due to the fault of the Contractor or his Subcontractor.
- 9.3.2.2 Unauthorized suspensions of work by the Contractor.



9.3.3 All claims for extension of time shall be made in writing to the Architect or Engineer not more than fifteen (15) days after the occurrence of the delay; otherwise they shall not be considered, except when the cause for delay is directly attributable to the Owner. These claims shall include: (a) the circumstances as may be required by the Architect or Engineer, (b) the operation alleged to have been delayed, (c) the calendar dates on which the operation were delayed and (d) the number of calendar days by which he is requesting the completion date to be extended.

#### **9.4 LIQUIDATED DAMAGES**

9.4.1 The amount stipulated in the Special Conditions and the Agreement shall be considered and treated not as a penalty, but as fixed and agreed liquidated damages due the Owner by the Contractor or, by the Surety in case of default, by reason of public inconvenience, obstruction to traffic, interference with business, increasing of engineering, inspection and administrative cost to the Owner; and other items which have caused an expenditure of public funds, resulting from the Contractor's or in case of default of the Surety's failure to complete the work within the time specified in the Contract or as extended by written authorized by the Owner.

9.4.2 Permitting the Contractor to continue and finish the Work or any part thereof after expiration of date of completion shall in no way operate as a waiver on their part of the Owner of any of its rights under this contract.

### **ARTICLE 10 PAYMENT AND COMPLETION, PAYMENT AND MEASUREMENT**

#### **10.1 CONTRACT SUM**

The Contract Sum is the contract Price as stated in the Agreement and is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents subject to additions and deductions. The amount payable to the Contractor shall be the actual total cost of the work performed and accepted.

#### **10.2 SCHEDULE OF VALUES**

10.2.1 In Unit Price Contracts, the Contractor will submit for approval to the Architect or Engineer whichever applicable a schedule of values for those Lump Sum bid items only. This schedule when approved by the Architect or Engineer shall be used only as a basis for the monthly partial payments.

#### **10.3 PROGRESS PAYMENTS**

10.3.1 From each partial payment the Owner shall retain ten (10) percent of the estimated amount except as provided in subparagraph 10.3.2.

10.3.2 After fifty (50) percent of the adjusted work has been completed, the Owner may pay in full any of the subsequent partial estimates, provided the progress and quality of work is satisfactory.

10.3.3 Immediately after the Architect or Engineer on the basis of an inspection has determined and certified that the Work is totally complete and acceptable, the Owner may release to the Contractor fifty (50) percent of the amount previously retained provided the following conditions are met:

10.3.3.1 A written consent of Surety to make such payment is submitted.

10.3.3.2 There are no claims to be settled from the Owner to the Contractor; otherwise the Owner will pay to the Contractor the undisputed amount.

10.3.3.3 Liquidated damages do not exceed fifty (50) percent of the amount previously retained by the Owner.

10.3.4 All work performed or labor and materials furnished on a force account basis shall be paid for as follows:

10.3.4.1 Labor: For all labor, and for foremen in direct charge of specific operations, the Contractor shall receive the rate of wage agreed upon in writing before beginning work for each and every hour that said labor and foremen are actually engaged in such work. The Contractor shall also receive the actual cost paid to or on behalf of workmen by reason of subsistence and travel allowance, health and welfare benefits, pension fund benefits and other benefits when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work. To said cost an amount equal to 20 percent of the sum thereof shall be added unless otherwise specified in the Special Conditions.

10.3.4.2 Materials: For all materials accepted by the Architect or Engineer and used, the Contractor shall receive the actual cost of such materials, delivered on the work, including transportation charges paid by him. To said cost an amount equal to 15 percent of the sum thereof shall be added, unless otherwise specified in the Special Conditions.

