



## **SUPPLEMENTARY CONDITIONS**

### **SCHOOL MODERNIZATION PROJECTS – PHASE II**

**AFI CLASSIC**

**NON-INFRASTRUCTURE**

**CONSTRUCTION-CONSERVATION**



The following definitions and terminology will be replaced and shall read as follows:

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

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

**1.1.1.4. Architect/Engineer's Consultant** - An individual or duly authorized legal entity having a contract with the Architect/Engineer to furnish services as Architect/Engineer's independent professional and collegiate consultant with respect to the Project.

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

**1.1.1.19. Contract Time or Time** - It is the period of time allotted in the Contract Documents.

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

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

The following definitions and terminology will be added as follows:

## **1.2.1 OTHER DEFINITIONS**

**1.2.1.1 Conditional Acceptance (or conditionally accepted)** - The action taken by OWNER, through the Contracting Officer or OWNER's Representative depending upon the particular Submittal involved, by which the Contracting Officer or OWNER's Representative, as the case may be, makes a determination with respect to a particular Submittal, that the Submittal appears to be satisfactory. Conditional Acceptance of a Submittal shall not, however, relieve the Contractor of its sole responsibility for its (a) accuracy and completeness, (b) coordination with other elements of the Work, (c) compliance with requirements of the Contract Documents, or (d) for errors and omissions in the Submittal.

**1.2.1.2 Contractor Certification** - A notarized affidavit signed by the Contractor's Project Executive or the Contractor's Project Manager certifying, with respect to a Contractor Change Request, a Contractor Change Proposal, or a notice given under the provisions of Subsection 9.3.3.1.6.4 (each a "Claim Submission"), that he or she has personally reviewed the documentation submitted in support of the Claim Submission, that he or she is satisfied that the Claim Submission is true, accurate and complete, that the dollar amounts and time extensions claimed accurately reflect the adjustments in the Contract Price or the Contract Time for which the Contractor reasonably believes OWNER is liable under the terms and conditions of the Contract, and that the Claim Submission is made in good faith.

**1.2.1.3 Delay Bank** - The net number of Days accumulated, from time to time, as a result of deposits of Days into the Delay Bank (made pursuant to Clause .4 and Clause .5 of Subsection 9.3.3.1.6.2), and withdrawals of Days from the Delay Bank (made pursuant to Subsection 9.3.3.1.6.5).

**1.2.1.4 Delay Day** - Any Day of delay affecting Critical Path Activities resulting from a Delay Event.

**1.2.1.5 Excusable Delay** - Any act, omission, event or condition which delays performance of Critical Path Activities for which the Contractor is entitled, under applicable provisions of the Contract, to an extension of the Contract Time.

**1.2.1.6 Executive Director** - OWNER's Executive Director.

**1.2.1.7 Good Industry Practices** - Practices, procedures, methods and standards that (i) are consistent with current industry practices and standards established for, or employed by, leading participants in the construction industry in the United States and in Puerto Rico; (ii) comply with Applicable Laws and applicable industry technical standards, and underwriters' and fire and life safety codes and standards; and (iii) promote the highest standards of reliability, efficiency, safety and security. Good Industry Practices require, without limitation, that reasonable steps be taken to assure that sufficient personnel are employed and available to perform the Work, and that such personnel are adequately skilled, experienced and trained to construct and install the Work properly and efficiently, and that appropriate coordination, monitoring and testing is performed to assure that all elements of the Work are constructed and installed so as to function as required by the Contract Documents.

**1.2.1.8 Hazardous Waste** - Any substance or material that is defined as a hazardous substance, hazardous material, hazardous waste or Special Waste under Applicable Laws, and that is required by Applicable Laws to be removed, remediated, or disposed of in a regulated waste facility (*i.e.*, a waste facility, other than a sanitary landfill, which is permitted to receive Special Waste or other hazardous waste).

**1.2.1.9 Special Waste** - Any discarded product or material generated by or resulting from industrial,

commercial, mining or agricultural operations, or household or community activities, that contains asbestos, lead, oils, greases, regulated biochemical waste, industrial waste or polychlorinated biphenyl (PCB) waste, as defined in 40 C.F.R., Part 762, and that, under Applicable Laws, must be disposed of in a non-hazardous waste facility that is permitted to receive Special Waste. Special Waste also includes any other non-hazardous solid wastes which the Puerto Rico Environmental Quality Board determines, due to their quantity, concentration or physical or chemical characteristics, require special handling to prevent imminent danger to human health or the environment, and which must be so disposed of.

**1.2.1.10 Taxes** - Any (i) fees or assessments imposed by governmental authorities for building permits, and other permits in the nature of building permits, that the Contractor is required to pay as a condition precedent to the performance of the Work, (ii) fees imposed by the Puerto Rico Engineer and Land Surveyor Association ("Colegio de Ingenieros y Agrimensores de Puerto Rico") for internal revenue stamps, (iii) sales, use, import/excise taxes and municipal or similar taxes (including municipal license ("patente" taxes) imposed upon, or in connection with, the Work, including, but not limited to, municipal construction taxes and the Puerto Rico excise taxes, and (iv) any other taxes or assessments against or on account of services, materials, equipment, processes or operations under, incidental to, or related to performance of the Contract.

**1.2.1.11 Weather Delay Day** - Any Work Day on which unusually severe weather or conditions resulting from unusually severe weather prevent the Contractor from proceeding with at least seventy-five percent (75%) of the normal labor and equipment force engaged on Critical Path Activities shown on the current conditionally accepted Progress Schedule and under the current Work Plan Schedule for at least fifty percent (50%) of the Work Day.

The following paragraph shall read as follows:

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

The following paragraphs shall be added:

## **2.1.5 PURPOSE OF CONTRACT DOCUMENTS**

The Contractor is responsible for the construction of a complete, fully operational and functional facility in accordance with the Contract Documents and Good Industry Practices. The Contractor shall furnish all management, construction and installation, and all other labor (at staffing and manpower levels sufficient to complete each and every construction activity involved in the Work continuously, expeditiously and efficiently), materials, tools, supplies, equipment and other items necessary for the expeditious, proper execution and completion of the Work in accordance with the Contract Documents and in a manner so as to meet or exceed all standards established by the Contract Documents.

## **2.1.6 Contractor's Obligations Not Diminished**

Any review, inspection, approval or acceptance by the Contracting Officer or OWNER's Representative of the Work, any portion thereof, or other services provided by the Contractor, or payment by OWNER for Work performed by the Contractor shall not (i) diminish the Contractor's obligations and responsibilities under the Contract or its warranties, or otherwise relieve the Contractor of any liability, or (ii) be construed as a waiver of any rights available to OWNER under the Contract or Applicable Laws, or of any cause of action arising out of the Contractor's performance of, or failure of the Contractor to perform, the Contract.

### **2.1.7 Technical Standards**

The Contractor represents that it is fully familiar with all technical standards applicable to the Work, including, but not limited to, the manuals, standards, guidelines and criteria listed in the Contract Documents. References in the Contract Documents to technical standards shall be construed to refer to the most recent published technical standards of the institute, organization, association, authority, or society specified therein. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings. Unless otherwise specified to the contrary in the Contract Documents:

- .1 all references to technical standards shall be construed to include the most recent revisions;
- .2 all such technical standards shall apply as if incorporated in the Contract Documents; and
- .3 if any revision of such technical standards occurs after the date when the Permits and Approvals authorizing the Work are issued and prior to completion of the applicable Work, the Contractor shall notify OWNER's Representative and, if directed to do so, shall perform the Work in accordance with the revised requirement.

Where the Contract Documents require materials or apparatus to conform to specified technical standards, the Contractor shall furnish to OWNER the manufacturer's written certification that such materials or apparatus conform to such technical standards. Such certifications shall not, with respect to OWNER, be conclusive as to such requirements, and failure of OWNER to request or reject any certification shall not release the Contractor from full responsibility for the accurate and complete performance of the Work in accordance with the Contract Documents.

### **2.1.8 LIABILITY FOR JOINT VENTURE**

If the entity constituting the Contractor is a joint venture, each principal member of the Contractor is and shall be jointly and severally responsible and liable for all obligations, responsibilities and liabilities of the Contractor under the Contract.

### **2.1.9 DISCLAIMER OF OWNER'S LIABILITY**

In no event shall OWNER be liable to the Contractor except for obligations expressly assumed by OWNER under the Contract Documents, nor shall OWNER ever be liable to the Contractor for indirect, special, incidental or consequential damages resulting from, arising out of, or in connection with, the Work, the Contract or its rescission, cancellation, termination or suspension or the acceleration of its expiration. No representative of OWNER, nor any officer, agent, consultant or employee of OWNER (including OWNER's Representative) shall be charged personally by the Contractor with any liability, or be held liable to it, under any term or provision of the Contract, or because of any breach of the Contract by OWNER, or otherwise in connection with performance under the Contract.

The following paragraphs shall read as follows:

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

2.2.1.1 any Contract Amendments;

2.2.1.2 any Change Orders – those of a later date taking precedence over those of an earlier date;

2.2.1.3 the Notice to Proceed;

2.2.1.4 the Agreement (including the Scope of Work and Attachments)

2.2.1.5 the Special and Supplementary Conditions (if any);

2.2.1.6 the General Conditions;

2.2.1.7 the Scope of Services (including the General Requirements);

2.2.1.8 the Schematic Drawings provided by Owner;

2.2.1.9 the Contractor Proposal;

2.2.1.10 the Contractual Exhibits and any other documents specifically identified and incorporated into any of the Contract Documents by reference – those of a later date taking precedence over those of an earlier date;

2.2.1.11 the Bonds;

2.2.1.12 the Tax Certifications;

2.2.1.13 the Contractor Insurance Policies; and

2.2.1.14 the Notice of Award.

**3.2** The following paragraphs shall replace Sections 3.2 to 3.10 of the General Conditions as follows:

1. Introduction

The Puerto Rico Infrastructure Financing Authority (AFI) has implemented an Owner Controlled Insurance Program (OCIP). The awarded Contractor must enroll in the OCIP and complete the required forms included with this Supplement. Awarded Contractor is responsible for enrollment and compliance with all OCIP requirements of subcontractors of all tiers. The OCIP requirements are not intended to create any contract between the subcontractors and AFI. The Contractor shall participate directly in the enforcement of any OCIP provisions that relate to Subcontractors but such participation shall not excuse the contractor of its responsibility for enrollment and compliance with all OCIP requirements of subcontractors of all tiers as provided above. The OCIP will provide builder's risk, general liability, contractor's pollution liability, and

excess liability for all eligible contractors of every tier enrolled in the OCIP and performing work at the project site (Section 5 of these provides a general description of the coverage's provided under the OCIP).

The OCIP is not intended to provide a complete insurance program to the Contractor. The OCIP will not include worker's compensation insurance, employers' liability, employee disability, Chauffeur Social Security or comprehensive automobile liability insurance, and the Contractor shall be responsible for purchasing and maintaining such insurance coverage.

AFI's election to provide the OCIP shall not relieve or limit, or be constructed to relieve or limit, the Contractor or any Subcontractor of or from any responsibility, obligation or liability whatsoever imposed by the Contract Documents or arising out of performance of the Work.

## 2. Program Eligibility

### 2.1. Eligible Contractor

Includes all contractors, subcontractors providing direct labor on the project site in connection with the AFI Work Plan. Temporary labor services and employee leasing companies are to be treated as a subcontractor.

### 2.2. Ineligible Contractor

Includes (but are not limited to) vendors, installers, truck persons, delivery persons, concrete/asphalt haulers, and or contractors who do not have on-site dedicated payroll except as otherwise endorsed. Any person or organization that fabricates or manufacturers products, materials or supplies away from the project site(s). Such entities or persons shall be required to provide their own insurance to cover and Indemnify AFI for their operations and activities.

### 2.3. OCIP Insured Projects

Include those projects in connection with the AFI Work Plan, for eligible participants of all tiers who are properly enrolled in the OCIP by completing the OCIP Form 1.

## 3. Contractor's Responsibility

Awarded Contractor shall enroll in the OCIP by completing the attached OCIP Form 1 and submitting it to the OCIP Administrator upon receipt of award notice from AFI. All awarding Contractors shall require that each of its subcontractors of all tiers enroll in the OCIP by submitting the OCIP Form 1 to the OCIP Administrator prior to the subcontractor entering the project site.

## 4. Contractor's Responsibility for its Subcontractors

The Awarded Contractor shall include all of the provisions of this agreement in every subcontract so that such provisions will be binding upon each of its subcontractors.

## 5. Coverage Provided in AFI's OCIP

AFI, at its sole expense, has in force an owner controlled insurance program (OCIP) to furnish certain insurance coverage's related to on-site-project activities. The OCIP will be for the benefit of AFI and its Contractor and Subcontractors of all tiers (unless specifically excluded) who have on-site employees and dedicated payroll. Such coverage applies only to work performed under this contract at the Project Site. Project Site is defined as the area described in the construction

contract documents including the areas available for contractor operations, access routes, right-of-ways, and additional sites necessary or incidental thereto in connection with the work or emanating from the project site, as approved by AFI. Contractor and Subcontractors of all tiers must carry and maintain their own insurance for off-site activities. The OCIP policies are available for review by the Contractor upon request to AFI. The terms of such policies or programs, as such policies or programs may be from time to time amended, will be incorporated by reference herein. The Contractor hereby agrees to be bound by the terms of coverage as contained in such insurance policies and/or self-insurance programs and acknowledge that such policies prevail over any contradictory terms of this.

AFI, at its sole expense, will provide and maintain in force the types of insurance as listed below. Contractor and Subcontractors of all tiers enrolled in the OCIP agree that the insurance company policy limits of liability, coverage terms, and conditions shall determine the scope of coverage provided by the OCIP. Contractor and Subcontractors of all tiers agree that the purpose of this section is to provide a general understanding of the coverage provided by the OCIP.

