

## GENERAL CONDITIONS

### 1.0 DEFINITIONS

1.1 **BID SECURITY:** The security, as designated in the Instructions to Bidders or in the Proposal form, furnished with the Proposal by the Bidder as a guaranty that he will enter into Contract and furnish a performance and payment bond and insurance policies as required for the Contract to be awarded to him.

1.2 **BIDDER:** Any individual, firm, company or corporation, submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

1.3 **CHANGE ORDER:** A written order to the Contractor, signed by the Contracting Officer, ordering a change that has been found necessary in the work from that originally shown in the plans and specifications but which is still within the general scope of the Contract. If the work is of a nature involving an adjustment of unit prices, it will be an Amendment to the Contract. Change Orders duly signed and executed by the Contractor constitute authorized modification of the Contract.

1.4 **CONTRACT:** The written agreement executed between the Government and the successful Bidder, covering the performance of the work and the furnishing of labor and materials, by which the Contractor is bound to perform the work and furnish the labor and materials, and by which the Owner is obligated to compensate him therefore at the mutually established and accepted Proposal, Plans, Specifications, Contract Documents, and subsequently entered into rate or price. The Contract shall include the instruction to Bidders to complete the work in accordance with the intent of the plans and specifications, in an acceptable manner.

1.5 **CONTRACTING OFFICER:** The term "Contracting Officer" as used herein means the Receiver – Gershman, Brickner & Bratton, Inc. in its capacity as Receiver for the Solid Waste Management Division of the Department of Public Works and shall include its authorized representatives.

1.6 **CONTRACTOR:** The term "Contractor" as used herein means the party or parties who or which shall have duly entered into a Contract with the Government of Guam to perform the work herein contemplated or his or their authorized assignee.

1.7 **ENGINEER:** The duly authorized representative of the Contracting Officer who is responsible for the administration of the Contract and for interpretations thereof on behalf of the Contracting Officer and for inspection of work in progress.

1.8 **EPA:** Means either The Guam Environmental Protection Agency or the Guam Environmental Protection Agency (may be used collectively to refer to both entities if applicable).

1.9 **EQUIPMENT:** All machinery, together with the necessary supplies for up keep and

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maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the work.

1.10 INSPECTOR AND/OR CONSTRUCTION MANAGER: An authorized representative of the Government, assigned to make all necessary inspections of the work performed or being performed or of the materials furnished or being furnished by the Contractor.

1.11 INTENTION OF TERMS: Whenever, in these specifications or upon the plans, the words "directed", "required", "permitted", "ordered", "designated", "prescribed", or words of like import, are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the Contracting Officer is intended; and similarly, the words "approved", "acceptable", "satisfactory", or words of like import, shall mean approved by, acceptable to, or satisfactory to the Contracting Officer, subject in each case to the final determination of the Owner.

Any reference to a paragraph or subparagraph within a section shall include the general provision of the section or sections and paragraph pertinent thereto.

1.12 LABORATORY: The official testing laboratories as may be designed by the Contracting Officer.

1.13 MIL SPECIFICATIONS: The Military Specifications and Standards, and indices thereto, are prepared and issued by the Department of Defense. These may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401.

1.14 NOTICE: The term "Notice" as used herein shall mean and include all written notice demands, instructions, claims, approvals and disapprovals required to obtain compliance with Contract requirements. Any written notice by either party to the Contract shall be sufficiently given if delivered to the last known business address of the person, firm, or corporation constituting the other party to the Contract, or to his, their, or its duly authorized agent, representative, or officers, or when enclosed in a postage prepaid envelop addressed to such last known business address and deposited in a United States mail box or when sent via facsimile or e-mail to the number or e-mail address provided by the Contractor. The Contractor must provide and maintain a mailing address within the Territory of Guam and file the same with the Contracting Officer.

1.15 NOTICE OF AWARD: A written notice to the successful Bidder stating that his bid has been accepted and that, in accordance with the terms of the Specifications, he is required to execute the Contract and furnish a satisfactory performance and payment bond, insurance policies as required by the Contract Documents, Guam Contractor's license, and Guam Business license.

1.16 NOTICE TO PROCEED: A written notice to the Contractor of the date on which, or before, he is to begin the prosecution of the work for which he has contracted.

1.17 OWNER: The term "Owner" as used herein means the Government of Guam, Hagåtña, Guam, and shall include the Governor of Guam, and/or his authorized representatives.

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1.18 PERFORMANCE AND PAYMENT BOND: The approved form of security furnished by the Bidder and his Surety as a guarantee of good faith and ability on the part of the Bidder to execute the work in accordance with the terms of the plans, specifications and Contract, and to pay in full all bills and accounts for materials and labor used in the construction of the work, as provided by law.

1.19 PLANS: The official plans, working drawings, or supplemental drawings or exact reproductions thereof, approved by the Contracting Officer, which show the location, character, dimensions, and details of work to be done and which are to be considered as a part of the Contract, supplementary to these Specifications.

1.20 PROPOSAL: The written offer of the Bidder, when submitted on the approved proposal form to perform the contemplated work and furnish the necessary materials in accordance with the provisions of the plans and these specifications.

1.21 SPECIAL PROVISIONS: The specific clauses setting forth conditions or requirements peculiar to the Project under consideration, covering work or materials involved in the proposal and estimate, which are not thoroughly or satisfactorily stipulated in the General Provisions or Technical Specifications.

1.22 SPECIFICATIONS: The directions, provisions, and requirements contained herein, supplemented by special provisions, pertaining to the method and manner of performing the work, or to the quantities or the qualities of materials to be furnished under the Contract.

1.23 SUPERINTENDENT: English speaking Executive representative for the Contractor present on the work at all times, authorized to receive and fulfill instructions from the Contracting Officer and capable of superintending the work efficiently.

1.24 SURETY: The corporate body or individuals who are bound by the performance and payment bond with and for the Bidder, and which engage to be responsible for the entire and satisfactory fulfillment of the Contract and for the payment of all debts incurred in fulfilling the Contract.

1.25 WORK: The term "WORK" shall be understood to mean the furnishing of all labor, materials, equipment, and other incidents necessary or convenient to the successful completion of the Project and the carrying out of all the duties and obligations imposed by the Contractor.

## 2.0 CONSTRUCTION CONTRACT

### 2.1 Contract Documents

(a) The Contract documents consist of the Formal Contract, the drawings, and

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specifications, including all addenda and alterations made in the documents prior to their execution.

(b) The Contract documents shall be signed by the Owner, the Receiver, and Contractor in as many original counterparts as may be mutually agreed.

