

PUERTO RICO INFRASTRUCTURE FINANCING AUTHORITY



SCHOOLS FOR THE 21ST CENTURY PROGRAM

_____ **SCHOOL MODERNIZATION PROJECT**

MUNICIPALITY OF _____

PROJECT NO. 03-11-100-11-00 _____

CONTRACT NO. 2011-000 _____

CONTRACT BOOK

- **PPP CONTRACT: AFI-DESIGN/BUILD/CONSERVATION CONTRACTOR AGREEMENT**
 - **GENERAL CONDITIONS**
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-

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PPP CONTRACT:

AFI- DESIGN/BUILD/CONSERVATION

CONTRACTOR AGREEMENT

PPP CONTRACT

AFI- DESIGN/BUILD/CONSERVATION CONTRACTOR AGREEMENT

CONTRACT No. 2011-000__

This Public Private Partnership Contract: AFI-DESIGN/BUILD/CONSERVATION CONTRACTOR AGREEMENT (the “Agreement” or the “Contract”) is made and entered into in San Juan, Puerto Rico as of the ____ day of _____, 20____ by and between:

AS THE FIRST PARTY: the **PUERTO RICO INFRASTRUCTURE FINANCING AUTHORITY** (“AFI”), a public corporation and government instrumentality of the Government of Puerto Rico (“Puerto Rico”) created and existing under Law Number 44 of June 21, 1988, as amended (the “Enabling Act”), represented herein by its Executive Director, José E. Basora Fagundo, of legal age, married, an engineer, and a resident of Trujillo Alto, Puerto Rico; and

AS THE SECOND PARTY: _____. (the “Contractor”), a corporation formed and existing under the laws of Puerto Rico, and authorized to do business in Puerto Rico, Tax I.D _____ represented herein by its President, _____, of legal age, _____, _____ and a resident of _____, Puerto Rico.

Terms used herein which are not defined in this Agreement shall have the meanings assigned to them in the contract document entitled “General Conditions” (the “General Conditions”), which is attached hereto and made a part hereof and the Contract Documents.

The parties, in consideration of the mutual covenants and agreements set forth below, agree as follows:

ARTICLE 1 - BACKGROUND

1.1 Recitals

The parties acknowledge that the following facts form the background of this Agreement:

1.1.1 Pursuant to the Enabling Act, AFI has entered into an Interagency Memorandum of Understanding, AFI Contract No. 2011-A10002 executed on October 29th, 2010 between the Public Building Authority (“AEP”), the Department of Education (“DE”), the Department of Transportation and Public Works (“DTOP”), the Public Private Partnership Authority (“AAPP”), the Governmental Development Bank (“BGF”) and the Puerto Rico Infrastructure Financial Authority (“AFI”) (the “Assistance Agreement”). In accordance with the Assistance Agreement, AFI provides assistance by undertaking and implementing certain projects and activities of the Schools of the 21st Century Program.

- 1.1.2** One such project is “_____ School Modernization Project”, Municipality of _____ (the “Project”). Upon completion and acceptance, the Project shall be transferred to the _____ of Puerto Rico (“_____”) as it is known by its Spanish language acronym.
- 1.1.3** For each proposed Public Private Partnership (“PPP”), the AAPP created a committee to oversee such PPP (the “PPP Committee”). The PPP Committee is responsible for the PPP qualification, evaluation and selection processes, for establishing the terms and conditions of the PPP Contract and preparing a report describing the procedures followed. The PPP Committee has selected the Contractor to design and build for the remodeling of an existing public school indicated in article 1.1.2, as more particularly described in the Contract Documents.
- 1.1.4** Under this Agreement, the PPP Committee has required of the Contractor, and the Contractor has agreed to provide, to operate and maintain the Project (infrastructure conservation). At the moment of signing, the infrastructure conservation will be for one (1) year, AFI may at its own discretion award additional yearly contracts to the Contractor.
- 1.1.5** Based on the Assistance Agreement, this Agreement will be executed between AFI and Contractor. AFI is acting also as representative of the school’s Owner, which may be either the Department of Transportation and Public Works (DTOP as per its Spanish language acronym) or the Public Building Authority (AEP as per its Spanish language acronym).
- 1.1.6** Both AFI and the Contractor desire to enter into an agreement with each other for the purpose of undertaking a contract for the execution of Work (as defined below), as established by the terms and conditions described in the Contract Documents.
- 1.1.7** AFI has designated a representative (the “AFI Representative”) whom is authorized to act on behalf of AFI, and with whom the Contractor may consult, and whose instructions, requests and decisions will be binding upon AFI as to all matters pertaining to this Agreement. AFI’s Representative will provide administration of the Project pursuant to the Contract Documents.

ARTICLE 2 - CONTRACT

2.1 Scope of Contract

The Contractor shall complete the design for the construction of the Project. These services include any inspections, evaluations, experiments, analyses, briefings and presentations that are, or may be, required by AFI in connection with the performance of such Services. Contractor shall fully execute all the Work described in the Contract documents.

The Contractor shall furnish all labor, materials, supervision, tools and equipment required for the construction of the Project in strict accordance with the provisions of the Contract Documents, all of which are hereby made a part hereof. On or before the expiration or termination of the Contract, as part of its obligations thereunder, the Contractor shall deliver to AFI a true and exact copy of all diagrams, plans, sketches, maps and other documents used in the performance of the Work and for which a third party copyright or patent right would not be an impediment to such delivery.

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.

The Contractor will implement a one (1) year infrastructure conservation program for the Project after Final Acceptance of the construction work upon the terms and conditions set forth in the Exhibit A and section 1.1.4.

The abovementioned services (the “Work”) are set forth in further detail in **Exhibit A**. AFI and the Contractor each agree to perform all of their respective obligations set forth in the Contract and to be bound by all of the terms and conditions of the Contract.

2.2 Contract Documents

The Contract includes the following Contract Documents: the Notice of Award, the Agreement, the General Conditions, the Supplementary Conditions, the Special Conditions (if any), the Scope of Services, the Contractor’s Proposal, including any minor modifications thereto made by AFI, the Notice(s) to Proceed, all Change Orders, any amendments to any of the foregoing duly executed by AFI and the Contractor, bonds, Insurance Policies, and any other documents specifically incorporated into any of the Contract Documents by reference, such as the Contractual Exhibits (as defined below). The Contract Documents do not include the Informational Exhibits, and any other documents not specifically identified and incorporated into the Contract Documents. The priority of the Contract Documents is set forth in Section 2.2.1 of the Supplementary Conditions.

2.3 Contract Exhibits

The Contract Exhibits are identified in **Attachment A** to this Agreement.

2.3.1 Contractual Exhibits. In constructing the Work, the Contractor shall be bound by and shall perform all required, recommended or specified actions and satisfy all required, recommended or specified criteria and shall follow all required, recommended or specified procedures, guidelines or requirements set forth in each Contractual Exhibit, to the same extent as if such obligations were specifically set forth in the Contract Documents. If the Contractor has any doubt or question as to the applicability of any provision contained in any Contractual Exhibit to the Work under this Contract, the Contractor shall promptly request, in writing, from AFI’s Representative a clarification or answer as to such applicability. If during the performance of the Work, AFI’s Representative finds that any provision of any Contractual Exhibit which is applicable to

the Work is not being complied with or observed, or is being misinterpreted by the Contractor, AFI's Representative may bring such matter to the attention of the Contractor, and the Contractor shall promptly comply with the decision of AFI's Representative with respect to such matter. Claims, disputes and other matters in question relating to the execution or progress of the Work or the interpretations of the Contract Documents shall be submitted initially to the Owner's Representative for a decision in accordance with Article 11 of the General Conditions.

2.3.2 Informational Exhibits. The Contractor hereby acknowledges that AFI has provided certain information (including, without limitation, the Informational Exhibits and other reports, plans, studies, tests and documentation) to the Contractor for the Contractor's use and convenience (collectively, the "Project Information"). The Project Information is not a part of the Contract, and AFI does not assume any responsibility for the accuracy, completeness or usefulness of the Project Information. AFI provides no assurance that the conditions or assumptions under which the Project Information was collected or determined remain unchanged. The Contractor represents that it has thoroughly studied and is familiar with the Project Information, the Contract Documents and the Work, and, to the extent the Contractor considers necessary or desirable, has or will independently verify the accuracy, completeness and usefulness of the Project Information prior to relying on it in any way. The Contractor shall be solely responsible for all interpretations, assumptions, deductions, conclusions and uses it may make of any Project Information. The Contractor shall have no recourse against AFI, AFI's Representative, or any other contractors or consultants to AFI if any Project Information shall prove to be inaccurate, incomplete or misleading. The Contractor shall not be entitled to any adjustment of the Contract Price or any Contract Time as a result of the Contractor's reliance on, or any conditions or circumstances that deviate from, the Project Information.

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

2.4 Permits and Approvals.

The Contractor shall timely perform all of its obligations mentioned in the General Conditions and Supplementary Conditions including, without limitation, securing and maintaining all Permits and Approvals legally required or imposed in connection with the performance of the Contract and the proper execution and completion of the Work, including compliance with the disposal of solid waste as stated in **Exhibit C**; except for those Permits and Approvals identified in **Attachment B** to this Agreement for which AFI shall be responsible.

2.5 Preliminary Design

(A) Time For Preliminary Design: Contractor shall prepare and submit to the AFI's Representative a Preliminary Design for the Project not later than the date called for in the Design Schedule,

(B) Contents Of Preliminary Design: The Preliminary Design shall address all requirements of the Project and shall include, without limitation, the following:

(1) preliminary drawings which illustrate each of the basic components of the Project including the size, scale, location, dimensions, and character of each building structure;

(2) preliminary drawings which illustrate each exterior view of the Project;

(3) preliminary drawings which illustrate a floor plan for each room, office, and functional area of the Project and the dimensions thereof;

(4) preliminary drawings and specifications illustrating and describing the architectural, electrical, mechanical, structural, and manufacturing systems of the Project;

(5) a written description of the materials and equipment to be incorporated into the Project and the location of same; and

(6) any other documents or things required to illustrate, describe or depict the Preliminary Design and the conformity of same with the requirements of the Design Scope Specification and this Contract.

