

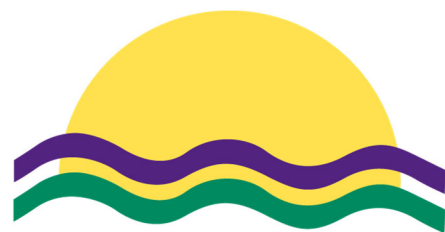
## EXHIBIT P: General Conditions

HURRICANE MARIA RECONSTRUCTION  
Category E (Buildings and Equipment)

FEMA PROJECT NUMBER # 77979 & 118695

**Bid Number: CDIPC-2023-001**

Compañía para el Desarrollo Integral de la Península de Cantera



Proyecto Península de Cantera  
*¡Nuestro Orgullo!*

**EXHIBIT P**  
**General Conditions**

**1. BASIC DEFINITIONS**

**1.1. DEFINITION OF TERMS**

Wherever in these General Conditions, or in other contract documents the following terms or pronouns are used, their definition and meanings shall be interpreted as follows:

**1.2. CDIPC**

The Owner, Compañía para el Desarrollo Integral de la Península de Cantera.

**1.3. ARCHITECT OR ENGINEER(A/E)**

Designer and/or Supervisor of the project. The Architect or Engineer (A/E) is the person lawfully licensed to practice architecture or engineering in Puerto Rico and is referred to throughout the Contract Documents as if singular in number. The term A/E means the Architect or Engineer or his authorized representative.

**1.4. CONTRACT**

The Contract Documents for the Construction Contract is a written document, signed by the parties, and duly registered in the Office of the Comptroller of Puerto Rico (OCPR) that represents the entire and integrated agreement including the proposal submitted by the Contractor and approved by the Executive Director as authorized by the Board of Directors of the Compañía para el Desarrollo Integral de la Península de Cantera. The Contract may be amended or modified only by a Change Order that must be approved by the Executive Director or CDIPC's Board of Directors and registered in the Office of the Comptroller of Puerto Rico. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and Contractor. The Inspector and A/E shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

**1.5. CONTRACTOR**

The Individual, Partnership, Firm or Corporation executing a Contract as Party of the Second Part, acting directly or through his lawful agents or employees, who is primarily liable for the acceptable performance of the work or services for which the Entity has contracted; and for the payment of all legal debts pertaining to the work.

**1.6. CONTRACT DOCUMENTS**

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract, that comply with the Article 1.4.

### **1.7. CONTRACT ARTICLES**

The obligation of the Contract, including performance of all work or services and furnishing of all labor and materials, described in the text of a Specific Item included in the Contract.

The entire proposal submitted by the Contractor and approved by the Executive Director and the Board of Directors of the CDIPC will be included as integral part of the Contract.

### **1.8. INSPECTOR**

The Inspector is the authorized representative of the Owner assigned to supervise the construction work. The Inspector is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Inspector" means the Inspector or the Inspector's authorized representative. For the purpose of Small Projects, such as the ones in this IFB, the Inspector will perform the responsibilities referred to the A/E.

### **1.9. MODIFICATION**

A modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, duly authorized by the Executive Director or CDIPC's Board of Directors and register in the OCPR.

### **1.10. OWNER**

Is referred throughout the Contract Documents as if singular in number representing the Compañía para el Desarrollo Integral de la Península de Cantera (CDIPC). The term "Owner" means the Owner or the Owner's representative.

### **1.11. PROJECT**

The project is the total execution of the Scope of Work, of which the work to be performed under the Contract Documents may be the whole or a part and which may include construction by the Owner including persons or entities under separate contracts not administered by the Inspector or by separate contractors.

### **1.12. PROJECT MANUAL**

The Project Manual is a volume or set of volumes assembled for the work, which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

### **1.13. REFERENCE STANDARDS**

All applicable laws, rules, regulation, standards, specification, ordinance, codes, and orders of all federal, commonwealth or municipal governmental bodies, agencies, authorities, and courts having jurisdiction.

### **1.14. SUPPLEMENTARY CONDITIONS**

Special requirements, regulations or directions prepared to cover conditions peculiar to projects which are not thoroughly or satisfactorily stipulated in these specifications. Supplementary Conditions are made a part of the contract with the express purpose that they shall prevail over all other specifications and over all plans, in that and because they set forth the final contractual intent as to matter involved.

### **1.15. SPECIFICATIONS**

The Specifications are an integral part of the Contract Documents consisting of the written requirements for materials, equipment, and systems, standards and workmanship for the Work, and performance of related services.

### **1.16. SUBCONTRACTOR**

A Subcontractor is a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site. The term Subcontractor is referred throughout the Contract Documents as if singular in number and means the Subcontractor or his authorized representative.

### **1.17. SUB-SUBCONTRACTOR**

A Sub-subcontractor is a person or entity that has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### **1.18. WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or part of the Project.

## **2. GENERAL PROVISIONS OF THE CONTRACT DOCUMENTS**

### **2.1. CORRELATING, EXECUTION, AND INTENT OF THE CONTRACT DOCUMENTS**

**2.1.1.** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. If any provision in any of the component parts of this Contract conflicts with any provision of any other component part, the following order of priorities shall govern:

1. The Agreement, including bonds and insurance coverage required
2. Addenda
3. General Conditions
4. Project Manual
5. Project Reports generated by FEMA
6. Contractor's proposal as accepted by the Owner

**2.1.2.** The Owner and Contractor shall sign the Agreement and any written amendment to the Agreement. Their authorized representatives, if not signed by the Owner or Contractor, shall identify the other component parts of the Contract Documents.

**2.1.3.** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with the requirements of the Contract

Documents.

- 2.1.4.** Organization of the Specifications into divisions, sections and articles, and 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.
- 2.1.5.** In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an”, but the fact that a modifier of an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.
- 2.1.6.** 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 A/E and in accordance with any schedule agreed upon. Either Party to the Contract may make written requests to the A/E for such interpretations. A/E will be part of the construction process on a case-by-case study, since the Inspector will be assuming the A/E responsibilities in Small Projects such as the ones included in this IFB. Such interpretations shall be consistent with and reasonably inferable from the Contract Documents. Interpretations are not modifications.

## **2.2. COPIES FURNISHED AND OWNERSHIP**

- 2.2.1.** The Contractor will be furnished, free of charge, two (2) complete sets of the Scope of Work reasonably necessary for the execution of the Work.
- 2.2.2.** The Scope of Work and other documents prepared by the A/E and consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project.
- 2.2.3.** The Contractor, Subcontractors, and material or equipment suppliers shall be authorized to use and reproduce applicable portions of the Scope of Work and other documents prepared by the A/E and consultants appropriate to and for use in the execution of their Work under the Contract Documents.

## **2.3. AUTHORITIES OF THE OWNER**

- 2.3.1.** The CDIPC's Board of Directors through the designated Executive Director and their representatives shall decide all questions, which may arise as to the quality or acceptability of materials furnished and work performed. It shall also decide the manner of performance and rate of progress of the work, the interpretations of the Scope of Work and the acceptable fulfillment of the Contract in the part of the Contractor. Its decisions shall be final and shall be enforced as having executive authority. This authority may be delegated at the discretion and orders of the Executive Director which has been designated by the CDIPC's Board of Directors to assess all matters and decisions related to the reconstruction projects.

## **2.4. AUTHORITIES OF THE INSPECTOR**

- 2.4.1.** The Inspector, appointed by the Executive Director or CDIPC's Board of Directors, will be fully empowered to represent the CDIPC in all matters pertaining to inspection of work executed and materials furnished. Such inspections may extend to all or any part of the work and to the preparation or manufacture of the materials to be used. In case of any dispute as to material furnished or the manner of performing the work, the Inspector shall have the Authority to

reject materials if they are not in compliance with specifications and request work be suspended in the particular area until the question at issue can be referred to and decided by the Executive Director or the Board of Directors. The Inspector shall not be authorized to revoke, alter, enlarge, relax, or release any requirements of the scope of work, nor to approve or accept any portion of the work or to issue instructions contrary to the scope of work.

- 2.4.2.** The Inspector shall have free access, always, to all parts of the work and to all materials intended for use in the work. The Contractor shall furnish the Inspector with every reasonable facility for ascertaining whether the work as performed is in accordance with the requirements and intent of the plans, specifications, and Contract. No work shall be done, nor materials used without suitable supervision or inspection by the Inspector. Failure to reject any defective work or materials shall not in any way prevent later rejection when such defects are discovered. Neither shall such failure obligate the Owner to final acceptance. The Contractor shall furnish the Inspector such information and assistance as may be required to make complete and detailed inspection. If the Inspector requires it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination by the Inspector, the Contractor shall restore said portions of work to the standards required by the scope of work. Should the work thus exposed and examined prove acceptable, the uncovering or removing and replacing of the covering or making good of the parts removed, shall be paid for as extra work, but should the work so exposed and examined prove unacceptable, the uncovering or removing and replacing of the covering and making good the parts removed, shall be at the Contractor's expense. When the United States Government (ie. FEMA, COR3, etc.) is to pay a portion of the cost or is directly affected by the work covered by this Contract, the work involved shall be subject to inspection by its authorized representatives. Such inspection shall not, in any sense, make the United States Government Agency a party of this Contract, and will in no way interfere with the rights of the Compañía para el Desarrollo Integral de la Península de Cantera or the Contractor. The authorized representatives and agents of the United States Government Agency(ies) shall be permitted to inspect (audit) all work materials, payrolls, and records of personnel, invoices of materials, and other relevant data and records.