10.3.4.3 Equipment:

- a. Equipment on the Work: For all equipment authorized by the Architect or Engineer to be used on the force account work the Contractor shall receive rental payment computed using an hourly rate which is 1/176<sup>th</sup> of the monthly rate listed in the Associated Equipment Distributor's current rental book. Rental will be paid for the time in hours the equipment is in actual operation on the force account work. The minimum rental time to be paid for each day of operation shall be not less than eight (8) hours, except if the Contractor uses such equipment on other work, then he will be paid only for actual time used in the force account work. If monthly rates for the equipment actually being used are not listed in the Associated Equipment Distributor's current rental book, the rental rate shall be computed using an hourly rate which is 1/176<sup>th</sup> of the prevailing monthly rates being paid for such equipment in the area in which the project is located. To compensate for fuel, lubricants, all repairs, and all other operating and maintenance costs other than operator's wages, the Contractor will be reimbursed thirty five (35) percent of the rental rates specified above. To the rental rates specified above an amount equal to fifteen (15) percent shall be added, to equipment not owned by the Contractor.
- b. Equipment not on the Work: For the use of equipment moved in on the Work and used exclusively for the work paid for on a force account basis, the Contractor will be paid the rental rates listed in the Associated Equipment Distributor's current rental book. If rental rates for the equipment are not listed in the Associated Distributor's current rental book, the Contractor shall receive the prevailing rental rates being paid for such equipment in the area in which the project is located. The rental time to be paid shall be the time that the equipment is at the site of the force account work, and shall terminate at end of the day on which the Architect or Engineer or his representative directs the Contractor to discontinue the use of such equipment, including the time required to move the equipment to and from the location of the force account work. If the Architect or Engineer determines that the Contractor could not reasonably obtain the equipment at the rental rates listed in the Associated Equipment Distributor's current rental book, the Architect or Engineer may authorize payment for the use of such equipment at equipment rental rates in excess of those listed as applicable for the use of such equipment subject to the following conditions: (1) The Architect or Engineer shall specifically approve the necessity for the use of particular equipment on such work, (2) The Contractor shall establish to the satisfaction of the Architect or Engineer that such equipment cannot be obtained from his normal equipment source at the rate listed in the Associated Equipment Distributor's current rental book, (3) The Contractor shall establish to the satisfaction of the Architect or Engineer that the proposed equipment rental rate for such equipment from his proposed source is reasonable and appropriate for the expected period of use, and that (4) the Architect or Engineer shall approve the equipment source and the

equipment source and the equipment rental rate to be paid by the Owner before the Contractor begins work involving the use of said equipment. The Contractor will be reimbursed for the cost of transporting equipment to the location of the force account work and its return to its original location. Should the Contractor desire the return of the equipment to a location other than its original location, the Owner will pay the cost of transportation, provided such payment shall not exceed the cost of moving the equipment to the site of the force account work. The minimum rental time to be paid for each of operation shall be not less than one day. It follows then that the rental time to be paid during the entire rental period will be in accordance with the following: (1) If the equipment is operated less than 3 days, rental time will be paid at a daily rate, (2) if operated more than three days but less than three (3) weeks, rental time will be paid at a weekly rate, and (3) if operated more than three (3) weeks, rental time will be paid at a monthly rate. Equipment which by its nature is rented on a hourly basis, the rental payment shall be computed using an hourly rate for the time in hours the equipment is in actual operation on the force account work as provided in Paragraph 10.3.4.3a. Rental time will not be allowed while equipment is inoperative due to breakdowns in excess of one day per breakdown. To compensate for fuel, lubricants, all repairs, and all other operating and maintenance costs other than operator's wages, the Contractor will be reimbursed thirty five (35) percent of the rental rates specified above. To the rental rates specified above, an amount equal to fifteen (15) percent shall be added.

10.3.4.5 Tools: No allowance shall be made for the use of small tools and manual equipment.

10.3.4.6 Bond, Insurance, and Tax: For Workmen's compensation insurance premium unemployment insurance contribution, social security taxes, any other employment taxes or fees required by law, and property damage and liability insurance premiums on the force account work, the Contractor shall receive the actual cost plus an amount equal to six (6) percent of actual cost. The Contractor shall furnish satisfactory evidence of the rate paid for such bonds, insurance and taxes.

