

The Project shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Project and Sections*] until GWA has received final operation and maintenance manuals in such detail, and any other manuals specified in GWA's Requirements for these purposes.

5.8 Design Error

If errors, Or missions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents, they and the Project shall be corrected at the Contractor's cost, notwithstanding any consent or approval under this Clause.

6. STAFF AND LABOR

6.1 Engagement of Staff and Labor

Except as otherwise stated in GWA's Requirements, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, housing, feeding and transport.

6.2 Rates of Wages and Conditions of Labor

The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those required by law.

6.3 Persons in the Service of GWA

The Contractor shall not recruit, or attempt to recruit, staff and labor from amongst GWA's Personnel.

6.4 Labor Laws

The Contractor shall comply with all the relevant labor Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

6.5 Working Hours

Unless otherwise agreed to between the parties, the working hours at the Site shall be from 8:00 a.m. through 6:00 p.m. Chamorro Standard Time. No work shall be carried out on the Site on locally recognized days of rest, or outside normal working hours, unless:

- (a) otherwise stated in the Contract;
- (b) GWA gives consent; or

- (c) The work is unavoidable, or necessary for the protection of life or property or for the safety of the Project, in which case the Contractor shall immediately advise GWA.

6.6 Facilities for Staff and Labor

Except as otherwise states in GWA's Requirements, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for GWA's Personnel as stated in GWA's Requirements.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Project.

6.7 Health and Safety

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Project, the Contractor shall provide whatever is required by the person to exercise this responsibility and authority.

The Contractor shall send, to GWA, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as GWA may reasonably require.

6.8 Contractor's Superintendence

Throughout the design and execution of the Project, and as long thereafter as is necessary to fulfill the Contractor's obligations, the Contractor shall provide all necessary supervision to plan, arrange direct, manage, inspect and test the work.

Project supervision shall be undertaken by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [*Law and Language*]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Project.

6.9 Contractor's Personnel

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. GWA may require the Contractor to remove (or cause to be removed) any person employed on the Site or Project, including the Contractor's Representative if applicable, who:

- (a) persist in any misconduct or lack of care;
- (b) carries out duties incompletely or negligently;
- (c) falls to conform with any provisions of the Contract; or
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

The Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

6.10 Records of Contractor's Personnel and Equipment

The Contractor shall submit, to GWA, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by GWA, until the Contractor has complete all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Project.

6.11 Disorderly Conduct

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and neat the Site.

7. PLANT, MATERIALS AND WORKMANSHIP**7.1 Manner of Execution**

The Contractor shall carry out the construction of Plant, the provision of production and goods and Materials, and all other items needed.

- (a) in the manner (if any) specified in the Contract;
- (b) in a proper workmanlike and careful manner, in accordance with recognized good practice; and
- (c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

7.2 Samples

The Contractor shall submit samples to GWA, for review in accordance with the procedures for Contractor's Documents described in Sub-Clause 5.2

[*Contractor's Documents*], as specified in the Contract and at the Contractor's cost. Each sample shall be labeled as to origin and intended use in the Project.

7.3 Inspection

GWA's Personnel shall at all reasonable times:

- (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained; and
- (b) during production, manufacture and construction (at the Site and, to the extent specified in the Contract, elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Contractor shall give GWA's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

In respect of the work which GWA's Personnel are entitled to examine, inspect, measure and/or test, the Contractor shall give notice to GWA whenever any such work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The GWA shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that GWA does not require to do so. If the Contractor fails to give notice, he shall, if and when required by GWA, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

7.4 Testing

This Sub-Clause shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labor, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with GWA, the time and place for the specified testing of any Plant, Materials and other parts of the Project.

GWA may, under Clause 13 [*Amendments and Change Orders*], vary the location or details of specified tests, or instruct Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Amendment shall be borne by the Contractor, notwithstanding other provisions of the Contract.

GWA shall give the Contractor not less than seventy (72) hours notice of GWA's intention to attend the tests. If GWA does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by GWA, and the tests shall then be deemed to have been made in GWA's presence.

If the Contractor suffers delays and/or incurs Cost from complying with these instructions or as a result of a delay for which GWA is responsible, the Contractor shall give notice to GWA and shall be entitled subject to Clause 20 [*Contractor's Claims and Dispute Resolution Procedures*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
- (b) payment of any such Cost plus reasonable profit, which shall be added to the Contract Price.