### **3. OWNER**

#### **3.1. INFORMATION AND SERVICES REQUIRED OF THE OWNER**

- 3.1.1.** The Owner or Owner's representative shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall furnish any other information or services relevant to the Contractor's performance of the Work under the Owner's control after receipt from the Contractor of a written request for such information or services.
- 3.1.2.** The Owner shall furnish, upon request of the Contractor, all available information describing the physical characteristics, legal limits, and utility locations for the Project.
- 3.1.3.** The Owner shall forward all communications to the Contractor through the Inspector and shall contemporaneously provide the same communications to the A/E, when applicable.

#### **3.2. OWNER'S RIGHT TO STOP THE WORK**

- 3.2.1.** If the Contractor fails to correct the defective Work which is not in accordance with the

requirements of the Contract Documents, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, the Contractor shall have no more than ten (10) calendar days to correct the cause of the work stoppage.

### **3.3. OWNER'S RIGHT TO CARRY OUT THE WORK**

- 3.3.1.** If after receipt of the written notice from the Owner to the Contractor detailed in 3.2.1 above to carry out the work in accordance with the contract documents, the Owner may give the Contractor and Surety a five (5) calendar day written notice to meet with the Owner to determine the steps for the completion of the project.

### **3.4. OWNER'S RIGHT TO POSTPONE OR DISCONTINUE OPERATION.**

- 3.4.1.** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period as the Owner may determine.

- 3.4.2.** The Contract Sum and Contract Time shall be adjusted for increases and decrease in the cost and/or time caused by suspension, delay or interruption as described below. Adjustment of the Contract Sum shall include profit and 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. No adjustment shall be made to the extent:

1. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. That an equitable adjustment is made or denied under another provision of the Contract.

- 3.4.3.** The Owner may, at any time, terminate the Contract, for the Owner's convenience and without cause with a thirty (30) day written Notice. Upon receipt of written notice from the Owner of such termination, the Contractor shall:

1. Cease operations as directed by the Owner in the notice.
2. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work.
3. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all rentals of equipment, existing subcontracts, purchase orders and enter no further subcontracts and purchase orders.

- 3.4.4.** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor, in full settlement of all claims by him hereunder, an amount to be determined as follows:

1. The Work performed and accepted by the Owner shall be paid in accordance with the terms of the Contract.
2. The actual cost of all acceptable materials for which orders have been placed by the Contractor for use under this Contract.
3. The actual cost of acceptable fabricated materials, called for hereunder, and already fabricated whether in the shop, or in transit.

4. Other costs incurred by reason of such termination, using unit prices in the breakdown for payment.

**3.4.5.** 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 unless this Work is related to Work done or completed by the Contractor.

**3.4.6.** 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.

### **3.5. OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**3.5.1.** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project under these or similar Conditions of the Contract not administered by the Inspector.

**3.5.2.** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so.

**3.5.3.** The Contractor shall afford the Owner's own forces, Inspector and other contractors, reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall properly connect and coordinate his Work with theirs.

**3.5.4.** If any part of the Contractor's Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to inspect and report shall constitute acknowledgement that the other contractor's work is suitable to receive his Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work. However, the Contractor is not responsible for the approval of the other Contractor's Work.

**3.5.5.** If a dispute arises between the separate contractors as to their responsibility for cleaning up, the Owner may clean up and charge the cost thereof to the several contractors and/or their Surety as determined to be just.

### **3.6. OWNER'S RIGHT TO TERMINATE THE EMPLOYMENT OF THE CONTRACTOR**

**3.6.1.** The Owner may terminate the Contract if the Contractor:

1. Persistently or repeatedly refuses or fails to supply enough properly skilled workmen, enough and proper materials, or equipment.
2. Fails to make prompt payment to subcontractors or for materials.
3. Persistently disregards laws, ordinances, or the instructions of the A/E.
4. Fails to begin the work within the period specified in the Order to Proceed.



5. Refuses or fails to prosecute the work, or any part thereof, with or any extension thereof. Such diligence as will ensure its completion within the time specified.
6. Fails to complete the work within agreed upon time.
7. Neglects or refuses to remove condemned work materials or performs new work as may have been rejected for being defective or unsuitable.
8. Abandons or discontinues the execution of the work without authority.
9. If the Contractor is negligent of a substantial violation of any provision of the Contract.
10. If the Contractor has insufficient materials to insure the completion of work within the contract time.
11. If the work is performed unsuitably.
12. If the Contractor commits any act of insolvency or bankruptcy or shall allow any final judgment in connection of the Contract to stand against him unsatisfied for such period as stipulated in the Decree of Judgment.

**3.6.2.** If after receipt of the written notice from the Owner to the Contractor detailed in 3.2.1 above to carry out the work in accordance with the contract documents, the Owner may give the Contractor and Surety a five-calendar-day written notice to meet with the Owner to determine the steps for the completion of the project.

**3.6.3.** All costs and charges incurred by the Owner or any damages that should be borne by the Contractor, together with the costs of completing the work under the Contract, shall be deducted from any money due the Contractor or any part thereof. In case the costs, charges and damages paid by the Owner shall be less than the amount which would have been payable under the contract, if the same has been completed by the Contractor or his Surety shall be entitled to receive the difference and if the total of such costs, charges and damages exceeds the balance of the Contract Price which would have been payable to the Contractor had they completed the work, then the Contractor and Surety shall, on demand, pay the Owner the full amount of such excess. In determining the final cost, the time of completion by the Owner, if the work is taken over, shall be used in determining the amount of liquidating damages to be deducted in case the work is not completed within the Contract time as originally set or extended.

**3.6.4.** The foregoing provisions are in addition to, and not in limitation of the rights of the Owner under any other provisions of the Contract.

#### **4. CONTRACTOR**

##### **4.1. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**4.1.1.** Since the Contract Documents, and the Contract between the parties (including the Contractor's entire proposal) are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various scope of work and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to the Contractor. The Contractor shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Inspector and A/E as a Request for Information

(RFI) in such form as the A/E may require.

- 4.1.2.** Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Inspector and A/E, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building code, rules and regulations, but any nonconformity discovered by or made known by Contractor shall be reported promptly to the Inspector and A/E.
- 4.1.3.** If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the A/E in response to the Contractor's notices or requests for information pursuant to the above Subparagraphs, the Contractor shall make appropriate Claims as stipulated in the contract to the Inspector. If the Contractor fails to perform the obligations of the above Subparagraphs, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner, Inspector or to the A/E for damages resulting from errors, inconsistencies, or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error inconsistency, omission or difference and knowingly failed to report it to the Inspector and A/E.

#### **4.2. SUPERVISION AND CONSTRUCTION PROCEDURES**

- 4.2.1.** The Contractor shall supervise and direct the Work, using his best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures; and for coordinating all portions of the Work under the Contract, subject to overall coordination of the Inspector as provided in Subparagraphs 6.2.3 and 6.2.4 unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences, or procedures may not be safe, the Contractor shall give timely written notice to the Owner, Inspector and A/E and shall not proceed with that portion of the Work without further written instructions from the Inspector. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences, or procedures without acceptance of changes proposed by them, the Owner shall be solely responsible for any resulting loss or damage.
- 4.2.2.** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.
- 4.2.3.** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- 4.2.4.** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Inspector or A/E in their administration

of the Contract, or by tests, inspections and/or approvals required or performed by persons other than the Contractor.

#### **4.3. LABOR AND MATERIAL**

- 4.3.1.** Unless otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, construction equipment and machinery, water, light, power, transportation, superintendence, temporary construction of every nature, including Inspector's and A/E's field offices, as may be described as part of the technical specifications, utilities, and all other services and facilities of every nature whatsoever necessary to execute, complete and deliver the work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. In the case of Small Projects, such as the ones included in this IFB, the Contractor is not required to provide an Inspector and A/E field office.
- 4.3.2.** Unless otherwise specifically stated in the Contract Documents, the Contractor shall engage an independent testing firm to perform soils and materials tests and reports, to secure compliance with the scope of work, when applicable.
- 4.3.3.** The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Inspector and A/E, giving careful evaluation to the following items:
1. represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all aspects to the specified product.
  2. represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified.
  3. certifies that the cost data presented is complete and includes all related costs under this Contract, except the A/E's analysis and redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent.
  4. will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all matters.
- 4.3.4.** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons included in the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

#### **4.4. WARRANTY**

- 4.4.1.** The Contractor warrants to the Owner that all materials and equipment furnished under the Contract will be of good quality and new unless otherwise specified, and that the Work will be of the best quality, free from defects and in conformity to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Inspector or A/E, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 4.4.2.** Contractor shall rebuild, repair, restore and make good of any damages to any portion of the work 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.

- 4.4.3.** In case of temporary suspension of work from any cause whatsoever the Contractor shall be responsible for the project and shall take such reasonable precautions as may be necessary to prevent damage to the project, provide suitable drainage and erect necessary temporary structures, signs, or other facilities, at his expense.

**4.5. TAXES**

- 4.5.1.** The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor, which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely schedule to go into effect.