(c) Anything called for by one of the Contract documents and not called for by the others shall be of like effect as if required or called for by all. In case of discrepancies between the Contract documents, the specifications shall take precedence over the drawings, and the Contract shall take precedence over the drawings and specifications. Any discrepancies between the Contract documents shall be called to the attention of the Contracting Officer before proceeding with work affected thereby.

(d) It will be conclusively presumed that the Contractor has read, examined and agreed to each and every term, conditions, provisions, covenant or agreement in the drawings, specifications, proposals, Contract, and bond related to the work to be carried on, said documents being on file in the Department of Public Works, Tamuning, Guam.

## 2.2 Drawings

(a) The general character and scope of the work are illustrated by the drawings. Any additional detail drawings and other information deemed necessary by the Contracting Officer will be furnished to the Contractor when and as required.

(b) In case of differences between small scale and large scale drawings, the large-scale drawings shall govern. Figured dimensions on the drawings shall be considered primary compared with measurements obtained through scaling of drawings. The Contractor shall verify all dimensions, and if any be lacking, he shall call the attention thereto and be governed by the decision of the Contracting Officer.

(c) Where on any of the drawings a portion of the work is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other like portions of the work.

(d) Where the word "similar" occurs on the drawings, it shall be interpreted in its general sense and not as meaning identical.

## 2.3 Detail Drawings and Instructions

The Contractor will be furnished additional instructions and detail drawings as may be necessary to carry out the work included in the Contract. The additional drawings and instructions thus supplied to the Contractor shall be consistent with the Contract documents and true developments thereof, and shall be so prepared that they can be reasonably interpreted as a part thereof. The Contractor shall carry out the work in

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accordance with the additional detail drawings and instructions.

## **2.4      Specifications and Drawings**

(a)      The Contractor shall keep on the work site a copy of the drawings and specifications including all authorized change orders, and shall at all times give the Owner, Contracting Officer and their representatives access thereto.

(b)      All drawings and specifications and copies thereof furnished by the Contracting Officer are his property and shall not be used on other projects without his consent. Upon completion of this Project all copies of the drawings and specifications except the signed Contract sets are to be returned to the Contracting Officer upon his request.

## **2.5      Special Requirements**

(a)      Where special requirements, provisions or specifications or detailed specifications are attached hereto or are included in the proposal, they shall be considered a part of these general conditions or specifications or detailed specifications as fully as if contained herein. Should any special provisions be in conflict with these general conditions or specifications or detailed specifications, said special requirements, provisions or detailed specifications shall govern.

(b)      Person in charge of electrical wiring and installations shall be a licensed Master Electrician and/or registered electrical engineer in Guam.

## **2.6      Explanation to Bidders**

No oral explanation in regard to the meaning of the drawings and specifications will be made and no oral instructions will be given before the award of the Contract. Discrepancies, omissions, or doubts as to the meaning of drawings and specifications should be communicated in writing to the Contracting Officer for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them. Every interpretation made to a Bidder will be in the form of an addendum to the Contract documents which, if issued, will be sent as promptly as practicable to all persons to whom the drawings and specifications have been issued. All such addenda shall become part of the Contract documents.

# **3.0      BIDS, BIDDER RESPONSIBILITIES**

## **3.1      Conditions at Site**

(a)      Bidders shall visit the site and shall be responsible for having ascertained pertinent conditions such as location, accessibility, and general character of the site, the character

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and extent of existing work within or adjacent to the site, and any other work being performed thereon at the time of the submission of his bid. No extra compensation will be made by reason of any misunderstanding or error as regards to the site, the conditions thereof, accessibility or the amount of kind or work to be performed.

(b) If, in the performance of the Contract, subsurface or latent conditions at the site are found to be materially different from those indicated by the drawings and specifications, or unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in work of the character shown and specified, the attention of the Contracting Officer shall be called immediately to such conditions before they are disturbed. Upon such notice, or upon his own observation of such conditions, the Contracting Officer shall promptly make such changes in the drawings and specifications as he finds necessary to conform to the different conditions, and any increase or decrease in the cost of the work resulting from such changes shall be adjusted as provided in the Contract.

### **3.2 Withdrawal of Bids**

Bids may be withdrawn on written or telegraphic request received from Bidders prior to the time fixed for opening. Negligence on the part of the Bidder in preparing the bid confers no right to the withdrawal of the bid after it has been opened.

### **3.3 Publicity of Bids**

At the time fixed for the opening of bids, the contents of the bids will be made public for the information of Bidders and others properly interested who may be present either in person or by representation.

### **3.4 Policy In Favor of Local Procurement**

All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:

- (a) a licensed bona fide manufacturing business that adds at least twenty-five percent of the value of an item, not to include administrative overhead, using workers who are U.S. Citizens or lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory of the Pacific Islands; or
- (b) a business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured; or

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- (c) a business that has a bonafide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or One Hundred Fifty Thousand Dollars (\$15,000) whichever is less, of supplies and items of a similar nature to those being sought; or
- (d) a service business actually in business, doing a substantial portion of its business on Guam, and hiring at least 95% U.S. Citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

Procurement of supplies and services from off Guam may be made if no business for such supplies or services may be found on Guam or if the total cost F.O.B. job site, unloaded, of procurement from off island is no greater than eighty-five percent (85%) of the total cost F.O.B. job site, unloaded, of the same supplies or services when procured from a business licensed to do business on Guam that maintains an office or other facility on Guam and that is one of the above-designated businesses entitled to preference.

### **3.5 Receipt and Opening of Bids**

- (a) Bids will be opened publicly at the time and place stated in the Invitation for Bids. The officer whose duty it is to open them will decide when the specified time has arrived and bids received thereafter will not be considered. No responsibility will be attached to any officer for the premature opening of a bid not properly addressed and identified.
- (b) Telegraphic bids will not be considered, but modifications by telegraph of bids already submitted will be considered if received prior to time set for opening.

### **3.6 Rejection of Bids**

The Owner reserves the right to reject any and all bids when such rejection is in the interest of the Owner and to reject the bid of a Bidder who is not in a position to perform the Contract.

### **3.7 Award of Contract**

- (a) The Contract will be awarded as soon as possible to the lowest responsive and responsible Bidder, provided it is in the interest of the Owner to accept his bid.
- (b) The Owner reserves the right to waive any informality in bids received when such waiver is in the interest of the Owner. The Owner also reserves the right to accept any item in the bid and to reject any item in the bid unless otherwise specified by the Owner.

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### **3.8 Cancellation of Award**

The Owner reserves the right to cancel the award of any Contract at any time before the execution of same.