After receiving this notice, GWA shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree to determine these matters.

The Contractor shall promptly forward to GWA duly certified reports of the tests. When the specified tests have been passed, GWA shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If GWA has not attended the tests, he shall be deemed to have accepted the readings as accurate.

7.5 Rejection

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the Contract, GWA may reject the Plant, Materials, design or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.

If GWA requires this plant, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause GWA to incur additional costs, the Contractor shall subject to Sub-Clause 2.4 [*GWA's Claims*] pay these costs to GWA.

7.6 Remedial Work

Notwithstanding any previous test or certification, GWA may instruct the Contractor to:

- (a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract;
- (b) remove and re-execute any other work which is not in accordance with the Contract; and

- (c) execute any work which is urgently required for the safety of the Project, whether because of an accident, unforeseeable event or otherwise.

If the Contractor fails to comply with any such instruction, which complies with Sub-Clause 3.4 [*Instructions*], GWA shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject Sub-Clause 2.4 [*GWA's Claims*] pay to GWA all costs arising from this failure.

7.7 Ownership of Plant and Materials

Each item of Plant and Materials shall become the property of GWA at whichever is the earlier of the following times, free from liens other encumbrances:

- (a) when it is delivered to the Site;
- (b) when the Subcontractor is entitled to payment of the value of the Plant and Materials under Sub-Clause 8.10 [*Payment for Plant and materials in Event of Suspension*].

7.8 Royalties

Unless otherwise stated in GWA's Requirements, the Contractor shall pay all royalties, rents and other payments for:

- (a) natural Materials obtained from outside the Site; and
- (b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

8. COMMENCEMENT, DELAYS AND SUSPENSION

8.1 Commencement or the Project

Unless otherwise stated:

- (a) GWA shall give the Contractor not less than seven (7) days notice of the Commencement Date; and
- (b) The Contractor shall commence the design and execution of the Project as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Project with due expedition and without delay.

8.2 Time for Completion

The Contractor shall complete the entire Project within 730 days from the Date of Commencement. Completion includes:

- (a) achieving the passing of the Tests on Completion; and
- (b) completing all work which is stated in the Contract as being required for the Project or Section to be considered to be completed for the purposes of taking-over Sub-Clause 10.1 [Taking Over of the Project and Sections].

8.3 Project Schedule

The Contractor shall submit a work schedule to GWA within ten (10) days after the Commencement Date. The Contractor shall also submit a revised schedule whenever the previous schedule is inconsistent with actual progress or with the Contractor's obligations unless stated in the Contract, each schedule shall include:

- (a) the order in which the Contractor intends to carry out the Project, including the anticipated timing of each major stage of the Project;
- (b) the periods for reviews under Sub-Clause 5.2 [*Contractor's Documents*],
- (c) the sequence and timing of inspections and tests specified in the Contract; and
- (d) a supporting report which includes:
 - (i) a general description of the methods which the Contractor intends to adopt for the execution of each major stage of the Project; and
 - (ii) the approximate number of each class of Contractor's Personnel and of each type of Contractor's Equipment.

Unless GWA, within twenty-one (21) days after receiving a schedule, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the schedule, subject to his other obligations under the Contract. GWA's Personnel shall be entitled to rely upon the schedule when planning their activities.

The Contractor shall promptly give notice to GWA of specific probable future events or circumstances which may adversely affect or delay the execution of the Project. In this event, or if GWA gives notice to the Contractor that a schedule fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised schedule to GWA in accordance with this Sub-Clause.

8.4 Extension of Time for Completion

The Contractor shall be entitled to Clause 20 [*Contractor's Claims and Dispute Resolution Procedures*] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [*Taking Over of the Project and Sections*] is or will be delayed by any of the following causes:

- (a) a change order (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [*Variation Procedure*];
- (b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these conditions; or
- (c) any delay, impediment or prevention caused by or attributable to GWA, GWA's Personnel, or GWA's other contractors on the Site.

If the Contractor considers himself to be entitled to an extension of Time for Completion, the Contractor shall give notice to GWA in accordance with Clause 20 [*Contractor's Claims and Dispute Resolution Procedures*]. When determining each extension of time under Clause 20, GWA shall review previous determinations and may increase, but shall not decrease, the total extension of time.