**4.6. PERMITS FEES AND NOTICES**

- 4.6.1.** The Contractor shall secure and pay for all permits, governmental and municipal fees, licenses, and certified inspections necessary for the proper execution and completion of this Contract, which are applicable at the time the bids are received.
- 4.6.2.** The Contractor shall comply with and give notices required by all Federal, Commonwealth and Municipal laws, ordinances, rules, regulations, by-laws, and all orders or decrees as exist at present or may be enacted later by bodies or Courts having any jurisdiction or authority which in any manner affect those engaged or employed on the work or which in any way affect the progress of the work.
- 4.6.3.** In the event of any change in the Contract Documents to comply with any Federal, Commonwealth and Municipal laws, ordinances, rules, regulations, by-laws, and all orders or decrees and such change involves a change in the contract price, the Contractor shall promptly notify the Owner, Inspector and A/E in writing, and necessary changes shall be accomplished by appropriate Modification, via Change Order of the Executive Director or Board of Directors of the CDIPC and later a Contract.
- 4.6.4.** If the Contractor performs any work knowing it to be contrary to such Federal, Commonwealth and Municipal laws ordinances, rules, regulations, by-laws, and all orders or decrees and without such notice to the Owner, Inspector and A/E, the Contractor shall assume full responsibility therefore, and shall bear all costs arising, therefore.

**4.7. ALLOWANCES**

- 4.7.1.** The Contractor shall include in the Contract Sum allowance stated in the Contract Documents, if applicable. Such persons or entities shall supply for such amounts and items covered by allowances as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.
- 4.7.2.** Unless otherwise provided in the contract documents:
- a) Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, minus applicable trade discounts.
  - b) Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances.

- c) Whenever costs are more than or less than allowance, the Contract Sum shall be adjusted according by Change Order. The amount of the Change Order shall reflect:
  - i. The difference between actual costs and allowance under the above Subparagraphs; and,
  - ii. Changes in Contractor's costs under the above Subparagraphs.

- 4.7.3.** Materials and equipment under an allowance shall be selected by the Owner in enough time to avoid delay in the Work.

#### **4.8. SUPERINTENDENT**

- 4.8.1.** The Contractor shall employ a competent construction Superintendent and necessary assistants who shall always be present at the project site during the prosecution of the work. The Superintendent shall be satisfactory to the Owner and shall not be changed except with the consent of the Owner unless the Superintendent proves to be unsatisfactory to the Contractor. 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 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. The Contractor irrespective of the total amount of the work shall furnish such superintendence. The Contractor shall, before commencing operations submit to the Owner the name and qualifications of the Superintendent.

#### **4.9. PROSECUTIONS AND PROGRESS**

- 4.9.1.** General Requirements for Construction Progress Schedule. The Contractor shall prepare and submit for the Inspector and A/E review and conditional acceptance a Construction Progress Schedule for the Work in accordance with this Subsection. The Progress Schedule shall show the full detail for the entire Work and, once conditionally accepted by the CDIPC, will become the baseline Project Schedule.
- 4.9.2.** For Small Projects such as the ones included in this IFB, where work to be performed is of limited complexity, the contractor may choose a simplified format of scheduling system to be used, once agreed with the project Inspector. Schedule content is to be limited to critical milestones. Project schedule must be coordinated and approved by the Inspector prior to the commencement of work to be performed. The approved project schedule is required for payment certification. Subsequent items under section 4.0 do not apply to Small Projects, unless otherwise stated.
- 4.9.3.** The Progress Schedule shall (a) be consistent with all milestone dates and completion dates specified in the Contract Documents, (b) shall be revised at the times required herein and at other appropriate intervals as required by the conditions of the Work, and (c) shall provide for expeditious and practicable execution of the Work. Inspector and A/E's conditional acceptance of the Progress Schedule for the Work shall not constitute acceptance of construction means, methods, techniques, sequences, or procedures, for which the Contractor shall have sole responsibility. The Progress Schedule shall indicate the order, sequence, and interdependence of all activities that the Contractor plans to follow in order to accomplish the work within the Contract Time, including authorized extensions. The Progress Schedule shall be comprehensive, orderly, and realistic, and shall cover activities onsite and offsite and activities

of infrastructure agencies that affect the Project.

- 4.9.4.** The Contractor shall conform to the most recent Progress Schedule. The Contractor shall furnish sufficient forces, plans and equipment as may be necessary to insure the progress of the Work in accordance with the Progress Schedule. If the Contractor falls behind the Progress Schedule, the Contractor shall promptly submit to Inspector and A/E an Updated Progress Schedule, demonstrating the manner in which the rate of progress shall be increased and shall take such steps as may be necessary to meet the Progress Schedule. The Contractor shall maintain its schedule so as not to delay the progress of the Work or the scheduled work of Other Contractors.
- 4.9.5.** The Contractor shall, with each Application for Payment, submit an Updated Progress Schedule indicating the progress and sequence of the Work, in a form acceptable to the Inspector and A/E. For Small Projects, such as the ones included in this Bid, there will not be partial payments.
- 4.9.6.** The Contractor shall always provide adequate rates of progress for the various parts of the Work to properly advance the Work and so that the Work always meets the requirements of the Progress Schedule. Whenever Critical Path Activities fall behind the planned schedule of design or construction as shown on the Progress Schedule, or when activities which were not critical become critical, Inspector and A/E shall be notified by the Contractor and advised of action being taken to return the Work to its original schedule and such action shall be indicated on an Updated Progress Schedule demonstrating the manner in which the rate of progress shall be increased and identifying the steps to be taken to recover lost time as may be necessary to meet the Progress Schedule.
- 4.9.7.** Scheduling System. For Large Projects, the Contractor shall use Primavera for Windows, or Microsoft Project, and a hardware system commensurate with the size of the Project, which shall be the "Scheduling System". The Contractor shall maintain the Scheduling System, the Progress Schedule, and Updated Progress Schedules onsite or at a location approved by the Inspector and A/E.
- 4.9.8.** Contents of Progress Schedule. The Progress Schedule shall:
1. Begin on the date of the Notice to Proceed and conclude with the date of Final Completion.
  2. Identify Work on a calendar basis using Days as a unit of measure.
  3. Show complete interdependence and sequence of construction and Work-related activities reasonably required to complete the Work.
  4. Identify Work of separate stages and other logically grouped activities, and clearly identify the critical path of activities.
  5. Reflect sequences of Work, restraints, delivery windows, review times, the Contract Time and Project Milestones as set forth in the CDIPC Contractor Agreement.
- 4.9.9.** Review Conditional Acceptance of Progress Schedule. Not later than thirty (30) Days after issuance of the Notice to Proceed, the Contractor shall submit to the Inspector and A/E for review, comment, and conditional acceptance a Progress Schedule for the entire Contract Time. The proposed Progress Schedule shall be reviewed for purposes of determining (a) compliance with applicable provisions of the Contract Documents, (b) whether the logic of the proposed Progress Schedule is sound and consistently developed and demonstrates a logical

sequencing and interdependence of activities required for the timely and orderly achievement of all Work activities and Milestones, including Substantial Completion and Final Completion of the Work within the Contract Time, and (c) whether float suppression techniques have been employed by the Contractor. Upon its conditional acceptance, such Progress Schedule will be employed by the Contractor in its scheduling and performance of the Work.

- 4.9.10.** When conditionally accepted, the Progress Schedule shall become the schedule against which all progress and revisions shall be measured. The Contractor shall revise the Progress Schedule in accordance with Subsection 4.9.11 to reflect actual progress and the Contractor's current plan for completion of the Work for the remainder of the Contract Time and submit the Updated Progress Schedule to the Inspector and A/E for review, comment, or conditional acceptance. As a condition precedent to Final Completion, the Contractor shall prepare and furnish to the Inspector and A/E a final as-built Progress Scheduled.
- 4.9.11.** The Contractor shall submit an Updated Progress Schedule for the Inspector and A/E review and conditional acceptance with each Application for Payment. The Updated Progress Schedule shall reflect: (1) the progress of the Work within five (5) Workdays prior to submission; (ii) approved changes in the Work scope and activities modified since submission; (iii) delays in Submittals or resubmittals, deliveries, or the Work; (iv) adjusted or modified sequences of Work; (v) other identifiable changes; (vi) revised projections of progress and completion; and (vii) a report of changed logic. If the Contractor fails to complete an activity by its latest scheduled completion date and this failure is anticipated to extend the Contract Time (or Milestone dates), the Contractor shall, within seven (7) days of such failure to complete the activity, submit a written statement showing how the Contractor intends to correct such failure and return to the current Progress Schedule.
- 4.9.12.** The Contractor shall submit with each Updated Progress Schedule a written certification by the Contractor's Project Manager that the Updated Progress Schedule is the actual schedule being utilized for execution of the Work. The Updated Progress Schedule submittal shall be submitted in paper and digital form.
- 4.9.13.** Immediately after being awarded the Contract, the Contractor and the Owner will establish a mutually agreeable date on which a preconstruction conference meeting will be held.
- 4.9.14.** After the Contract has been completed and signed, the Contractor will be formally notified to proceed with the work or services provided in the Contract. The Notice to Proceed will stipulate the date on which it is expected the Contractor will begin construction and from which date contract time will be charged. This notice to proceed must be done as a written notice from CDIPC.
- 4.9.15.** The Contractor shall start work on the part of the project set forth in the progress schedule, and the work shall be conducted in such a manner and with sufficient materials, equipment and labor as considered necessary to ensure its completion in accordance with the Contract Documents within the time set forth in the Contract. The Contractor shall cooperate with the Inspector in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of other Contractors or the construction or operations of the

Owner's own forces.