(C) To Be Reviewed With AFI: Contractor shall review the Preliminary Design with AFI and AFI's Representative and shall incorporate any changes ordered by AFI and AFI's Representative in regard to the Preliminary Design or the requirements of the Project. When the changes are approved by AFI, an increase in the Contract price equal to the approved change may be performed. Said increase in the Contract may be performed only when the required documents have been submitted and approved by AFI and AFI's Representative.

(D) Authorization To Proceed With Detailed Design: After review of the Preliminary Design and incorporation of any changes ordered by AFI's Representative, AFI's Representative shall authorize Contractor in writing to commence preparing the Detailed Design, or such part thereof as directed by AFI's Representative.

2.6 Detailed Design

(A) Time For Preparation: Contractor shall prepare and submit to AFI's Representative the complete Detailed Design not later than the date called for in the Design Schedule, after AFI's Representative has authorized Contractor to commence with the Detailed Design as provided in Paragraph 2.5(D) above.

(B) The Detailed Design: The Detailed Design shall include all Design Documents which shall describe with specificity all elements, details, components, materials, and other information necessary for the complete construction of the Project and the rendering of the Project fully operational for its intended purposes, including satisfaction of all testing, permitting, qualifications, certifications, validations, and obtaining regulatory approvals by all applicable regulatory authorities required to render the Project and

all its components operational and functionally and legally usable for their intended purpose. Subject to the provisions of this Agreement, AFI shall review and approve, where appropriate, the Design Documents, or any portion thereof.

(C) Design Documents: Design Documents means all the design documents provided by Contractor and approved by AFI pursuant to the Contract including, without limitation, those for use in constructing the Project, performing the Work, and the rendering of the Project fully operational, and shall include, without limitation, detailed plans, drawings, specifications, manuals, and related materials prepared by or on behalf of Contractor.

2.7 Construction Services

(A) General Intent: Contractor shall perform all Work necessary to construct the Project in accordance with this Contract, and to render the Project and all its components operational and functionally and legally usable for their intended purpose.

(B) Work Defined: The term “Work” shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of the Project under the Contract, including, without limitation, the following:

(1) construction of the whole and all parts of the Project in full and strict conformity with this Contract;

(2) the provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Project;

(3) the procurement and furnishing of all necessary building permits and other permits required for the construction of the Project;

(4) the creation and submission to AFI of detailed as-built drawings depicting all as-built construction;

(5) the furnishing of any required surety bonds and insurance as required by the Contract;

(6) the furnishing of all equipment and product warranties, manuals, test results and user guides required by the Contract or otherwise reasonably available to Contractor;

(7) the furnishing of all other services and things required or reasonably inferable from the Contract Documents;

2.8 Additional Duties and Responsibilities of the Contractor

(1) Supervision Of The Construction Work: The Construction Work shall be strictly supervised and directed using Contractor's best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of Contractor.

(2) Warranty Of Construction Workmanship And Materials: Contractor warrants and guarantees to AFI that all labor furnished to perform the Construction Work under the Contract will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only first-class results in strict compliance with the Contract, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Contract, and that the Construction Work will be of high quality, free from faults and defects and in strict conformance with the Contract. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

(3) As-Built Drawings: Contractor shall prepare and provide to the Owner's Representative a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

(4) Compliance With Labor Laws: Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

(5) Testing, Inspections, And Approvals: Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to AFI. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to AFI the required certificates of inspection, testing or approval.

(6) AFI's Regulations And Applicable Laws: Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by AFI. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

(7) Compliance With Construction Regulations: Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor shall fully indemnify and hold AFI harmless from all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by AFI, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of AFI, its officers, agents, or employees.

(8) **Permits, Licenses And Notices:** All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the Owner's Representative when it has received said permits, licenses, and authorizations, and upon receipt shall supply the Owner's Representative with copies of same. The originals of permits, licenses and authorizations shall be delivered to the Owner's Representative upon completion of the Construction Work, and receipt of these documents by AFI shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

(9) **Cleaning The Site:** Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

(10) **Fiduciary Relationship:** Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and AFI and agrees that it shall at all times in good faith use its best efforts to advance AFI's interests and agrees to perform the Design Services and the Construction Work in the highest professional manner.

ARTICLE 3- CONTRACT PRICE, WITHHOLDING, AND LIQUIDATED DAMAGES

3.1 Contract Price

3.1.1 Contract Price. In accordance with the Contract Documents, AFI agrees to pay and the Contractor accepts, as full payment for the complete and proper performance of the Contract, the amount of _____ **DOLLARS** (\$ _____), subject to authorized increases or decreases by means of Change Orders in accordance with Subsection 3.1.3 of this Agreement, the General Conditions and Supplementary Conditions.

3.1.2 Submission of Applications for Payment. Prior to the submission of the first Application for Payment by the Contractor, AFI's Representative and the Contractor shall agree upon a date each month (the "Invoice Submission Date"), which shall be the same date each month, on or prior to which the Contractor shall submit, on a monthly basis, an Application for Payment in accordance with the General Conditions.

Except as provided in the succeeding paragraph, in the event the Contractor fails to submit, on or prior to the 15th day following the Invoice Submission Date for any month, an Application for Payment for such month that complies with the requirements of the General Conditions, the amount of such Application for Payment AFI may reduce by one percent (1%) of the amount of such Application for Payment, without the requirement of further action by AFI or the Contractor. Such reduction in the amount of any Application for Payment shall not be recoverable by the Contractor and shall constitute instead an automatic adjustment in the Contract Price binding upon the Contractor.

In the event the Contractor fails to submit, on or prior to the 30th day following the Invoice Submission Date for any month, an Application for Payment for such month that complies with the requirements of the General Conditions, AFI may reduce the amount of such Application for Payment by two (2%) of the amount of such Application for Payment, without the requirement of further action by AFI or the Contractor. Such reduction in the amount of any Application for Payment (a) shall be in lieu of, and not in addition to, the reduction provided in the preceding paragraph, and (b) shall not be recoverable by the Contractor and shall constitute instead an automatic adjustment in the Contract Price binding on the Contractor.

All Applications for Payments shall be subject to review and approval by AFI's Representative and the Contracting Officer in accordance with the General Conditions. Any determination by AFI's Representative whether or not to recommend the issuance of a Certificate of Payment, in whole or in part, with respect to any Application for Payment shall be made in accordance with the General Conditions.

3.1.3 *Allowances.* The allowances listed in **Attachment C** to this Agreement (the "Allowances") are included in the Contract Price. Whenever the cost attributable to any Allowance item is more or less than the stated Allowance amount, the Contract Price shall be adjusted by means of a Change Order in accordance with the General Conditions. The amount of the Change Order shall be the difference between the actual allowable costs of the Contractor and the stated Allowance amount. If AFI decides, after the execution of this Agreement, that any Allowance will not be applicable, the Allowance full amount will be deducted from the Contract Price through a Change Order as per General Conditions.

3.1.4 *Duplication of Fees and Expenses.* The Contractor shall not charge AFI more than once for any service, labor, effort, endeavor, item, expense, expenditure or cost in connection with the performance of the Work.

3.2 Withholding

3.2.1 *Resident Individual or Entity Contractors.* Except as provided in Subsection 3.2.2 and 3.2.3 (in the case where the Contractor is a non-resident individual or a foreign corporation or partnership not engaged in a trade or business in Puerto Rico), AFI shall deduct and withhold at the source an amount equal to seven percent (7%) of the portion of any payments due to the Contractor under the Contract that relate to architectural, engineering design or consulting services rendered by the Contractor not including "construction of works", as defined in, and as required by, Section 1143 of the Puerto Rico Internal Revenue Code of 1994, as amended, (the "Puerto Rico Tax Code"), L.P.R.A. T.13, § 8543; provided, however, that such deduction and withholding obligation shall not apply to the first \$1,500.00 of payments due to the Contractor during each calendar year; and provided, further, that if the Contractor is an individual and submits to AFI, on the date of execution of the Contract by the Contractor and on each anniversary thereof, a letter issued in the name of the Contractor by the Puerto Rico Treasury Department and dated not more than sixty (60) days prior to such date or anniversary, as the case may be, stating that the Contractor is current in the payment of all taxes to the Puerto Rico Treasury Department, the amount to be deducted and withheld pursuant to this paragraph shall be reduced to five percent (5%).

All Applications for Payment submitted by the Contractor shall specify the portion of the Work described therein that relates to architectural, engineering design or consulting services. If any Application for Payment fails to so specify, AFI shall have the right to assume, for purposes of the preceding paragraph, that up to five (5%) of the Work described therein relates to architectural, engineering design or consulting services.

Notwithstanding the foregoing, the Contractor shall be exempted from the deduction and withholding requirement set forth in the first paragraph of this Subsection 3.2.1 (and AFI shall not deduct and withhold any amount pursuant thereto) (a) if, in the event the Contractor is a corporation or partnership, the Contractor submits to AFI, on the date of execution of the Contract by the Contractor and on each anniversary thereof, a letter issued in the name of the Contractor by the Puerto Rico Treasury Department and dated not more than sixty (60) days prior to such date or anniversary, as the case may be, stating that the Contractor is current in the payment of all taxes to the Puerto Rico Treasury Department, and (b) if the Contractor is an individual, with respect to payments due to the Contractor under the Contract during the first three (3) years of the Contractor's commencement of activity of rendering services; provided that, solely in the case of the preceding clause (b), the Contractor shall have certified in writing under the penalties of perjury (i) the date on which it commenced the activity of rendering services and (ii) that the Contractor has not previously taken advantage of the exemption described in the preceding clause (b).

3.2.2 *Non-resident Individual Contractors.* In the event the Contractor is a non-resident individual not engaged in a trade or business in Puerto Rico, AFI shall deduct and withhold at the source an amount equal to a percentage of the payments due to the Contractor under the Contract that is equal to (a) twenty percent (20%), if the Contractor is a citizen of the United States, and (b) twenty-nine (29%), if the Contractor is an alien, as required by Section 1147 of the Puerto Rico Tax Code, L.P.R.A. T.13, § 8547.