10.3.4.7 Superintendence and Owner: No additional allowance shall be made for general superintendence, overhead or other costs for which no specific allowance is herein provided.

10.3.4.8 Compensation as set forth above shall be received by the Contractor as payment in full of the extra work done on a force account basis.

10.3.4.9 At the end of each day, the Contractor and the Resident Engineer or Resident Inspector shall compare records of the cost of work done on a force account basis. Copies of these records shall be made upon suitable forms and signed by both the Resident Engineer and Resident Inspector and the Contractor or their authorized representatives and each party will retain one copy. All claims for extra work done on a force account basis shall be submitted each month to the Architect or Engineer together with receipted bills or certified statement of the cost of materials used and any other expenses in connection with said work.

10.3.4.10 No payment will be made for force account work unless the Contractor shall furnish the Architect or Engineer duplicate itemized statements of the cost of such force account work detailed as to the following:

- 1) Nature of work performed
- 2) Name, classification, date, daily hours, total hours, rate benefits and extension for each laborer, foreman equipment operator.
- 3) Designation dates, daily hours, total hours, rental rate and extension for each unit of machinery and equipment.
- 4) Quantities of materials used, prices and extensions.

- 5) Transportation of materials.
- 6) Cost of insurance premiums and taxes.

10.3.5 Materials which have been delivered to the project in accordance with the requirement of the plans or Contract, but which, due to revisions or elimination of items authorized by the Architect or Engineer or due to discrepancies in the plans or Contract, are not used in the work, the Contractor upon request will be reimbursed for the actual verified cost of such material delivered at the project site, including handling charges less any discount allowed on the invoice, but with no percentage added, and such material will thereafter become the property of the Owner.

10.3.6 The issuance of a Certificate for Payment will constitute a representation by the Resident Engineer or Resident Inspector, based on his observations at the site that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by the Contract Documents correctable prior to completion, and to any specific, qualifications stated in his Certificate); and that the Contract is entitled to payment in the amount certified. In addition, the Owner's Final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment have been fulfilled. However, by issuing a Certificate for Payment, the Owner or his representative shall not thereby be deemed to represent that he has made exhaustive or continuous on site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the money previously paid on account of the Contract Sum.

#### **10.4 PAYMENT WITHHELD**

If the Architect or Engineer is unable to recommend payment in the amount of the Application for Payment, the Architect or Engineer will so notify the Contractor. If the Contractor and the Architect or Engineer cannot agree on a revised amount, the Architect or Engineer will recommend to the Owner that a Certificate for Payment be issued for the amount determined to be properly due. The Architect or Engineer may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued. The Owner (in addition to and without limitation of any other rights and remedies of the Owner under the Contract Documents) may withhold payment of any amounts claimed to be due by the Contractor and certified for payment, in each case to such extent as may be necessary in order to provide for retention covering the fair value of any Claims, costs, losses or damages the Owner may have against the Contractor, which amounts may include, but shall not be limited to, the fair value of any Claims, costs, losses or damages arising from:

- 10.4.1 Defective Conditions not remedied;
- 10.4.2 Failure to carry out the Work in accordance with the Contract Documents or other default by the Contractor under, or failure of the Contractor to comply with any provisions of, the Contract Documents.

#### **10.5 MEASUREMENT AND PAYMENTS**

10.5.1 The determination of quantities of work acceptably completed under the terms of the contract will be made by the Architect or Engineer and based on measurements made by him or his assistants according to the units or measure for each item as shown in the proposal and by the method indicated in the corresponding specification for said item.