The Contractor hereby covenants and warrants that all insurance costs (including those for all Subcontractors of any tier) for the coverage provided under the OCIP are excluded from the Contract Price.

### 3.3 Commercial General Liability Insurance

Provides coverage for On-Site projects activities for Bodily Injury, Property Damage, Personal Injury, Products and Completed Operations (Completed Operations has a 5-year extension) and Employer's Liability Coverage.

#### Scope of Coverage

|    |            |  |   |
|----|------------|--|---|
| A. | Operations | The performance of work in connection with AFI's OCIP Insured Projects by an enrolled contractor, subcontractor of any tier performed at the Project Site. |   |
| B. | Insured    | AFI, enrolled Contractor, and enrolled Subcontractor of all tiers.   |   |
| C. | Limits     | \$2,000,000  | Bodily Injury & Property Damage<br>Each Occurrence                      |
|    |            | \$6,000,000  | General Aggregate for all insured projects                              |
|    |            | \$6,000,000  | Products and Completed Operations<br>Aggregate for all insured projects |
|    |            | \$2,000,000  | Employer's Liability Coverage   |

### 3.4 Excess General Liability Insurance

Provides Liability coverage in excess of Primary Commercial General Liability Coverage for On-Site project activities.

#### Scope of Coverage

|    |            |   |
|----|------------|---|
| A. | Operations | The performance of work in connection with AFI's OCIP Insured Projects by an enrolled contractor, subcontractor of any tier, performed at the Project Site. |
| B. | Insured    | AFI, Contractor and enrolled Subcontractors of all tiers.   |



|    |        |                              |   |
|----|--------|------------------------------|---|
| C. | Limits | \$50,000,000<br>\$50,000,000 | Each Occurrence<br>General Aggregate for all insured projects |
|----|--------|------------------------------|---|

### 3.5 Contractor's Pollution Liability Insurance

Provides coverage for Bodily Injury, Property Damage or Environmental Damage claims from third parties caused by pollution conditions resulting from covered operations. The policy is written on an "occurrence" form and includes a five year completed operations period.

#### Scope of Coverage

|    |            |   |                  |
|----|------------|---|------------------|
| A. | Operations | All construction activities of an enrolled contractor, subcontractor or consultant of any tier performed at the project site in connection with AFI's OCIP insured projects.  |                  |
| B. | Insured    | Contracted construction management teams, contractors, subcontractors, remediation and environmental contractors, and subcontractors, of all tiers providing services in connection with projects covered under AFI's OCIP. |                  |
| C. | Limits     | \$15,000,000  | Each loss        |
|    |            | \$15,000,000  | Total all losses |

### 3.6 Builder's Risk/Installation Floater Insurance

Provides coverage under an "all risks" form (including flood and earthquake) for physical loss or damage to work or any part thereof.

#### Scope of Coverage

|    |            |   |  |
|----|------------|---|--|
| A. | Operations | Work done in conjunction with AFI's OCIP by enrolled Contractors and sub-contractors of any tier.                                   |  |
| B. | Insured    | AFI and Contractors/Subcontractors of any tier.   |  |
| C. | Limits     | Up to Complete Individual Project Value<br>\$100,000,000 Each and Every Loss & In the Annual Aggregate for Earthquake, Wind & Flood |  |
| D. | Sub limits | \$2,000,000   | Off-Site Storage (Not part of any Marine Voyage) |
|    |            | \$1,000,000   | Transit per Conveyance (Within Puerto Rico only) |
|    |            | \$2,000,000   | Expediting Expenses                              |
|    |            | \$1,000,000   | Existing Surrounding Property                    |
|    |            | \$5,000,000   | Debris Removal                                   |

The Builders Risk will not provide coverage for any loss: to (1) horizontal drilling (except as specifically endorsed in the policy), tunneling work; (2) Advance Loss of Profits, Any Form of Consequential Loss, Manufacturers Risk; (3) underground works (other than lying pipelines or utilities), Wet Works; (4) to materials (unless the materials are to be incorporated into the Project); (3) tools, or (4) equipment of the Contractor or any tier of Subcontractor, or any other person furnishing labor or materials for the Work. Contractor agrees to indemnify, defend, and hold AFI and its officers, agents, and employees harmless

from any such loss, theft, or disappearance.

### **3.7 Certificates and Policies**

All the AFI furnished insurance coverage's shall be either written by insurance companies approved by AFI or self-insured. AFI or its appointed representative shall provide Contractors and Subcontractors with appropriate certificates of insurance or self-insurance evidencing the coverage outlined above.

### **3.8 Warranty Work**

A contractor, subcontractor who has completed its work at the Project Site and whose insurance was provided by AFI's OCIP and such insurance policies has been terminated, if they need to return to the site to perform warranty type work, it must be done under its own insurance coverage's and not under those provided by AFI's OCIP.

### **3.9 Termination/Modification of the OCIP**

AFI reserves the right to terminate any contractor/subcontractor from the OCIP, and to terminate or modify the OCIP, or any portion thereof. To exercise this right, AFI shall provide sixty-(60) days advance written notice to all contractors/subcontractors covered by the OCIP. Contractors and Subcontractors of all tiers shall immediately be required to obtain appropriate replacement insurance coverage acceptable to AFI. The reasonable cost of such replacement insurance will be reimbursed by AFI. Written evidence of such insurance shall be provided to AFI prior to the effective date of the termination or modification of the OCIP.

## **6. Contractor Responsibilities**

- 6.1. The Contractor is required, in behalf of himself and that of his subcontractor to cooperate with AFI and its OCIP Administrator with regards to the administration and operation of the OCIP. The Contractor's responsibilities shall include, but are not limited to:
  - 6.1.1. Compliance with applicable Construction Safety Programs(s);
  - 6.1.2. Compliance with AFI's OCIP and Safety Manuals setting forth the administrative procedures required of the Contractors;
  - 6.1.3. Provision(s) of necessary contract, operations and insurance information;
  - 6.1.4. Immediately notifying the OCIP Administrator of all subcontractors of all tiers upon award;
  - 6.1.5. Cooperation with any insurance company and OCIP Administrator with respect to requests for claims or other information required under the program;
  - 6.1.6. Immediately notifying AFI that any Contractor/Subcontractor-provided coverage has been canceled, materially changed, or not been renewed;
  - 6.1.7. Complete the following administrative forms within the time frames specified:

- A. AFI OCIP Form 1 - OCIP Enrollment Form. Upon receipt of notice to proceed from AFI.
- B. AFI OCIP Form 2 - Notice of Completion. Upon completion of all work being performed under the contract.

6.1.8. Completed forms will be sent to AFI's OCIP Administrator at the following address:

Puerto Rico Infrastructure Financing Authority  
Ave. Muñoz Rivera  
Suite 268  
Hato Rey, PR 00940  
Attn. Gladys Torres, OCIP Administrator

## 6.2. Deductibles

- 6.2.1. **Project CGL Policy.** The Contractor agrees that, in case of payment by AFI or its Project CGL Policy insurer on account of injury or damage claims arising out of the performance of the Work, AFI shall withhold from payments otherwise due the Contractor hereunder a deductible amount (irrespective of any actual deductible amount under the Project CGL Policy) equal to such payment (including loss adjusting expense), but not to exceed Five Thousand Dollars (\$5,000.00) per occurrence, which such withheld amount shall become the property of AFI.
- 6.2.2. **Maintenance CGL Policy.** The Contractor agrees that, in case of payment by AFI or its Project CGL Policy insurer on account of injury or damage claims arising out of the performance of the Maintenance, AFI shall withhold from payments otherwise due the Contractor hereunder a deductible amount (irrespective of any actual deductible amount under the Project CGL Policy) equal to such payment (including loss adjusting expense), but not to exceed Five Thousand Dollars (\$5,000.00) per occurrence, which such withheld amount shall become the property of AFI.
- 6.2.3. **Project Builder's Risk Policy.** The Contractor shall pay all costs and expenses arising out of loss or damage to the Work (including construction materials to be incorporated into the Work stored on-site and construction materials to be incorporated into the Work manufactured, fabricated or stored at construction yards or storage sites dedicated to the Project and located in the vicinity of the Site) within the deductible or self-insured retention under the Project Builder's Risk Policy, regardless of the number of losses, up to Ten Thousand Dollars (\$10,000) per occurrence for Modernization Schools' projects and Fifteen Thousand Dollars (\$15,000) deductible for New Schools' Projects.
- 6.2.4. **Project Pollution Policy.** The Contractor agrees that, in case of payment by AFI or its Project Pollution Policy insurer on account of claims arising out of pollution caused, directly or indirectly, from the performance of the Work by the

Contractor, AFI shall withhold from payments otherwise due the Contractor hereunder a deductible amount equal to such payment (including loss adjusting expense), but not to exceed Twenty-five Thousand Dollars (\$25,000.00) per occurrence, which withheld amount shall become the property of AFI.

**7. Assignment of Return Premiums**

AFI will be responsible for the payment of all premiums associated solely with the OCIP and will be the sole recipient of any dividend(s) and/or return premium(s) generated by the OCIP. In consideration of AFI's provision of said coverage's, by signing this contract, the contractor agrees to: Irrevocably assign to and for the benefit of AFI, all return premiums, premium refunds, premium discounts, dividends, retentions, credits, and any other monies due to AFI in connection with the insurance which AFI herein agrees to provide. The Awarded Contractor further agrees to require each subcontractor of all tiers to execute a similar provision for the benefit of AFI.

**8. Contractor's-Provided Coverage**

Contractor will be required to provide the following additional coverage's that are not provided under AFI's OCIP program.

8.1. For any work under this contract, and until completion and final acceptance of the work, the Contractor, at its own expense, must promptly furnish to AFI's OCIP Administrator, certificates of insurance giving evidence that certain coverage's are in force. Contractor is responsible for compliance with these requirements by its subcontractors of all tiers.

8.2. Upon receipt of notice to proceed, Contractor agrees and shall cause its subcontractors of all tiers to agree to obtain the insurance set out below from a company or companies acceptable to AFI as follows:

**8.2.1. Workmen's Compensation Insurance**

8.2.1.1. The Contractor shall provide Workmen's Compensation Insurance as described by the Workmen's Compensation Act of the Commonwealth of Puerto Rico. The Contractor shall also be responsible for compliance with said Workmen's Compensation Act by all its subcontractors.

8.2.1.2. The Contractor shall furnish the Authority a certificate from the State Insurance Fund showing that all personnel employed in the work are covered. If imported technical personnel are exempted, the Contractor shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.

8.2.1.3. For imported personnel eligible for exemption, as per Act. No. 16 of May 16, 1958, the Contractor shall refer to Appendix "A".

**8.2.2. Comprehensive Automobile Liability Insurance**

Contractor agrees, and shall cause its subcontractors of all tiers to agree, to provide, at their own expense, Automobile Liability Insurance for claims arising

from the ownership, maintenance, or use of a motor vehicle at, upon, or away from the Project Site. The insurance shall cover all owned, non-owned, and hired automobiles used in connection with the work, with the following minimum limits of liability:

\$1,000,000          Combined Single Limit Bodily Injury

- 8.2.2.1. The certificate evidencing this coverage shall state that the policy has been endorsed to name AFI as an Additional Insured (as their interest may appear).
- 8.2.2.2. This policy shall be endorsed to include Waiver of Subrogation in favor of AFI.
- 8.2.2.3. Notice of Cancellation. Policies and or certificates shall specifically provide an advanced sixty-(60) day notice of cancellation, non-renewal or material change to be sent to the OCIP Administrator at the aforementioned address, as a condition for such cancellation, non-renewal or material change to take place.
- 8.2.2.4. If there is the exposure of transportation of hazardous materials the following endorsement shall be provided. Under this policy, Motor Carrier Endorsement, of the Motor Carrier Act of 1980, Form MCS-90, shall be provided by the Contractor.

### **8.2.3. Payment & Performance Bonds**

The Contractor shall furnish a performance bond (the "Performance Bond") and a labor and materials payment bond (the "Payment Bond"), each in the amount of one hundred percent (100%) of the Contract Price, and in the form set forth, respectively, as Attachments D and E to the AFI-Contractor Agreement. The Performance Bond shall name AFI as obliges. The Performance Bond and the Payment Bond (collectively, the "Bond") shall be issued by a surety company qualified to do business under the laws of the place where the Project is located and acceptable to AFI. The premiums for the Bonds are included in the Contract Price. The Bond shall remain in effect for the one-year warranty period specified in Section 5.4 of the contract. The Bond shall be executed in the required number of counterparts and shall be submitted to AFI for insertion into the Contract Documents simultaneously with the execution of the Contract by the Contractor. Upon the request of any person or entity appearing to be a potential beneficiary of the Bond covering the payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the Bond or shall permit a copy thereof to be made.

### **8.3. Certificates of Insurance**

Prior to entrance on the Project Site, Contractors agrees, and shall cause its subcontractors of all tiers to agree, to provide to AFI's OCIP Administrator a Certificate of Insurance setting out the coverage's described herein, limits, and amendments to the

certificate necessitated by changes to the work to be performed under the contract until completion and final acceptance of work. Insurances must be placed with carriers having an A.M. Best's Guide rating of A-VII or better. Such certificate shall be forwarded to the OCIP Administrator at the address described on Section 6.1.8. above.

#### **8.4. Furnishing of Policies and Bonds**

8.4.1. All required policies of insurance and bonds shall be in a form acceptable to the "Authority", and shall be issued only by insurance companies authorized to do business in Puerto Rico.

8.4.2. The Contractor shall furnish the original and one certified copy of each required bond duly signed by an Attorney in Fact and countersigned by an authorized representative.

8.4.3. The Contractor shall furnish a complete copy of each policy required under this contract, or a Certificate of Insurance signed by an authorized representative of the insurer in Puerto Rico, describing the coverage's afforded. This certification shall be in an "Accord" form, in general use by the insurers.