3.2.3 *Non-resident Entity Contractors.* In the event the Contractor is a foreign corporation or partnership not engaged in a trade or business in Puerto Rico, AFI shall deduct and withhold at the source an amount equal to twenty-nine (29%) of any payments due to the Contractor under the Contract, as required by Section 1150 of the Puerto Rico Tax Code, L.P.R.A. T.13, § 8550.

3.3 Liquidated Damages

3.3.1 *Measure of Damages.* In the event that Construction Substantial Completion is not achieved on or prior to the Scheduled Construction Substantial Completion Date (as such date may be adjusted by means of a Change Order in accordance with the Contract Documents), whether or not the Contract is terminated pursuant to the General Conditions, the Contractor acknowledges that (a) AFI will suffer losses and damages on account of such delay, and (b) the amount of such losses or damages would be difficult, if not impossible, to ascertain and prove. The liquidated damage amount specified below shall be considered not as a penalty, but as fixed and agreed liquidated damages due to AFI from the Contractor by reason of interference with business, increased engineering, inspection and administrative costs to AFI and other items which would result in an expenditure of public funds due to the delay in achieving Construction Substantial Completion on or prior to the Scheduled Construction Substantial Completion Date. AFI

and the Contractor, having considered the nature and types of losses or damages that would be suffered by AFI, hereby agree for purposes of the Contract that, instead of requiring proof of actual damages, the amount of such damages is fairly and reasonably established as the liquidated amount as further described Article 9, section 9.5 and shall be determined per day for each and every day of delay:

- .1 in achieving Construction Substantial Completion on or prior to the Scheduled Substantial Completion Date (as adjusted in accordance with the Contract Documents); or
- .2 in the event of termination of the Contract pursuant to the General Conditions and AFI's replacement of the Contractor with another contractor to complete the Work, in achieving Construction Substantial Completion measured from the Scheduled Substantial Completion Date.

The damages described in Clauses .1 and .2 above are referred to herein as "Liquidated Damages".

3.3.2 *Recovery of Damages.* The Contractor agrees to pay to AFI, upon demand, the full amount of the Liquidated Damages due under Subsection 3.3.1 and authorizes AFI to deduct the amount of such Liquidated Damages due from retainage or any other amounts otherwise due the Contractor under the Contract. Nothing contained in this Section 3.3 shall be interpreted to limit the damages otherwise recoverable by AFI or any other remedies of AFI under the Contract Documents, at law or in equity. The amount of Liquidated Damages payable to AFI pursuant to this Subsection 3.3.1 shall not be subject to reduction, adjustment or offset for any reason (including, without limitation, that the circumstances giving rise to such Liquidated Damages were caused by any action or inaction of AFI other than any action or inaction constituting willful misconduct or gross negligence on the part of AFI).

3.4 Collection Remedies

All amounts due to AFI from the Contractor pursuant to Section 3.3 or any other provisions of the Contract ("Owed Amounts") shall be due and payable on the tenth (10th) day after demand therefore, and, if not paid when due, shall bear interest from such due date at the Repayment Rate on the amount outstanding. AFI shall be entitled, at any time, to recover any Owed Amount (plus interest) from the Contractor by reducing any payments due to the Contractor from AFI by all or any portion of such Owed Amount (plus interest) and crediting the amount of such reduction (excluding interest for such purpose) against the Owed Amount. If any such offset is made, AFI shall so notify the Contractor. AFI's rights under this Section 3.4 are in addition to its right to receive direct payment of Owed Amounts (plus interest) from the Contractor.

ARTICLE 4 - CONTRACT TIME

4.1 Contract Time

The Contract Time will be effective and enforceable against the parties for a period of no more than _____ (____) **calendar days** from the date of issuance of the Notice to Proceed. This time period includes all administrative tasks, the

project start up, Design-Construction Period, Infrastructure Conservation Period and final payment.

The Design-Construction Period for this Agreement, on the other hand, as offered by the Contractor and accepted by AFI, is for the total of _____ (____) **calendar days** from the issuance of the Notice to Proceed by AFI, until the date on which the Contractor accepts Final Payment (the Contract Time), which time is included in the Contract Period. The Design-Construction Period will commence upon receipt and/or as specified on the Notice to Proceed from the AFI to Contractor. The Contract Period may be adjusted in accordance with, and subject to the terms of the Contract Documents.

4.2 Construction Substantial and Final Completion Dates; Contract Final Completion Date

The Contractor shall commence the Work promptly upon receipt of the Notice to Proceed issued by AFI in accordance with the Contract Documents. The Contractor shall thereafter proceed to carry out the Work diligently in accordance with the schedule requirements and milestone completion set forth in the Contract Documents so as to ensure the Construction Substantial Completion not later than the date that is _____ (____) **calendar days** after the date of issuance of the Notice to Proceed (the “Scheduled Construction Substantial Completion Date”).

The Scheduled Construction Substantial Completion Date shall be subject to adjustment by means of a duly approved Change Order by AFI and the Office of the Comptroller of the Commonwealth of Puerto Rico in accordance with the Contract Documents. Final Construction Completion of the Work shall be achieved not later than **THIRTY (30) calendar days** following the date of achievement of the Substantial Completion.

The one (1) year infrastructure conservation program will start upon acceptance of the Construction Final Completion with an issuance of Notice to Proceed for the Infrastructure Conservation Program. The closing date of the Contract (the “Closing Date of the Contract”) occurs one (1) year upon Notice to Proceed for Infrastructure Conservation Program. The Administrative Closing shall be achieved within **ONE HUNDRED EIGHTY (180) calendar days** from the date of the Closing Date of the Contract. Administrative Closing of the Project is part of the contract term and included in the same period of _____ (____).

This is a “fast-track” project and time is of the essence with respect to all of the obligations of the Contractor under the Contract. It is through the failure to complete the Work within the time frame established by this “Scheduled Substantial Completion Date”, that the Contractor shall be subject to liquidated damages as set forth in Section 3.3 of this Agreement.

**ARTICLE 5 - CONTRACTOR'S REPRESENTATIONS,
WARRANTIES AND COVENANTS**

5.1 Organization and Authority of Contractor

Specific Representations: In order to induce AFI to execute this Agreement and recognizing that AFI is relying thereon, Contractor, by executing this Agreement, and without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, makes the following express representations to AFI:

- 5.1.1** Contractor is professionally and fully qualified to act as the design professional and the general contractor for the Project and is, and will remain, licensed to practice engineering and architecture and general contracting by all public entities having jurisdiction over Contractor or the Project
- 5.1.2** The Contractor is a legal entity duly formed, validly existing and in good standing under the laws of the state of its formation
- 5.1.3** The Contractor is duly registered before the Puerto Rico Department of State under identification no. _____ and duly authorized to do business in Puerto Rico.
- 5.1.4** The Contractor has the expertise, experience, and knowledge as well as the necessary plant, personnel and financial capability to perform the Design Services and the Work in accordance with the terms of this Contract
- 5.1.5** The Contractor has full power, authority and capacity to (a) carry on its business, profession or craft, (b) execute, deliver and perform its obligations under the Contract and (c) perform the Work in full.
- 5.1.6** The Contractor has taken all necessary corporate or other action to authorize its execution, delivery and performance of its obligations under the Contract.
- 5.1.7** The Contract has been duly executed and delivered by the Contractor and constitutes the legal, valid and binding obligation of the Contractor enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws of general application affecting the rights and remedies of creditors.
- 5.1.8** The Contractor's execution, delivery and performance of its obligations under the Contract does not and will not (a) conflict with, result in a breach of, or constitute a default under, any agreement or other instrument to which the Contractor is a party, or (b) violate any federal, state or local law including the Public-Private Partnership Act, regulation, ordinance, judgment, decree or order to or by which the Contractor or any of its assets may be bound or affected (collectively, "Laws and Orders").
- 5.1.9** The Contractor and its employees and agents (a) have complied with all Laws and Orders that relate to or could affect the Contractor's ability to perform the Work, (b) possess all necessary Permits and Approvals necessary to perform the Work, which Permits and

Approvals are in full force and effect, and (c) are not aware of any legal, professional or ethical impediment of any kind to performing the Work.

5.1.10 The Contractor, and each of its employees, agents and subcontractors or subconsultants, have all licenses, permits, authorizations, consents and approvals (collectively, the “Licenses”) necessary to the performance of the Work, and that such Licenses are in full force and effect as of the date of execution of this Agreement, and that no defaults exist thereunder. Contractor shall comply with section 5.4 of the General Conditions.

5.1.11 The Consultant has the requisite professional education, know-how, training, knowledge, expertise and experience to perform the Work, and hereby warrants that it is experienced with respect to the best available technology applicable to the Work.

5.2 Contract Documents, Site and Work

The Contractor further represents and warrants to AFI that:

5.2.1 The Contractor and its legal representation has examined, carefully reviewed, analyzed and read the Contract Documents.

5.2.2 The Contractor has visited the Site and is familiar with, and is satisfied as to, the general, local and Site conditions that may affect cost, progress, performance, furnishing or completion of the Work.

5.2.3 The Contractor is familiar with, and is satisfied as to, all Laws and Orders that may affect costs, progress, performance or furnishing of the Work.

5.2.4 The Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been made available by AFI.

5.2.5 The Contractor is aware of the general nature of work to be performed by AFI and others at the Site, if any, that relates to the Work as indicated in the Contract Documents.

5.2.6 The Contractor has correlated (a) all information known to the Contractor, (b) all information and observations obtained from visits to the Site, (c) all reports and drawings identified in the Contract Documents, and (d) all additional examinations, investigations, explorations, tests, studies and data, with the Contract Documents.

5.2.7 (a) The Contractor has given AFI written notice of all conflicts, errors, ambiguities or discrepancies that the Contractor has discovered in the Contract Documents, (b) the written resolution thereof by AFI is acceptable to the Contractor, and (c) the Contract Documents are generally sufficient to indicate and convey an understanding of all terms and conditions for performance and furnishing of the Work.