#### **10.6 FAILURE OF PAYMENTS**

- 10.6.1 In those cases where the Owner is responsible for the preparation of monthly certificate, if the Owner fails to pay the Contractor within sixty (60) calendar days after the date established by the Owner in writing for the preparation of the monthly certificate of the progress estimate as certified by the Resident Engineer, interest at the annual rate published by the Office of the Commissioner of Financial Institutions of Puerto Rico for the applicable period will be paid to the Contractor beginning on the 61<sup>st</sup> day after the date established by the Owner in writing for the preparation of the monthly certificate of the progress estimate as certified by the Resident Engineer and extending to the date the monthly certificate is paid, provided that the Contractor review, accepts and sign the monthly certificate on the same date it is actually prepared and certified by the resident Engineer. In the event the contractor fails to review, accept, and sign the monthly certificate on the same date it is actually prepared and certified by the Resident Engineer, and monthly certificate is not paid within the stipulated sixty (60) days after the date established by the Owner in writing for the preparation of the monthly certificate of the Progress estimate as certified by the Resident Engineer, the number of days on which interest accrues will be reduced by the number of days the Contractor requires to sign and submit the monthly certificate to the Owner.
- 10.6.2 In those cases where the Contractor is responsible for the preparation and submission of the monthly certificate, if the Owner fails to pay the Contractor within sixty (60) days after the date established by the Owner in writing for the preparation and submission by the Contractor of the monthly certificate of the progress estimate as certified by the Resident Engineer, interest at the annual rate published by the Office of the Commissioner of Financial Institutions of Puerto Rico for the applicable period will be paid to the Contractor beginning on the 61<sup>st</sup> day after the date established by the Owner in writing for the preparation and submission by the Contractor of the monthly certificate of progress estimate as certified by the Resident Engineer, and extending of the date the monthly certificate is paid, provided that the Contractor prepares and submit the monthly certificate on the date established by the Owner in writing for its preparation and submittal by the Contractor and duly certified by the Resident Engineer. In the event the Contractor fails to prepare and submit the certified monthly certificate on the date established by the Owner in writing, the number of days on which interest accrues will be reduced by the number of days the Contractor requires to prepare and submit the monthly certificate after the date established by the Owner writing to do so.

## **10.7 SUBSTANTIAL COMPLETION AND FINAL PAYMENT**

### **10.7.1 Substantial Completion**

When, in the Contractor's judgment, the Work is Substantially Complete and ready for inspection, the Contractor shall submit a written certification to the Architect or Engineer that the Work has been Substantially Completed in accordance with the Contract Documents. The Architect or Engineer shall then make an inspection of the Work with the Contractor in order to determine whether the Work is Substantially Complete.

### **10.7.2 Final Acceptance**

Upon written notice from the Contractor that the Work is Finally Complete and ready for final inspection and acceptance, the Architect or Engineer will make a final inspection of the Work within ten (10) calendar days from notice. If, on the basis of such inspection, the Work is found to be Finally Complete and the Contract fully performed, the PHA shall issue a Certificate of Final Completion.

Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Owner (1) an Affidavit that all payrolls, bills for the materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety to final payment and (3), if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any

such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

If after Substantial Completion of the Work final completion thereof is materially delayed through no fault of the Contractor, and the Architect or Engineer so confirms, the Owner shall, upon certification by the Architect or Engineer make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as required in Subparagraph 8.5.1, 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 the Contractor to the Owner prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

#### 10.7.3 The making of final payment

- 1) Unsettled liens and unsettled claims previously made in writing.
- 2) Faulty or defective work appearing after Substantial Completion, as specified in Subparagraph 14.2.2.
- 3) Failure of the Work to comply with the requirements of the Contract Documents, or
- 4) Terms of any special guarantees required by the contract Documents. Should final payment on project not be made within ninety (90) calendar days after the Contractor has submitted all the documents required for final payment for those items mutually accepted by both parties, interest at the rate of six (6) percent per annum will be paid the Contractor for the beginning on the 91<sup>st</sup> day after the Contractor has submitted the documents required for final payment and extending to the date the final estimate is paid.