## **4.0 DUTIES OF CONTRACTING OFFICER AND CONTRACTOR SAFETY MEASURES**

### **4.1 Authority of Contracting Officer**

The Contracting Officer shall give all orders and directions contemplated under this Contract and specifications relative to the execution of the work. The Contracting Officer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid or under this Contract and shall decide all questions which may arise in relation to paid work and the construction thereof. The Contracting Officer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said Contract or specifications, the determination or decision of the Contracting Officer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this Contract affected in any manner or to any extent by such question.

The Contracting Officer shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute.

Any difference or conflicts in regard to their work which may arise between the Contractor under this Contract and other contractors performing work for the Owner shall be adjusted and determined by the Contracting Officer.

### **4.2 Contractor's Obligations**

The Contractor shall, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Contract within the time herein specified in accordance with the plans and drawings of the work covered by this Contract and any and all supplemental plans and drawings, and in accordance with the directions of the Contracting Officer as given from time to time during the progress of the work. He alone shall be responsible for the safety, efficiency and adequacy of his plant, appliances and methods, and for any damage which may result from their failure or their improper construction, maintenance or operations. The Contractor shall observe, comply with and be subject to all terms, conditions, requirements, and limitations of the Contract and specifications and shall do, carry on and

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complete the entire work to the satisfaction of the Contracting Officer and the Owner.

#### **4.3      Superintendence by Contractor**

The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work at all times during progress with authority to act for him.

#### **4.4      Subcontracts**

(a)      Nothing contained in the specifications, drawings, or Contract documents shall be construed as creating any contractual relationship between any subcontractor and the Owner. The division of sections of the specifications is not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b)      The Contractor shall be as fully responsible to the Owner for the acts and omissions of subcontractors and of persons employed by them, as he is for the acts and omissions of persons directly employed by him.

(c)      The Contractor shall be responsible for the coordination of the trades, subcontractors, and material men engaged in his work.

(d)      The Contractor shall, without additional expense to the Owner, utilize the services of specialty subcontractors on those parts of the work which are specified to be performed by specialty subcontractors.

(e)      The Owner will not undertake to settle any differences between the Contractor and his subcontractors or between subcontractors.

(f)      The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work including waiver of mechanics liens to bind subcontractors by the terms of the General Conditions and other Contract documents insofar as applicable to the work of subcontractors and to give the Owner any exercise over the Contractor under any provisions of the Contract documents.

#### **4.5      Subletting**

Subletting part of the work is permitted. However, Bidder must note that subletting in excess of the following is not allowed:

(a)      Where the subletting is for both labor and material, the sum total cost of all sublet work shall not exceed 49% of the total Contract amount.

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(b) Where subletting is for labor only, the sum total cost of all sublet work shall not exceed 20% of the total Contract amount. Information concerning subcontracts must form a part of the bid documents and shall be submitted to the Contracting Officer.

#### 4.6 Assignments

The Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without the written consent of the Owner and of all the sureties executing any bonds on behalf of the Contractor in connection with said Contract. In case the Contractor assigns the whole or any part of said Contract or assigns all or any part of any monies due or to become due under said Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the Contractor or otherwise shall be subject to all of the terms and conditions of said Contract or supplemental thereto, the rights and remedies of the Owner thereunder or arising by operation of the law and to the liens of all persons, firms, companies, and corporations for services rendered or materials supplied in connection with the performance of said Contract.

#### 4.7 Equal Opportunity

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color, age, economic status, or national origin. The Contractor will take affirmative action to insure that qualified applicants are employed and that employees are treated during employment without regard to their race, religion, sex, color, age, economic status, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color, age, economic status, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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#### **4.8 Hiring of Apprentices**

The Contractor shall hire for performance of work under this Contract apprentice(s) to be employed in the performance of work under this Contract in accordance with Executive Order No. 2000-10, dated April 11, 2000.

#### **4.9 Minimum Wage Rate**

All persons employed on this Project shall be paid not less than minimum wage applicable to the corresponding skill or craft as determined by the Department of Labor, Government of Guam. Prevailing wage rates of Department of Labor, Government of Guam are attached herewith and shall be deemed a part of the Contract documents.

#### **4.10 Laws, Permits and Regulations**

(a) The building permit for the Project will be processed by the Contracting Officer up to approval of all Government of Guam agencies except for the Contractor's License Board and the Department of Public Works. The Contractor shall be responsible for finalizing the procurement of the building permit. All building permit fees shall be paid for by the Contractor.

(b) The Contractor shall pay all fees and charges for connection to outside service and use of property other than the site of the work for storage of materials or other purposes.

(c) The Contractor shall comply with all laws, ordinances, regulations and building code requirements applicable to work hereunder unless in conflict with Contract requirements. If the Contractor ascertains at any time that any requirement of this Contract is a variance with applicable laws, ordinances, regulations, or building code requirements, he shall promptly notify the Contracting Officer and any necessary adjustment of the Contract shall be made by the Contracting Officer.

#### **4.11 Contractor's and Subcontractor's Insurance**

(a) The Contractor shall not commence work under this Contract until he has obtained all the insurance required hereunder and such insurance has been approved by the Owner. The Contractor shall not allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

(b) Workman's Compensation and Employer's Liability Insurance - The Contractor shall take out and maintain during the life of this Contract the statutory Workman's Compensation and Employer's Liability Insurance for all of his employees to be engaged in

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work on the Project under this Contract and in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Workman's Compensation and Employer's Liability Insurance for all of the latter's employees to be engaged in such work.

(c) Bodily Injury Liability and Property Damage Liability Insurance - The Contractor shall take out and maintain during the life of this Contract such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him and any subcontractor performing work covered by this Contract from claims for damages for personal injury including accidental death, as well as from operations under this Contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than:

(1) Bodily Injury Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) per person for injuries including wrongful death and in an amount not less than One Million Dollars (\$1,000,000.00) for injuries including wrongful death resulting from one accident.

(2) Property Damage Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) for damages resulting from any one accident and in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for damages resulting from all accidents.

(3) Bodily Injury Liability and Property Damage Insurance in an aggregate amount not less than Two Million Dollars (\$2,000,000.00).

(d) Owner's Protective Liability Insurance - The Contractor shall take out and furnish to the Owner and maintain during the life of this Contract complete Owner's protective liability insurance in amounts as specified in paragraph 4.11 (c), above for bodily injury liability insurance and for property damage liability insurance.

(e) Fire Insurance - The Contractor shall insure the building or other work included in this Contract against loss or damage by fire and against loss or damage covered by the standard extended coverage insurance endorsement, in an insurance company or companies acceptable to the Owner, the amount of the insurance at all times to be at least equal to the amount paid on account of work and materials and plus the value of work or materials furnished or delivered but not yet paid for by the Owner.