#### **9. Other Insurance**

Any type of insurance or any increase of limits of liability not described above which a contractor requires for its own protection or on account of any statute shall be its own responsibility and its own expense.

The OCIP is not an attempt to provide the Contractor and its subcontractors of all tiers with complete insurance programs. AFI shall not be responsible to provide any insurance coverage not specified above. The Contractor and its Subcontractors of all tiers have the responsibility to make sure their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage, which they deem advisable, whether or not specified above.

AFI reserves its right to require any changes of insurance or coverage which considers necessary in this contract and to adapt insurance requirements to needs arising during the contracting process.

While AFI intends to maintain the OCIP as described herein, no warranty or representation is made that market conditions, costs, loss records or other factors not now prevalent will not result in changes to the program at some future date. Notwithstanding any other provisions of the Contract Documents, AFI may, at its sole option, modify or discontinue the OCIP or its policy limits, deductible amounts or other elements of coverage. The insurance provisions set forth herein are not intended to and do not represent or fully describe the terms of the policies issued, nor should they be construed to alter or amend those policies. Any questions concerning these insurance provisions shall be directed, in writing, to AFI.

#### **10. Subcontractor Participation**

Upon execution of the contract, the Contractor will immediately report all new eligible Subcontractors of all tiers to the OCIP Administrator for enrollment in the OCIP. The Contractor

shall incorporate all provisions of these in any Subcontractor agreement and shall cause its Subcontractors to cooperate fully with AFI, and the insurance companies for the project, in the administration of the OCIP. The Contractor agrees to cooperate in the safety and accident prevention program and claim handling procedures as established for the project, by AFI. In accordance with this paragraph, Contractor shall not permit any subcontractor of any tier to enter the Project Site prior to submitting enrollment forms in the AFI's OCIP; failure to do so may negate the afforded coverage(s). Any failure by the Contractor in complying with this provision shall constitute a contractual material breach of Contractor and upon its occurrence AFI may pursue any and all rights or remedies it may have under this Contract and/or under the law.

11. **Waiver of Subrogation**

Contractor waives all rights of subrogation and recovery against AFI, its designee(s), Construction Managers, General Contractors and subcontractor(s) of all tiers to the extent of any loss or damage, which is insured under the OCIP. Contractor waives its rights of subrogation and recovery for damage to any property or equipment against AFI, its designee(s), Construction Managers, General Contractors and subcontractor(s) of all tiers. Contractor shall require all subcontractor(s) to similarly waive their rights of subrogation and recovery in each of their respective construction contracts with respect to their work.

12. **No Release**

The carrying of the above-described insurance shall in no way be interpreted as relieving the Contractor of any other responsibility or liability under this agreement or any applicable law, statute, regulation or order.

13. **Approval of Forms and Companies**

All insurance described in this contract shall be written by an insurance company or companies satisfactory to AFI and licensed to do business in Puerto Rico and shall be in a form and content satisfactory to AFI. No party subject to the provisions of this contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein.

14. **OCIP and Safety Procedures**

The Contractor agrees, and shall cause its subcontractors of all tiers to agree, to adhere to and perform all reporting requirements as detailed in AFI's OCIP and Safety Manuals as described in the construction contract. Failure to follow the procedures outlined in these manuals may result in fines being assessed by the appropriate state agencies or commissions or default judgments from a lawsuit against AFI or the Contractor. The contractor shall, at its own expense, be responsible for any fines or judgments arising out of failure to follow these procedures. AFI shall deduct from monies due or to become due under payment of this contract any applicable fines or judgments that are assessed against AFI.

15. **Owner Controlled Insurance Program**

AFI reserves the right to modify or cancel the owner controlled insurance program(OCIP) or to otherwise determine if the awarded contractor will provide their own insurance coverage in lieu of the OCIP provided coverage, or part thereof.

The following paragraphs shall read as follows:

## **4.2 Subsurface and Physical Conditions**

4.2.1. Reports and Drawings. The Scope of Work at the Agreement identify:

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

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

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

4.7.1. Reports, Studies and Drawings. Reference is made to the Scope of Work at the Agreement for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site.

The following paragraphs will be added as follows:

## **5.9 OWNER'S REPRESENTATIVE**

5.9.1 Owner's Representative, through its authorized representatives, will provide general administration of the Contract, and will review and take other action as specified in the Contract Documents with respect to Submittals, and will monitor Construction of the Work.

5.9.2 Owner and Owner's Representative, and their respective authorized representatives, shall at all times have access to the Work wherever it is in preparation and progress. The Contractor will provide, at no cost to Owner, field facilities to the satisfaction of the Contracting Officer so that the Contracting Officer and Owner's Representative may perform their functions under the Contract Documents.

5.9.3 Owner's Representative will have authority to reject Work which does not conform to the Contract Documents. Whenever, in its reasonable opinion, it considers it necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, Owner's Representative will have authority to require special inspection or testing of the Work, whether such Work shall be then fabricated, installed or completed. However, neither the authority of Owner's Representative to act under this Subsection 5.9.3, nor any decision made by it in good faith whether to exercise such authority, shall give rise to any duty or responsibility of Owner's Representative to the Contractor, any Subcontractor, or any Sub-Subcontractor, or any of their



agents or employees, or any other person performing any of the Work, nor will the Contractor be relieved from any of its obligations under the Contract.

- 5.9.4 Owner's Representative will conduct inspections to determine the dates on which Substantial Completion and Final Completion occur and will receive and review written guarantees and other documents required as conditions precedent to Substantial Completion and Final Completion.
- 5.9.5 Owner's Representative will not be responsible for any acts or omissions of the Contractor, any Subcontractor or any Sub-Subcontractor, or any of their agents or employees, or any other persons performing any of the Work.
- 5.9.6 Owner's Representative shall have the right to stop the Work, in whole or in part, in an emergency or when such stoppage is necessary to insure safety or security of people or property; provided, however, the right of Owner's Representative to stop the Work in these circumstances shall not give rise to a duty on the part of Owner's Representative to exercise this right for the benefit of the Contractor or any person, nor to relieve the Contractor of its sole responsibility for safety and security at the Site.

The following paragraphs will be added as follows:

#### **6.1.2.1.2 Management Personnel**

Simultaneously with the execution of the Contract by the Contractor, the Contractor shall designate and describe, in writing to the Contracting Officer, the name, title, qualifications and experience of the proposed Contractor's Project Executive (who shall be the Contractor's Project Executive named in the Contractor Proposal unless otherwise directed or approved by the Contracting Officer). The Contractor's Project Executive shall have supervisory control over the Contractor's Project Manager and full authority to represent, bind and act for the Contractor with respect to any matters arising under the Contract. OWNER shall have the right, in its sole discretion, to approve, reject or to require replacement of the Contractor's Project Executive at any time.

The Contractor shall notify Owner's Representative, in writing, if the Contractor desires to change the Contractor's Project Manager, the Contractor's Project Executive or any senior staff member, and shall provide information in writing to the Contracting Officer as to the experience and qualifications of the proposed new Contractor's Project Manager, Contractor's Project Executive or any senior staff member, as the Contracting Officer may request. No change in the Contractor's Project Manager or Contractor's Project Executive or senior staff shall be made, however, without the Contracting Officer's prior written approval.

The Contractor shall employ a competent construction superintendent and necessary assistants who shall be in attendance at the Site at all times during Construction. The superintendent shall have full authority to act on behalf of the Contractor. The Contracting Officer may require the replacement of such personnel at any time. The Contractor shall coordinate and supervise the work of all Subcontractors and Sub-Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Contractor's Project Manager and, in his absence, the superintendent shall represent the Contractor, and communications given to the Contractor's Project Manager or the superintendent shall be as binding as if given to the Contractor directly. Communications may be confirmed in writing by AFI. Other communications shall be similarly confirmed on written request in each case.

#### **6.1.3 GENERAL**

### **6.1.3.1 Standard of Performance**

The Contractor shall perform all of the management, quality control, scheduling, procurement, construction, installation and all other obligations set forth in, required by, or reasonably inferable from, the Contract Documents, in order to deliver a complete, fully operational and functional facility that meets or exceeds the requirements of Good Industry Practices and the standards established by, and other requirements of, the Contract Documents. The Contractor shall be solely responsible for constructing and installing all elements of the Work.

The following paragraphs shall replace Section 6.4.3 Scheduling Format as follows:

### **6.4.3 SCHEDULING**

#### **Contractor's Construction Scheduler**

**6.4.3.1** The Contractor shall employ or retain the services of a Construction Scheduler. The Construction Scheduler shall have at least five (5) years of verifiable experience as the person primarily responsible for preparing and maintaining detailed CPM schedules on projects of the same or similar size and nature as the Work. The Construction Scheduler shall attend all meetings pertaining to the scheduling and progress of the Work and any other meetings as may be scheduled by Owner.

**6.4.3.2** Within five (5) Days after the date of issuance of the Notice to Proceed, the Contractor shall provide a written statement to Owner's Representative setting forth the following information:

- .1 identification, qualifications, and experience of the proposed Contractor's Construction Scheduler and all other members of the Contractor's scheduling staff; and
- .2 references of not less than two (2) previous projects on which the Contractor's Construction Scheduler has utilized CPM scheduling.

**6.4.3.3** Owner's Representative reserves the right to reject any identified or proposed candidate for the Construction Scheduler and to require the Contractor to select another candidate acceptable to OWNER's Representative.

**6.4.3.4** General Requirements for Progress Schedule. The Contractor shall prepare and submit for Owner's Representative's review and Conditional Acceptance a Contractor's Progress Schedule for the Work as previously described. The Progress Schedule shall show the full detail for the entire Work and, once conditionally accepted by Owner's Representative, will become the baseline Project Schedule. The Progress Schedule shall be based upon a Work Breakdown Structure ("WBS") Level 6, and shall be a resource and cost-loaded schedule using the Critical Path Method of scheduling, providing monthly and long-term scheduling and cost control. It also shall provide a basis for determining amounts of Progress Payments. The Progress Schedule shall be developed to provide for Progress Payments to be made on a schedule intended to compensate the Contractor for its costs incurred in performance of the Work on a reasonably current basis (sometimes referred to in the industry as "cash-flow neutral"), subject to the delays inherent in the payment process.

The Progress Schedule shall (a) include Scheduled Weather Delay Days, (b) be consistent with all milestone dates and completion dates specified in the Contract Documents, (c) be revised at the times required herein and at other appropriate intervals as required by the conditions of the Work,

and (d) provide for expeditious and practicable execution of the Work. Owner's Representative'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 adjustments thereto. The Progress Schedule shall be comprehensive, orderly, and realistic, and shall cover activities onsite and offsite and activities of the School and other agencies that affect the Project.

The Contractor shall conform to the most recent Progress Schedule. The Contractor shall furnish sufficient forces, plant and equipment as may be necessary to insure the progress of the Work in accordance with the Progress Schedule. Without limiting OWNER's rights under Section 9.4.3, if the Contractor falls behind the Progress Schedule, the Contractor shall promptly submit to Owner's Representative 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.

The Contractor shall, with each Application for Payment, submit an Updated Progress Schedule indicating the progress and sequence of the Work, in form acceptable to Owner's Representative.

The Contractor shall at all times provide adequate rates of progress for the various parts of the Work so as to properly advance the Work and so that the Work at all times meets the requirements of the Progress Schedule. Whenever Critical Path Activities fall behind the planned schedule of construction as shown on the Progress Schedule, or when activities which were not critical become critical, Owner's Representative 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.

#### 6.4.3.5 Work Breakdown Structure (WBS)

The Contractor shall submit to Owner's Representative for approval a detailed organized hierarchical division of the WBS for completing each portion of the Work. The WBS shall be the basis for organizing all Work under the Contract, and shall be used to structure the Progress Schedule, Submittal Schedule, and Schedule of Values and other cost control systems. The WBS shall be broken down into the following levels:

- WBS Level 1   PROJECT  
Work breakdown of the Project.
- WBS Level 2   CONTRACT COMPONENT  
Work breakdown into major components of the Contract.
- WBS Level 3   SUBCOMPONENT  
Work breakdown of the Contract components.
- WBS Level 4   PHASE  
Work breakdown into major phases of Work.

WBS Level 5 DISCIPLINES OF WORK  
Work breakdown into Construction Disciplines.  
Schedule of Values (Payment Schedule) Level.

WBS Level 6 DETAIL  
Work breakdown defined by Contractor.  
Progress Schedule Level.  
Resource and Cost-Loaded.  
Rolling 6 Month Schedule - To provide monthly schedule control.  
Progressed and submitted on a monthly basis.

6.4.3.6 Scheduling System. The Contractor shall use Oracle Primavera P6 (professional Project Management), and a hardware system commensurate with the size of the Project (the "Scheduling System"). The Scheduling System shall use the Critical Path Method and be capable of handling, processing, printing, and plotting data to satisfy all Owner's requirements. The Contractor shall maintain the Scheduling System, the Progress Schedule and Updated Progress Schedules, and the scheduling staff onsite or at a location approved by Owner's Representative.

6.4.3.7 Contents of Progress Schedule. The Progress Schedule shall:

6.4.3.7.1 Begin on the date of issuance of the Notice to Proceed and conclude with the date of Final Completion;

6.4.3.7.2 Identify Work on a calendar basis using Days as a unit of measure;

6.4.3.7.3 Show complete interdependence and sequence of construction and Work-related activities reasonably required to complete the Work;

6.4.3.7.4 Identify Work of separate stages and other logically grouped activities, and clearly identify the critical path of activities;

6.4.3.7.5 Reflect sequences of Work, restraints, delivery windows, review times, the Contract Time and Project Milestones as set forth in the Agreement.; and

6.4.3.7.6 Include, as applicable, the following activities:

6.4.3.7.6.1 Design deliverables

6.4.3.7.6.2 Time for obtaining permits, submittals for early product procurement and long lead time items.

6.4.3.7.6.3 Mobilization and other preliminary activities.

6.4.3.7.6.4 Initial site work.

6.4.3.7.6.5 Specified Work sequences, constraints, and Milestones, including date of Substantial Completion and trade Work.