### **ARTICLE 11 PROTECTION OF PERSONS AND PROPERTY**

#### **11.1 SAFETY PRECAUTIONS AND PROGRAMS**

11.1.1 The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, including, but not limited to, compliance by the Contractor, all Subcontractors and Sub-Subcontractors with all safety precautions and programs required by the Occupational Safety and Health Act, other Applicable Laws and the Contract Documents.

#### **11.2 SAFETY OF PERSONS AND PROPERTY**

11.2.1 The Contractor shall take all necessary precautions for the safety of, and shall provide protection to prevent damage, injury or loss to:

11.2.1.1 employees on the Site and other persons who may be affected thereby;

11.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-Subcontractors; and

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

11.2.2 The Contractor shall designate a member of the Contractor's organization at the Site, experienced in construction safety and security, who shall report directly to the Contractor's Project Executive, and who shall, as his primary responsibility, be responsible for the implementation of the Contractor's safety plan, and the implementation of a security program to provide for, at a minimum:

11.2.2.1 security requirements and procedures to address responding to, and protecting against, acts of crime, trespassing and vandalism, and lost or stolen equipment and materials from the Site;

11.2.2.2 procedures for Site security, employee and visitor Site security and in-progress construction security; and

11.2.2.3 establishment of security perimeters and implementation of security measures at the Site, such as fencing, and lighting.

11.2.3 The Contractor shall not load or unload, or allow to be loaded or unloaded, any part of the Construction at the Site so as to endanger its safety.

### **11.3 EMERGENCIES**

11.3.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss and shall as promptly as conditions permit notify insurance carriers, the Architect or Engineer and the PHA of the nature of the emergency and circumstances related thereto. Immediately thereafter, Contractor shall prepare a written report setting forth in detail the action taken and describing in detail all circumstances and conditions which are related to such action.

## **ARTICLE 12 INSURANCE**

### **12.1 CONTRACTOR'S BOND AND INSURANCE**

12.1.1 The Contractor must, within ten (10) consecutive 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:

1. Performance Bond to guarantee the faithful performance of the Contract, in an amount equal to one hundred (100) percent of his bid.
2. Payment Bond including Labor bond in an amount equal to one hundred (100) percent of his bid.
3. Evidence of the following insurance coverage if required in the contract Document:
  - a. Workmen's Compensation Insurance Policy issued by the Puerto Rico State Insurance Fund.
  - b. Employer's Liability.
  - c. Comprehensive General and Automobile Liability Insurance.
  - d. Builder's Risk all risks form including earthquake.
  - e. Installation Floater Policy.

12.1.2 All the above referred to bonds and policies must be satisfactory to the Owner in compliance with the law, and in form and amount properly sufficient to protect the Owner.

12.1.3 It shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure to maintain adequate coverage shall not relieve the contractor of any contractual responsibility or obligation. The certificates file with the Owner shall state that thirty (30) days written notice will be given to the Owner before any policy covered thereby is changed or canceled.

12.1.4 If at the due date of the policies the project is still under construction and the Contractor has not renewed the policies the Owner can renew then and deduct the amount paid for the premium from the next payment.

## 12.2 WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY

12.2.1 This insurance shall protect the contractor against all claims under applicable state workmen's compensation law. The Contractor shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not all within the provisions of a workmen's compensation law. The liability limits shall not be less than:

Workmen's compensation	Statutory
Employer's Liability	\$ 100,000 each person

## 12.3 COMPREHENSIVE GENERAL AND AUTOMOBILE LIABILITY INSURANCE

12.3.1 Public liability insurance shall be written in comprehensive form and shall protect the Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor of his agents or employees. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under the General Conditions. The liability limits shall not



Property Damage

100,000	each occurrence
200,000	aggregate

**12.4 BUILDER'S RISK**

- 12.4.1 This insurance shall be written under and all risks form including earthquake and shall protect the Contractor and the Owner against damages to buildings, structures, and materials and equipment not otherwise covered under installation floater insurance. The amount of such insurance shall be not less than the insurance value of the work at completion less the value of the materials and equipment insured under installation floater insurance. Equipment such as pumps, engine-generators, compressors, basin equipment, motors switchgear, transformers, panel boards, control equipment, and other similar equipment shall be insured under installation floater insurance when the aggregate value of the equipment exceeds \$10,000.00. If the work does not include the construction of structures, builders risk insurance may be omitted at the option of the owner as indicated in the contract documents. Builders risk insurance shall provide for losses to be payable to the Contractor and the Owner as their interests may appear and shall contain a waiver of subrogation rights against the insured parties.