(f) Motor Vehicle Insurance – Prior to the commencement of any work under this Contract, the Contractor shall furnish to the Contracting Officer adequate proof that all vehicles it intends to operate in the furtherance of performance under this Contract are adequately insured with amounts required by law and as indicated below, whichever is stricter. The Owner will not be responsible for harm or loss to any of the Contractor's vehicles.

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(1) Vehicle Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury per person and Five Million Dollars (\$5,000,000.00) for property damage and in an amount not less than Five Million Dollars (\$5,000,000.00) for each accident.

(2) Comprehensive form covering all owned, non-owned, leased, hired, and borrowed vehicles.

(g) Excess Liability Insurance – Minimum Five Million Dollars (\$5,000,000.00) limit of liability. The excess liability coverage must be an occurrence following form policy including coverage for all required endorsements and no additional exclusions. The excess liability policy must extend over the general liability, automobile liability, and employer's liability policy forms. The excess liability policy must have concurrent effective dates with the primary coverage parts.

(h) Additional insurance requirements include the following.

(1) There shall be no exclusions for explosion, collapse or underground exposures on the Commercial General Liability Insurance Policy.

(2) The Owner shall be advised promptly in writing of the following changes in the insurance policies – (i) Setting up a new or retro date; (ii) Exhausting any aggregate limit under any of the policies; or (iii) Switching occurrence based coverage to claims made coverage or vice versa.

(3) Approval for deductibles higher than \$25,000 for the liability policies will be required from the Owner.

(i) All policies shall be in the names of the Owner, Receiver and the Contractor, as their interests may appear. Certificates of the insurance company as to the amount and type of coverage, terms of policies, etc., shall be delivered to the Owner before the Contract is signed.

Each insurance policy shall contain a clause providing that it shall not be canceled or materially altered without ninety (90) calendar days written notice to the Government. Neither approval by the Government of any insurance supplied by a Contractor or subcontractor, nor failure to disapprove such insurance, shall relieve the Contractor or subcontractors of their obligation to maintain in full force during the life of the Contract all required insurance as set forth in this section. The Government may require other insurance as it deems necessary to perform under this Contract. If such insurance is required due to fault, error or omission on the part of Contractor, the Contractor shall be solely responsible to pay for such insurance. If however, the insurance is required by the Government through no fault of the Contractor, the Government shall pay for the reasonable costs of the insurance not specified herein

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#### **4.12 Accident Prevention**

(a) Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery equipment and all hazards shall be observed. Machinery equipment and all hazards shall be guarded or eliminated in accordance with the safety provisions of the latest edition of the Manual of Accident Prevention in Construction published by the Associated General Contractors of America to the extent that such provisions are not in contravention of applicable laws.

(b) Should typhoon warnings be issued, the Contractor shall take every practicable precaution to minimize damage and/or danger to persons, to the work, and to the adjacent property. These precautions shall include closing all openings, removing all loose materials, tools and/or equipment from exposed locations, and removing or securing scaffolding and all other temporary work.

#### **4.13 Protection of Work and Property**

The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this Contract. He shall at all times safely guard and protect his own work and that of adjacent property (as provided by law and the Contract documents) from damage. All passageways, guard fences, lights and other facilities required for protection by laws and regulations and local conditions must be provided and maintained.

#### **4.14 Responsibility of Contractor to Act in Emergency**

In case of an emergency which threatens loss of property or injury and/or safety of life, the Contractor shall act, without previous instructions from the Owner or Contracting Officer, as the situation may warrant. He shall notify the Contracting Officer thereof immediately thereafter of any compensation claimed by the Contractor. Substantiating documents regarding expenses shall be submitted to the Owner through the Contracting Officer and the amount of compensation shall be determined by agreement or as per the method described in Section 8.10.h, Changes in Work, of the General Conditions.

#### **4.15 Mutual Responsibility of Contractors**

If the Contractor or any of his subcontractors or employees cause loss or damage to any separate contractor on the work, the Contractor agrees to settle with such separate contractor by agreement, if he will so settle. If such separate contractor sues the Owner on account of any loss so sustained, the Owner shall notify the Contractor who shall indemnify and save harmless the Owner against any expenses or judgment arising therefrom.

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#### **4.16 Use of Premises and Removal of Debris**

The Contractor expressly agrees to undertake at his own expense

- (a) to take every precaution against injuries to persons or damages to property;
- (b) to comply with the regulations governing the operation of premises which are occupied and to perform his Contract in such a manner as not to interrupt or interfere with the operation of other facilities;
- (c) to perform any work necessary to be performed after regular working hours or on weekends or legal holidays without additional expense to the Owner;
- (d) to store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractors;
- (e) to place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;
- (f) to frequently clean up all refuse, rubbish, scrap materials and debris caused by his operation so that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
- (g) to effect all cutting, fitting, or patching of his work required to make the same conform to the plans and specifications, and except with the consent of the Contracting Officer, not to cut or otherwise alter the work of any contractor; and
- (h) before final payment to remove all surplus materials, false work, temporary structures, including foundations thereof, equipment plant of any description and debris of every nature resulting from his operations, to put the site in a neat, orderly condition.

#### **4.17 Obstructions**

The Contractor shall at his own expense remove all obstructions, the removal of which shall be necessary for the proper reception, performance, construction, installation and completion of all work under this Contract.

#### **4.18 Site of Contractor's Operations**

The Contractor shall confine all construction operations within the vicinity of the site and shall arrange his work so that all construction materials and equipment are placed in such manner and location that there may be a minimum of interference or inconvenience

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inflicted upon the public and employees of the Government.

#### **4.19 Barricades**

The Contractor shall erect, install and maintain all temporary public walks, warning signs, barricades or other protective means in and around the site as deemed necessary or as may be ordered by the Contracting Officer for the effective protection of the public from injury and shall be held strictly liable for their safety.

#### **4.20 Electrical Energy**

The Contractor shall make all necessary applications, pay all fees and charges, obtain necessary permits and provide and maintain his own electrical power and light as required and necessary in the progress of any branch of the work. He shall provide all temporary wiring necessary.

#### **4.21 Water**

The Contractor shall make all necessary applications, pay all fees and charges, and obtain all necessary permits for construction of temporary water required for use on this Project. The nearest available source of water tap shall be verified by the Contractor. The Contractor shall be responsible for all expenses required for conveying water to the site from the available nearest source.

#### **4.22 Signs**

The Contractor shall erect a sign at the Project site at his own expense. The location of sign shall be as directed by the Contracting Officer. Size of signs, lettering, and other pertinent data that should appear on the sign will be furnished by the Contracting Officer to the Contractor.

### **5.0 QUALITY OF WORK**

#### **5.1 Engineering and Layout**

(a) The Contractor shall provide competent engineering services to execute the work in accordance with the Contract requirements. He shall verify the figures shown on the survey and approach drawings before undertaking any construction work and shall be responsible for the accuracy of the finished work.