5.2.8 The Contractor accepts the trust and confidence established between the Contractor and AFI by this Agreement, and agrees to furnish reasonable skill and judgment and to

cooperate with each other. The Contractor shall furnish procurement, construction, construction administration and management services, and shall use the Contractor's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of AFI. AFI and the Contractor shall endeavor to promote harmony and cooperation between AFI and the Contractor and other persons or entities employed by AFI for the Project or the Contractor for the Work.

5.2.9 Contractor assumes full responsibility to AFI for the improper acts and omissions of its Subcontractors or others employed or retained by Contractor in connection with the Project.

5.2.10 *Records.* The Contractor shall maintain copies of all supporting documents for Work rendered under the terms of this Agreement for at least six (6) years after termination of this Agreement.

The aforementioned documents shall be available, upon the reasonable request of AFI, for inspection and audit by representatives of AFI or any operational or fiscal auditor appointed by AFI or any other official entity of the Government of Puerto Rico. AFI may request, in writing, that any information necessary for conducting any audits related to the Work be delivered to AFI or its designated auditor. Contractor shall deliver all such requested information within thirty (30) days of the date of such request.

Contractor shall provide annually audited financial statements and as requested by AFI. The audited financial statements shall be for the contract time specified in this Agreement, and the contractor shall maintain said information available for six (6) years after the termination of the Agreement.

5.3 Tax Matters

5.3.1 *Certifications.* Prior to the execution of the Contract by the Contractor, in accordance with Puerto Rico Treasury Department Tax Circular Letter No. 1300-21-06 dated February 28, 2006, Every Contractor and, in the event the Contractor is a partnership, each partner of the Contractor who is a resident of Puerto Rico shall have submitted to AFI:

- .1 A Certification of Filing of Income Tax Returns (Form SC-6088), a Certificate of Compliance with Filing of Return and Tax Debt for Government Contractors (Form SC-2628) or, in the event the Contractor is an individual, a Certification of Individuals of Filing of Returns, issued by the Puerto Rico Treasury Department, Area of Internal Revenue or Division of Tax Assistance (as applicable), certifying that the Contractor or such partner, as the case may be, has filed all required income tax returns during the five (5) years prior to the date of the Contract (to obtain such Certification, the Contractor or such partner, as the case may be, must submit a Request for Filing Certification and Copy of Return (Form 330-05) to the Puerto Rico Treasury Department);
- .2 A Certification of Debt (Form SC-6096) issued by the Puerto Rico Treasury Department, Area of Internal Revenue, unless a Certificate of Compliance with Filing of Return and

Tax Debt for Government Contractors (Form SC-2628) was submitted by the Contractor or such partner, as the case may be, to AFI in accordance with the preceding paragraph;

- .3 A Certification, issued by the Municipal Income Collection Center (the "CRIM"), certifying that the Contractor or such partner, as the case may be, does not owe any real or personal property tax to the CRIM (to obtain such Certification, the Contractor or such partner must use the appropriate form issued by the CRIM); and
- .4 A Certification, issued by the Puerto Rico Labor and Human Resources Department, certifying that the Contractor or such partner, as the case may be, has paid to the Puerto Rico Labor and Human Resources Department all required unemployment security, temporary disability, and chauffeurs social security taxes, or has entered into a payment plan to pay any such taxes which may be delinquent (a copy of which payment plan the Contractor has submitted to AFI) and is in full compliance with the terms of such payment plan (to obtain such Certification, the Contractor or such partner must use the appropriate form issued by the Puerto Rico Labor and Human Resources Department).

If the Contractor or any such partner was not required to file any income tax returns during all or part of the five (5) year period referred to above for any of the reasons provided by the Puerto Rico Tax Code, the Contractor or such partner, as the case may be, shall have presented, prior to the execution of the Contract by the Contractor, a sworn statement, subject to the penalty of perjury (as defined in the Puerto Rico Penal Code of 1974), reciting the reason for which the Contractor or such partner was not required to file income tax returns.

If any of the above certifications shows a tax debt, and the Contractor or such partner, as the case may be, has filed a petition to review or adjust such debt, the Contractor or such partner shall have so certified upon execution of the Contract by the Contractor. If the review or adjustment is denied by the corresponding agency, the Contractor or such partner shall immediately provide AFI evidence of the payment of such debt, and shall submit to AFI a certification to that effect from the Puerto Rico Treasury Department, Department of Labor and Human Resources or CRIM, as the case may be; otherwise, the Contractor or such partner agrees to pay such debt from the amounts to be paid under the Contract, by AFI withholding the corresponding amount.

5.3.2 ***Representations and Warranties.*** Every Contractor and, in the event the Contractor is a partnership, each partner of the Contractor who is a resident of Puerto Rico represents and warrants to AFI, as of the date of execution of the Contract by the Contractor, that each of them:

- .1 Has filed all required income tax returns with the Puerto Rico Treasury Department during the five (5) years prior to the date of the Contract and does not owe any income taxes to Puerto Rico, or has entered into a payment plan to pay any delinquent income taxes (a copy of which payment plan the Contractor has submitted to AFI) and is in full compliance with the terms of such payment plan; and

2. Has paid any required property taxes, unemployment security, temporary disability and chauffeurs social security taxes, and any other "tax debt" as defined in the aforementioned Puerto Rico Treasury Department Tax Circular Letter No. 1300-21-06, or has entered into a payment plan to pay any such tax debt which may be delinquent (a copy of which payment plan the Contractor has submitted to AFI) and is in full compliance with the terms of such payment plan.

Each submittal of an Application for Payment shall constitute a reaffirmation of the representations and warranties contained in this Subsection 5.3.2 as of the date of such Application for Payment.

5.3.3 *Covenants.* On an annual basis on each anniversary of the date of execution of the Contract by the Contractor, the Contractor and, in the event the Contractor is a partnership, each partner of the Contractor who is a resident of Puerto Rico shall (a) submit to AFI the certifications or other documentation required under Subsection 5.3.1, and (b) expressly confirm the representations and warranties contained in Subsection 5.3.2.

The Contractor and each such partner hereby covenants that, during the term of the Contract, none of them shall (a) become delinquent in the payment of any taxes to Puerto Rico, its subdivisions or municipalities, or (b) fail to fully comply with the terms of any payment plan with respect to delinquent taxes to which it may be subject.

In the event the Contractor or any such partner has filed all income tax returns but owes any taxes, the Contractor agrees to pay such taxes from the amounts to be paid under the Contract, by AFI withholding the corresponding amount.

The Contractor shall require each Subcontractor to agree to in writing, and make and perform the representations, warranties and covenants contained in this Section 5.3. The Contractor shall promptly furnish such written agreements to AFI.

Every Contractor and, in the event the Contractor is a partnership, each partner of the Contractor who is a resident of Puerto Rico expressly agrees and acknowledges that (a) the representations, warranties and covenants contained in this Section 5.3 are essential conditions to the Contract, and (b) if AFI determines that any of such representations, warranties or covenants are not true and correct or performed, in whole or in part, AFI shall have sufficient cause to rescind, cancel or terminate the Contract. If such rescission, cancellation or termination occurs, the Contractor shall reimburse to AFI all payments received by the Contractor under the Contract.

5.4 Warranty on Materials, Parts and Equipment

Without limitation to the warranties set forth in the General Conditions, the Contractor warrants that all materials, parts and equipment used and services performed under the Contract (a) comply in all respects with the terms and conditions of the Contract, (b) are free from any and all latent and patent defects in design, materials and workmanship, and (c) are suitable and adequate for the purposes for which they were designed and for such other purposes, if any, as are specified in the Contract. The warranty period will begin on

the date on which AFI accepts the service and/or installation of the material, part or equipment and will continue for a period of one (1) year following Substantial Completion (the "Minimum Warranty Period") or for such longer period as the manufacturer or supplier of such material, part or equipment may provide in a separate warranty or as otherwise provided by Puerto Rico law. The Contractor shall, upon written notice from AFI during the applicable warranty period, fully remedy, free of any cost or expense to AFI, such defects or deficiencies as may exist with respect to any material, part, or equipment used or any service performed under the Contract, whether or not such remedy is commenced or completed prior to the expiration of the applicable warranty period; provided that, in the case of a material, part or equipment, such material, part or equipment has been properly stored, maintained, and operated by AFI within the specified requirements for such material, part or equipment. Without limiting the generality of the foregoing, the Contractor shall, at its own cost and expense, repair or replace, transport-in from the Contractor's facilities to the Site, and transport-out from the Site to the Contractor's facilities any and all materials, parts, and/or equipment necessary to fully remedy all defects or deficiencies subject to the foregoing warranties or otherwise to enable the Contractor to fully comply with its obligations under this Section 5.4. The Performance Bond shall serve as a guarantee for the Contractor's obligations under this Section 5.4 during the Minimum Warranty Period, and shall cover any failure, in whole or in part, by the Contractor to properly perform any of such obligations. With respect to any material, part or equipment procured by the Contractor from the manufacturer thereof or supplier, the Contractor shall obtain from such manufacturer or supplier, and, upon acceptance of such material, part or equipment by AFI, legally tender or assign to AFI in full, a written warranty from such manufacturer or supplier with respect to such material, part or equipment at least as broad in scope and duration as the warranties contained in this Section 5.4.

5.5 Conflicts of Interest

The Contractor represents and warrants that there is no conflict of interest according to the statute of the Public-Private Partnership Authority and its rules and regulations. The Contractor represents and warrants that it does not receive any payment or benefit of any kind for services rendered regularly in connection with an appointment of the Contractor to a governmental agency, body, public corporation or municipality of Puerto Rico.

The Contractor also represents and warrants that it may have entered into contracts with other governmental agencies or bodies, but that such circumstances do not constitute a conflict of interest for the Contractor.

The Contractor agrees and acknowledges it has a duty of complete loyalty to AFI in rendering services under the Contract, which duty includes not having any interests adverse to AFI. Adverse interests include representation of clients with interests in opposition to those of AFI. Also, the Contractor shall have the continuous obligation to disclose to AFI all information and circumstances regarding the Contractor's relations with clients and third parties and any interest which could influence AFI in exercising its rights or in enforcing the Contractor's obligations under the Contract during or after the term of the Contract.