**12.5 INSTALLATION FLOATER**

- 12.5.1 The insurance shall protect the Contractor and the Owner from all insurable risks of physical loss or damage to materials and equipment not otherwise covered under builder's risk insurance, while in warehouses or storage areas, during installation, testing, and after the work is completed. It shall be of the "all risks" type, with coverage designed for the circumstances which may occur in the particular work included in this contract. The coverage shall be for an amount not less than the insurable value of the work at completion, less the value of the materials and equipment insured under builder's risk insurance. The value shall include the aggregate value of the Owner's furnished equipment and materials to be erected or installed by the Contractor not otherwise insured under builder's risk insurance. Installation floater insurance shall provide for losses to be to be payable to the Contractor and the Owner as their interests may appear and shall contain a waiver of subrogation rights against the insured parties. If the aggregate value of the Owner's furnished and Contractor's furnished equipment is less than \$ 10,000, such equipment may be covered under builder's risk insurance shall quote the insuring agreement and all exclusions as they appear in the policy; or in lieu of certificates, copies of the complete policy may be submitted.

**12.6 SUBCONTRACTOR'S AND SUB-CONTRACTOR'S INSURANCE**

- 12.6.1 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 maintain in effect, insurance of the types and with limits not less than the minimum amounts specified above, or insure the activity of his subcontractors in his own policy.

**ARTICLE 13 CHANGES IN THE WORK**

**13.1 CHANGE ORDERS AND EXTRA WORK ORDERS**

- 13.1.1 Change Orders shall set forth the agreement of the Owner and the Contractor with respect to any of the following:
- 13.1.1.1 a change in the Work consisting of additions, deletions or other revisions;
  - 13.1.1.2 the amount of the adjustment in the Contract Price, if any; and
  - 13.1.1.3 the amount of the adjustment in the Contract Time, if any.

- 13.1.2 Any adjustment in the Contract Price as a result of a Change in the work, except for adjustments in the Contract Price resulting from costs incurred as a result of delay, shall be determined in one or more of the following ways:
- 13.1.2.1 By mutual acceptance of a lump sum; or
  - 13.1.2.2 By cost to be determined in a manner agreed upon by the Owner and the Contractor.
- 13.1.3 When negotiating change orders Contractors will be allowed a maximum of:
- 13.1.3.1 fifteen (15) percent to cover indirect costs and profit if they perform the work
  - 13.1.3.2 ten (10) percent to cover indirect costs and profit if a subcontractor performs the work. In addition the subcontractor will be allowed also a ten (10) percent to cover indirect costs and profit.
- “Subcontractor” is defined in the contract documents and shall be presented as such at the beginning of the project.
- 13.1.4 If the Contractor claims the additional cost is involved because of (1) any written interpretation issued pursuant to Subparagraph 2.2.6, (2) any order by the Owner to stop the Work where the Contractor was not at fault, or ( 3 ) any written order for a minor change in the Work issued, the Contractor shall make such claim.
- 13.1.5 An Extra Work Order is a written order signed by the Owner or his representative authorizing a change in the Work, adjustment in the Contract Sum and the Contract time for services or work for which there is no applicable basis of payment, either direct or indirect, provided in the proposal or the contract or if the resulting overruns or underruns of any item or items exceed certain percentages. The percentages and the method to be followed for unit price adjustment shall be as follows:
- 13.1.5.1 Overruns of more than twenty five (25) percent of any major item or items shall require a negotiated unit price which shall be covered by a Supplemental Agreement. The original unit price shall apply to all work performed up to one hundred twenty five (125) percent of the original proposal quantity for the item, and the negotiated unit price shall apply only to the quantity of work performed in excess of said 125 percent. If a satisfactory negotiated price cannot be agreed upon for any item or items, the Owner reserves the right to require the contract to perform the work by Force Account or to eliminate the increased quantity from the contract.
  - 13.1.5.2 Underruns of more than twenty five (25) percent of any major item or items shall require a negotiated unit price for the units of work finally performed which shall be covered by a Supplemental Agreement. The total quantity of work finally performed shall be paid at the negotiated unit price, but in no case will the amount paid for the total quantity performed exceed seventy five (75) percent of the original total amount for the item.
  - 13.1.5.3 Overruns of a minor item to the extent that the amount of the item calculated at the original unit price, exceeds 6.25 percent of the original contract amount, shall require a negotiated unit price which shall be covered by a Supplemental Agreement. The original unit price shall apply to all work performed in the item up to a value of 6.25 percent of the original contract amount and the negotiated price cannot be agreed upon, the Owner reserves the right to require the Contractor to perform the work by force account or to eliminate the increased quantity from the Contract.