(b) The Owner has established or will establish such general reference points as will, in his judgment, enable the Contractor to proceed with the work. If the Contractor finds that any previously established reference points have been destroyed or displaced, he

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shall promptly notify the Owner.

(c) The Contractor shall protect and preserve the established bench marks and monuments and shall make no changes in location without the written approval of the Owner. Any of them which may be lost or destroyed or which require shifting because of necessary changes in grades or locations shall be subject to prior approval by the Owner, be replaced and accurately located by the Contractor.

## 5.2 Shop Drawings, Materials and Workmanship

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

### Shop Drawings

(a) The Contractor shall submit, for the approval of the Contracting Officer, shop and setting drawings and schedules required by the specifications or that may be requested by the Contracting Officer and no work shall be fabricated by the Contractor, save at his own risk, until such approval has been given.

(b) Drawings and schedules shall be submitted in quadruplicate (unless otherwise specified) accompanied by letter of transmittal which shall give a list of the numbers and dates of the drawings submitted. Drawings shall be complete in every respect and bound in sets.

(c) The Contractor shall submit all drawings and schedules sufficiently in advance of construction requirements to allow ample time for checking, correcting, resubmitting and rechecking.

(d) The drawings submitted shall be marked with the name of the Project, numbered consecutively and bear the stamp of approval of the Contractor as evidence that the drawings have been checked by the Contractor. Any drawings submitted without this stamp of approval will not be considered and will be returned to the Contractor for resubmission. If the shop drawings show variations from the requirements of the Contract because of standard shop practice or other reasons, the Contractor shall make specific mention of such variation in his letter of transmittal in order that if applicable, suitable action may be taken for proper adjustment. Otherwise, the Contractor will not be relieved of the responsibility for executing the work in accordance with the Contract even though such shop drawings have been approved.

(e) If a drawing as submitted indicates a departure from the Contract requirements which the Contracting Officer finds to be in the interest of the Owner and to be so minor as not to involve a change in the Contract price or time for performance, he may approve the

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drawings.

(f) The approval of shop and setting drawings will be general and, except as otherwise provided in paragraph 5.2 (e), shall not be construed (1) as permitting any departure from the Contract requirements; (2) as relieving the Contractor of the responsibility for any error in details, dimensions or otherwise that may exist; or (3) as approving departures from additional details or instructions previously furnished by the Contracting Officer.

### 5.3 Standards

(a) Any material specified by reference to the number, symbol or title of a specific standard, such as a commercial standard, a Federal specification, a trade association standard or other similar standard, shall comply with the requirements in the latest revision thereto in effect on the date of Invitation for Bids, except as limited to type, class or grade or modified in such reference.

(b) The standard referred to, except as modified in the specifications, shall have full force and effect as though printed in the specifications. These standards are not furnished to Bidders for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements. The Contracting Officer will furnish, upon request, information as to how copies of such standards may be obtained.

(c) Reference in the specifications to any article, device, product, material, fixture, form, or type of construction by name, make or catalog number shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition; and the Contractor, in such cases, may at his option use any article, device, product, material, fixture, form or type of construction which in the judgment of the Contracting Officer expressed in writing is equal to that specified.

### 5.4 Samples

(a) The Contractor shall furnish for the approval of the Contracting Officer any samples required by the specifications or that may be required by the Contracting Officer of any and all materials or equipment he proposes to use and shall prepay all shipping charges on the samples.

(b) No samples are to be submitted with bids.

(c) No materials or equipment of which samples are required to be submitted for approval shall be used on the work until such approval has been given by the Contracting Officer, save only at the Contractor's risk and expense.

(d) Each sample shall have a label indicating the material represented, its place of

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origin and the names of the producer, the Contractor and the building or work for which the material is intended. Samples of finished materials shall be so marked as to indicate where the materials represented are required by the drawings or specifications.

(e) A letter in duplicate submitting each shipment of samples shall be mailed under separate cover by the Contractor to the Contracting Officer and contain a list of the samples, the name of the building or work for which the materials are intended, and the brands of the materials and names of the manufacturers.

(f) The approval of any sample shall be only for characteristics or for the named in such approval and no other. No approval of a sample shall be taken in itself to change or modify any Contract requirement. When a material has been approved, no additional sample of that material will be considered and no change in brand or make will be permitted. Approval of samples of hardware in good condition may be suitably marked for identification and used in the work.

(g) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider under this Contract any further samples of the same brand or make of that material.

(h) Test samples as the Contracting Officer may deem necessary will be procured from the various materials or equipment delivered by the Contractor for use in the work. If any of these test samples fail to meet the specifications requirement, any previous approvals will be withdrawn and such materials or equipment shall be subject to removal and replacement by the Contractor with materials or equipment meeting the specification requirements, or at the discretion of the Owner, the defective materials and equipment may be permitted to remain in place subject to a proper adjustment of the Contract price. The cost of the tests will be borne by the Contractor except where laboratory tests as hereinafter specified are required by the specifications.

## 5.5 Laboratory Tests

Any specified laboratory tests of materials and finished articles to be incorporated in the work shall be made by bureaus, laboratories or agencies approved by the Contracting Officer, and the reports of such tests shall be submitted to the Contracting Officer. The cost of the testing shall be paid for by the Contractor.

## 5.6 Methods

The Contractor shall use proper and efficient methods and appliances for the performance of all the operations connected with work embraced under these specifications, drawings and Contract to secure a rate of progress which will secure completion of the work within the time specified. If, at any time before commencement of work, or during the progress thereof, such methods, equipment or appliances are inefficient or inappropriate for securing said quality of work or said rate of progress, the Contracting Officer may order the

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Contractor to increase their efficiency or to improve their character, and the Contractor must conform to such order. The failure of the Contracting Officer to demand such increases of efficiency or improvement shall not relieve the Contractor or his sureties from the obligations to secure such quality of work and said rate of progress and the completion of the work as required herein.

## 5.7 Labor and Materials

The Contractor shall furnish all labor, materials and equipment for the execution of the work according to the drawings, specifications and Contract, and where no specifications are contained therein for whatever may be necessary, shall do all that may be termed ordinary, customary or essential to a job to be well and reliably completed. This includes concealment of all pipes and other rough items of installation if not clearly so shown on the drawings in a manner acceptable to the Contracting Officer. Structural safety shall not be impaired by such concealment. Work not particularly detailed, marked or specified shall be of equal quality as similar parts that are detailed, marked or specified. All material finished for and used in the job shall be of kind and grade specified and where not specifically called for at least of customary standard grade. All work shall be executed in accordance with their trades. Full structural safety is essential and the Contractor guarantees to accomplish same for the entire work.