8.5 Delays Caused by Authorities

If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country;
- (b) these authorities delay or disrupt the Contractor's work; and
- (c) the delay or disruption was not reasonably foreseeable by an experienced contractor by the date for submission of the Tender;

then this delay or disruption will be considered as a cause for delay under subparagraph (b) of Sub-Clause 8.4 [*Extension of Time for Completion*].

8.6 Rate of Progress

If, at any time:

- (a) actual progress is too slow to complete within the Time for Completion; and/or
- (b) progress has fallen (or will fall) behind the current schedule under Sub-Clause 8.3 [*Schedule*];

other than as a result of a cause listed in Sub-Clause 8.4 [*Extension of Time for Completion*], then the GWA may instruct the Contractor to submit, under Sub-Clause 8.3 [*Project Schedule*], a revised schedule and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

Unless the GWA notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause GWA to incur additional costs, the Contractor shall subject to Sub-Clause 2.4 [*GWA's Claims*] pay these costs to the GWA, in addition to delay damages (if any) under Sub-Clause 8.7 below.

8.7 Liquidated Damages

If the Contractor fails to comply with Sub-Clause 8.2 [*Time for Completion*] and 12.4 [*Failure to Pass Test After Completion*], the Contractor shall subject to Sub-Clause 2.4 [*GWA's Claims*] pay liquidated damages to GWA for this default. These liquidated damages shall be the amount of eleven thousand dollars (\$11,000.00) per day, which shall be paid for every day which shall elapse between the relevant Times for Completion and the date stated in the Taking Over Certificate or other times as specified in the appropriate Clause. These damages are meant to compensate GWA for damages related to all delay of the Project estimated at the time of Contract execution and are not meant to be construed as a penalty.

These liquidated damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [*Termination by GWA*] prior to completion of the Project. These damages shall not relieve the Contractor from his obligations to complete the Project, or from any other duties, obligations or responsibilities which he may have under the Contract and are to be paid in addition to other applicable damages.

8.8 Suspension of Work

GWA may at any time instruct the Contractor to suspend progress of part or all of the Project. During such suspension, the Contractor shall protect, store and secure such part of the Project against any deterioration, loss or damage.

GWA may also notify the cause for the suspension. If and to the extent that cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 8.9, 8.10 and 8.11 shall not apply.

8.9 Consequences of Suspension

If the Contractor suffers delay and/or incurs Cost from complying with GWA's instruction under Sub-Clause 8.8 [*Suspension of Work*] and/or from resuming the work, the Contractor shall give notice to GWA and shall be entitled subject to Clause 20 [*Contractor's Claims and Dispute Resolution Procedures*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
- (b) payment of any such Cost, which shall be added to the Contract Price.

After receiving this notice, GWA shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to

protect, store or secure in accordance with Sub-Clause 8.8 [*Suspension of Project*].

8.10 Payment for Plant and Materials in Event of Suspension

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- (a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than twenty eight (28) days; and
- (b) the Contractor has marked the Plant and/or Materials as GWA's property in accordance with GWA's instructions.

8.11 Prolonged Suspension

If the suspension under Sub-Clause 8.8 [*Suspension of Work*] has continued for more than ninety (90) days, the Contractor may request GWA's permission to proceed. If GWA does not give permission within twenty eight (28) days after being requested to do so, the Contractor may, by giving notice to GWA, treat the suspension as an omission under Clause 13 [*Amendments and Change Orders*] of the affected part of the Project. If the suspension affects the whole of the Project, the Contractor may give notice of termination under Sub-Clause 16.2 [*Termination by Contractor*].

8.12 Resumption of Work

After the permission or instruction to proceed is given, the Parties shall jointly examine the Project and the Plant and Materials affected by the suspension. The Contractor shall make good any determination or defect in or loss of the Project or Plant or Materials, which has occurred during the suspension.

9. TESTS ON COMPLETION

9.1 Contractor's Obligation

The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [*Testing*] after providing the documents in accordance with Sub-Clause 5.6 [*As-Built Documents*] and Sub-Clause 5.7 [*Operation and Maintenance Manuals*].