## **ARTICLE 14 TERMINATION OF THE CONTRACT**

### **14.1 OWNER’S RIGHT TO POSTPONE OR DISCONTINUE OPERATIONS**

- 14.1.1 If the Owner shall consider it necessary or desirable, for any reason whatsoever, before completion of the work here under, to postpone or abandon further operations, the Contract may be terminated by the Owner and in that event Owner shall pay the Contractor, in full settlement of all claims by him hereunder, an amount to be determined as follows:
- 14.1.1.1 The Work performed and acceptable by the Owner shall be paid in accordance with the terms of the Contract.
  - 14.1.1.2 The actual cost of all acceptable material for which orders have been placed by the Contractor for use under this contract, it being agreed that, if required by the Owner, the contractor shall make every possible effort, to cancel such orders.
  - 14.1.1.3 The actual cost of acceptable fabricated materials, called for hereunder, and already fabricated whether in the shop, or in transit thereof;
  - 14.1.1.4 The actual amount paid by the Contractor for construction equipment rentals up to the time of the aforementioned termination, plus any amounts accrued or payable under written contracts for the rental of such equipment it being agreed that the Contractor shall make every possible effort to cancel any such contracts. If the equipment is owned by the Contractor, he will be paid the prevailing rental rates.
  - 14.1.1.5 The actual cost to the contractor of bonds, insurances and taxes as required under the contract; for the period of the work's stoppage.
  - 14.1.1.6 Fixed Expenses for the period of the work's stoppage, such as supervisory, administrative, and operations personnel salaries, utilities, equipment, and miscellaneous expenses such as safety and vigilance.
  - 14.1.1.7 Overhead and profit in the amount of 15% of all expenses detailed under .2,.3,.4 and .6 above only, provided, however, that such costs are not in excess of reasonable market prices for the same or similar materials, equipment and services. From the total of all the foregoing costs as determined there shall be deducted all payments thereon previously made and all proper charges to the Contractor in relation therewith.
- 14.1.2 In case the contract is terminated under the above provisions the Contractor shall be under no further obligation to the Owner with reference to the work eliminated. Termination of a contract, as stated above, will not relieve the Contractor of his responsibilities for the completed work, nor shall relieve his surety of its obligation for and concerning any just claims arising out of the completed work.

## **14.2 CONTRACTOR'S RIGHT TO TERMINATE THE CONTRACT**

- 14.2.1 If the work should be substantially stopped by the Owner by any reasons whatsoever through no act or fault of the contractor for a period of ninety (90) calendar days from written notice of the Owner and the Architect or Engineer, the Contractor may terminate the Contract and recover from the Owner payment for all work executed as specified in Subparagraph 14.1.1.1, 14.1.1.2, 14.1.1.3, 14.1.1.4, 14.1.1.6 and 14.1.1.7.