The Contractor agrees and acknowledges that it has a conflict of interest when (i) it is required to argue on behalf of a client a position which it has a duty to oppose in order to comply with its obligations to a prior, present or potential client other than AFI, or (ii) its conduct is described as such in the canons of ethics applicable to the Contractor and its personnel, or in the laws, regulations or ordinances of Puerto Rico.

If, in the event the Contractor is a partnership, corporation or other entity, any of the partners, directors or employees of the Contractor engages in any conduct described in this Section 5.5, such conduct shall constitute a violation of the restrictions set forth herein.

The Contractor shall avoid even the appearance of a conflict of interest.

The Contractor acknowledges that the Executive Director of AFI shall have the power to intervene in the acts of the Contractor or any Subcontractor or Sub-subcontractor and/or their respective agents and employees for the purpose of enforcing the restrictions set forth in this Section 5.5. In the event that the Executive Director of AFI should discover the existence of adverse interests with respect to the Contractor, the Executive Director shall inform the Contractor, in writing, of AFI's intention to terminate the Contract within a period of thirty (30) days. During such period, the Contractor may request a meeting with the Executive Director to present its arguments regarding the alleged conflict of interest, which meeting shall be granted by AFI in every case. In the event that the Contractor does not request such a meeting during the specified thirty (30) day period or the controversy is not satisfactorily resolved during the meeting, the Contract shall be terminated by AFI.

5.6 Child Support

In the event the Contractor is an individual resident of Puerto Rico or a sole proprietor or partnership, the Contractor or each partner of the Contractor who is a resident of Puerto Rico, represents and warrants that the Contractor or such partner, as the case may be, has made all required child support payments and does not owe any child support, or has entered into a payment plan to pay any delinquent child support and is in full compliance with the terms of such payment plan.

If the Contractor is a Corporation that has received one or more court orders requiring the Corporation to retain child support from its employee's salary, it certifies that it has made such retentions.

5.7 Licenses, Copyrights, Trade Marks and Patents

The Contractor is prohibited from the unauthorized use of, or infringement upon, any patent, copyright, trade mark, trade secret or proprietary information, however, constituted, in the performance of the Work and shall defend and indemnify AFI, AFI's Representative, AFI's consultants, and its or their trustees, directors, members, officers and employees, from and against any claim arising out of or in connection with such unauthorized use or infringement.

ARTICLE 6- CONDITIONS PRECEDENT

6.1 Conditions Precedent

AFI shall have no obligation to issue the Notice to Proceed until each of the conditions precedent set forth in Subsections 6.1.1 through 6.1.5 below has been satisfied or waived by AFI in its sole discretion.

- 6.1.1 Insurance.** All insurance required to be carried by or on behalf of the Contractor pursuant to the Contract shall be in full force and effect, in accordance with the provisions of the General Conditions and **Attachment F** of Agreement, and originals or certified copies of all required insurance certificates or policies shall have been provided to AFI in accordance with the provisions set forth in the General Conditions and **Attachment F** of this Agreement.
- 6.1.2 Bonds.** AFI shall have received duly authorized and executed originals of the Performance Bond and the Payment Bond, in the forms attached hereto, respectively, as **Attachments D** and **E** to this Agreement, in accordance with the General Conditions.
- 6.1.3 Representations and Warranties.** The representations and warranties of the Contractor set forth in the Contract Documents, including, without limitation, those set forth in Article 5 of this Agreement, shall be true and correct in all material respects as of the date hereof and as of the date of issuance of the Notice to Proceed.
- 6.1.4 No Litigation.** There shall be no pending or threatened action, suit, investigation or proceeding (or basis therefore), at law or in equity, before or by any arbitration panel, court or governmental agency or body that (a) challenges, or might challenge, directly or indirectly, the selection of the Contractor to perform the Contract or the authorization, execution, delivery, validity or enforceability of the Contract, or (b) materially adversely affects the Contractor's ability to perform the Contract.
- 6.1.5 Tax Certifications.** The Contractor shall have complied with the requirements of Subsection 5.3.1.

ARTICLE 7 - MISCELLANEOUS

7.1 Entire Agreement

The Contract constitutes the entire integrated agreement of and between the parties, and any and all prior or contemporaneous promises, representations, agreements or understandings, whether oral or written, between or of the parties are expressly merged into the Contract, and superseded hereby.

7.2 Severability

If any provision of the Contract is declared or determined to be invalid or unenforceable by a court of competent jurisdiction, such declaration or determination shall not affect or impair the validity or enforceability of the remaining provisions of the Contract, and the parties hereto agree to comply with such remaining provisions.

7.3 Notices

All notices and communications to AFI, AFI's Representative and the Contractor, including, without limitation, all orders, consents and approvals, shall be in writing, shall be deemed to have been received if delivered personally, or sent by registered or certified United States mail, return receipt requested, or by private express courier or mail service providing evidence of receipt, to the addresses set forth below or to such other address as the addressee shall have indicated by prior written notice to the person or entity giving notice:

If to AFI:

Puerto Rico Infrastructure Financing Authority
Capital Center II
North Tower, 16th Floor
235 Arterial Hostos Avenue
Hato Rey, Puerto Rico 00918
Attn: Eng. José E. Basora Fagundo
Executive Director

If to AFI's Representative:

Caribbean Project Management, PSC
Corporate Office Park CPM Plaza
Suite 200 Road 20 Km 2.6
Guaynabo, P.R. 00966
Att. Francisco Arteaga
Program Director

If to the Contractor:

Tel. _____

Fax _____

7.4 No Waiver or Novation

The failure of AFI or AFI's Representative to enforce any provision of the Contract or any right or remedy available at law or in equity shall not be construed to be a waiver of any such provision, right or remedy, nor to affect in any way the validity of the Contract or any part thereof. To be effective, a waiver of any right of AFI under the Contract must be expressed in writing and specifically addressed to the Contractor.

AFI and the Contractor expressly agree that no amendment of the Contract or Change Order shall be understood or construed as a contractual novation of the Contract, unless both parties agree to the contrary specifically in writing. The foregoing provision shall be equally applicable in such other cases where AFI grants the Contractor an extension of

time for compliance with any of the Contractor's obligations under the Contract, or where AFI fails to make any claim or demand with respect to any of its rights or remedies under the Contract.

Under no circumstances, except where AFI specifically agrees in writing, shall AFI's rights under the Contract be understood or construed to have been waived by any amendment, Change Order or extension of time or by reason of any failure to make any claim or demand with respect to any of AFI's rights or remedies under the Contract, even where AFI has agreed, as provided under the previous paragraph, that any of these circumstances shall constitute a contractual novation, and AFI hereby expressly reserves its right to enforce or make any claim with respect to its rights and obligations under the Contract and to require and insist on the Contractor's compliance with any and all of its obligations under the Contract as if such amendment, Change Order, extension of time, failure to make a claim or demand, or novation, if any, had not occurred or been made.

All clauses, conditions and laws that govern this Agreement shall be binding and demandable for all parties from the creation to the term of the Agreement. Therefore, any change or transfer of the rights of a Contractor to a third party with respect to the rights of the Contractor shall make this third party a Successor Contractor and shall have the same responsibilities and benefits of the original Contractor, and shall also comply with the requirement of a qualified and selected Contractor. The change in Contractor shall not be considered a novation of any type whatsoever to demand changes or the extinction of the clauses of the Contract. If the Successor Contractor requests a change in the Agreement, it shall be submitted to and approved by AFI and the Board of the APP.

7.5 Disclaimer of Liability and Indemnification

7.5.1 *Disclaimer of Liability.* In no event shall AFI be liable to the Contractor except for obligations expressly assumed by AFI under the Contract Documents, nor shall AFI 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, any rescission, cancellation, termination or suspension of the Contract or any acceleration of the expiration of the Contract. No representative of AFI nor any officer, agent, consultant or employee of AFI (including, without limitation, AFI'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, for any breach of the Contract by AFI, or otherwise in connection with performance under the Contract.

7.5.2 *Indemnification.* Without limiting the scope of the indemnification clauses set forth in the General Conditions, the Contractor agrees to save and hold harmless, and to indemnify AFI, AFI's Representative, AFI's consultants, and its or their trustees, directors, members, officers and employees against any and all expenses and costs of any nature (including, without limitation, attorneys' fees and costs) incurred by AFI in connection with any claim made by any person for personal injuries, including, without limitation, death, or for property damage caused by the Contractor, by act or omission, in the performance or non-performance of its obligations under the Contract.

7.6 Governing Law and Jurisdiction

7.6.1 *Governing Law.* The Contract shall be governed by, and construed in accordance with, the laws of Puerto Rico. The parties hereto expressly agree that their respective liability for damages under the Contract shall be governed by the Puerto Rico Civil Code and related case law as determined by the Supreme Court of Puerto Rico.

7.6.2 *Jurisdiction and Venue.* Each of the parties hereto expressly and irrevocably (a) agrees that the state courts of Puerto Rico shall have sole and exclusive jurisdiction to settle any dispute or controversy between the parties regarding the terms and conditions of the Contract or any other matter involving the Project, (b) submits itself and its assets to the jurisdiction of such courts, (c) waives any objection or defense that such courts lack in personal jurisdiction over such party, (d) waives any objection or defense which it may have at any time to venue residing in such courts with respect to any proceedings involving the Contract or the Project, (e) waives any claim that any proceedings involving the Contract or the Project have been brought in an inconvenient forum, and (f) agrees not to seek redress or institute any action with respect to the Contract or the Project in any court or other forum, whether federal or state, other than in the state courts of Puerto Rico. Nothing contained in this Section shall preclude the parties from enforcing in any jurisdiction any judgment, award or order obtained in the state courts of Puerto Rico.

7.6.3 *Change of Law.* Any change in law during the term of the Contract, including, without limitation, any changes in applicable tax law, that causes an increase in the Contractor's costs in supplying any products or services to AFI shall be the Contractor's responsibility, and AFI shall not be obligated to make any additional payments or to pay any additional sums beyond the Contract Price, unless agreed otherwise.