## 5.8 Guarantee of Work

(a) Except as otherwise specified all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one year from the date of final completion of the Contract or upon disturbance of the work by other Contractor hired by the Owner, whichever is earlier.

(b) If within any guarantee period, repairs or changes are required in connection with guaranteed work which, in the opinion of the Contracting Officer, is rendered necessary as the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract, the Contractor shall promptly upon receipt of notice from the Owner and without expense to the Owner:

(1) Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein; and

(2) Make good all damage to the building or site or equipment or contents thereof which, in the opinion of the Contracting Officer, is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract.

(c) In any case wherein fulfilling the requirements of the Contract or of any guarantee embraced in or required thereby the Contractor disturbs any work guaranteed under another contract, he shall restore such disturbed work to a condition satisfactory to the

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Contracting Officer and guarantee such restored work to the same extent as it was guaranteed under such other contract.

(d) If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected and the Contractor and his surety shall be liable for all expense incurred.

(e) All special guarantees applicable to definite parts of the work shall be stipulated in the specifications or other papers forming a part of the Contract and shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

## 5.9 Defective Work

No work or material which may be defective in construction or quality or deficient in any of the requirements of the drawings and specifications will be considered accepted as a consequence of the failure of the Contracting Officer or the inspectors to discover or to point out said defects or deficiencies during the construction; nor will the presence of inspectors on the work relieve the Contractor from the responsibility of securing the quality and progress of work as required by these specifications.

Any defective work that may be discovered before the completion of the work or within such time as required by the performance and payment bond shall be replaced by work and materials that shall conform to the spirit and intent of the drawings, specifications and Contract.

The fact that the Contracting Officer or his representatives may have overlooked defective work shall not constitute the acceptance of work. NO PAYMENT WHETHER PARTIAL OR FINAL SHALL BE CONSTRUED TO BE AN ACCEPTANCE OF DEFECTIVE WORK OR IMPROPER MATERIALS.

The Contracting Officer may at any time by order given in writing stop any work not being done according to drawings and specifications and any order so given shall not in any way relieve the Contractor from completing his Contract and shall not in any way terminate, cancel or abrogate the Contract or any part thereof, and the Government of Guam shall not in any way be responsible for the delay due to stopping the work as aforesaid.

## 6.0 INSPECTION OF WORK

### 6.1 Access to the Work

The Contracting Officer and his representatives shall have access at all times to the work for inspection and the Contractor shall provide proper facilities for such access and inspection.

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## 6.2 Inspectors

Inspectors may be placed by the Contracting Officer to supervise each and every subdivision of the work or any parts or process thereof. The Contracting Officer and the inspectors shall have free access to all parts of the work at all times and shall be given every facility, information and means of thoroughly inspecting the work done and the materials used or to be used.

The inspectors shall at all times be free to perform their duties and any intimidation of any inspector by the Contractor or the employees thereof shall be sufficient reason, if the Owner shall so decide, to annul the Contract.

## 6.3 As-Built Drawings

A Contract set of drawings shall be maintained at the site with all changes or deviations from the original drawings neatly marked thereon in brightly contrasting color. This shall be a separate set of drawings not used for construction purposes which shall be kept up to date as the job progresses and shall be made available for inspection by the Contracting Officer at all times. Upon completion of the Contract this set of drawings shall be delivered to the Contracting Officer.

## 6.4 Inspection

(a) All materials and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination and testing by the Contracting Officer at any and all times during manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. The Contracting Officer shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected, and rejected materials shall be satisfactorily replaced with proper materials and the Contractor shall promptly segregate and remove the rejected materials from the premises. If the Contractor fails to proceed at once with the replacement of rejected materials and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such materials and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed as provided in the Contract documents, the Contractor and surety being liable for any damage to the same extent

(b) The Contractor shall furnish promptly, without additional charge, all reasonable facilities, labor and materials necessary for the safe and convenient inspection and tests that may be required by the Contracting Officer. All inspections and tests shall be performed in such manner as not to unnecessarily delay the work. Special, full-size and performance tests shall be as described in the specifications. The Contractor shall be charged with any cost of inspection when material and workmanship are not ready at the time of inspection as requested by the Contractor.

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(c) Should it be considered necessary or advisable by the Contracting Officer at any time before final acceptance of the entire work to make an examination of work already completed by removing or tearing out same, the Contractor shall on request promptly furnish all necessary facilities, labor and materials. If such work is found to be defective in any material respect due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements involved in the examination and replacement, the cost of conducting the test plus fifteen percent (15%) shall be allowed the Contractor and he shall in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

## **6.5 Final Inspection**

When the work is substantially completed the Contractor shall notify the Owner, in writing, that the work will be ready for final inspection and test on a definite date which shall be stated in such notice. The notice shall be given at least ten (10) calendar days in advance of said date and shall be forwarded through the Contracting Officer who will attach his endorsement as to whether or not he concurs in the Contractor's statement that the work will be ready for final inspection or tests on the date given but such endorsement shall not relieve the Contractor of this responsibility in the matter.

# **7.0 TIME FOR PERFORMANCE**

## **7.1 Prosecution of the Work**

The Contractor agrees that said work shall be prosecuted regularly, diligently and without interruption at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed by and between the Contractor and the Owner that the time for completion of the same takes into consideration the average climatic range and usual industrial conditions prevailing in the locality.

## **7.2 Suspension of Work**

The Owner will furnish all land and rights-of-way necessary for the carrying out of this Contract and the completion of the work herein contemplated. Should the Owner be prevented or enjoined from proceeding with the work or from authorizing its prosecution, either before or after the commencement by reason of any litigation, the Contractor shall not be entitled to make or assert any claim for damage by reason of said delay, or to withdraw from the Contract except by consent of the Owner, but time for completion of the work will be extended to such time as the Owner determines will compensate for the time lost by such delay determination to be set forth in writing.

## **7.3 Climatic Conditions**

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(a) When so ordered by the Contracting Officer, the Contractor shall suspend any work that may be subject to damage by climatic conditions.

(b) Contract Completion Time. The Contract completion time for this Contract was calculated after allowing for the following number of lost work days in each month. Time extension on account of inclement weather will be allowed only if the daily report of the Contracting Officer's inspector indicates lost work days beyond the limits shown below. Time extension on account of inclement weather on weekends or holidays shall be granted only if the Contractor confirms in writing at least seven (7) calendar days in advance his intention to work on weekends or holidays.

<u>Month</u>	<u>Non-Working Days</u>	<u>Month</u>	<u>Non-Working Days</u>
January	07	July	10
February	05	August	11
March	05	September	12
April	04	October	10
May	05	November	07
June	06	December	07

#### 7.4 Progress Report

The Contractor shall submit a monthly progress report in triplicate on or before the fifth (5<sup>th</sup>) working day of each month to the Contracting Officer briefly setting forth work accomplished.