- 4.9.16.** The Contractor shall prepare and keep current, a schedule of submittals, which is coordinated with the Contractor's construction schedule and allows the Inspector and A/E reasonable time to review and approve submittals.
- 4.9.17.** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner.
- 4.9.18.** The Contractor shall begin work immediately after the date established by the Notice to Proceed.
- 4.9.19.** The Contractor within fifteen (15) calendar days after the date of execution of the Contract will submit for approval to the Inspector and A/E a schedule of values of the various portions of the Work aggregating the total Contract Sum, divided so as to facilitate monthly partial payments, prepared in approved forms. Each item in the schedule of values shall include its proper share of overhead and profit, except that such initial expenditures as the portion completed for mobilization, temporary facilities, premiums for insurance and bonds, and any government regulations shall be separately itemized to facilitate its request in the first partial payment. This schedule, when approved by the Inspector and the A/E shall be used as a basis for the monthly partial payments and change orders.
- 4.9.20.** The Contractor shall start work on the initial part of the project designated by the Owner and shall be conducted in such a manner and with sufficient materials, equipment and labor as are considered necessary to insure its completion in accordance with the Scope of Work and Contract, within the time set forth in the Contract and Proposal. Should the execution of the work be discontinued for any reason, the Contractor shall notify the Inspector at least 24 hours in advance of resuming operations. The Rate of Progress shall be compared with the Time Chart as the work progresses and if the Contractor falls behind schedule, they will be required to employ more equipment and labor or to modify his operations to ensure the completion within the time set in the Contract.

#### **4.10. CONTRACT DOCUMENTS AT THE SITE**

- 4.10.1.** The Contractor shall always have available on the work during the construction period, one complete copy of the Contract, all approved Plans, Specifications, Special Provisions, and authorized alterations, when applicable. The Contractor shall give the work his constant attention, shall facilitate the progress thereof and shall cooperate with the Inspector in every possible way. The Contractor shall always have a competent and satisfactory Superintendent (A/E) on the work, authorized to receive orders and act for him. In the performance of the work under this Contract, the Contractor shall so conduct his operations as to avoid interference with any other Contractors, when applicable.
- 4.10.2.** The Contractor shall maintain at the site for the Owner one (1) record copy of all Contracts, Scope of Work, Addenda, Change Orders, and other Modification, in good order and marked currently to record field changes and selections made during construction, and in addition approved shop drawings, Product Data, Samples and similar required submittals. These shall be available for the Inspector and A/E and shall be delivered to the Inspector for submittal



to the Owner upon completion of the Work.

#### **4.11. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

- 4.11.1.** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- 4.11.2.** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- 4.11.3.** Samples are physical examples, which demonstrate materials, equipment or workmanship and establishes standards by which the work will be judged.
- 4.11.4.** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents, the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.
- 4.11.5.** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Inspector and A/E, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. At the time of submission, the Contractor shall inform the Owner in writing of any deviation in the Shop Drawings or Samples from the requirements of the Contract Documents.
- 4.11.6.** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 4.11.7.** The Inspector and A/E will review and approve Shop Drawings, Product Data, Samples, and similar submittals, with reasonable promptness so as to cause no delay, but only for conformance with the design concept of the Project and with the information given in the Contract Documents. The Inspector and A/E's approval of a separate item shall not indicate approval of an assembly in which the item functions.
- 4.11.8.** The Contractor shall make any corrections required by the Inspector and A/E and shall resubmit the required number of corrected copies of Shop Drawings, Product Data, Samples, or similar submittals until approved. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections requested by the Inspector and A/E on previous submissions.
- 4.11.9.** The Inspector and A/E's approval of Shop Drawings, Product Data, Samples, or similar submittals shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Owner in

writing of such deviation, nor shall the Inspector and A/E's approval relieve the Contractor from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples, or similar submittals.

- 4.11.10.** The Contractor shall not perform any portion of the Work for which the Contract Documents require a submittal and review of Shop Drawings, Product Data, Samples, and similar submittals until the Inspector and/or A/E has approved the respective submittal.
- 4.11.11.** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the A/E's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the A/E in writing of such deviation at the time of submittal and (1) The A/E has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the A/E's approval thereof.
- 4.11.12.** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the A/E on previous submittals. In the absence of such written notice the A/E's approval of a resubmission shall not apply to such revisions.
- 4.11.13.** Informational submittals upon which the A/E is not expected to take responsive action may be so identified in the Contract Documents.
- 4.11.14.** The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Inspector or A/E will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the professional's written approval when submitted to the A/E. The Owner, Inspector and A/E shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner, Inspector and A/E have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Subparagraph, the A/E will review, approve, or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract

Documents.

#### **4.12. USE OF SITE**

- 4.12.1.** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.
- 4.12.2.** The Contractor shall coordinate their operations with, and secure the approval of the Inspector before using any portion of the site.

#### **4.13. CUTTING AND PATCHING**

- 4.13.1.** The Contractor shall be responsible for cutting, fitting, or patching required for completing the Work or to make its parts fit together properly.
- 4.13.2.** The Contractor shall not damage or endanger any portion of the work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner, Inspector and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor, the Contractor's consent to cutting or otherwise altering the Work.

#### **4.14. CLEANING UP**

- 4.14.1.** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project, waste materials, rubbish, tools, construction equipment, machinery, and surplus materials. The Contractor shall dispose of all waste materials in a manner consistent with Municipal and State Laws and Ordinances.
- 4.14.2.** If the Contractor fails to clean up as provided in the Contract Documents, the Inspector may do so with the Owner's approval and the cost thereof shall be charged to the Contractor. The cost per unit of such clean-up will be assessed as per standard costing procedure.

#### **4.15. ACCESS TO WORK.**

- 4.15.1.** The Contractor shall provide the Owner, Inspector and A/E access to the Work in preparation and progress wherever located.

#### **4.16. ROYALTIES, PATENTS AND COPYRIGHTS**

- 4.16.1.** The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Inspector and A/E harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner, Inspector or A/E. However, if the Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, the Contractor shall be responsible for

such loss unless such information is promptly furnished to the Inspector and A/E.

#### **4.17. INDEMNIFICATION**

- 4.17.1.** To the fullest extent permitted by law and, to the extent claims, damages, losses or expenses are not covered by insurance purchased by the Contractor, the Contractor shall indemnify and hold harmless the Owner, Inspector, A/E, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expenses is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.
- 4.17.2.** The obligations of the Contractor shall not extend to the liability of the Inspector, A/E, their consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Inspector, A/E, their consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

### **5. SUBCONTRACTORS AND SUB-SUBCONTRACTORS**

#### **5.1. CONTRACTUAL RELATIONS**

- 5.1.1.** Nothing contained in the Contract Documents shall create any contractual relation between the Owner and any Subcontractor or Sub-subcontractor.

#### **5.2. AWARD OF SUBCONTRACTS FOR PORTIONS OF THE WORK**

- 5.2.1.** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner for his acceptance, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Inspector will promptly reply to the Contractor in writing stating whether the Inspector, Owner and A/E, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Inspector to reply within fifteen (15) calendar days from the submittal shall constitute notice of no reasonable objection.
- 5.2.2.** The Contractor shall not contract with a proposed person or entity to whom the Owner, Inspector or A/E has made reasonable and timely objection.
- 5.2.3.** The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. If the Owner, Inspector or A/E has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Inspector or A/E has no reasonable objection. No increase in the Contract Sum or

Contract Time shall be allowed for such change.

- 5.2.4.** The Contractor shall not change a Subcontractor, person, or entity previously selected if the Owner, Inspector or A/E makes reasonable objection to such change.
- 5.2.5.** For large projects, 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.

### **5.3. SUBCONTRACTUAL RELATIONS**

- 5.3.1.** By appropriate agreement, written where legally required for validity, 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, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Inspector and A/E. Each subcontract agreement shall preserve and protect the rights of the Owner, Inspector and A/E under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice or impair such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and compensation against the Contractor that they, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Owner of the project must be notified of these agreements. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies by his own cost of the Contract Documents to which the Subcontractor will be bound and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub- subcontractors.
- 5.3.2.** The Owner may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding percentage of completion certified to the Contractor on account of Work done by such Subcontractors.
- 5.3.3.** The Owner shall not have any obligation to pay or to see to the payment of any moneys to any Subcontractor or Sub- subcontractor except as may otherwise be required by law or stipulated agreements.

## **6. A/E AND INSPECTOR**

### **6.1. RESPONSABILITIES**

- 6.1.1.** Duties, responsibilities, and limitations of authority of the Inspector and A/E as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Inspector and A/E. Consent shall not be unreasonably withheld.
- 6.1.2.** If the employment of the Inspector or A/E is terminated, the Owner shall employ a new

Inspector, or A/E.

- 6.1.3. A/E will be part of the construction process on a case-by-case study. The Inspector will be assuming the A/E responsibilities in Small Projects, such as the ones included in this Bid, unless otherwise noted.