7.7 Force Majeure

Each of the parties hereto shall be excused from performing any obligation hereunder and shall not be liable in damages or otherwise for such non-performance, if and only to the extent that such party shall be unable to perform, or is prevented from performing such obligation by an event constituting a Force Majeure. Force Majeure may include, but shall not be limited to, the following: acts of God, third party industrial disturbances, acts of the public enemy, war, blockages, boycotts, riots, insurrections, epidemics, earthquakes, hurricanes, major floods, civil disturbances, lockouts, fires, explosions, and interruptions of services due to any act or failure to act of any governmental instrumentality; provided that (a) each of these events, or any other claimed as a Force Majeure, and/or its effects, are beyond the reasonable control and are not caused by the fault or negligence of the party claiming the occurrence of a Force Majeure or of its employees, agents, affiliated companies or subcontractors, (b) in the case of natural phenomena, are beyond normal intensity at the Site and are not ordinarily occurring, and (c) such party, within ten (10) days after the occurrence of the alleged Force Majeure, gives the other party written notice describing the particulars of the occurrence and its

estimated duration. The burden of proof as to whether a Force Majeure has occurred shall be on the party claiming the occurrence of the Force Majeure.

7.8 Independent Contractor

The Contractor shall be considered and shall act solely as an independent Contractor for all material purposes under this Contract, and nothing in the Contract shall be construed to create an agency, partnership, or joint-venture relationship between the Contractor and AFI or between any members of the Contractor and AFI. All Subcontractors, Sub-subcontractors or other persons engaged or contracted by the Contractor for the performance of the Contractor's obligations under the Contract and all personnel of any of the foregoing involved in any aspect of performing the Work shall be considered employees or agents of the Contractor or such Subcontractor or Sub-subcontractor (and not as employees or agents of AFI), and shall be subject to the direction, supervision and control of the Contractor or such Subcontractor or Sub-subcontractor (and not AFI), subject to the terms and conditions of the Contract Documents.

7.9 No Contractual Relationship

The Contract Documents shall not be construed to create a contractual relationship of any kind (i) between AFI's Representative and the Contractor, (ii) between AFI and any Subcontractor, or (iii) between any persons or entities other than AFI and the Contractor, and, to the extent provided herein, APP, except as specifically set forth in the Contract.

7.10 Assignment and Subcontractors

7.10.1 The Contractor shall not assign, delegate or subcontract any of its rights and obligations under the Contract, except with the prior written authorization of AFI and unless otherwise provided in this Agreement.

7.10.2 Contractor is obligated to bind his Subcontractors and their Sub-subcontractors thru written subcontracts, to the same duties that Contractor will undertake towards AFI under the PPP Contract. Contractor shall always remain obligated to AFI under this Agreement for the prompt and effective performance of all obligations hereunder notwithstanding the execution or terms and conditions of any approved subcontract. No failure by any Subcontractor and Sub-subcontractor shall relieve Contractor from any obligation hereunder.

7.10.3 This Contract can be assigned or transferred by AFI in its full force to any governmental entity with prior notification to Contractor.

7.11 Amendments

To the extent permitted by law, the terms of the Contract shall not be altered, modified, supplemented or amended in any manner whatsoever, except by a written instrument duly executed by AFI and the Contractor. AFI may, in its sole discretion, increase, decrease or otherwise modify the Work, subject to execution of a written amendment to this Agreement

7.12 Captions

The captions or headings in any Contract Document are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of such Contract Document.

7.13 Execution in Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

7.14 Dissemination of Information

All Services performed by the Contractor, whether or not reduced to writing or any other form or media, shall be privileged and confidential, and may not be divulged or disclosed to any third party, unless the Consultant has received AFI's prior express written authorization for any such disclosure. Certain of AFI's confidential or proprietary information may come into the Contractor's possession in the course of performing its obligations under the Contract. The Contractor shall hold such information and all other information that it develops or obtains from AFI or otherwise regarding 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 AFI by the same obligation of confidentiality. AFI reserves the right to release all information to the public and to the media relating to the Contract and the Work. The Contractor agrees, and to cause its employees, agents, Subcontractors and Sub-subcontractors, to refer all inquiries about the Contract or the Work to AFI.

7.15 Cancellation and Termination

Notwithstanding the provisions mentioned in the General Conditions, in the event of a substantial or material breach of the Contract by the Contractor or an emergency or other circumstance requiring AFI to take immediate action to protect its interests, limit its liability or prevent injury to any person or damage to any property, AFI shall have the right to rescind, cancel, terminate or suspend the Contract immediately and without prior notice to the Contractor. The exercise by AFI of its right to rescind, cancel, terminate or suspend the Contract shall not be construed as a waiver by AFI of any right or remedy it may have under the Contract or at law for any delay or breach by the Contractor in the performance of its obligations under the Contract. AFI will not be liable for unforeseen,

direct, indirect and punitive damages arising from AFI's decision to rescind, cancel, terminate or suspend the Contract.

If Contractor fails to comply with this Agreement and whose noncompliance causes the termination of said Contract, shall be disqualified from contracting with any other Government Entity for a period of ten (10) years, counting from the date in which the termination of the Contract is complied with by the Contracting Party or is declared final and binding by a court or forum with jurisdiction.

7.16 Proprietary Rights

To the extent permitted by applicable law, all Work performed, whether or not reduced to writing or any other form of media, shall be the exclusive and sole property of AFI, and shall not be made available to any third party without the prior express written approval and consent of AFI.

ARTICLE 8 - CRIMINAL CHARGES CLAUSE

8.1 Certification

The Contractor certifies and guarantees that at the execution of this Contract, the Contractor, its partners, associates, officers, employees and agents have not been convicted, or that it has no knowledge of being the subject of any investigation in either a civil or a criminal procedure in a state or federal court for criminal charges related to the public treasury, the public trust, a public function, or a fault that involves public funds or property. It is expressly acknowledged that this certification is an essential condition of this Contract. If the certification is not correct in its entirety or in any of its parts, it shall constitute sufficient cause for AFI to terminate this Contract immediately, without prior notice, and the Contractor will have to reimburse AFI any amount of money received under this Contract.

If the status of the Contractor with regards to the charges previously mentioned changes at any time during the term of the Contract, it shall notify AFI immediately. Failure to comply with this responsibility constitutes a violation of this clause, and shall result in the remedies mentioned in the previous paragraph.

ARTICLE 9- ATTACHMENTS

9.1 Incorporation

This Agreement includes the **Attachments** listed below, each of which is incorporated hereby and made a part of the Contract. Those **Attachments** not referred to in this Agreement are referred to in the General Conditions.

Attachment A	Contract Exhibits
Attachment B	AFI Permits and Approvals
Attachment C	Allowances
Attachment D	Form of Performance Bond
Attachment E	Form of Payment Bond
Attachment F	Insurances

Attachment G Cancelled Stamps
Attachment H Other Documents

ARTICLE 10 - LAW NUMBER 84

10.1 Law Number 84

The contractor shall duly comply with the dispositions of Law Number 84 of June 18, 2002, in which establishes the Code of Ethics for Contractors, Suppliers and Solicitor of Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico.

ARTICLE 11 - LAW NUMBER 85

11.1 Eligibility Certificate

In accordance with the dispositions of the Law Number 85 of June 18, 2002, the contractor is submitting the Eligibility Certificate from the “Administración de Servicios Generales” No. 9659. Each member from the Contractor’s Team will have to provide the Contractor with the Eligibility Certificate.

ARTICLE 12 – BUDGET CLAUSE

12.1 Budget Clause

The Work performed under this agreement is budgeted and will be paid from PPP-Schools for the 21st Century Program, Account No. **251-0230-5**.

ARTICLE 13

13.1 None of the services rendered under this Contract can be claimed until the same is presented to the Office of the Comptroller of Puerto Rico for registration, as required with Law Number 18 of the 30th of October of 1975, as amended.

ARTICLE 14

14.1 Contractor certifies that at the time of signing of this Agreement, he has no claim of any nature against AFI or against any other Government Agency of the Commonwealth of Puerto Rico, nor is he an interested party in any judicial or administrative procedure against AFI or any other Government Agency of the Commonwealth of Puerto Rico. Should the Contractor in fact have a claim or claims or be an interested party in any judicial or administrative procedure against AFI or any other Government Agency, the Contractor shall disclose the following: case number or numbers and respective parties in each claim.

ARTICLE 15 - ETHICS AND SWORN STATEMENT

15.1 Ethics. The Contractors undertake to comply with the provisions of Act No. 84 of June 18, 2002, known as the Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico".

In Compliance with Act Number 458 of December 20, 2000, as amended by Act Number 428 of September 22, 2004, enclosed, to be considered part of this contract, Sworn Statement by Constructor or Contractor.

ARTICLE 16

COMPLIANCE WITH DAVIS BACON ACT

16.1. DEFINITIONS

In addition to the definitions appearing in Article 1, for purposes of this Article 16, the following definitions shall apply:

Administrator means the Administrator of the Wages and Hours Division of the United States Department of Labor.

DBA means the Davis-Bacon Act, 40 U.S.C. 3141, *et. seq.*

Department of Labor means the United States Department of Labor.

Government means the Government of the United States.

Secretary of Labor means the Secretary of the United States Department of Labor.

Site of the Work means (i) the physical place or places where the construction required under the Contract will remain when the Work is completed; and (ii) any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the Project.

Except as provided below, the Site of the Work includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided (i) they are dedicated exclusively, or nearly so, to the Project or the performance of the Contract; and (ii) they are adjacent or virtually adjacent to the Site of the Work as described above.

Site of the Work does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of the Contractor or a Subcontractor whose locations and continuance in operation are determined wholly without regard to the Contract or the Project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the Project before opening of bids and not on the Site of the Work as defined above are not included in the Site of the Work. Such permanent, previously established

facilities are not a part of the Site of the Work even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of the Contract.

Subcontractor means all Subcontractors and Sub-Subcontractors, regardless of tier.

Wage Determination means the Wage Determination of the Secretary of Labor included as **Contract Exhibit - Contractual Exhibit A** to the Agreement, which is expressly made a part of the Contract.