6.4.3.7.6.6 Interfaces with Other Contractors.

6.4.3.7.6.7 Major equipment design, fabrication, factory testing, and delivery dates.

- 6.4.3.7.6.8 Site work.
- 6.4.3.7.6.9 Concrete work.
- 6.4.3.7.6.10 Structural steel work.
- 6.4.3.7.6.11 Architectural features work.
- 6.4.3.7.6.12 Conveying systems work.
- 6.4.3.7.6.13 Equipment work.
- 6.4.3.7.6.14 Mechanical work.
- 6.4.3.7.6.15 Electrical work.
- 6.4.3.7.6.16 Instrumentation and control work.
- 6.4.3.7.6.17 Interfaces with Owner -furnished equipment.
- 6.4.3.7.6.18 Other important work for each major facility.
- 6.4.3.7.6.19 Equipment and system startup and test activities.
- 6.4.3.7.6.20 Project closeout and cleanup.
- 6.4.3.7.6.21 Demobilization.

**6.4.3.8** Progress Schedule Graphical Display. The graphical display for the Progress Schedule shall be furnished to OWNER's Representative on a Primavera P3 diskette and shall:

- 6.4.3.8.1 Plot or print on paper not greater than 30 inches by 42 inches or smaller than 22 inches by 34 inches, unless otherwise approved.
- 6.4.3.8.2 Include a title block indicating the name of the Project, Owner, date submitted, revision or update number, and the name of the scheduler. Updated Progress Schedules shall indicate data date.
- 6.4.3.8.3 Identify horizontally across the top of the schedule the time frame by year, month, and Day.
- 6.4.3.8.4 Identify each activity with a unique number and a brief description of the Work associated with that activity.
- 6.4.3.8.5 Indicate the Critical Path.
- 6.4.3.8.6 Show, at a minimum, the controlling relationships between activities.
- 6.4.3.8.7 Plot activities on a time-scaled basis, with the length of each activity proportional to the current estimate of the duration.
- 6.4.3.8.8 Plot activities on an early start basis unless otherwise requested by OWNER's Representative.

**6.4.3.8.9** Provide a legend to describe standard and special symbols used.

**6.4.3.9** Progress Schedule Report. The Contractor shall submit a Progress Schedule Report with the Progress Schedule and with each Updated Progress Schedule. The Progress Schedule Report shall be printed on 8-1/2 inch by 11-inch white paper, unless otherwise approved by Owner's Representative. The Progress Schedule Report shall provide information for each activity in tabular format, including, at a minimum:

**6.4.3.9.1** Activity Identification Number.

**6.4.3.9.2** Activity Description.

**6.4.3.9.3** Original Duration.

**6.4.3.9.4** Remaining Duration.

**6.4.3.9.5** Early Start Date (actual start on Updated Progress Schedules).

**6.4.3.9.6** Early Finish Date (actual finish on Updated Progress Schedules).

**6.4.3.9.7** Late Start Date.

**6.4.3.9.8** Late Finish Date.

**6.4.3.9.9** Total Float.

**6.4.3.10** Float Time. Float time (whether identified in the initial Progress Schedule or in any Updated Progress Schedule) is a Project resource available to both the Contractor and to Owner to meet Milestones and the Contract Time. Use of float suppression techniques such as preferential sequencing or logic, special lead/lag logic restraints, and extended activity times is prohibited.

The use of float time disclosed or implied by the use of alternate float suppression techniques shall be shared to the proportionate benefit of Owner and the Contractor.

**6.4.3.11** Review and Conditional Acceptance of Progress Schedule. Not later than thirty (30) Days after the date of issuance of the Notice to Proceed, the Contractor shall submit to Owner's Representative 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.

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 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 Owner's

Representative for review, comment or Conditional Acceptance. As a condition precedent to Final Completion, the Contractor shall prepare and furnish to Owner's Representative a final as-built Progress Schedule.

The following paragraphs shall read as follows:

6.13.1. The Contractor shall be fully responsible for initiating, maintaining enforcing and supervising all safety and security precautions and programs in connection with the performance of the Contract, including, but not limited to, compliance by the Contractor, all Subcontractors and Sub-Subcontractors with all occupational safety standards and regulations required by the Occupational Safety and Health Act, other Applicable Laws, the Contract Documents, and any insurance carrier providing insurance coverage for Owner or the Contractor in connection with the Project. Without limiting the generality of the foregoing, the Contractor shall, prior to commencement of Construction, prepare a written Construction Safety and Security Plan which shall be submitted to Owner and issued to all Subcontractors and all forces employed on the Work. Such program shall include weekly safety meetings with employees and subcontractors, and the Contractor shall prepare, circulate and maintain on file at the Site minutes and attendance of all safety meetings and comply with the program. The Construction Safety Program besides the Occupational Safety and Health Act, shall include responsibility levels and disciplinary action for employees and Subcontractors not following the Safety Program. Such programs shall include but not limited to, job hazard analysis, fall protection program, excavation safety program, scaffolds safety program, electrical safety program, lock out tag out program, confined spaces entry program, stairs and ladder safety program, cranes safety, hand powered tools safety, housekeeping and hygiene program, hazard communication program, emergency and fire prevention program, personal protective equipment program, employees and subcontractors disciplinary action program or other safety program as required by the applicable construction activities, OSHA regulations in 29 CFR 1926, 1910, and the Puerto Rico Occupational Safety and Health Act. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.13.1.1. All persons, subcontractors, sub-subcontractors on the Site who may be affected by the Work;

The following paragraphs will be added as follows:

6.13.4 The general contractor shall submit the safety program to the Owner to verify if it contains the minimum OSHA 29 CFR 1926, 1910 and the Puerto Rico Occupational Safety and Health Act requirements applicable to the Project or other codes or regulations by reference.

The following paragraphs shall read as follows:

6.14.1 Contractor shall designate a qualified experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and maintaining and supervising of safety precautions and programs. The Safety representative main activity shall be the implementation of the Contractor safety program.

The following paragraphs will be added as follows:

6.14.1.1 The Contractor shall designate a member of the Contractor's organization assigned at the Site, experienced in OSHA construction safety standards by formal training and safety, who shall be present at the Project during days of construction work activities, who shall report directly to the Contractor's

Project Executive, and who will have as his primary responsibility, implementation of the Contractor's safety plan, and the implementation of a security program to provide for, at a minimum:

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

6.14.1.1.2 procedures for Site safety; employee and visitor Site security and in-progress construction security; and

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

6.14.1.1.4 The designate safety and security member shall have a minimum of 3 years of experience and documented safety education similar to the OSHA 30 hours training for construction.

6.14.1.1.5 The designated safety and security representative can perform other activities only at the project site or premises. Neither the Owner nor the project engineer may be designated as the safety representative.

The following paragraphs will be added as follows:

## **6.22 UTILITY WORK**

### **6.22.1 UTILITY FACILITIES**

Owner makes no representation or warranty that the utility facilities (“utilities” or “utility facilities”) shown or otherwise referred to in the Contract Documents are in the locations indicated or are the only utility facilities that may be encountered. Prior to commencing the Work, the Contractor shall visit the Site and shall confirm the existence and location of all utility facilities and shall, during the course of the Work, make diligent and continuous efforts to confirm the locations of all utility facilities at and adjacent to the Site. The Contractor shall make necessary arrangements with, and obtain approvals from, utility companies for the design, protection, alteration and relocation of utility facilities which may be necessary in connection with performance of the Work, as hereafter provided, and shall notify all municipal departments and utility companies concerned of the time and location of any work which may affect them. The Contractor shall be responsible for all costs and all claims, damages and liabilities arising directly or indirectly from any damage to utility facilities or any intentional or unintentional interruption of service occurring in connection with the Work or other operations of the Contractor.

### **6.22.2 RESPONSIBILITY FOR RELOCATION OF UTILITIES**

Except as expressly otherwise provided below, the Contractor shall be solely responsible for the temporary or permanent relocation of all existing utilities, public and private, located on, over, under or adjacent to the Site, which conflict with, or are affected by, the construction and installation of the Work, and for obtaining all related approvals required from utility companies.

The utilities to be relocated, replaced or rehabilitated shall include, without limitation, all electric power, telephone, cable television, telecommunication, gas, petroleum products, water, sewer, storm drain, irrigation, steam, and similar lines and facilities located within the Site, whether located on the surface, underground or overhead, and whether indicated in the Contract Documents, Drawings and Specifications



developed by Contractor or discovered in the course of performance of the Work.

The Contractor shall use its best efforts to relocate or cause to be relocated the existing utilities in the most expeditious manner, with the least damage to existing trees and shrubbery and the operations of the affected utility company and its customers. The Contractor shall comply with all Applicable Laws, easements or other agreements governing or relating to the existing utilities, and, in particular, with any provisions thereof relating to relocation of such utilities. The Contract Price includes all of the Contractor's costs, expenses, overhead and profit for all private utility relocation Work and public utility relocation work. The Contractor shall be responsible for informing and reporting the list of existing public utilities in the Project area. If Contractor should interrupt or cause damage to any public utility he shall be held responsible or accountable for such interruption or damages and the full cost of repairing and restoring the same. The Contractor shall be responsible for overseeing and receiving all claims as stated in Section 6.22.2.

### **6.22.3 PRIVATE UTILITIES**

With respect to cable television, telephone and other privately-owned utilities, the Contractor shall notify such utility company of the need to relocate such utility at the private utility company's expense, the acceptable locations for the relocated utility and the necessary timetable for such relocation for the Work to proceed in accordance with the Contractor's Progress Schedule. The Contractor shall cooperate and coordinate with the private utility company to cause the relocation work for such company to occur in accordance with the Contractor's Progress Schedule. If necessary, the Contractor, himself, shall relocate the utilities. The Contractor shall be responsible for informing and reporting the list of existing private utilities in the Project area. If Contractor should interrupt or cause damage to any private utility he shall be held responsible or accountable for such interruption or damages and the full cost of repairing and restoring the same. The Contractor shall be responsible for overseeing and receiving all claims as stated in Section 6.22.3.

With respect to the relocation of telephone lines, the Contractor shall be responsible for all construction and installation work required to relocate the telephone utility lines and all related work using contractors approved by the telephone company, except for work involving splicing of fiber optic cables (which shall be performed by the telephone company). The Contractor shall be responsible for causing the telephone company to perform all work necessary to splice fiber optic cables.

The Contractor shall be responsible for obtaining reimbursement from the private utility companies for all costs, equipment rental, labor or other charges or fees incurred by the Contractor, any Subcontractor or Sub-Subcontractor and any mark-up or profit of the Contractor, any Subcontractor or Sub-Subcontractor in connection with such relocation ("relocation costs") and in no event shall such relocation costs be charged to Owner.

### **6.22.4 PUBLIC UTILITIES**

With respect to electric power, water, sewer, storm drains, and other publicly-owned utilities, the Contractor shall be solely responsible for all costs of the design, construction, installation and relocation of such utilities.

### **6.22.5 LOCATION OF RELOCATED UTILITIES**

The Contractor shall cause to be provided to Owner, any affected utility companies, all governmental agencies having jurisdiction, and any affected landowners or other lawful occupants, a survey, plot plan,

legal description or other documentation providing a sufficient description to enable the recipient to accurately and precisely identify the “as-built” location of temporarily and permanently relocated utilities on the Site or other adjacent parcels of land. Such documentation of the “as-built” location of relocated utilities shall be provided whether the utilities have been relocated permanently or temporarily.

#### **6.22.6 INSPECTION RIGHTS**

Owner or its agents may inspect any utility relocation work in progress on or adjacent to the Site, regardless of whether the Contractor or the affected utility company is performing the work.

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

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

**6.23.2** The Contractor shall be responsible to Owner for the acts and omissions of all of its employees, agents, Subcontractors, and Sub-Subcontractors (and their respective agents and employees) and all other persons performing any of the Work or supplying any materials or equipment for the Work under a contract with the Contractor. The Contractor shall rebuild, repair, restore and make good any damages to any portion of the Work before its final completion and acceptance, and shall bear the expense thereof.

#### **6.24 RECORD DOCUMENTATION**

The Contractor shall keep complete and accurate field records of all changes and deviations from the Drawings and Specifications indicating the actual placement and condition of all elements of the Work as actually constructed or installed. All such deviations and changes shall be made on a regular and current basis, and shall be neatly and accurately indicated on the Drawings affected, or in the Specifications, with appropriate supplemental notes. The Contractor shall keep at the Site field office a copy of the as-built Contract Documents which shall be available at all times for use and inspection by the Contracting Officer and Owner’s Representative. At the conclusion of the Work, the Contractor shall prepare as-built “Record Drawings” on a set of Drawings, and shall deliver the final as-built Record Drawings and other Record Documentation to Owner’s Representative for approval before, and as a condition precedent to, Final Payment.

The following paragraphs will be added as follows:

#### **9.2.3 Time Impact Analysis for Change Modifications, Delays, and Contractor Requests:**

**9.2.3.1** When change modifications are indicated and delays are experienced, by Owner’s request or the Contractor desires to revise the Project Schedule, the Contractor shall submit to the OWNER’s Representative a written Time Impact Analysis illustrating the influence of each modification, delay, or Contractor request on the contract time. The preparation of Time Impact Analysis is considered part of the construction process and will be performed at no additional cost to OWNER. Each Time Impact Analysis shall include a Fragmentary Network (Network analysis) demonstrating how the Contractor proposes to incorporate the modification, delay or Contractor request into the Project Schedule. The Time Impact Analysis shall demonstrate the time impact

based on the date the modification is given to the Contractor or the date the delay occurred; the status of construction at that point in time; and the event time computation of all affected activities. The event times used in the Time Impact Analysis shall be those included in the latest Project Schedule Update or as adjusted by mutual agreement.