## **6.2. ADMINISTRATION OF THE CONTRACT**

- 6.2.1. The Inspector and A/E will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence from time to time during the one-month period for correction of Work after the date of Substantial Completion. The Inspector and A/E will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. Small Projects are to be performed with a detailed Scope of Work, developed by FEMA and the CDIPC. Unless otherwise noted in writing, there will not be an A/E consultant for the implementation process of Small Projects.
- 6.2.2. The Inspector will determine in general that the Work is being performed in accordance with the requirements of the Contract Documents, will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.
- 6.2.3. The Inspector will provide for coordination of the activities of other Contractors and of the Owner's own forces with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other Contractors and the Inspector and Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction Schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall constitute the schedules to be used by the Contractor, other Contractors, the Inspector, and the Owner until subsequently revised.
- 6.2.4. The Inspector will schedule and coordinate the activities of the Contractors in accordance with the latest approved Project construction schedule.
- 6.2.5. Where applicable, the A/E will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, the A/E shall recognize and point out any such deficiencies that require correction by the Contractor, (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.
- 6.2.6. The Inspector, except to the extent required by Subparagraph 6.2.4, and A/E will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Inspector and the A/E will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Inspector and A/E will not have control over or charge of and will not be

responsible for acts or omissions of the Contractor, Subcontractors, or the agents or employees, or any other persons or entities performing portions of the Work.

- 6.2.7. Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Inspector, and shall contemporaneously provide the same communications to the A/E. Communications by and with the A/E's consultants shall be through the A/E. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Inspector and shall be contemporaneously provided to the A/E. A/E will be part of the construction process on a case-by-case study, since the Inspector will be assuming the A/E responsibilities in some Small Projects, such as the ones included in this Bid.
- 6.2.8.** The Inspector will review and certify all Applications for Payment by the Contractor, including final payment. The Inspector will assemble each of the Contractor's Applications for Payment with similar Applications from other Contractors into a Project Application and Project Certificate for Payment. After reviewing and certifying the amounts due the Contractors, the Inspector will submit the Project Application and Project Certificate for Payment, along with the applicable Contractors' Applications and Certificates for Payment, to the A/E.
- 6.2.9.** Based on the A/E's evaluations of the Contractor's Applications for Payment, and the certifications of the Inspector, the A/E will review and certify the amounts due to the Contractor and will issue Certificates for Payment in such amounts.
- 6.2.10.** The A/E will have authority to reject work that does not conform to the Contract Documents. Whenever the A/E considers it necessary or advisable the A/E will have the authority to require inspections or testing of the work but will take such action only after notifying the Inspector. Subject to review by the A/E, the Inspector will have the authority to reject Work which does not conform to the Contract Documents. Whenever the Inspector considers it necessary or advisable for implementation of the intent of the Contract Documents, the Inspector will have authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. The foregoing authority of the Inspector will be subject to interpretations and decisions of the A/E. However, neither this authority of the Inspector or of the A/E nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Inspector or of the A/E to the Contractor.
- 6.2.11.** The Inspector will receive from the Contractor: Shop Drawings, Product Data and Samples, and forward to the A/E for review and final approval. The Inspector's actions will be taken with such reasonable promptness as to cause no delay in the Work of the Contractor or in the activities of other Contractors, the Owner, or the A/E.
- 6.2.12.** The A/E will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The A/E's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, nor Inspector, while allowing sufficient time in the A/E's professional judgment to

permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The A/E's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the A/E, of any construction means, methods, techniques, sequences, or procedures. The A/E's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- 6.2.13.** The Inspector will prepare Change Orders and submit them to the Owner's Representative, for evaluation before recommendation to the Executive Director and the Board of Directors. The Board of Directors is responsible for the approval of alterations or additions that entail an increase in cost of less than and up to a maximum of thirty percent (30%) of the total original cost of the project. In exceptional duly justified and documented circumstances, CDIPC may approve a Change Order that exceeds thirty percent (30%) of the original cost of the project by formulating a supplemental contract. When there is more than one alteration or addition to a contract in the form of a Change Order, such alterations or additions taken together may not exceed a maximum of thirty percent (30%) of the total original cost of the project and will have to be approved by the Board of Directors, provided that when this happens, a supplementary contract is granted with the affirmative vote of two thirds (2/3) of the members of the Board. Said contract may not exceed fifteen percent (15%) of the total cost of the project, including change orders.
- 6.2.14.** The Inspector will assist the A/E while conducting inspections to determine the date or dates of Substantial Completion and the date of Final Completion. The Inspector will receive and forward to the A/E for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.
- 6.2.15.** The A/E will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Owner, Inspector or Contractor. The A/E's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- 6.2.16.** Interpretations and decisions of the A/E will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.
- 6.2.17.** The A/E's decisions on matters relating to the aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.
- 6.2.18.** If the Owner and A/E agree, the A/E will provide one or more project representatives to assist in carrying out the A/E's responsibilities at the site. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in an exhibit to be



incorporated in the Contract Documents.

## **7. PROTECTIONS OF PERSONS AND PROPERTY**

### **7.1. SAFETY PRECAUTIONS AND PROGRAMS**

**7.1.1.** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### **7.2. SAFETY OF PERSONS AND PROPERTY**

**7.2.1.** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

1. employees on the Work and other persons who may be affected thereby.
2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors.
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, sidewalks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement during construction.

**7.2.2.** The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss.

**7.2.3.** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

**7.2.4.** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**7.2.5.** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible except damage or loss attributable to acts or omissions of the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Contractor.

**7.2.6.** The Contractor shall be responsible for the protection of all public and private property, monuments, telephone lines, optic fiber, and other public utilities along and adjacent to the project. The Contractor shall use every precaution to prevent damage to pipes conduits and underground structures and shall cooperate with the owners of utility companies in the removal or relocation of their facilities in such a way that their operation is not interrupted.

The time and labor for the relocation of these facilities shall be reduced to a minimum, so that the services rendered by them are not unnecessarily interrupted. Any of these services that might be affected or interrupted by the Contractor shall be immediately repaired or resumed at the Contractor's expense. The Contractor shall carefully protect all property limit monuments. They shall notify the responsible person or agency, if these must be moved or changed in any way and shall not affect them until and authorized agent has referenced them and authorized their relocation or removal. All roads adjacent to or intersecting the project shall be protected from damage. The Contractor shall take all necessary precautions to preserve all objects of archeological value, of art, antiques and minerals found in the area of the work or in the construction operations and they shall notify about them to the Inspector and A/E. All such articles or objects shall be delivered to the Owner and shall be extracted and removed in accordance with the instructions of the Inspector and A/E or the appropriate governmental agencies. When any direct or indirect damage is done to the public or private property by an act, omission, neglect, or fault of the Contractor in the execution of the work, the Contractor without the right to additional compensation shall restore such property. Otherwise, the Contractor shall compensate the affected person or entity in a form acceptable to the parties.

- 7.2.7.** The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Health Department and other bodies having jurisdiction thereto. They shall neatly clean up all camp sites, dispose of all rubbish and perishable materials and leave the premises in a neat and sanitary conditions when they have completed the occupancy of the site.
- 7.2.8.** The Contractor shall exercise every reasonable precaution throughout the life of the project to prevent silting of rivers, streams, lakes, and reservoirs. Construction of drainage facilities as well as performance of other contract work, which will contribute to the control of siltation, shall be carried out in conjunction with earthwork operations or as soon thereafter as is practicable. Unless otherwise approved in writing by the Inspector and A/E, construction operations in rivers, streams, lakes, and reservoirs 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. 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. 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. Unless otherwise approved in writing by the Inspector and A/E, mechanized equipment shall not be operated in live streams except as may be required to construct channel and temporary or permanent structures. The Contractor shall exercise every reasonable precaution throughout the life of the project to prevent pollution of rivers, streams, lakes, or reservoirs. Pollutants such as chemicals, fuels, lubricants, bitumen, raw sewage, and other harmful waste shall not be discharged into or alongside of rivers, streams, lakes or reservoirs or into natural or manmade channels leading thereto. The Contractor shall also comply with the applicable regulations relating to the prevention and abatement of water pollution.
- 7.2.9.** In carrying out work within or adjacent to Commonwealth National Forests, the Contractor shall comply with all regulations of the Commonwealth and Federal Fire Service, Conservation

Commission, Department of Natural Resources, or any other authority having jurisdiction, governing the protection of forests and the carrying out of works within forests, and shall observe all sanitary laws and regulations with respect to the performance of work in forest areas. They shall keep the areas in an orderly condition, dispose of all, refuse, and obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures. The Contractor shall take all reasonable precaution to prevent and suppress forest fires and shall require its employees and subcontractors, both independently and at the request of Forest officials, to do everything reasonable within their power to prevent and to assist in preventing and suppressing forest fires and to 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.

**7.2.10.** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the Owner.

**7.2.11.** The Contractor shall not load or permit any part of the construction or site to be loaded to endanger its safety.

### **7.3. EMERGENCIES**

**7.3.1.** In an emergency affecting safety of persons or property, the Contractor shall act, at their discretion, to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in these Contract Documents.

## **8. AWARDS, INSURANCE AND BONDS**

### **8.1. AWARDS PROCESS**

**8.1.1.** Once the Bid has been adjudicated, and the process not being contested, once the period established by Law (10 consecutive days) has passed, the adjudication becomes final. The formal Notification by the Auction Board of GSA will be sent via certified mail to the selected entity, and will detail all the documentation, Bonds, and Insurance, with their respective limits. Once all the documentation is received by the Auction Board of GSA, the respective contract will be redacted. In cases that an adjudication is contested within the period established by Law, the Auction Board of GSA will immediately refer the matter to GSA's Auction Review Board.