16.2 DAVIS BACON ACT REQUIREMENTS

16.2.1 Minimum Wages

.1 All laborers and mechanics employed or working upon the Site of the Work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the Wage Determination, regardless of any contractual relationship which may be alleged to exist between Contractor or any Subcontractor and such laborers and mechanics.

.2 Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 3141(2) of the DBA on behalf of laborers or mechanics are considered wages paid to such laborers and mechanics, subject to the provisions of paragraph .4 below; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

.3 Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in Section 16.2.4. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

.4 The Wage Determination (including any additional classifications and wage rates conformed under paragraph .5 below) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and the Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

.5 Any class of laborers or mechanics, including helpers, which is not listed in the Wage Determination and which is to be employed under the Contract or any Subcontract shall be classified in conformance with the wage determination. AFI shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
- (ii) The classification is utilized in the area by the construction industry.
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

.6 If the Contractor (or Subcontractor, as applicable) and the laborers and mechanics to be employed in the classification (if known), or their representatives and AFI agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by AFI to:

Administrator of the Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise AFI or will notify AFI within the 30-day period that additional time is necessary.

.7 In the event the Contractor (or Subcontractor, as applicable), and the laborers or mechanics to be employed in the classification, or their representatives, and AFI do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), AFI shall refer the questions, including the views of all interested parties and the recommendation of AFI, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise AFI or will notify AFI within the 30-day period that additional time is necessary.

.8 The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs .6 or .7 of this Section 16.2.1 shall be paid to all workers performing work in the classification under the Contract or any Subcontract from the first day on which work is performed in the classification.

.9 Whenever the minimum wage rate prescribed in the Wage Determination for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor or Subcontractor, as applicable, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

.10 If the Contractor or any Subcontractor does not make payments to a trustee or other third person, the Contractor or Subcontractor, as applicable, may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor or Subcontractor, as applicable, that the applicable standards of the DBA have been met. The Secretary of Labor may require the

Contractor or Subcontractor, as applicable, to set aside in a separate account assets for the meeting of obligations under the plan or program.

16.2.2 *Withholding of Funds*

AFI shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor, under the Contract or any other Federal contract or federally assisted contract subject to DBA prevailing wage requirements, which is held by the Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor, the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the Site of the Work, all or part of the wages required by the Contract, AFI may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased or the Government may cause the suspension of any further payment under any other Federal contract or any other federally assisted contract subject to DBA prevailing wage requirements, which is held by the Contractor.

16.2.3. *Payrolls and Basic Records*

.1 Payrolls and basic records relating thereto shall be maintained by the Contractor and each Subcontractor during the term of the Contract and preserved for a period of three years thereafter for all laborers and mechanics working at the Site of the Work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 3141(2)(B) of the DBA), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 3141(2)(B) of the DBA, the Contractor or Subcontractor, as applicable, shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Contractor and each Subcontractor employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

.2 The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to AFI, within seven days after the regular payment date of the payroll period. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph .1 of this Section 16.2.3, except that the full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required

weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

.3 The Contractor is responsible for the ensuring that all Subcontractors and Sub-Subcontractors submit copies of payrolls and basic records as required by this Section 16.2.3. The Contractor and all Subcontractors and Sub-Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request for transmission to AFI or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this Section 16.2.3 for the Contractor to require a Subcontractor or Sub-Subcontractor to provide addresses and social security numbers to the Contractor for its own records, without weekly submission to AFI.

.4 Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor (or Subcontractor, as applicable) or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify:

- (i) That the payroll for the payroll period contains the information required to be maintained under paragraph .2 of this Section 16.2.3, the appropriate information is being maintained under paragraph .1 of this Section 16.2.3, and that such information is correct and complete;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the Wage Determination.

.5 The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph .4 of this Section 16.2.3.

.6 The falsification of any of the certifications required as described in this Section 16.2.3 may subject the Contractor or Subcontractor, as applicable, to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

.7 The Contractor and each Subcontractor shall make the records required under this Section 16.2.3 available for inspection, copying, or transcription by AFI or the Department of Labor. The Contractor and each Subcontractor shall permit AFI and the Department of Labor to interview employees during working hours on the job. If the Contractor or Subcontractor, as applicable, fails to submit the required records or to make them available, AFI may, after written

notice to the Contractor or Subcontractor, as applicable, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

16.2.4. Apprentices and Trainees

16.2.4.1 Apprentices.

.1 An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed:

- (i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (“OATELS”) or with a State Apprenticeship Agency recognized by the OATELS; or
- (ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

.2 The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

.3 Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph .1 of this Section 16.2.4.1, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

.4 If the Work is being performed in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman’s hourly rate) specified in the Contractor’s registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

.5 Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

.6 In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

16.2.4.2 Trainees.

.1 Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the U.S. Department of Labor, Employment and Training Administration.

.2 Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator determines that there is an apprenticeship/training program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the U.S. Department of Labor, Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

.3 In the event the U.S. Department of Labor, Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

16.2.4.3 Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this subsection shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

16.2.5 Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR Part 3 which are hereby incorporated by reference in the Contract.

16.2.6 Subcontracts

The Contractor shall insert in any Subcontract the provisions of Section 16.2 and such other clauses as AFI may require, and also a requirement requiring each Subcontractor include such provisions in any Sub-Subcontract. The Contractor shall be responsible for ensuring compliance by each Subcontractor with all of the requirements contained in this Section 16.2.

Objections To Subcontractors: Upon execution of this Agreement, and at such later times as may be applicable, Contractor shall furnish AFI, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as AFI deems necessary. AFI shall promptly reply to Contractor, in writing, stating any objections AFI may have to such proposed Subcontractors. Contractor shall not enter into a subcontract with an intended Subcontractor with reference to whom AFI objects. Any consent or failure to reject by AFI shall in no way relieve Contractor of any of its duties or warranties under the Contract.

Removal Of Subcontractors And Personnel: If, at any time during the course of the Project, AFI reasonably determines that the performance of any Subcontractor or any member of Contractor's construction staff working on the Project is unsatisfactory, AFI's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to AFI for delays or inefficiencies the change may cause.

16.2.7 Contract Termination – Debarment

A breach of the provisions of this Section 16.2 may be grounds for termination of the Contract and for debarment as a contractor or subcontractor as provided in 29 CFR 5.12.

16.2.8 Compliance with Davis-Bacon and Related Act Regulations

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in the Contract.

16.2.9 Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general dispute clauses of the Contract. The Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures. Disputes within the meaning of this Section 16.2 include disputes between the Contractor (and any Subcontractor) and AFI, the Department of Labor, or the employees or their representatives.

16.2.10 Certification of Eligibility

.1 By entering into the Contract, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm, is a person, entity, or firm ineligible to be awarded Government contracts or Government awards by virtue of Section 3144 of the DBA or 29 CFR §12(a)(1).

.2 No part of the Contract shall be subcontracted to any person or firm ineligible for award of a Government contract or Government award by virtue of Section 3144 of the DBA or 29 CFR §12(a)(1).

.3 The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC. 1001.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

**PUERTO RICO INFRASTRUCTURE
FINANCING AUTHORITY**

José E. Basora Fagundo
Executive Director

ATTACHMENT A
CONTRACT EXHIBITS

PART I: CONTRACT DOCUMENTS

1. Design/Build/Conservation Agreement
2. General Conditions
3. Special Provisions- Infrastructure Conservation Program
4. Supplementary Conditions
4. Contractual Exhibits listed in Section A of Part II below.

PART II: CONTRACT EXHIBITS

SECTION A – CONTRACTUAL EXHIBITS

EXHIBIT A-Scope of Work

EXHIBIT B-Compliance with David Bacon Act: Wage Determination, General Decision
Number PR 100001, 3/12/2010

SECTION B – INFORMATIONAL EXHIBITS

EXHIBIT C-SOLID WASTE DISPOSAL

EXHIBIT D- UNDER PENALTY OF NULITY

EXHIBIT E- LAW 428 OF SEPTEMBER 22, 2004

EXHIBIT A
SCOPE OF WORK

EXHIBIT B

Compliance with David Bacon Act: Wage Determination, General Decision Number PR 100001, 3/12/2010

Refer to: <http://www.wdol.gov/wdol/scafiles/davisbacon/PR1.dvb>

General Decision Number: PR100001 03/12/2010 PR1

Superseded General Decision Number: PR20080001

State: Puerto Rico

Construction Type: Building

Counties: Puerto Rico Statewide.

BUILDING CONSTRUCTION (does not include single family homes and apartments up to and including 4 stories).

Modification Number Publication Date
0 03/12/2010

* SUPR1993-001 10/29/1993

	Rates	Fringes
BRICKLAYER.....	\$ 7.25	.42
CARPENTER.....	\$ 7.25	.34
CEMENT MASON/CONCRETE FINISHER.....	\$ 7.25	.31
ELECTRICIAN (Including HVAC control wiring).....	\$ 7.25	
IRONWORKER.....	\$ 7.25	
Laborer, Unskilled.....	\$ 7.25	
PAINTER.....	\$ 7.25	
PIPEFITTER.....	\$ 7.25	
PLUMBER (Including HVAC work).....	\$ 7.25	.31

Power equipment operators:

Cranes.....	\$ 7.25	
Diggers.....	\$ 7.25	
Loaders.....	\$ 7.25	.26
Traxcavator.....	\$ 7.25	

Sheet metal worker (Including HVAC duct work).....

Sheet metal worker (Including HVAC duct work).....	\$ 7.25	.31
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TRUCK DRIVER.....	\$ 7.25	.30
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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.
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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

EXHIBIT C

UNDER PENALTY OF NULLITY

SOLIDS WASTE DISPOSSAL

The Contractor will comply with the Solids Waste Reduction and Recycle Act, Law #70 of September 18th, 1992, as amended by Law #411 of October 8th, 2000.

Article 6 A establishes: “Every industry, manufacture, store, commerce and any other type of institution that employs more than ten(10) people, either on a full or part time basis, would have to implement a Recycle Plan.”

- The Contractor will file a Recycle Plan in compliance with requirements of said Act.
- The Contractor will submit, before the Project Manager, a monthly report as to recyclable and re-usable materials recuperated, for statistical purposes.