- 9.2.3.2 Activity delays shall not automatically mean that an extension of the Contract time will be warranted or due the Contractor. It is possible that a modification or delay will not affect existing critical activities or cause non-critical activities to become critical. A modification or delay may result in only absorbing a part of the available total float that may exist within an activity chain of the Network, thereby not causing any effect on the Contract time.
- 9.2.3.3 Float is not for the exclusive use or benefit of either OWNER or the Contractor. Extension of the Contract time will be considered in the review/evaluation process only to the extent the equitable time adjustments to the activity or activities affected by the modification or delay, exceed the total float of an activity; and forces the activity onto the critical path; and extends the contract time set forth in Contract Conditions.
- 9.2.3.4 Four (4) copies of each Time Impact Analysis shall be submitted as follows:
- 9.2.3.4.1 Along with the proposal for any requested change.
  - 9.2.3.4.2 Within seven (7) calendar days after receipt of a written modification under Contract Conditions.
  - 9.2.3.4.3 Within seven (7) calendar days after the furnishing of a written notice by OWNER's Representative as set forth under Contract Conditions.
  - 9.2.3.4.4 Within seven (7) calendar days from the beginning of a delay from unforeseeable causes as set forth in Contract Conditions.
- 9.2.3.5 In cases where the Contractor does not submit a Time Impact Analysis within the time stated above it is mutually agreed that the particular modification, delay or the Contractor request does not require an extension of the contract time.
- 9.2.3.6 Approval or rejection of each Time Impact Analysis by OWNER's Representative shall be made after receipt of each Time Impact Analysis, unless subsequent meetings and negotiations are necessary. Upon approval, a copy of the Time Impact Analysis signed by OWNER shall be returned to the Contractor, and incorporated into the Project Schedule at the next monthly Schedule Update.
- 9.2.3.7 Time Impact Analysis related to an extension of the Contract time and/or change modification work shall be incorporated into and attached to the applicable Change Order.

### 9.3.4 TYPES OF DELAY EVENTS

9.3.4.1 "Delay Event" means any of the following acts, omissions, events or conditions which delays completion of the Work or prevents performance of the Contractor's obligations under the Contract and which could not be prevented by the Contractor even though the Contractor were to take all appropriate care to avoid or diminish the adverse consequences of the Delay Event:

- .1 Fire or explosion;
- .2 Act of war, civil disorder, riot or similar occurrence;
- .3 Order, legislation, judgment, or other official action, of any governmental body, agency or official (other than OWNER) having jurisdiction over the Project;

- .4 Any act or omission of OWNER or OWNER's Representative, such as a temporary stoppage or suspension of Work, not resulting from the act or omission of the Contractor, any Subcontractor or Sub-Subcontractor or any other person or entity for whom the Contractor is responsible;
- .5 Excess Weather Delay Days for which the Contractor is entitled to an extension of the Contract Time pursuant to Subsection 9.3.4.2; or
- .6 Strikes or work shutdowns caused by labor disputes and lockouts (other than lockouts caused by the Contractor, Subcontractors or Sub-Subcontractors), subject to the provisions of Subsection 9.3.4.3.

The financial difficulties of the Contractor (or any Subcontractor, Sub-Subcontractor, supplier or other party for whom the Contractor is responsible) or the consequences thereof, shall not constitute a Delay Event.

9.3.4.2 Weather Delay Days

In order to assist in managing issues relating to the Contractor's entitlement to adjustments of the Contract Time resulting from unusually severe weather conditions (including, without limitation, hurricanes), the Contractor shall include in its Progress Schedule, for each calendar month during the Contract Time, the same number of Weather Delay Days as are set forth, for each calendar month, in Table 9.1, below ("Scheduled Weather Delay Days").

Table 9.1

| January | February | March | April | May | June |
|---------|----------|-------|-------|-----|------|
| 1       | 0        | 0     | 1     | 2   | 1    |

| July | August | September | October | November | December |
|------|--------|-----------|---------|----------|----------|
| 1    | 2      | 2         | 2       | 2        | 2        |

As is more particularly described below, the Contractor shall be entitled to seek an extension of the Contract Time on account of the occurrence of Weather Delay Days only if the number of Weather Delay Days experienced by the Contractor exceeds the number of Scheduled Weather Delay Days. The specific requirements and procedures for administering, calculating and determining Weather Delay Days and the Contractor's entitlement to an extension of the Contract Time on account thereof are as follows:

- .1 *Notice from the Contractor.* If the Contractor believes that a Weather Delay Day has occurred, the Contractor shall provide to OWNER's Representative with a written notice no later than five (5) Work Days following the occurrence of each claimed Weather Delay Day. The notice shall (a) describe the weather event, (b) set forth the number of Weather Delay Days claimed, and (c) include sufficient documentation to establish that, on each claimed Weather Delay Day, the weather or conditions resulting therefrom prevented the Contractor from engaging at least seventy-five percent (75%) of the labor force and

equipment that was scheduled (under the current Progress Schedule and Work Plan Schedule) for engagement on Critical Path Activities for at least fifty percent (50%) of that Work Day. The Contractor shall also furnish such other supporting documentation as OWNER's Representative or the Contracting Officer may request, including an Updated Progress Schedule or schedule impact (fragnet) analysis worksheet. The submission of such written notice within the specified time period shall be a condition precedent to any extension of the Contract Time.

- .2 *Monthly Determination.* Based upon information provided to OWNER's Representative under Clause .1, the Contracting Officer shall make a monthly determination as to the number of Weather Delay Days during the preceding calendar month, and shall furnish to the Contractor a written monthly statement stating the number of Weather Delay Days that the Contracting Officer shall have initially determined to have occurred during that calendar month.
- .3 *Resolution of Disagreements.* If the Contractor disagrees with the Contracting Officer's initial determination of Weather Delay Days set forth in such a monthly statement, the Contractor may pursue, in negotiations with OWNER, a resolution of the issue during the thirty (30) Day period following the furnishing to the Contractor of the Contracting Officer's monthly statement. If no agreement is reached on the issue by the expiration of such thirty (30) Day period, the Contracting Officer's initial determination of Weather Delay Days as set forth in his monthly statement shall, automatically and without further action by the Contracting Officer or the Contractor (effective on the Day after expiration of such thirty (30) Day period), become a Claim Determination, and shall be final and binding upon OWNER and the Contractor unless, not later than thirty (30) Days after the effective date of such Claim Determination, the Contractor files with OWNER's Representative a written notice disputing the Claim Determination and informing OWNER of the Contractor's intention to seek judicial resolution of the issue.
- .4 *Extensions of the Contract Time on Account of Weather Delay Days for the First Year.* With respect to the period from the date of issuance of the Notice to Proceed through the end of the twelfth full calendar month thereafter, the Contracting Officer shall determine the total number of Weather Delay Days that have occurred during that period as of the anniversary of the date of issuance of the Notice to Proceed (or if the Notice to Proceed was issued on a date other than the first Day of any calendar month, on the anniversary of the first Day of the calendar month next following the date of issuance of the Notice to Proceed). The Contracting Officer's annual determination shall be based upon those monthly determinations made by the Contracting Officer pursuant to Clause .2, above, which have become final and binding upon OWNER and the Contractor and any negotiated resolutions of monthly determinations achieved under Clause .3, above (collectively, "included calendar months"). If the number of Weather Delay Days determined to have occurred by the Contracting Officer during the included calendar months during such period exceeds the Scheduled Weather Delay Days for the included calendar months, then the Contractor shall be granted an extension of the Contract Time equal in duration to the difference between (a) the actual Weather Delay Days experienced during the included calendar months and (b) the Scheduled Weather Delay Days during the included calendar months, with the result multiplied by 1.46 and rounded to the nearest integer. A Change Order reflecting such time extension will be furnished to the Contractor within a reasonable period of time after such annual determination. Such Change Order shall provide for a retroactive adjustment of the Progress Schedule, allowing the Contractor to take into account Weather Delay Days (for which the Contractor is entitled to an extension of the

Contract Time) on the Days when such Weather Delay Days, in fact, occurred. If the number of Weather Delay Days determined to have occurred by the Contracting Officer during the included calendar months during such period is less than the Scheduled Delay Days for the included calendar months, OWNER shall be entitled to deposit into the Delay Bank that number of Days equal to the difference between (y) the actual Weather Delay Days experienced during the included calendar months and (z) the Scheduled Weather Delay Days during the included calendar months, with the result multiplied by 1.46 and rounded to the nearest integer. Any months as to which the Contractor shall have filed with OWNER's Representative a written notice disputing a Claim Determination shall be excluded from the Contracting Officer's annual determination, and, when the determination of Weather Delay Days for such months is resolved, an appropriate adjustment of the Contract Time or of the Delay Bank shall be made.

- .5 *Annual Determination in Later Years.* For each subsequent annual period, the Contracting Officer shall make an annual determination identical to that set forth in Clause .4, except that if the number of Weather Delay Days determined to have occurred exceeds the corresponding Scheduled Weather Delay Days, the Contractor shall be granted an extension of the Contract Time equal in duration to the difference between (a) the actual Weather Delay Days experienced and (b) the sum of the Scheduled Weather Delay Days plus the number of Days in the Delay Bank, with the result multiplied by 1.46 and rounded to the nearest integer.
- .6 *Partial periods.* With respect to any partial years or partial calendar months pro rata calculations shall be made in making the foregoing determinations.

#### 9.3.4.3 Strikes

No strike or work shutdown caused by a labor dispute shall be considered to be a Delay Event if:

- .1 It is found by a court of competent jurisdiction or by the National Labor Relations Board that such strike or work shutdown was principally caused by the Contractor's breach of its collective bargaining agreement, or by the Contractor's refusal to negotiate or bargain in good faith; or
- .2 Such strike or work shutdown was fomented or perpetrated by the Contractor for the purpose of interfering with, delaying or influencing a decision about the Contractor's performance under the Contract.

#### 9.3.5 Notice and Procedures as to Delay Events

9.3.5.1 Initial Notice. The Contractor shall provide Owner's Representative with an initial written notice of any occurrence, event or condition which the Contractor claims (or intends to claim) constitutes a Delay Event, except that any such claim that a Weather Delay Day shall have occurred shall be governed by the provisions of Subsection 9.3.4.2, and not this Subsection 9.3.5.1. Such initial written notice shall be submitted and delivered to OWNER's Representative within five (5) Work Days of the commencement of such occurrence, event or condition, and shall:

- .1 State in detail the circumstances which form the basis of the Claim, and the current and probable future effects on the Contractor's performance; and
- .2 State the date of commencement of the delay and the duration or expected duration of the delay with respect to each affected portion of the Work.

The submission of such initial written notice within the time period provided above shall be a condition precedent to any extension of the Contract Time. Neither OWNER's Representative nor any other agent, consultant or employee of OWNER shall have authority to modify or waive, expressly or by implication, such condition precedent or the corresponding condition precedents set forth in Subsection 9.3.4.2 and 9.3.5.2, and any action or statement by OWNER's Representative or such other person to such effect shall not be binding upon OWNER.

**9.3.5.2 Second Notice.** Following submission of the initial written notice, not later than fifteen (15) Work Days of the commencement of any occurrence, event or condition which the Contractor claims (or intends to claim) constitutes a Delay Event, the Contractor shall submit to OWNER's Representative written notice of such occurrence, event or condition. This written notice shall (i) state that an extension of the Contract Time is claimed; (ii) state in detail the circumstances which form the basis of the delay; (iii) identify Work activities alleged to have been delayed; (iv) state the calendar dates on which the Work activities were delayed and are anticipated to be further delayed; (v) state the number of calendar Days by which the Contractor is requesting the Contract Time to be extended; (vi) fully complete and state the CPM analysis justifying the request, including a schedule impact (fragnet) analysis worksheet prepared in a time-scale to graphically illustrate the effect of the alleged delay on affected activities; and (vii) state the time, the date of commencement and duration or expected duration of the delay and its effect on the various portions of the Work, and such notice shall be accompanied by a Contractor Certification. OWNER shall have no obligation to act upon any such notice if the same is not accompanied by a Contractor Certification. The Contractor shall provide such supporting documentation as OWNER may require, including, where appropriate, an Updated Progress Schedule indicating all of the activities affected by the circumstances which form the basis for the Claim. The submission of such written notice within the time period provided above shall be a condition precedent to any extension of the Contract Time. Because the possible necessity for an extension of the Contract Time might materially alter the scheduling, plans and other actions of OWNER and Other Contractors and because, with sufficient opportunity, OWNER might (if it knew of the Contractor's claim) attempt to mitigate the effect of a delay for which an extension of the Contract Time was to be claimed, and only oral notice might cause disputes as to the existence or substance of such Claim, and because delayed notice seriously hinder or prevent OWNER's investigation of the pertinent facts, the giving of written notice within the time periods stated above in Subsections 9.3.4.2, 9.3.5.1 and 9.3.5.2 shall be of the essence of the Contractor's obligations, and failure of the Contractor to comply with these requirements shall be a conclusive waiver of a claim for extension of the Contract Time. It shall in all cases be presumed that no extension or further extension of the Contract Time is due unless the Contractor shall affirmatively demonstrate the Contractor's entitlement to an extension of the Contract Time under all applicable terms and conditions of the Contract Documents. To this end, the Contractor shall maintain clear and precise records supporting any claim for an extension of the Contract Time, and in the absence of such records, the foregoing presumption shall be conclusive.

**9.3.5.3 Procedures for Review and Resolution.** Claims for an extension of the Contract Time by reason of a Delay Event shall be reviewed and resolved subject to, and in accordance with, Clauses .3 through .6 of Subsection 11.9.2 and Subsection 11.9.3, except that Claims based upon Weather Delay Days shall be reviewed and resolved pursuant to Subsection 9.3.4.2.