**8.1.2.** The Contractor must, within ten (10) consecutive calendar days from the date of Notice of Award, provide the following documentation:

1. Performance Bond to guarantee the faithful performance of the Contract, in an amount equal to hundred (100) percent of his bid, and/or adjusted to the revised contract amount cost.
2. The statutory Workmen's Compensation Insurance (State Insurance Fund).
3. Comprehensive General Liability Insurance (\$1,000,000). 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 or 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 be less than (a) Bodily Injury \$500,000 each occurrence, and (b) Property damage \$100,000 each occurrence - \$500,000 Aggregate.

#### 4. Hold Harmless Agreement

- 8.1.3.** 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 enough to protect the Owner.
- 8.1.4.** It shall always be the responsibility of the Contractor to maintain adequate insurance coverage. Failure to maintain adequate coverage shall not relieve the Contractor of any contractual responsibility or obligation. The certificates filed with the Owner shall state that thirty-(30) day written notice will be given to the Owner before any policy covered thereby is changed or canceled.
- 8.1.5.** 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 them and deduct the amount paid for the premium from the next payment.
- 8.1.6.** The Public liability 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 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 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, and if so covered, this installation floater 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.
- 8.1.7.** All insurance must contain an endorsement naming the Owner as an additional insured.
- 8.1.8.** The Contractor must provide a Certificate of Good Standing from the Commissioner of Insurance of Puerto Rico for each company providing any of the foregoing insurance policies.

#### **8.2. SUBCONTRACTOR'S AND SUB-SUBCONTRACTOR'S INSURANCE**

- 8.2.1.** The Contractor shall, throughout the performance of work under the contract, procure and maintain in effect, and require all subcontractors and Sub-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.

## **9. CHANGES IN THEWORK**

### **9.1. GENERAL**

- 9.1.1.** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, or order for a minor change in the Work, subject to the limitations stated in the Contract Documents.
- 9.1.2.** A Change Order shall be based upon agreement among the Owner, Inspector, Contractor and A/E, an order for a minor change in the Work may be issued by the A/E alone.
- 9.1.3.** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, or order for a minor change in the Work.

### **9.2. CHANGE ORDERS**

- 9.2.1.** A Change Order is a written instrument prepared by the Inspector and signed by the Owner or his representative(s), Inspector, A/E and Contractor, stating their agreement upon all of the following:
  - 1. change in the Work
  - 2. the amount of the adjustment (add or subtract), if any, in the Contract Sum
  - 3. the extent of the adjustment, if any, in the Contract Time.
  - 4. All Change Orders must be approved by CDIPC and registered via amendment in the Puerto Rico Comptroller's Office.
- 9.2.2.** In Lump Sum Contracts the cost or credit to the Owner, resulting from a Change in the Work shall be determined in the following ways:
  - 1. mutual acceptance of a lump sum properly itemized and supported by enough substantiating data to permit evaluation.
  - 2. unit prices stated in the Contract Documents or subsequently agreed upon.
  - 3. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.
  - 4. All Change Orders must be first referred to the to the Owner's Representative, for evaluation and the Executive Director or Board of Directors of the CDIPC for approval and registered via amendment in the Puerto Rico Comptroller's Office.
- 9.2.3.** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of work proposed will be equitably adjusted

accordingly.

**9.2.4.** The percentages and the method to be followed for unit price adjustment for resulting overrun or under run of any item or items in unit price contracts shall be as follows:

1. Overruns of more than fifty (50) percent of any major item or items shall require a negotiated unit price which shall be covered by a modification agreement by both parties. The original unit price shall apply to all work performed up to one hundred fifty (150) 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 one hundred fifty (150) percent.
2. Under runs of more than fifty 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 modification agreement by both parties. 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.
3. Overruns of a minor item to the extent that the amount of the item calculated at the original unit price, exceeds seventy-five (75) percent of the original contract amount, shall require a negotiated unit price, which shall be covered by a Change Order. The original unit price shall apply to all work performed in the item up to a value of fifty (50) percent of the original contract amount and the negotiated unit price shall apply to the additional work.

**9.2.5.** The amount of credit to be allowed by the Contractor to the Owner for any deletion or change, which results in a net decrease in cost will be, the amount of the actual net decrease as confirmed by the Inspector and A/E.

**9.2.6.** Should concealed conditions encountered in the performance of the Work below the surface of the ground, be at variance with the conditions indicated by the Contract Documents or should unknown physical conditions below the surface of the ground of an unusual nature, differing materially from those ordinary encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract Sum shall be equitable adjusted by Change Order upon claim by either party made within ten (10) days after the first observance of the conditions.

### **9.3. MINOR CHANGES IN THE WORK**

**9.3.1.** The A/E will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order issued through the Construction Manager and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

## **10. UNCOVERING AND CORRECTION OF WORK**

### **10.1. UNCOVERING OF WORK**

**10.1.1.** If a portion of the Work is covered contrary to the request of the Inspector or A/E, or to requirements specifically expressed in the Contract Documents, it must, if required in writing

by the Inspector or A/E, be uncovered for the Inspector's and A/E's examination and be replaced at the Contractor's expense without change in the Contract Time.

- 10.1.2.** If a portion of the Work has been covered which the Inspector or A/E has not specifically requested to examine prior to its being covered, the Inspector or A/E may request to see such Work and the Contractor shall uncover it. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs caused the condition.

## **10.2. CORRECTION OF WORK**

- 10.2.1.** The Contractor shall promptly correct Work rejected by the Inspector or A/E for failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Inspector's and A/E's services and expenses made necessary thereby, shall be at the Contractor's expense.
- 10.2.2.** If, within one month after the date of Final Completion of the Work or designated portion thereof or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner through the Inspector to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-month period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner through the Inspector, the Owner may correct it and claim for the expenses incurred.
- 10.2.3.** The one-month period of the Notification by the Owner for correction of Work shall not be extended by corrective Work performed by the Contractor.
- 10.2.4.** The Contractor shall remove from the site portions of the Work, which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- 10.2.5.** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- 10.2.6.** Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations, which the Contractor might have under the Contract Documents.

Establishment of the one-month period for the Notification of correction of Work relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **10.3. ACCEPTANCE OF NONCONFORMING WORK**

- 10.3.1.** If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

## **11. TIME**

### **11.1. TIME EXTENTS**

- 11.1.1.** Contract Time is the period, including authorized adjustments, Change Orders, allotted in the Contract Documents for Substantial Completion of the Work.
- 11.1.2.** The date of commencement of the Work is the date established in the Notice to Proceed.
- 11.1.3.** The date of substantial completion of the work or designated portion thereof is the date certified by the Inspector, A/E, Contractor and Owner, in the corresponding document, 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.
- 11.1.4.** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

### **11.2. PROGRESS AND COMPLETION**

- 11.2.1.** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- 11.2.2.** The time limit for the execution of the 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 Inspector. Except in cases of emergency, the Contractor shall file request for permission to work extra hours, Sundays or legal holidays with the Inspector 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 Inspector. Work that is not expected to be completed during the working day should not be started.
- 11.2.3.** The Contractor shall begin the work on the date of commencement as defined in the Notice to Proceed. The Contractor shall carry the work forward expeditiously with adequate forces



and shall complete it within the Contract Time.

### **11.3. DELAYS AND EXTENSIONS OF TIME**

- 11.3.1.** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Inspector, A/E, or of an employee of any of them, of a separate contractor employed by the Owner, by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, by delay authorized by the Owner, or by other causes which the Inspector and A/E based on recommendations by the Inspector determines may justify delay, the Contract Time shall be extended by Change Order approved by the Owner's Representative and the Executive Director, for such reasonable time as the Inspector and A/E may determine.
- 11.3.2.** Extension in Contract Time shall not be considered or allowed for the following reasons:
1. Suspensions of work ordered by the Owner, the Inspector and A/E due to the fault of the Contractor or his Sub-contractor.
  2. Unauthorized suspensions of Work by the Contractor.
- 11.3.3.** All claims for extension of time shall be made in writing to the A/E through the Inspector not more than ten (10) 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:
1. the circumstances as may be required by the A/E,
  2. the operation(s) alleged to have been delayed,
  3. the calendar dates on which the operation(s) were delayed, and
  4. the number of calendar days by which the Contractor is requesting the completion date to be extended.
  5. Any Claim for extensions of time and delays will be attended to at the Close of the Project.

### **11.4. LIQUIDATED DAMAGES**

- 11.4.1.** Should the Contractor or, the Surety in case of default, 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 will be made for each and every calendar day that such work remains uncompleted after the expiration of the date of completion up to the date of substantial completion or final completion as the case may be. This amount will be deducted from any money due or that may become due the Contractor or his Surety under the Contract.
- 11.4.2.** The Liquidated Damages amount applicable to the project(s) stipulated in the Contract shall be considered and treated not as a penalty, but as fixed and agreed liquidated damages due to the Owner by the Contractor or, by the Surety in case of default of the contractor, by reason of public inconvenience, 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 authorization by

the Owner.