EXHIBIT D

UNDER PENALTY OF NULLITY

Name of Company _____

Name of Principal _____

Re: _____
Project

Each invoice must include a written certification stating that no officer or employee of AFI, its subsidiaries or affiliates, will derive or obtain any benefit or profit of any kind from this Agreement, with the acknowledgment that invoices which do not include this certification will not be paid. This certification must read as follows:

“We certify under penalty of nullity that no public servant of AFI will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the delivery of goods or for services provided is the agreed-upon price that has been negotiated with an authorized representative from AFI. The total amount shown on this invoice is true and correct. The professional services have been rendered, and no payment has been received”.

Name: (Print)

Date

Signature

EXHIBIT E

STATEMENT UNDER OATH IN COMPLIANCE WITH LAW 428

SWORN STATEMENT

The undersigned, _____ (full name), in its capacity of _____ (Position at the Corporation) of (name of corporation or legal entity), of legal age, _____ (marital status), and resident of _____ (Municipality), Puerto Rico, hereby declare under oath as follows:

1. That my personal circumstances are as above stated.

2. _____ (Name of corporation or legal entity), is a corporation duly incorporated under the laws of Puerto Rico, with its principal place of business in (physical and mailing address)

_____.

3. _____ (Name of corporation or legal entity), its officers or directors have not been convicted under federal, state, foreign or Puerto Rico laws of any crimes involving fraud, embezzlement or illegal appropriation of public funds, nor have they admitted guilt for the commission of any such crimes, including but not limited to the following:

- a. Aggravated illegal appropriation of goods in all its modalities;
- b. Extortion;
- c. Construction fraud;
- d. Fraud in the execution of construction projects;
- e. Fraud in the delivery of goods;
- f. Undue intervention in the processes of bid contracts or in government operations;
- g. Bribery in all its modalities;
- h. Aggravated bribery;
- i. Offer to bribe;
- j. Undue influence;
- k. Crimes against public funds;

- l. Preparation of false documents;
- m. Presentation of false documents;
- n. Falsification of documents;
- o. Possession and delivery of false documents.

4. **I certified that personally, in my capacity of (Position at the Corporation or legal entity), the _____ (Name of Corporation or legal entity),** its officers or directors are not under investigation under the federal, state, foreign or Puerto Rico jurisdictions, at any legislative, judicial or administrative level for the alleged commission of the abovementioned crimes.

5. I am a duly authorized representative of _____ **(Position at the Corporation or legal entity)**, with authority to execute this sworn statement.

6. All the facts previously stated are true to the best of my knowledge and personal belief, and is submitted in compliance with Act No. 458 of December 20, 2000, as amended by Act No. 428 of September 22, 2004.

In _____ **(Municipality), Puerto Rico**, this ____ day of _____, 2009.

(Full Name), (Position)

(Corporate Seal)

Affidavit No. _____

Sworn and signed before me by _____ **(Full Name)**, of the abovementioned circumstances, whom I know personally, this _____ day of _____, 2009, in _____ **(Municipality), Puerto Rico.**

Notary Public

ATTACHMENT B

AFI PERMITS AND APPROVALS

Refer to RFP documents.

AFI will help with all permit requirements in order to keep the project on schedule and after all due diligence perform by the Contractor.

ATTACHMENT C
ALLOWANCES

Refer to RPF documents.

ATTACHMENT D
FORM OF PERFORMANCE BOND
PUERTO RICO INFRASTRUCTURE FINANCING AUTHORITY
SCHOOLS FOR THE 21ST CENTURY PROGRAM
_____ **MODERNIZATION PROJECT**

Contract No. _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____ (the “Principal”), and _____, as surety(ies) (collectively, the “Surety”, and together with the Principal, the “Obligors”), are held and firmly bound unto the Puerto Rico Infrastructure Financing Authority and Public-Private Partnership Authority, each a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, and their respective successors and assigns, as obligee (collectively, the “Obligee”) in the amount of _____ **Dollars** (\$_____,**000.00**) lawful money of the United States of America, for the payment of which to the Obligee the Principal and the Surety do hereby bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into Contract No. **2011-000**_____, “Schools for the 21st Century Program, _____ School Modernization Project” with the Obligee dated as of _____ (the “Contract”), which Contract is by reference made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the Principal shall promptly, fully, faithfully and completely perform the Work, as such term is defined in the Contract, in all respects in accordance with each and every requirement and intendment, term, covenant, and condition, as they now exist or may hereafter be modified, of the Contract, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

For valuable consideration, the Surety, jointly and severally, does hereby covenant and agree with the Obligee, that in case of failure or default by the Principal, resulting in a rescission, cancellation or termination of the Contract under the terms thereof, and the Principal’s failure to deposit to the credit of the Obligee, the excess amount necessary for completing the Work according to and as provided by the terms of the Contract, and provided that if, at the demand of the Obligee, the Surety, or any of them, elect not to complete the Work or to supervise the

remedies for defects or damages covered by the terms of the Contract or of this bond according to the terms thereof or hereof, then in that event the Surety, or any of them, will, within ten (10) days from the date of written notice from the Oblige, specifying the amount of such excess necessary or used for completing the Work, deposit to the credit of the Oblige, the amount of such excess, without prejudice to the Oblige as to any other or further right or action upon this bond or upon the Contract. The amount of such excess shall not, in any event, exceed the amount of this bond.

And for valuable consideration, it is further jointly and severally covenanted and agreed between the Obligors and the Oblige:

1. That the changes, deviations, extensions, alterations, modifications, deductions, additions or extras in or to the Contract may be made as contemplated by the terms thereof and that no such changes, deviations, extensions, alterations, modifications, deductions, additions or extras shall in any way affect the continuing obligation of the Principal or of the Surety of any of them under this bond.
2. That the obligations of this bond shall continue for the full amount thereof, and shall also extend to cover any and all costs, expenses or charges arising out of any and all defects or faults by reason of defective or faulty materials or workmanship used in or upon the Work by the Principal, its employees, servants, subcontractors, agents or sub-agents, during the progress of the Work, and to save harmless the Oblige from any and all loss or expense by reason of any and all claims, suits or actions as aforesaid, or any costs, expenses or charges connected therewith as aforesaid, whether said defects or defaults in the Work are known prior to the final acceptance of the Work, or discovered during the warranty period provided for in the Contract, or whether said claims, suits or actions are brought or prosecuted before or after the final acceptance of the Work and within the statutory period therefore.
3. That if any part, clause, condition, covenant, or agreement of the Contract shall be decided by any court of competent jurisdiction to be invalid, this bond and the obligations thereof shall continue in full force and effect, notwithstanding said invalid part, clause, condition, covenant, or agreement so long as the invalidity of said part, clause, condition, covenant, or agreement shall not affect the validity of the Contract as a whole, or leaves any part thereof which can be given effect without the part, clause, condition, covenant, or agreement so decided to be invalid.
4. That the obligations, conditions, covenant and agreements of this bond shall be liberally construed to effect the objects and purposes thereof.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this ____ day of _____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by the undersigned representative pursuant to authority of its governing body.

Principal:

In the Presence of:

[CORPORATE SEAL]

In the Presence of:

[CORPORATE SEAL]

In the Presence of:

[CORPORATE SEAL]

Contractor

By: _____

Name: _____

Title: _____

Surety:

By: _____

Name: _____

Title: _____

Surety:

By: _____

Name: _____

Title: _____

ATTACHMENT E
FORM OF PAYMENT BOND
PUERTO RICO INFRASTRUCTURE FINANCING AUTHORITY
SCHOOLS FOR THE 21ST CENTURY PROGRAM
_____ **SCHOOL MODERNIZATION PROJECT**

Contract No. 2011-000_____
LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____ (the “Principal”), and _____, as surety(ies) (collectively, the “Surety”, and together with the Principal, the “Obligors”), are held and firmly bound unto the Puerto Rico Infrastructure Financing Authority and Public-Private Partnership Authority each a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, and the Secretary of Labor and Human Relations, and their respective successors and assigns, as obligee (collectively, the “Obligee”) in the amount of _____ **Dollars (\$_____,000.00)** lawful money of the United States of America, for the payment of which to the Obligee the Principal and the Surety do hereby bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into **Contract No.** _____ “Schools for the 21st Century Program, _____ School Modernization Project” with the Obligee dated as of _____ (the “Contract”), which Contract is by reference made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the Principal shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for use in performance or the Work, as such term is defined in the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract: labor and material being construed to include any part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the performance of the Contract.
2. The Principal and Surety hereby jointly and severally agree with the Obligee that every claimant, as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant’s work or

labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgement for such sum or sums as may be justly due such claimant, and have execution thereon. The Obligee shall not be liable for the payment of any costs or expense of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:
 - a) Unless claimant, other than a claimant having a direct contract with the Principal shall have given written notice to any two of the following: the Principal, the Obligee, or the Surety, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Obligee and/or Surety, at any place where an office is regularly maintained by the addressee for the transaction of business, or served in any manner in which legal process may be served in the Commonwealth of Puerto Rico, save that such service need not be made by a public officer.
 - b) After the expiration of one (1) year following the date on which the Principal achieved Substantial Completion of the Work under the Contract; it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of Puerto Rico, and not elsewhere.
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by the Surety of mechanics' liens which may be filed of record against the real property upon which such Work was performed, whether or not a claim for the amount of such lien shall have been presented under and against this bond.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this ____ day of _____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by the undersigned representative pursuant to authority of its governing body.

Principal:

In the Presence of:

[CORPORATE SEAL]

In the Presence of:

[CORPORATE SEAL]

In the Presence of:

[CORPORATE SEAL]

Contractor

By: _____

Name: _____

Title: _____

Surety:

By: _____

Name: _____

Title: _____

Surety:

By: _____

Name: _____

Title: _____

ATTACHMENT F
INSURANCES

See Supplementary Conditions

ATTACHMENT G
CANCELLED STAMPS

CIAPR Stamps

- Contract Amount \$ _____

- CIA Stamps Cancelled (0.001 x Contract Amount)..... \$ _____

- Hacienda Stamps Cancelled..... \$ _____

ATTACHMENT H
OTHER DOCUMENTS

- Eligibility Certificate