### **9.3.6 Limitations on Delay Computation**

Whenever the Contractor claims an extension of the Contract Time as a result of an Excusable Delay, only the unavoidable delay caused to completion of the Work as a whole shall be considered in measuring or evaluating the extent of the delay. If, for example, extra work can be (or could have been) performed along with the regular Work called for by the Contract Documents so as to reduce or eliminate a delay in the progress of the Work or some portion thereof, without causing necessary delay to such regular work,

no claim for extension of the Contract Time shall be granted. An extension of the Contract Time shall be granted only for delays affecting Critical Path Activities. In any event, even though a cause of delay meets all of the above conditions, any extension shall be granted only to the extent that the effect of such cause cannot be (or could not have been) avoided or mitigated by the exercise of all reasonable precautions, efforts and measures (including planning, scheduling and rescheduling, re-sequencing Work activities, and reallocating and redeploying work forces), whether before or after the occurrence of the cause of delay. If a concurrent delay occurs (*i.e.*, either a single delay resulting from two or more causes where at least one delay is the responsibility of the Contractor, or multiple delays, where at least one delay is the responsibility of the Contractor), no extension of the Contract Time shall be granted to the Contractor during the period of any such delay for which the Contractor is responsible.

No extension of the Contract Time shall be allowed unless the number of Days of extension of the Contract Time to which the Contractor would otherwise be entitled is reduced, on a Day-for-Day basis, by the number of Days, if any, then in the Delay Bank. Days in the Delay Bank so applied to reduce the duration of an extension of the Contract Time shall, upon such application, be withdrawn from the Delay Bank.

### **9.3.7 Sole Remedy**

Subject only to Subsection 9.3.8, the Contractor assumes the risk of all delays of any kind or duration, whether or not within the contemplation of either OWNER or the Contractor and whether foreseeable or unforeseeable. The Contractor shall have no right to rescind, cancel or terminate the Contract except as expressly provided herein, and the Contractor shall have no cause of action under any theory of quasi-contract or *quantum meruit*, by reason of any such delay. The Contractor agrees that extensions of the Contract Time shall be the Contractor's sole and exclusive remedy against OWNER, except to the extent otherwise provided in Subsection 9.3.8, below.

### **9.3.8 Adjustment of the Contract Price as a Result of Certain Delays**

If and to the extent that the Contractor establishes that all of the following have occurred:

- .1 The Contractor is entitled to an extension of the Contract Time pursuant to this Section 9.3,
- .2 The Contractor suffered Compensable Losses (as defined below) as a result of the delay, and
- .3 The Contractor could not have avoided or mitigated such Compensable Losses despite having taken all reasonable precautions, efforts and measures to avoid or reduce the amount thereof, including, without limitation, mitigating delays by re-sequencing Work activities, and reallocating and redeploying work forces of the Contractor, Subcontractors and Sub-Subcontractors to the maximum extent practicable, then OWNER shall adjust the Contract Price by an amount equal to the Contractor's Compensable Losses directly attributable to the Delay Event giving rise to the extension of the Contract Time. A Change Order effecting the adjustment to the Contract Price will be furnished to the Contractor within a reasonable period after such determination.

“Compensable Losses” include only the reasonable verified amounts of necessary direct costs of idle time of equipment, necessary direct costs for idle time of workers and professional and technical personnel, and necessary direct costs of moving of equipment and extended field office overhead expenses. No mark-up of Compensable Losses will be allowed for home office



overhead or profit. For purposes of the Contract, "extended field office overhead" expenses shall mean those indirect costs incurred at the Site (sometimes also referred to as general conditions costs or jobsite overhead costs) (i) which cannot reasonably be allocated to any specific work item within the Work, and (ii) which increase or decrease as a function of the duration of the Contract Time. Examples of extended field office overhead items include: project manager, superintendent, temporary utilities and temporary facilities, clerical staff, office equipment and supplies and project trucks and automobiles.

The following paragraph will be added as follows:

#### **9.4.3 RECOVERY MEASURES**

If OWNER determines that the performance of the Work has not progressed to, or reached, the level of completion required by the current Progress Schedule, OWNER shall have the right to direct the Contractor to take all the necessary measures and steps to recover any lost time and return the Work to the level of progress or completion required by the current Progress Schedule ("Recovery Measures"). In such event, the Contractor shall, within five (5) Work Days of receiving OWNER's direction to take Recovery Measures, notify OWNER's Representative in writing of the steps and measures which the Contractor proposes to take to remedy the situation, and furnish OWNER's Representative with an Updated Progress Schedule reflecting such Recovery Measures, and implement such steps promptly and without further delay. Performance of such Recovery Measures may include steps such as working six Days per week, lengthening the Work Day, double shifts, and increasing work forces and construction equipment employed on the Work. Such Recovery Measures shall continue until the progress of the Work is returned to the stage of completion required by the current Progress Schedule. OWNER's right to require Recovery Measures is solely for the purpose of ensuring the Contractor's compliance with the Progress Schedule. If the Contractor disputes OWNER's direction to the Contractor to take Recovery Measures, the Contractor shall, nonetheless, promptly and diligently perform the Recovery Measures and shall have no right whatsoever to fail or refuse to take such Recovery Measures. If the delays giving rise to a direction from OWNER to the Contractor to take Recovery Measures are not Excusable Delays, the Contractor shall not be entitled to an extension of the Contract Time or an adjustment of the Contract Price in connection with taking Recovery Measures. The Contractor acknowledges that if any delay giving rise to a direction from OWNER to implement Recovery Measures is, in fact, an Excusable Delay, the Contractor shall be entitled to be compensated therefor under Art. 9 and 11. The Contractor's only recourse, if the Contractor disputes OWNER's order to take Recovery Measures, shall be to submit a Contractor Change Request subject to, and in accordance with, the provisions of Section 11.9. The Contractor acknowledges the critical importance of achieving completion of the Work within the Contract Time, and maintaining the progress of the Work consistently with the Progress Schedule.

#### **9.6 EARLY COMPLETION INCENTIVE**

Articles 9.6 and 9.6.1 are hereby eliminated from the Uniform General Conditions for Public Works Contracts. OWNER shall not pay the Contractor an incentive of any kind for completion of contract work before the expiration of the contract time, or at any other circumstances therefore.

The following paragraph will read as follows:

10.2.1.3.1. If required by Owner's Representative, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine which bids, if any, will be acceptable.

10.2.1.5.3. Rentals of all construction equipment and machinery, and the parts thereof whether rented

from Contractor or others in accordance with rental agreements approved by Owner's Representative and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof.

The following paragraphs will be added as follows:

### **11.6 Change Notice**

OWNER may, at any time, initiate a Change Order by causing a Change Notice to be issued to the Contractor. A Change Notice shall be the standard method employed to notify the Contractor of OWNER's intent to implement a Change Order. A Change Notice will indicate one of the following:

- .1 That the proposed Change Order involves no adjustment of the Contract Price or the Contract Time;
- .2 That the proposed Change Order involves only items for which there are changes in quantities of items for which unit prices are specified in the Contract Documents;
- .3 That the proposed Change Order involves an adjustment of the Contract Price or the Contract Time, and the Change Notice proposes the basis for adjusting the schedule or the compensation, or both; or
- .4 That the proposed Change Order may involve an adjustment in the Contract Price or the Contract Time and will require that the Contractor submit a Contractor Change Proposal in accordance with Section 11.8.

Following the issuance of a Change Notice under the provisions of Clauses .1, .2 or .3 of this Subsection 11.6, if the Contractor agrees with the Change Notice, the Contractor shall sign a copy of the Change Notice, indicating "agreed" next to its signature, and return it to OWNER's Representative within five (5) Work Days after receipt. A Change Order will then be issued pursuant to this Section 11.1, and the Contractor shall proceed with the Work indicated in the Change Order. If the Contractor disagrees with the Change Notice, the Contractor shall sign the Change Notice, indicating "protested" next to its signature, return it to OWNER's Representative within five (5) Work Days, and follow the protest procedure set forth in Section 11.5.

Following receipt of a Change Notice under the provisions Clause .4 of this Subsection 11.6, the Contractor shall sign the Change Notice, acknowledging its receipt, and return it to OWNER's Representative within fifteen (15) Work Days, together with a Contractor Change Proposal prepared in accordance with Section 11.8.

The Contractor shall not perform any Work which is the subject of a Change Notice unless and until a Change Order is executed implementing the Change Notice, or a Change Directive is issued pursuant to Section 11.7. The Contracting Officer may withdraw a Change Notice without incurring any liability to the Contractor at any time prior to the execution of a Change Order implementing such Change Notice, or the issuance of a Change Directive implementing such Change Notice.

### **11.7 CHANGE DIRECTIVES**

**11.7.1** A "Change Directive" is a written order issued by OWNER's Representative and signed and approved by the Contracting Officer, directing a change in the Work and stating a proposed basis for any adjustment of the Contract Price or the Contract Time, or both. OWNER may, by Change Directive, without invalidating the Contract, order changes in the Work consisting of additions,

deletions or other revisions, and the Contract Price and, if applicable, the Contract Time shall be adjusted accordingly.

**11.7.2** A Change Directive may be used in the absence of total agreement on the terms of a Change Order.

**11.7.3** If the Change Directive provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 on a unit price basis for those items of Work for which unit prices are specified in the Contract Documents;
- .3 in a manner agreed upon by OWNER and the Contractor; or
- .4 on a Force Account basis, as provided in Section 11.11.

The Contractor agrees to be bound by the mark-ups specified in Subsection 11.11.8 for any Change Order in which the Contract Price is adjusted, regardless of the method of adjustment selected, and acknowledges that such rates shall not be the subject of future negotiation.

**11.7.4** The Contractor shall promptly proceed with the change in the Work described in the Change Directive, even if the Contractor and OWNER have not agreed upon any adjustment to the Contract Price or the Contract Time for such Work, and even if a Change Order shall not yet have been issued.

**11.7.5** If the Contractor agrees with the Change Directive, the Contractor shall sign a copy of the Change Directive, indicating "agreed" next to its signature and return it to OWNER's Representative within five (5) Work Days after receipt. A Change Order will then be issued pursuant to Section 11.1. If the Contractor disagrees with the Change Directive, the Contractor shall sign the Change Directive, indicating "protested" next to its signature, return it to OWNER's Representative within five (5) Work Days after receipt, and follow in Section 11.5.

## **11.8 CONTRACTOR CHANGE PROPOSAL**

Following issuance of a Change Notice or Change Directive for which the Contractor has been requested to submit a Contractor Change Proposal, the Contractor shall submit to OWNER's Representative a Contractor Change Proposal for performing the proposed changes in the Work within fifteen (15) Work Days after the receipt of such Change Notice or Change Directive; provided, however, that if the nature and extent of the proposed Change Notice or Change Directive requires a longer period of time for the Contractor to prepare a Contractor Change Proposal, the submission period may be extended by OWNER's Representative. The Contractor Change Proposal shall be accompanied by a Contractor Certification. The Contractor Change Proposal shall contain a detailed cost/time breakdown of any proposed adjustment to the Contract Price and, if applicable, the Contract Time attributable to such Change Notice or Change Directive, as follows:

- .1 The cost breakdown shall include separate estimates of all costs of the proposed added (or deleted) Work for labor, materials, equipment rental, overhead and profit and Work to be performed by Subcontractors, in such detail as OWNER's Representative may require

to permit a thorough analysis of such cost breakdown. To the extent that cost items, overhead amounts or profit identified in such cost breakdown are addressed in, or limited by, the provisions of Section 11.11, the cost estimates for such items, overhead amounts or profit shall not exceed the limitations on compensation specified or referred to in Section 11.11. The Contractor shall review all quotations from Subcontractors and Sub-Subcontractors in order to assure that pricing is fair and reasonable before forwarding such proposed pricing to OWNER. The Contractor shall submit to OWNER a Contractor Certification at the time of submitting its Contractor Change Request, and OWNER shall have no obligation to act upon a Contractor Change Proposal if not accompanied by a Contractor Certification.

- .2 Any proposed adjustment of the Contract Time shall be made in accordance with Art. 9, and shall include a schedule impact analysis (fragnet) worksheet prepared in a time-scale to graphically illustrate the effect of the proposed change in the Work. The Contractor Change Proposal shall include an Updated Progress Schedule indicating any proposed adjustment of the Contract Time.

OWNER's Representative will consider the Contractor Change Proposal, and the Contractor will cooperate, as necessary, to reach an agreement at the earliest practicable date on the terms of compensation or schedule adjustment for the Change Notice or Change Directive. If and when an agreement is reached, a Change Order will be issued pursuant to this Art. 11. If a negotiated settlement of the Change Notice or the Change Directive is not reached within thirty (30) Days after the date of receipt by OWNER's Representative of the Contractor Change Proposal, the Contracting Officer will notify the Contractor, in writing, to perform the Work included in the Change Notice or Change Directive on a Force Account basis, and the Contract Price shall be adjusted in accordance with Section 11.11, below.

## **11.9 CHANGES REQUESTED BY THE CONTRACTOR**

### **11.9.1 Contractor Change Requests**

The Contractor may initiate a request for a Change in the Work by submission to OWNER's Representative of a Contractor Change Request. Except for Change Orders or Change Directives initiated pursuant to Sections 11.1, 11.2, 11.3 or Section 11.7, the Contractor shall not be entitled to any adjustment of the Contract Price or the Contract Time as a result of any statement, direction, action or failure to act by OWNER's Representative, the Contracting Officer or OWNER, the occurrence of any event or incident, or any other cause, including a change in Applicable Laws after the date of submission of the final Contractor Proposal, unless, subject to the terms of Subsection 7.6.3 of the Agreement, the Contractor shall have first submitted to Owner's Representative a Contractor Change Request, as hereinafter specified, and shall have complied with the other applicable requirements of the Contract. If the Contractor believes that it is entitled to adjust the Contract Price or the Contract Time, or otherwise modify the terms of the Contract Documents, the Contractor must submit to OWNER's Representative a Contractor Change Request, in accordance with the time periods and procedures set forth in Subsection 11.9.2, containing, at a minimum, the information required to be included in a Contractor Change Proposal, as described in Section 11.8.