- 11.4.3.** The sum set forth in the following schedule shall be the amount of liquidated damages specified for each calendar day beyond the term limit stipulating the final termination and acceptance of the work:

**SCHEDULE OF LIQUIDATED DAMAGES**

Original Amount of Contract		Amount of Liquidated Damages per Calendar Day
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
\$50,000,000.00	Unlimited	\$8,000.00 or any other amount as agreed in the Contract

- 11.4.4.** Permitting the Contractor to continue and finish the Work or any part thereof after expiration of the date of completion shall in no way operate as a waiver on the part of the Owner of any of its rights under this Contract. The Owner may waive such portions of the liquidated damages as may accrue after the work is substantially completed.

- 11.4.5.** Any Claim for Liquidated Damages will be attended to at the Close of the Project.

**12. PAYMENTS**

**12.1. CONTRACT SUM**

- 12.1.1.** 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 the performance of the Work under the Contract Documents subject to additions and deductions as approved by Change Order. The amount payable to the Contractor shall be the actual total cost of the work performed and accepted.

**12.2. SCHEDULE OF VALUES**

- 12.2.1.** Before the first Application for Payment, the Contractor shall submit for approval to the A/E and the Inspector, a schedule of values of the various portions of the Work, aggregating the

total Contract Sum. In Unit-Price Contracts, the Contractor will submit for approval to the Inspector and A/E, a schedule of values for those Lump-Sum bid items only. Each item in the schedule of values shall include its proper share of overhead and profit, except that such initial disbursements as the portion completed for mobilization, temporary facilities, premiums for insurance and bonds, and any government regulations, shall be separately itemized to facilitate its request in the partial payments. This schedule, when approved by the Inspector, and A/E when applicable, shall be used only as a basis for reviewing the Contractor's Applications for Payment and change orders.

### **12.3. APPLICATIONS FOR PAYMENT**

- 12.3.1.** Partial payments will be made according to the schedule of payments in the form of itemized Applications for Payment. Such applications will include, but may not be limited to:
1. The Application for Payment, with the operations completed in accordance with the schedule of values. This Application must be signed by the Contractor, Inspector and A/E, and approved by the Owner's representative.
  2. Supporting data deemed necessary by the Inspector and A/E.
  3. Six (6) Photographs 8" x 10" each, of the site prior to the beginning of the work, and monthly, thereafter.
- 12.3.2.** From each partial payment, the Owner shall retain ten (10) percent of the estimated amount as guarantee, to be paid at Project Closeout.
- 12.3.3.** No advance payment may be made to the Contractor for Small Projects, such as the ones included in this Bid.
- 12.3.4.** Advance payment may be made to the Contractor for the ninety (90) percent of the cost of materials which are to be incorporated into the work and which are on hand at the job site or stored in acceptable storage places in the vicinity of the project. No advance payment may be made to the Contractor for materials fabricated, pre-cast or otherwise produced for this specific project and stored at an approved site in Puerto Rico other than in the immediate vicinity of the project. No advance payment will be made on living or perishable plant materials. In the case of materials that have been purchased by the Contractor the cost shall be determined by the vendor's invoice. In the case of materials manufactured or obtained by the Contractor through the use of his own workmen or equipment, the cost shall be determined by the Inspector and A/E in accordance with and based upon that particular unit of the project in which the materials are to be utilized.
- 12.3.5.** The Contractor shall present signed receipts or other documentary evidence to prove that the cost of the materials for which they are to receive advance payment has been paid in full. If the materials have not been paid for, the invoice shall be accompanied by a release from the materials dealer expressing his conformity with the payment for such materials to the Contractor by the Owner. If at any time after the Contractor has received advance payment for materials, the Inspector and A/E shall obtain evidence indicating that said materials, or any part or parts thereof, are defective, damaged or lost, or that said materials, or part thereof, do not conform to the specifications, the Inspector and A/E, shall 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 materials, or part or parts thereof, found to be defective,

damaged or lost.

- 12.3.6.** Materials for which the Contractor has received advance payment shall be properly housed or stored in a manner that will insure the preservation of their quality and fitness for the work. Moreover, the Contractor shall not withdraw said materials for any purpose other than incorporation into the project, unless they have written authority from the Owner to do so. 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.
- 12.3.7.** Material 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 A/E 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.
- 12.3.8.** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
- 12.3.9.** The issuance of a separate Certificate for Payment will constitute a representation made separately by the Inspector and A/E to the Owner, based on their individual evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Inspector's and A/E's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Inspector or A/E.
- 12.3.10.** The issuance of a payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Inspector or A/E has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
- 12.3.11.** The Inspector will assemble a Project Application for Payment by combining the Contractor's applications with similar applications for progress payments from other Contractors and, after

certifying the amounts due on such applications, forward them to the A/E within seven days.

- 12.3.12.** Within seven days after the A/E's receipt of the Project Application for Payment, the Inspector and A/E will either issue to the Owner a Project Certificate for Payment, with a copy to the Contractor, for such amount as the Inspector and A/E determine is properly due, or notify the Contractor and Owner in writing of the Inspector's and A/E's reasons for withholding certification in whole or in part as provided in Subparagraph 12.4.1. Such notification will be forwarded to the Contractor by the Inspector. For Small Projects, such as the ones included in this Bid, where no A/E is involved in the construction process, the Inspector will solely undertake the Project Certificate for Payment process.

#### **12.4. PAYMENTS WITHHELD**

- 12.4.1.** The Inspector or A/E may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Inspector's or A/E's opinion the representations to the Owner required by Subparagraphs 12.3.9 and 12.3.10 cannot be made. If the Inspector or A/E is unable to certify payment in the amount of the Application, the Inspector or A/E will notify the Contractor and Owner as provided in Subparagraph 12.3.12. If the Contractor, Inspector, and A/E, cannot agree on a revised amount, the Inspector and A/E will promptly issue a Certificate for Payment for the amount for which the Inspector and A/E are able to make such representations to the Owner. The Inspector or A/E may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Inspector's or A/E's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions because of:

1. defective works, no remedies.
2. third party claims filed or reasonable evidence indicating probable filing of such claims unless the Contractor provides security acceptable to the Owner
3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials, or equipment.
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum.
5. damage to the Owner or another contractor.
6. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay
7. persistent failure to carry out the Work in accordance with the Contract Documents.

- 12.4.2.** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

#### **12.5. PROGRESS PAYMENTS**

- 12.5.1.** The Owner is responsible to pay the Contractor within thirty (30) calendar days after the Inspector and A/E have issued a Certificate for Payment and shall so notify the Inspector and A/E of this payment.

- 12.5.2.** The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the

Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

- 12.5.3.** The Inspector will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Inspector, A/E and Owner on account of portions of the Work done by such Subcontractor.
- 12.5.4.** Neither the Owner, Inspector nor A/E shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.
- 12.5.5.** Payment to material suppliers shall be treated in a manner similar to above.
- 12.5.6.** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work in accordance with the Contract Documents.
- 12.5.7.** Immediately after the Inspector and A/E has determined and certified that the Work is substantially completed, the Owner may release to the Contractor fifty (50) percent of the 10% previously retained, provided the following conditions are met:
  - 1. A written consent of Surety to make such payments is submitted.
  - 2. There are no claims to be settled from the Owner to the Contractor.
  - 3. No liquidated damages are pending.

#### **12.6. NO WAIVER OF LEGALRIGHTS**

- 12.6.1.** The Compañía para el Desarrollo Integral de la Peninsula de Cantera shall not be precluded or stopped from any inspection, measurement, estimate or certificate, for the payment of money, any payment for or acceptance of any work or any extension of time, or any possession taken by Compañía para el Desarrollo Integral de la Peninsula de Cantera, from showing the true amount and character of the work performed and materials furnished by the Contractor, nor from showing that any measurement, estimate or certificate is untrue or is incorrectly made, nor that the work or materials do not in fact conform to the Contract. The Compañía para el Desarrollo Integral de la Peninsula de Cantera shall not be precluded or stopped, notwithstanding any such measurement, estimate or certificate and payment in accordance therewith, from recovering from the Contractor and his Sureties, such damages as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the Compañía para el Desarrollo Integral de la Peninsula de Cantera or by its representative, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession by the Compañía para el Desarrollo Integral de la Peninsula de Cantera or any of its representatives shall operate as a waiver of any portion of the Contract of or any powers herein reserved, or of any rights to damages. A waiver of any

breach of Contract shall not be held to be a waiver of any other or subsequent.

#### **12.7. SUBSTANTIAL COMPLETION**

- 12.7.1.** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.
- 12.7.2.** For Small Projects, such as the ones included in this Bid, the Contractor can avoid a substantial completion request and, upon completion of the Work, forward to the Inspector a written notice that the Work is ready for final inspection and Final acceptance. This must be coordinated and approved by the Inspector.
- 12.7.3.** When the Contractor considers that the Work, or a portion thereof which the Owner has agreed to accept separately, is substantially complete, the Contractor and Inspector shall jointly prepare and submit a request for inspection to the A/E.
- 12.7.4.** Upon receipt of the Contractor's request, the A/E, assisted by the Inspector, will inspect to determine whether the Work or designated portion thereof is substantially complete. If the A/E's inspection discloses any item, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification of the A/E. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. In such case, the Contractor shall then submit a request for another inspection by the A/E assisted by the Inspector to determine Substantial Completion.
- 12.7.5.** When the Work or designated portion thereof is substantially complete, the Inspector will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, air conditioning, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. However, such time will not exceed ten (10) calendar days after the date established in the Certificate of Substantial Completion. In relation of Liquidated Damages, the following will apply according to different circumstances:
  - 1. If the date of completion established in the contract has expired, no Substantial Completion will be accepted.
  - 2. If the date of Substantial Completion is granted before the day stipulated in the contract, the time for final acceptance shall be the date established in the Substantial Completion Document or the day stipulated in the contract whichever comes last. At this time of the process, the name of Substantial Completion will be changed to Final Acceptance.
- 12.7.6.** Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
- 12.7.7.** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for

their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, and upon application by the Contractor and certification by the Inspector and A/E, the Owner shall make payment of retained applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents such as Liquidated Damages.