#### 7.5 Owner's Right to Stop Work or Terminate Contract, Delays, Damages

(a) If:

(1) The Contractor shall be adjudged bankrupt or make an assignment for the benefit of creditors; or

(2) A receiver or liquidator shall be appointed for the Contractor or for any of his property and shall not be dismissed within twenty (20) calendar days after such appointment, or the proceedings in connection therewith shall not be stayed on appeal within the said twenty (20) calendar days; or

(3) The Contractor shall refuse or fail, after Notice of Warning from the Contracting Officer, to supply enough properly skilled workmen or proper materials; or

(4) The Contractor shall refuse to prosecute the work or any part thereof with such diligence as will insure its completion within the period herein specified (or

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any duly authorized extension thereof) or shall fail to complete the work within said period; or

(5) The Contractor shall fail to make payments as specified to persons supplying labor or materials for the work; or

(6) The Contractor shall fail or refuse to regard laws, ordinances or the instructions of the Contracting Officer or otherwise be guilty of a substantial violation of any provisions of this Contract, then, and in any such event, the Owner, upon the certificate of the Contracting Officer that sufficient cause exists to justify such action, and without prejudice to any other rights or remedy he may have may, with ten (10) calendar days notice to the Contractor, terminate the employment of the Contractor and his right to proceed, either as to the entire work or (at the option of the Owner) as to any portion thereof as to which delay shall have occurred, and may take possession of the work and complete the work by contract or otherwise as the Owner may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment on that work until the work is finished. If the unpaid balance of the compensation to be paid the Contractor hereunder shall exceed the expense of so completing the work (including compensation for additional managerial, administrative, and inspection services and any liquidated damages for delay), such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor and his sureties shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the work is so terminated, the Owner may take possession of and utilize in completing the work such materials, supplies, plant, and equipment as may be on the site of the work and necessary therefor. The expenses incurred through the Contractor's default shall be certified by the Contracting Officer.

- (b) If the Owner does not terminate the right of the Contractor to proceed, the Contractor shall continue the work, in which event the Contractor shall pay to the Owner as fixed, agreed, and liquidated damages for each calendar day of the delay until work is completed or accepted the amount as set forth in the Contract documents and the Contractor and his sureties shall be liable for the amount thereof.
- (c) Provided that the right of the Contractor to proceed shall not be terminated, or the Contractor charged with liquidated damages because of any delays in the completion of the work due to unforeseeable cause beyond the control and without the fault or negligence of the Contractor including, but not restricted to, acts of God or of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes by others than the Contractor or his subcontractors, freight embargoes, and unusually severe weather, or delays of subcontractors due to such cases, if the Contractor shall, within ten (10) calendar days from the beginning of any such delay (unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract)

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notify the Owner in writing through the Contracting Officer of the causes of delay, who shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of facts justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto.

## **8.0 CLAIMS, PAYMENTS**

### **8.1 Contractor's Title to Materials**

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies for which he accepts partial payments.

### **8.2 Claims**

The Contractor agrees whenever required to do so by the Owner to furnish satisfactory evidence that all persons, firms or corporations who have done work or supplied materials under these specifications have been paid or have been duly notified of the completion of the work and have been secured to their satisfaction before the said Contractor shall be entitled to final payment.

In case such evidence is not furnished or in case any claim is filed with the Owner or any suit or action is instituted against the Owner as defendant or garnishes against the Contractor in connection with the work performed or to be performed under the drawings, specifications or Contract, the Owner may retain from the money due or to become due to the Contractor such sum or sums as in the judgment of the Contracting Officer will fully protect the Owner from loss, charge or expense by reason of such claim, suit or action. The Owner without prejudice to any other and further rights, may make any and all deductions for any loss, charge or expense sustained by it to which it would be entitled under the Contract specifications or performance and payment bond, or otherwise before paying over the balance of the sum or sums retained as aforesaid, if any, to the Contractor, his creditor, or any successful claimant against the Contractor.

No payment made or retained under this Contract shall be held to relieve the Contractor and/or his sureties from his and/or their obligations under this performance and payment bond to hold harmless and indemnify the Owner or its agents from any and all loss, charge or expense by reason of any unpaid claim whatsoever.

### **8.3 Waiver of Mechanics Liens**

Contractor waives any right that he now has or in the future may have to claim a mechanic's lien against the real property or improvements thereon which are the subject of this Contract, to secure payment for labor and materials furnished or to be furnished by him under this Contract.

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#### **8.4 Schedule of Values**

Within three (3) working days after receipt of notice to proceed, the Contractor shall submit for approval a schedule of the estimated values of the main branches of the work totalling the amount of the Contract. The format to be used will be furnished by the Contracting Officer. These values will be used for determining partial payments and as a basis for changes in work as outlined in the General Conditions.

#### **8.5 Taxes**

The Contractor shall, without additional expense to the Owner, pay all applicable taxes. The successful Bidder will be required to comply with the applicable sections of Titles 11 and 21 of the Guam Code Annotated, as regards to licenses and taxes. In addition to the general Contractor's liability, subcontractors are also subject to these provisions. Subcontractors are also required to possess Guam Service Licenses. The Contractor will be required to submit a list of his subcontractors and the monetary amount of each subcontract.

#### **8.6 Materials, Services and Facilities**

It is understood that except as otherwise specifically stated in the Contract documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, insurance, bonds, water, light, power, transportation, superintendence, temporary construction of every nature whatsoever necessary to execute, complete and deliver the work within the specified time.

#### **8.7 Patents**

The Contractor shall hold and save the Owner and his officers, agents, servants, and employees and the Receiver harmless from liability of any nature or kind, including cost and expenses, for or on account of any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the Contract including its use by the Owner, unless otherwise specifically stipulated in the Contract documents.

#### **8.8 Payment by Contractor**

The Contractor shall pay:

- (a) for all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered;
- (b) for all materials, tools, and other expendable equipment to the extent of 90 percent of the cost thereof, not later than the 20th day of the calendar month following that in which

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such materials, tools and equipment are delivered at the site of the Project, and the balance of the cost thereof not later than the 30th day following the completion of that part of the work in or on which such materials, tools and equipment are incorporated or used; and

(c) to each of his subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his subcontractors, to the extent of such subcontractor's interest therein.

## 8.9 Extras

Except as otherwise herein provided, no charge for any extra work or materials will be allowed unless the same has been ordered in writing by the Owner and either the price is stated in such order or a definite acknowledgment is made that a change in price is involved subject to later determination.