### **11.9.2 Notices, Procedures and Time Periods**

- .1 *Initial Notice.* For any proposed change to the Work initiated by the Contractor, the Contractor shall provide an initial written notice of the Contractor's intent to file a Contractor Change Request. Such initial written notice shall be provided to OWNER's Representative not later than five (5) Work Days following the occurrence of the event on

which the Contractor Change Request is based, and shall contain as much information concerning the event and its effect on the Contract Price or the Contract Time as is reasonably available to the Contractor within such time period.

- .2 *Second Notice.* The Contractor shall provide OWNER's Representative with a Contractor Change Request, denominated as such, not later than fifteen (15) Work Days following the occurrence of the action, event or cause upon which its Contractor Change Request is based, unless the Contracting Officer agrees in writing to an extension. The Contractor Change Request shall set forth the reasons for which the Contractor believes an adjustment in the Contract Price or the Contract Time is warranted, and the applicable Contract Document references supporting such Claim, the nature of the additional costs or schedule extension involved, the efforts taken and to be taken to prevent or minimize such costs or extensions, and, insofar as possible, the amount of the proposed increase in the Contract Price or extension of the Contract Time.
- .3 *Contractor Certification.* The Contractor shall submit to OWNER's Representative a Contractor Certification at the time of submitting its Contractor Change Request and neither OWNER's Representative nor the Contracting Officer shall have any obligation to act upon a Contractor Change Request if not accompanied by a Contractor Certification.
- .4 *Further Information.* All Contractor Change Requests presented by the Contractor shall provide sufficient detail for OWNER's Representative to understand the basis for, and amount of, the adjustment in the Contract Price or the Contract Time requested in the Contractor Change Request. The Contractor shall furnish, within ten (10) Work Days after OWNER's Representative's request in writing, such further information and details including, but not limited to, books of account, records and other documents of the Contractor and of its Subcontractors, as may be required by OWNER's Representative to determine the facts or issues of contention involved in the Contractor Change Request. The Contractor's failure to deliver such information will be sufficient cause for rejecting any Contractor Change Request, unless such time is extended in writing by OWNER.
- .5 *Conferences.* The Contractor, if requested by OWNER's Representative, shall meet and confer with OWNER's Representative, the Contracting Officer or any other representative of OWNER involved in evaluating the Contractor Change Request to discuss the issues involved.
- .6 *Continuation of Work.* The filing of a Contractor Change Request shall not postpone or alter in any respect the Contractor's duty to complete the Work diligently and without delay.

### **11.9.3 Review of Contractor Change Request**

The Contracting Officer shall act on a Contractor Change Request within thirty (30) Work Days after all information and data requested by OWNER's Representative in connection with such Contractor Change Request have been received by OWNER's Representative. If the Contracting Officer fails or refuses to act on a Contractor Change Request within such time, the Contractor Change Request shall be deemed to have been rejected by the Contracting Officer and shall constitute, on the last Day of the period within which the Contracting Officer was required to act upon the Contractor Change Request, the Contracting Officer's Claim Determination with respect to the Contractor Change Request. If the period within which the Contracting Officer was required to act is extended by written agreement of OWNER and the

Contractor, the last Day of the period within which the Contracting Officer is required to act shall be the last Day of the period specified in such extension agreement. If the Contractor Change Request is granted, a Change Order will be issued in accordance with Section 11.1. If the Contractor Change Request is rejected, or deemed to have been rejected, in whole or in part, the deemed rejection or written rejection by the Contracting Officer shall constitute a Claim Determination, as provided in Subsection 11.5.

#### **11.9.4 Adjustments in the Contract Price**

Any adjustment in the Contract Price as a result of a Contractor Change Request, except for adjustments in the Contract Price resulting from costs incurred as a result of delay, (which adjustments shall be determined in accordance with the provisions of Section 9.3.8), shall be determined in one or more of the following ways:

- .1 By mutual acceptance of a lump sum; or
- .2 By cost to be determined in a manner agreed upon by OWNER and the Contractor.

If the methods set forth above cannot be agreed upon, any adjustment of the Contract Price as a result of a Contractor Change Request shall be treated as Force Account Work, and the amount by which the Contract Price shall be adjusted shall be on a Force Account basis in accordance with Section 11.11. The Contractor agrees to be bound by the markups at the rates specified in Subsection 11.11.8 regardless of the method of adjustment selected.

#### **11.9.5 Adjustment of the Contract Time**

Any adjustment of the Contract Time as a result of a Contractor Change Request shall be determined in accordance with, and shall be subject to, the provisions of Subsections 9.3.6 through 9.3.8.

#### **11.9.6 Strict Compliance, Waiver or Bar**

Failure of the Contractor to comply strictly with the notice requirements, procedures and time periods set forth in this Section 11.9 shall constitute a waiver by the Contractor of any right to an adjustment of the Contract Price or the Contract Time with respect to any Contractor Change Request.

#### **11.10 TWO PART CHANGE ORDERS**

In those instances when negotiations between OWNER and the Contractor have not resolved the pricing of all items of a Change Order, but nonetheless the pricing of significant portions of the Change Order have been agreed upon by such parties, at the option of OWNER, a two-part Change Order may be issued to expedite payment to the Contractor for Work completed. Part one of the Change Order shall be issued for those items of the Change Order as to which agreement has been reached on price, which shall include the following:

- .1 A detailed description of the items of the agreed-upon Change Order;
- .2 A specific description of the items as to which no agreement has been reached; and
- .3 A statement on compensation which shall read as follows: "This Change Order includes compensation in full to the Contractor and all of its Subcontractors for all direct and indirect costs, overhead, and profit attributable to the Work described herein, except for the specific unresolved elements or items listed above."

When the unresolved elements of the Change Order have been agreed upon by OWNER and Contractor, then part two of the Change Order shall be issued by OWNER.

## **11.11 FORCE ACCOUNT WORK**

When Work to be performed under a Change Order is to be paid for on a Force Account basis, the labor, materials and equipment used in the performance of Force Account Work shall be subject to verification by OWNER's Representative, based upon its determination that the compensation sought by the Contractor is in compliance with the requirements of this Section 11.11. Compensation for Force Account Work will include only those items as specified below in this Section 11.11.

### **11.11.1 Cost of Labor**

**11.11.1.1** *Labor Rates.* The cost of labor used in performing the Force Account Work shall not exceed prevailing standard rates paid in the San Juan area in the case of Force Account Work involving construction, installation or other activities at the Site and, for all other Force Account Work, shall not exceed prevailing standard rates paid in the area where the Force Account Work is performed, and shall include only the following:

**11.11.1.2** *Actual Wages of Workers.* Wages of workers involved in performance of construction, installation or other activities at the Site, or with the Contracting Officer's written approval, at off-Site locations. The charges for construction labor shall include all classifications up to foremen, and shall include foremen only when foremen are engaged in the actual and direct performance of the Work at the Site. Labor charges for workers shall not include charges for assistant superintendents, superintendents, office personnel, timekeepers, and maintenance mechanics, all of which are included in the authorized mark-ups set forth in Subsection 11.11.8.

**11.11.1.3** *Supervisory Personnel.* To the extent involved directly with the Force Account Work, wages or salaries of supervisory personnel, when stationed at the Contractor's field office at the Site. Personnel engaged at factories, shops or on the road, in inspecting, testing or expediting the production or transportation of materials and equipment for use in the Work, shall be considered as stationed at the field office, but only for that portion of their time when so engaged at factories, shops or on the road.

**11.11.1.4** *Benefits.* Costs paid or incurred for employee benefits (not including bonuses) such as taxes, insurance, pension contributions and other benefits required by law or collective bargaining agreements, and for personnel not covered by collective bargaining agreements, customary employee benefits (not including bonuses) such as sick leave, medical and health benefits, holidays, vacations and pensions, which are payable on account of wages and salaries included in Force Account Work under Subsections 11.11.1.2 and 11.11.1.3.

### **11.11.2 Travel and Subsistence**

The portion of travel and subsistence expenses of the Contractor or its employees, when appropriate and incurred while travelling in the discharge of their duties in connection with Force Account Work subject to OWNER's Standard Guidelines.

### **11.11.3 Materials and Equipment**

The cost of materials and equipment actually used for the accomplishment of the Work will be the delivered cost to the Contractor from the supplier, except to the extent the following are applicable:

- .1 If a cash or trade discount by the actual supplier is offered or available to the Contractor, it shall be credited to OWNER notwithstanding the fact that such discount may not have been taken.
- .2 If materials or equipment are procured by any method which is not a direct purchase from, and a direct billing by, the actual supplier to the Contractor, the cost of such materials or equipment shall be deemed to be the price paid to the actual supplier as determined by OWNER's Representative. No mark-up, except for actual costs incurred in the handling of such materials or equipment, will be permitted.
- .3 If the materials or equipment are obtained from a supply or source owned wholly or in part by the Contractor, payment therefore will not exceed the price paid by the Contractor for similar materials furnished from an independent source or the current wholesale price for such materials delivered to the Site, whichever price is lower.
- .4 If the cost of such materials or equipment is, in the opinion of OWNER's Representative excessive, then the cost of such materials or equipment shall be deemed to be the lowest current wholesale price at which such materials or equipment are available in the quantities concerned, delivered to the Site, less any discounts as provided in Clause .1 above.
- .5 If the Contractor does not furnish satisfactory evidence of the cost of such materials or equipment from the actual supplier thereof, the cost shall then be determined in accordance with Clause .4 above.

The Contractor shall have no claims for costs and mark-ups on materials or equipment furnished by OWNER, if any.

#### **11.11.4 Equipment Rental**

The Contractor will be paid for the use of equipment in an amount equal to the lesser of (i) actual costs, or (ii) eighty-five percent (85%) of the rental rates listed for such equipment in the most recent and applicable publication at that time of the Rental Rate Bluebook published by Machinery Information Division of K-III Directory Corporation of San Jose, California, as adjusted for the rate adjustment factor applicable to Puerto Rico, regardless of Ownership and any rental or other agreement for the use of such equipment entered into by the Contractor. If it is necessary to use equipment not listed in the Rental Rate Bluebook, a suitable discounted rental rate for such equipment will be established by OWNER based upon similar available rate information. The Contractor shall furnish all cost data required for OWNER to establish such rental rate. If at any time, the Rental Rate Blue Book is no longer published, OWNER and the Contractor will mutually agree on the applicable rental rate to be utilized under this Subsection 11.11.4.

Operators of rented equipment will be paid as provided under Subsection 11.11.1.2. All equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used. Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer. Individual pieces of equipment or tools having a new value of Three Hundred Dollars (\$300.00) or less, whether or not consumed by use, shall be considered to be small tools included in Contract Price and no additional payment will be made therefore.



### 11.11.5 Equipment on the Work

The rental time to be paid for equipment otherwise in use on the Work shall include only the time the equipment is in operation on the Force Account Work being performed and the time required to move the equipment to the location of the Force Account Work and return it to the original location, or to another location requiring no more time than that required to return it to its original location. Moving time will not be paid for, however, if the equipment is used on other work at the site of the Force Account Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made if the equipment is used at the site of the Force Account Work on Work other than such Force Account Work.

### 11.11.6 Equipment not on the Work

For the use of equipment moved to the Site and used exclusively for Force Account Work, the Contractor will be paid the rental rates agreed to in Subsection 11.11.4 and for the cost of transporting the equipment from the equipment lessor's usual storage facilities to the location of the Work and back to its original location, all in accordance with the following provisions:

- .1 The original location of the equipment to be hauled to the location of the Work shall be agreed to by OWNER in advance.
- .2 Payment of the costs of loading and unloading such equipment shall be made in accordance with Subsection 11.11.1.
- .3 The cost of transporting equipment shall not exceed the applicable rates customarily applied in the San Juan area.
- .4 The rental period shall begin at the time the equipment is unloaded at the Site, shall include each working Day that the equipment is at the Site and any other Days on which the Force Account Work is performed, and shall terminate when the Work it was hired to perform is completed or at the end of the Day on which OWNER's Representative directs the Contractor to discontinue the use of such equipment. The maximum rental time to be paid per Day will not exceed eight hours unless the equipment is in operation for a longer time. The minimum rental time to be paid for the entire rental period shall not be less than eight hours. If the entire rental period to be paid for exceeds eight hours, the rental time which will be paid per Day will be in accordance with the following:

| <i>Hours Equipment<br/>is in Operation</i> | <i>Hours to<br/>be Paid</i> |
|--|-----------------------------|
| 0.5 and over, up to and including 2        | 2                           |
| over 2 and up to and including 4           | 4                           |
| over 4 and up to and including 6           | 6                           |
| over 6 and up to and including 8           | 8                           |

- .5 Rented equipment shall not be billed to OWNER at rates exceeding those described below:

| <i>Actual Usage</i> | <i>Payment Rate Category</i> |
|---------------------|------------------------------|
| 8 hours or less     | Hourly Rate                  |

|                                  |              |
|----------------------------------|--------------|
| One to Six Days                  | Daily Rate   |
| One Week but less than one Month | Weekly Rate  |
| One Month or more                | Monthly Rate |

- .6 For equipment not reasonably available in Puerto Rico, the rental period shall begin at the time the equipment leaves the rental storage facility, and shall terminate at the time the equipment is returned to the rental storage facility. For such specialty equipment, the Contractor shall provide a certificate that the most effective rate (weekly, monthly, yearly) has been obtained.
- .7 Should the Contractor request the return of the equipment to a location other than its original location, OWNER will pay the cost of transportation in accordance with the above provisions, provided that such payment shall not exceed the cost of moving the equipment to the Work from the original location.
- .8 Payment for transporting and loading and unloading equipment, as above provided, will not be made if the equipment is used on any Work in addition to Force Account Work paid for on a Force Account basis.