#### **12.8. PARTIAL OCCUPANCY OR USE**

- 12.8.1.** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, air conditioning, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents.
- 12.8.2.** Immediately prior to such partial occupancy or use, the Owner, Inspector, Contractor, and A/E shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- 12.8.3.** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### **12.9. FINAL ACCEPTANCE AND FINAL PAYMENT**

- 12.9.1.** Upon completion of the Work, the Contractor shall forward to the Inspector a written notice that the Work is ready for final inspection and final acceptance and shall also forward to the Inspector a final Contractor's Application for Payment.
- 12.9.2.** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Inspector will forward the notice and Application to the A/E and they will promptly make such inspection assisted by the Inspector and, when the A/E, based on the recommendation of the Inspector finds the Work acceptable under the Contract Documents and the Contract fully performed, the Inspector and the A/E will promptly issue a final Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Inspector's and A/E's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 12.9.3 as precedent to the Contractor's being entitled to final payment have been fulfilled.
- 12.9.3.** Any remaining retained percentage or final payment shall not become due until the Contractor



submits to the A/E through the Inspector:

1. an Affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, (less amounts withheld by Owner), have been paid or otherwise satisfied,
2. consent of Surety to final payment,
3. release from the State Insurance Fund of Puerto Rico
4. evidence of payment of Municipal construction taxes, if applicable, and,
5. 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 a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.
6. Use Permit, if applicable.
7. Any other document that the Owner deems necessary.

**12.9.4.** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Inspector and A/E so confirms, the Owner shall, upon application by the Contractor and certification by the Inspector and A/E, and without terminating the Contract, 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 retained stipulated in the Contract Documents, and if bonds have been furnished, the written consent of Surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the A/E through the Inspector prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**12.9.5.** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

1. liens, Claims, security interests or encumbrances arising out of the Contract and unsettled.
2. failure of the Work to comply with the requirements of the Contract Documents; or
3. terms of special warranties required by the Contract Documents.
4. those detailed in the Puerto Rico Civil Code.

**12.9.6.** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

**12.9.7.** The Contract shall be considered complete in its construction phase, but not for Audit, when all work covered by the same shall have been completely performed on the part of the Contractor, and all parts of said work have been approved by the Inspector, the final inspection made, the final liquidation examined and approved by the Owner's Representative and the Executive Director, and the final payment made and accepted by the Contractor. The date of

final payment shall be the date of final completion and settlement and the Contractor will then be release from further obligation except upon proof of error or as set forth in the performance and payment bonds.

### **13. CLAIMS AND DISPUTES**

#### **13.1. DEFINITION**

- 13.1.1.** 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, and 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 initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### **13.2. TIME LIMITS ON CLAIMS**

- 13.2.1.** Claims by either party must be initiated within thirty (30) days after occurrence of the event giving rise to such Claim or within thirty (30) days after the claimant first recognizes the condition giving rise to such Claim or within thirty (30) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the A/E and the other party.

#### **13.3. CONTINUING CONTRACT PERFORMANCE**

- 13.3.1.** Pending final resolution of a Claim except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Any unresolved Claim at the time of Close-out, will be resolved in the Superior Court that has jurisdiction over the Autonomous Municipality of San Juan and/or la Compañía para el Desarrollo Integral de la Península de Cantera.

#### **13.4. CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS**

- 13.4.1.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions.
- 13.4.2.** The A/E and Inspector will promptly investigate such conditions and, if they differ substantially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, they will recommend an equitable adjustment in the Contract Sum, Contract Time, or both.
- 13.4.3.** If the A/E and Inspector determine that the conditions at the site are not substantially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the A/E and Inspector shall so notify the Owner and Contractor in writing,

stating the reasons.

- 13.4.4.** Claims by either party in opposition to such determination must be made within ten (10) days after the A/E and Inspector have given notice of the decision. If the conditions encountered are substantially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the A/E and Inspector for initial determination, subject to further proceedings.

### **13.5. CLAIMS FOR ADDITIONAL COST**

- 13.5.1.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property.
- 13.5.2.** If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the A/E, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the A/E, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Article.

### **13.6. CLAIMS FOR ADDITIONAL TIME**

- 13.6.1.** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.
- 13.6.2.** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

### **13.7. INJURY OR DAMAGE TO PERSON OR PROPERTY**

- 13.7.1.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.
- 13.7.2.** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### **13.8. CLAIMS FOR CONSEQUENTIAL DAMAGES**

- 13.8.1.** The Contractor and Owner waive Claims against each other for consequential damages arising

out of or relating to the Contract. This mutual waiver includes:

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business, and reputation, and for loss of management or employee productivity or of the services of such persons; and
  2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business, and reputation, and for loss of profit except anticipated profit arising directly from the Work.
- This mutual waiver is applicable without limitation, to all consequential damages due to either party's termination. Nothing contained herein shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

#### **14. MISCELLANEOUS PROVISIONS**

##### **14.1. GOVERNING LAW**

- 14.1.1.** The Contract shall be governed by the laws of the Commonwealth of Puerto Rico and the United States of America.

##### **14.2. SUCCESSORS AND ASSIGNS**

- 14.2.1.** The Owner and Contractor respectively bind themselves, their partners, successors, delegates and legal representatives to the other party hereto and to partners, successors, delegates and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

##### **14.3. WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an office of the corporation for which it was intended or if delivered at or sent by fax or sent by e-mail to a specified e-mail account in the Contract Documents, registered or certified mail to the last business address known to the party giving notice.

##### **14.4. RIGHTS AND REMEDIES**

- 14.4.1.** 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.
- 14.4.2.** No action or failure to act by the Owner, Inspector, A/E or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically

agreed in writing.

#### **14.5. ROYALTIES AND PATENTS**

- 14.5.1.** The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, they shall be responsible for such loss unless they promptly give such information to the Owner.

#### **14.6. TESTS AND INSPECTIONS**

- 14.6.1.** Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Inspector and A/E timely notice of when and where tests and inspections are to be made so that the Inspector and A/E may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded.
- 14.6.2.** If the Inspector, A/E, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included above, the Inspector, A/E will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Inspector, A/E of when and where tests and inspections are to be made so that the Inspector, A/E may be present for such procedures. Such costs, except as provided in the following Subparagraph shall be at the Owner's expense.
- 14.6.3.** If such procedures for testing, inspection or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Inspector's and A/E's services and expenses shall be at the Contractor's expense.
- 14.6.4.** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor, and promptly delivered to the Inspector and A/E.
- 14.6.5.** If the Inspector and A/E are to observe tests, inspections or approvals required by the Contract Documents, the Inspector and A/E will do so promptly and, where practicable, at the normal place of testing.
- 14.6.6.** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly

to avoid unreasonable delay in the Work.

## **15. COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

### **15.1.1. As between the Owner and Contractor:**

1. Before Substantial Completion - As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
2. Between Substantial Completion and Final Certificate for Payment - As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment;
3. After Final Certificate for Payment - As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided, the date of any correction of the Work or failure to correct the Work by the Contractor as provided, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

## **16. EQUAL EMPLOYMENT OPPORTUNITY**

**16.1.1.** The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

**16.1.2.** During the performance of this Agreement, the CONTRACTOR agrees as follows:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
2. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
4. The Contractor will send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,

- 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  6. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  7. In the event of the Contractor's non-compliance with the non-discrimination clause of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
  8. Contractor shall incorporate the provisions of 1 through 7 above in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor so that such provisions shall be binding on such subcontractor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **17. LABOR STANDARDS**

- 17.1.1.** The term "labor standards" means the requirements of: The Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Copeland Act, prevailing wage provisions of the Davis-Bacon and "related Acts"; and Regulations, 29 CFR 1, 3, and 5, as well as those expressed in the Special Conditions. Regarding these labor standards, the Contractor, sub-contractors, and sub-subcontractors:
- i. Comply with all requirements of labor standards and follow the requirements of the Davis-Bacon Act and related Acts (DBRA) Housing Policy.
  - ii. Ensure that no contracts or subcontracts are granted to federally excluded contractors.
  - iii. Attend non-mandatory pre-bid / pre-construction meetings and construction meetings.
  - iv. Participate in training and proactively request technical assistance before and during construction.
  - v. Enforce DBRA requirements for the duration of the DBRA-covered project.
  - vi. Show the required DBRA posters and wage determination prominently and easily accessible in the workplace.
  - vii. Maintain key information for workers and laborers, such as name, address, and social security numbers.
  - viii. Pay workers and mechanics employed directly in the workplace, at least applicable current wages (including supplementary benefits)
  - ix. Send weekly certified payroll reports (CPR) to the Owner through the Inspector.

- x. Present evidence of payments to workers and laborers in approved fringe benefit programs.
- xi. Keep detailed information about the use of apprentices and/or assistants.
- xii. Follow all current Wage Determinations and Government of Puerto Rico Executive Orders, as applicable.