## 8.10 Changes in Work

(a) The Contracting Officer, at any time, without notice to the sureties may, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to the following changes. However, no change will be made which increases the total Contract price without notice to sureties.

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished facilities, equipment, materials, services for site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written order or an oral order (which terms as used in this paragraph (b) shall include direction, instructions, interpretations or determination from the Contracting Officer) which causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances and source of the order and that the Contractor regards the order as a change order.

(c) Except as herein provided, no order, statement, or conduct of the Contracting Officer shall be treated as a change order under this clause or entitle the Contractor to an equitable adjustment hereunder.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly, provided, however, that except for claims based on defective specifications no claim for any change under (b) above shall be allowed for any costs incurred more than 20

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calendar days before the Contractor gives written notice as therein required. And provided further, that in the case of defective specifications for which the Owner is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

(f) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 calendar days after receipt of a written change order under (a) above or the furnishing of a written notice under (b) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Owner. The statement of claim hereunder may be included in the notice under (b) above.

(g) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

(h) In making any change, the charge or credit for the change shall be determined by the following method:

(1) The actual cost of:

- I. Labor, including foreman
- II. Materials entering permanently into the work
- III. Equipment rental cost during time used on extra work
- IV. Power and consumable supplies
- V. Insurance
- VI. To the above cost there shall be added a fixed fee to be agreed upon, but not to exceed 15% of the net cost. This fee shall be compensation to cover the cost of supervision, overhead, bond, profit and other general expenses.

(i) The Contractor shall, when required by the Owner, furnish to the Owner an itemized breakdown of the quantities and prices used in computing the value of any change that might be ordered.

(k) In figuring changes, instructions for measurement of quantities set forth in the specifications shall be followed.

(l) If any part of the work as installed is at variance with the Contract requirements, the Owner may, if he finds it to be in his interest, allow all or any part of such work to remain in place subject to a proper adjustment in the Contract price.

## 8.11 Payment to Contractor

(a) Unless otherwise provided in the specifications, the Owner will make partial

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payments to the Contractor after receipt and approval of the request for partial payment covering the work performed during the preceding calendar month. No payments for installed materials on the site will be made unless such request is accompanied by a receipt or certification showing that the Contractor has made payment in full for such work done. In preparing such requests, preparatory work done shall not be considered for payment. Materials delivered to site shall be considered for payment subject to the following conditions:

- (1) The material shall be kept in a safe, enclosed and bonded warehouse or area located on site with restricted access.
- (2) The receipt and issue of material must be controlled by a stock card kept in the warehouse or Contractor's office.
- (3) Insurance coverage required under Section 4.11 of the General Conditions shall include insurance of such material and shall include theft insurance.

(b) In making such partial payments there shall be retained ten percent (10%) of the estimated amount until final completion and acceptance of all work covered by the Contract. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize payment in full of each progress payment for work performed beyond the 50 percent stage of completion. Also, whenever the work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to the Contractor all or a portion of such excess amount.

(c) All materials and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made, or the restoration of any damaged work or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract.

(d) Release of Claims - Neither the final payment or any part of the retained percentage shall become due until the Contractor shall deliver to the Owner through the Contracting Officer a complete release of all claims against the Owner arising under and by virtue of this Contract, including claims of all subcontractors and suppliers of either materials or labor, other than such claims, if any, as may be specifically excepted by the Contractor.

(e) Certificate of Completion - Upon completion and acceptance of all work whatsoever required and the release of all claims against the Owner as specified, the Contracting Officer shall file a written certificate with the Owner and with the Contractor as

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to the entire amount of work performed and compensation earned by the Contractor, including extra work and compensation therefor.

(f) Final Payment - Within thirty (30) calendar days after the filing of such certificate of completion, the Owner shall pay to the Contractor the amount therein stated less all prior payments and advances whatsoever to or for the amount of the Contract. All prior estimates and payments including those relating to extra work shall be subject to correction by this payment which is throughout this Contract called Final Payment.

(g) Acceptance of Final Payment Constitutes Release - The acceptance by the Contractor of the final payment shall be and shall operate as a release to the Owner of all claims and of all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work, excepting the Contractor's claims for interest upon the final payments if this payment be improperly delayed. No payments, however, final or otherwise shall operate to release the Contractor or his sureties from any obligations under this Contract or the performance and payment bond.

## 9.0 MISCELLANEOUS

### 9.1 Prohibited Interests

(a) No member of or Delegate to Congress or Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

(b) No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Government of Guam authorized to exercise any legislative, executive supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.

### 9.2 Disputes

(a) All controversies between the Government and the Contractor which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement, shall be

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decided by the Procurement Officer in writing, within 60 days after written request by the Contractor for a final decision concerning the controversy; provided, however that if the Procurement Officer does not issue a written decision, with 60 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision has been received. The Procurement Officer for this Contract is the Director of the Department of Public Works or his authorized representative.

- (b) The Procurement Officer shall immediately furnish a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- (c) Any such decision shall be final and conclusive, unless fraudulent, or:
  - (i) the Contractor brings an action seeking judicial review of the decision in the Superior Court of Guam.
- (d) The Contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of this Contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Contract, except where there has been a material breach of the Contract by the Government; provided, however, that in any event the Contractor shall proceed diligently with the performance of the Contract where the Procurement Officer has made a written determination that continuation of work under this Contract is essential to the public health and safety.

### **9.3 Construction Manager Field Office**

The Contractor shall provide an office for the Construction Manager separate from the Contractor's Office which contains an area of at least 150 square feet with a minimum width of at least 10 feet, has electrical power with at least 2 wall outlets, sufficient lighting, plan table (36" x 48" top), desk and chair, 2 folding chairs, plan racks, one four-drawer file cabinet, adequate air-conditioning, and equipped with sanitary facilities, i.e., toilet, sink and medicine cabinet. Office shall be lockable by Construction Manager.

Provision for the Construction Manager's Field Office and all associated expenses is incidental to the cost of the Project and is therefore no additional cost to the Owner.

### **9.4 Sanitary Provisions**

The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Department of Public Health and Social Services or of other authorities having jurisdiction.

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## 9.5      **Restriction on Employment of Sex Offenders**

The Contractor warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide services on behalf of the Contractor relative to this Contract. If any person employed by the Contractor and providing services under this Contract is convicted subsequent to the Parties entering into this Contract, then the Contractor warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services under this Contract. If the Contractor is found to be in violation of any of the provisions of this paragraph, then the Government shall give notice to the Contractor to take corrective action. The Contractor shall take corrective action within twenty-four hours of notice from the Government, and the Contractor shall notify the Government when action has been taken. If the Contractor fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend this Contract temporarily.

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