**11.11.7 Subcontractors**

The cost for Work under a Subcontract will be the actual cost to the Contractor for Work performed by a Subcontractor. The Contractor shall include in each Subcontract provisions corresponding to the provisions of this Section 11.11 with respect to Force Account Work performed by Subcontractors and Sub-Subcontractors and each Subcontractor or Sub-Subcontractor shall compute its compensation for Force Account Work as set forth in Subsections 11.11.1 through 11.11.6 and its overhead and profit shall be payable in accordance with Clause .1 of Subsection 11.11.8.2.

**11.11.8 Mark-ups**

The mark-ups contained in this Subsection 11.11.8 shall apply to all Change Orders.

**11.11.8.1 Contractor Force Account Work Mark-up.** For adjustments in the Contract Price based upon Force Account Work performed by the Contractor, the Contractor shall be compensated in full for all indirect costs, overhead and profit associated with such Force Account Work, in an amount equal to the following percentages of the direct costs of such Force Account Work:

|                         |                        |
|-------------------------|------------------------|
| Labor                   | Fifteen percent (15%). |
| Materials and Equipment | Ten percent (10%).     |
| Equipment Rental        | Ten percent (10%).     |
| Other                   | Ten percent (10%).     |

The Contractor’s mark-ups for overhead and profit set forth above and in Subsection 11.11.8.2 below, shall include compensation in full to the Contractor for:

- .1 Profit.
- .2 Payroll costs and other compensation of personnel employed by the Contractor whether at the Site or in the Contractor’s principal office or a branch office for management and administration or in support of the performance, management and administration of the Work, including, but not limited to, the Contractor’s officers, executives, principals,

general managers, construction managers, office personnel, estimators and schedulers, detailers, claims consultants, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, engineers, architects, timekeepers and clerks.

- .3 Expenses of the Contractor's principal and branch offices other than the Contractor's office at the Site.
- .4 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work involved and charges for delinquent payments.
- .5 Costs of small tools used but not consumed which remain the property of the Contractor.
- .6 Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of claims.
- .7 Anticipated lost profits or lost revenues and lost income or earnings.
- .8 Costs attributable to home office overhead.
- .9 Fees and costs of consultants or attorneys, whether or not in the direct employ of the Contractor, employed for services specifically related to the resolution of a claim, dispute, or other matter relating to the acceptability of the Work.
- .10 Other administrative expense or contingent costs of any kind.

In no event shall any of the foregoing expenses be included as costs of Force Account Work pursuant to Subsections 11.11.1 through 11.11.7, above.

**11.11.8.2** *Subcontractor Force Account Work Mark-up.* For adjustments in the Contract Price based upon Force Account Work performed by a Subcontractor or Sub-Subcontractor, the following amounts shall be added to the total of the payments for such Force Account Work:

- .1 An amount representing compensation to the Subcontractor or Sub-Subcontractor in full for all overhead and profit associated with such Force Account Work, not exceeding ten percent (10%) of the Subcontractor's or Sub-Subcontractor's costs, exclusive of overhead and profit, attributable to the Force Account Work; and
- .2 An amount representing compensation to the Contractor in full for all overhead and profit associated with Force Account Work performed by such Subcontractor or Sub-Subcontractor, not exceeding five percent (5%) of the payments for such Force Account Work.

The Subcontractor's or Sub-Subcontractors mark-ups for overhead and profit set forth above shall include compensation in full to the Subcontractor for all of the items and costs set forth in Clauses .1 through .10 of Subsection 11.11.8.1.

**11.11.8.3** *Limit on Mark-ups.* The aggregate amount of all mark-ups for overhead and profit, for the Contractor and all Subcontractors and Sub-Subcontractors, regardless of the number of tiers of Subcontractors or Sub-Subcontractors involved or the amount of the Force Account Work, shall not exceed twenty-five percent (25%).

**11.11.8.4** *Combined Changes.* When both additions and credits are involved in any single Change Order, the allowances for overhead and profit shall be computed based upon the net increase, if any.

**11.11.8.5** *Insurance and Bond Mark-up.* To the amounts computed above shall be added the increased bonding and insurance costs, if any, directly attributable to the Force Account Work, representing compensation in full for the additional costs of such bonds and insurance.

**11.11.8.6** *Exclusion from Compensation for Force Account Work.* In no event shall the Contractor be compensated for costs due to the fault or negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including, but not limited to, deposits lost, costs to correct defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property, or for overtime or premium pay, unless approved in advance by OWNER in writing.

#### **11.11.9 Records and Accounts**

Whenever the Contractor is to be compensated for Work performed on a Force Account basis, the Contractor shall maintain separate records and accounts of all costs incurred with respect to such Work, specifically identifying all such Work as Force Account Work by a distinct job order number. The Contractor shall segregate all such records and accounts so as to provide a clear distinction between Force Account Work and all other Work. No compensation shall be due or payable to the Contractor on account of Work performed on a Force Account basis unless such separate records and accounts are maintained to clearly establish the Contractor's entitlement to payment. At the end of each Work Day, the Contractor shall prepare a daily report sheet identifying all Work performed on a Force Account basis on that Day, and shall furnish such daily report sheet to OWNER's Representative, in duplicate. The daily report sheet shall identify:

- .1 The nature of the Work performed and job order number.
- .2 The name, classification, date, daily hours worked, hourly rate of pay, benefits for each laborer, foreman or other worker.
- .3 Designation, date, daily hours, rental rate for each item of machinery and equipment employed on such Work.
- .4 Quantities of materials used, prices and extensions, substantiated by suppliers' invoices.
- .5 Transportation charges, substantiated by invoices.
- .6 Insurance, bond and tax costs.

Equipment and material charges shall be substantiated by copies of supplier's invoices. Such invoices shall be submitted with the daily report sheets, or, if not yet available, shall be submitted with subsequent daily report sheets. All such daily report sheets substantiating Force Account Work shall be signed by the Contractor's Project Manager and shall be certified to be correct and complete.

OWNER's Representative will review the daily report sheets furnished by the Contractor, make any necessary adjustment. When these daily reports are agreed upon and signed by OWNER's Representative and the Contractor, they shall become the basis of payment for the Force Account Work performed, but shall not preclude adjustment based on a subsequent audit.

The Contractor's original cost records pertaining to Work paid for on a Force Account basis shall be made available for inspection or audit by representatives of OWNER.

#### **11.12 MINOR CHANGES IN THE WORK**

OWNER's Representative will have authority to order minor changes in the Work not involving an adjustment in the Contract Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on OWNER and Contractor. The Contractor shall carry out such written orders promptly.

#### **11.13 PROCEDURAL REQUIREMENTS FOR CLAIMS**

##### **11.13.1 Continuing Contract Performance**

Pending final resolution of a Claim (including negotiation or litigation), the Contractor shall proceed continuously and diligently with performance of the Work, in accordance with the Contract Documents.

**11.13.1.1** The exclusive jurisdiction and venue for any legal action or proceeding arising out of, or relating to the Contract or the Work shall be the Court of First Instance of the Commonwealth of Puerto Rico, San Juan District.

The following paragraphs will read as follows:

13.2.5.2. Failure of the Contractor to comply with any requirements of the Contract Documents. A 10% Application for Payment reduction shall be applied in the monthly breakdown for payment for failure to comply with OSHA regulations and allowing general public and general contractor or subcontractors employees to be exposed to unsafe conditions that could result in serious injuries or death.

The following paragraphs will be added as follows:

#### **13.11 DECISIONS TO WITHHOLD CERTIFICATION AND PAYMENT**

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

- .1 Defective Conditions not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payments properly to Subcontractors or otherwise for labor, materials or equipment;

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- .5 damage to OWNER or an Other Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that interim completion dates will not be met, or that the unpaid balance of the Contract Price would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents or other default by the Contractor under, or failure of the Contractor to comply with any provisions of, the Contract Documents;
- .8 failure of the Contractor to undertake Recovery Measures;
- .9 claims for damages for delay; or
- .10 any lien or attachment not discharged as required by the Contract Documents.

When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld at the time of the next Application for Payment.

### **13.12 PAYMENT NOT ACCEPTANCE**

No Certificate for Payment, nor any Progress Payment made, nor any partial or full use or occupancy of the Work by OWNER, shall constitute an acceptance of any Work not in accordance with the Contract Documents. All Progress Payments will be subject to correction following the discovery of an error, misreported progress, misrepresentation, or unallowable cost in any previous application, with the correction amount applied to reduce the requested amount of one or more subsequent Applications for Payment until full recovery of the correction amount. The making of any Progress Payment shall not in any respect be construed as an acceptance by OWNER of the amount of Work completed, or the release of the Contractor from any of its responsibilities under the Contract.

The following paragraphs will be added as follows:

#### 17.11 Rights and Remedies

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

17.11.2 OWNER's rights and the Contractor's obligations under this Agreement and provisions of the Contract Documents that contemplate continuing rights and obligations, respectively, shall survive expiration of the Contract Time and expiration or termination of the Contract.

17.11.3 No action or failure to act by OWNER, the Contracting Officer, OWNER's Representative or the 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 thereunder, except as may be specifically agreed in writing.

## **17.12 MAINTENANCE DURING CONSTRUCTION**

- 17.12.1 The Contractor shall maintain the Work during construction and until the Work is completed in full. This maintenance shall constitute continuous and effective work prosecuted Day by Day, with adequate equipment and forces to the end that all Work covered by the Contract is kept in satisfactory and acceptable conditions at all times.
- 17.12.2 All cost of maintenance during construction and before the Work is accepted by OWNER shall be included in the Contract Price and the Contractor will not be paid an additional amount for such work.
- 17.12.3 If the Contractor at any time fails to comply with the provisions of Section 17.12, OWNER's Representative may notify the Contractor of such non-compliance. If the Contractor fails to remedy unsatisfactory maintenance within twenty-four (24) hours after receipt of such notice, OWNER may immediately proceed to maintain the Work, and the entire cost of this maintenance will be deducted from monies due or to become due to the Contractor under the Contract.

## **17.13 DISSEMINATION OF INFORMATION**

Certain of OWNER's confidential or proprietary information may come into the Contractor's possession in performing the Contract. The Contractor shall hold such information and all other information that it develops or obtains from or about OWNER or the Project in confidence, shall not use such information other than for performance of its obligations under the Contract, and shall require its employees, agents, Subcontractors and Sub-Subcontractors to be bound to OWNER by the same obligation of confidentiality. OWNER reserves the right to release all information to the public and to the media relative to the Project and the Contract. The Contractor agrees to refer (and to cause its employees, agents, Subcontractors and Sub-Subcontractors to refer) all inquiries about the Project and the Contract to OWNER.

## **17.14 RECORDS AND AUDIT**

- 17.14.1 The Contractor shall maintain detailed books and records consistent with all applicable requirements of the Contract Documents, sound administration practices of the design and construction of facilities similar to the Project, generally accepted accounting principles consistently applied, and all Applicable Laws, including such records as may be necessary to properly verify costs or substantiate claims for payment under the Contract. The Contractor's books and records shall include all documentation reasonably necessary or desirable for OWNER, or others having audit rights, to verify costs, pricing data, amounts of compensation and schedule adjustments. The Contractor shall keep and maintain all such books and records until six (6) years after the date of achievement of Final Completion (or such longer period as may be required by Applicable Laws), and thereafter until all pending Claims or disputes with OWNER are finally resolved.
- 17.14.2 OWNER, or its duly authorized representatives, shall have the right to examine and audit the Contractor's books and records, including cost or pricing data, receipts, invoices or other documents, in order to evaluate the accuracy, completeness and currency of cost or pricing data used or included by the Contractor in any Contractor Change Proposal or Contractor Change Request, or in connection with any adjustment to the Contract Price pursuant to Section 11.9.4 or 9.3.8.

In addition, to the extent required by Applicable Laws, OWNER, Puerto Rico and the Comptroller of Puerto Rico, or their duly authorized representatives, shall have the right to inspect the Work and to

examine and audit the Contractor's books and records. The books and records subject to such examination and audit shall include all books, correspondence, records, cost or pricing data, receipts, invoices, or other documents necessary to evaluate the accuracy, completeness and currency of cost or pricing data used by the Contractor.

The Contractor's books and records required to be made available for examination and audit pursuant to this Subsection 17.14.2 shall be made available at the Contractor's office at the Site during normal business hours, upon five (5) Work Days' prior notice to the Contractor.

If any audit of the Contractor's books and records discloses an overcharge to OWNER, OWNER may elect to either invoice the Contractor for the Repayment Amount (as hereinafter defined) or to deduct the Repayment Amount from any subsequent payment due to the Contractor, in OWNER's full discretion. If OWNER elects to invoice the Contractor for any Repayment Amount due pursuant to the provisions of this Subsection 17.14.2, the Contractor shall pay the Repayment Amount to OWNER within fifteen (15) Days after receipt of the billing statement.

The "Repayment Amount" shall be an amount equal to the overcharge, together with interest on such amount at the Repayment Rate computed from, and including the date of, issuance of payment to the Contractor of the overcharged amount, but not including the date of repayment to, or deduction by, OWNER, as the case may be.

17.14.3 The Contractor shall insert provisions corresponding to Subsections 17.14.1 and 17.14.2 in each Subcontract, to grant OWNER and its representative's rights to examine and audit the books and records of each respective Subcontractor.

#### **17.15 RIGHTS TO RECORD DOCUMENTATION**

Notwithstanding any other provisions of this Article 17, title to all Record Documentation, and title to all computer data bases developed specifically for, or in connection with the Project, shall vest with OWNER, automatically without further action by either OWNER or the Contractor, upon the earlier of the date of achievement of Final Completion or the date of expiration or termination of the Contract.

#### **17.19 PREFERENTIAL PURCHASE POLICY**

In the performance of the Work, the Contractor shall use, whenever available, equipment and materials manufactured, assembled, bottled or packaged in Puerto Rico or distributed by agents established and existing in Puerto Rico, pursuant to the Preferential Policy Act for Purchases by the Government of Puerto Rico, 3 L.P.R.A. §914a *et seq.*