The Contractor shall give to GWA not less than twenty-one (21) days notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agree, Tests on Completion shall be carried out within fourteen (14) days after this date, on such day or days as GWA shall instruct.

Unless otherwise stated in the Particular Conditions, the Tests on Completion shall be carried out in the following sequence:

- (a) pre-commissioning tests, which shall include the appropriate inspections and functional tests to demonstrate that each item of Plant can safely under-take the next stage, (b);
- (b) commissioning tests, which shall include the specified operational tests to demonstrate that the Project or Section can be operated safely and as specified, under all available operating conditions; and
- (c) trial operation, which shall demonstrate that the Project or Section perform reliably and in accordance with the Contract.

During that operation, when the Project is operating under stable conditions, the Contractor shall give notice to GWA that the Project is ready for any other Tests on Completion, including performance tests to demonstrate whether the Project conform with criteria specified in GWA's Requirements and with the Performance Guarantees.

Trial operation shall not constitute a taking over under Clause 10 [*GWA's Taking Over*]. Unless otherwise stated and any product produced by the Project during trial operation shall be the property of GWA.

In considering the results of the Tests on Completion, appropriate allowances shall be made for the effect of any use of the Project by GWA on the performance or other characteristics of the Project. AS soon as the Project, or a Section, have passed each of the Tests on Completion described in sub-paragraph (a), (b) or (c), the Contractor shall submit a certified result of these Tests to GWA.

9.2 Delayed Tests

If the Tests on Completion are being unduly delayed by GWA, Sub-Clause 7.3 [*Testing*] (fifth paragraph) and/or Sub-Clause 10.3 [*Interference with Tests on Completion*] shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, GWA may by notice require the Contractor to carry out the tests within twenty-one (21) days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to GWA.

If the Contractor fails to carry out the Tests on Completion within the period of twenty-one (21) days, GWA's Personnel may proceed with the Tests at risk and cost of the Contractor. These Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the tests shall be accepted as accurate.

9.3 Retesting

If the Project, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [*Rejection*] shall apply, and GWA or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be required under the same terms and conditions.

9.4 Failure to Pass Tests on Completion

If the Project, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [*Retesting*], GWA shall be entitled to:

- (a) order further repetition of Tests on Completion under Sub-Clause 9.3;
- (b) if the failure deprives GWA of substantially the whole benefit of the Project or Section, reject the Project or Section (as the case may be), in which event GWA shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 11.4 [*Failure to Remedy Defects*]; or
- (c) issue a Taking-Over Certificate.

In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the GWA as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined), in the Contract, GWA may require the reduction to be: (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued; or (ii) determined and paid under Sub-Clause 2.4 [*GWA's Claims*] and Sub-Clause 3.5 [*Determinations*].

10. GUAM WATERWORKS AUTHORITY'S TAKING OVER

10.1 Taking Over of the Project and Sections

Except as stated in Sub-Clause 9.4 [*Failure to Pass Tests on Completion*], the Project shall be taken over by GWA when: (i) the Project has been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [*Time for Completion*] and except as allowed in sub-paragraph (a) below; and (ii) a Taking-Over Certificate for the Project has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the GWA for a Taking-Over Certificate not earlier than fourteen (14) days before the Project will, in the Contractor's opinion, be complete and ready for taking over. If the Project is divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

The GWA shall, within twenty-eight (28) days after receiving the Contractor's application:

- (a) issue the Taking-Over Certificate to the Contractor, stating the date on which the Project or Section was completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Project or Section for their intended purpose (either until or while this work is completed and these tests defects are remedied); or

- (b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the GWA fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the prior of twenty-eight (28) days, and if the Project or Section (as the case may be) is substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

10.2 Taking Over of Parts of the Project

Parts of the Project (other than Sections) shall not be taken over or used by GWA, except as may be stated in the Contract or as may be agreed by both Parties.

10.3 Interference with Tests on Completion

If the Contractor is prevented, for more than fourteen (14) days, from carrying out the Tests on Completion by a cause for which the GWA is responsible, the Contractor shall carry out the Tests on Completion as soon as practicable.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to GWA and shall be entitled subject to Clause 20 [*Contractor's Claims and Dispute Resolution Procedures*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
- (b) payment of any such Cost plus reasonable profit, which shall be added to the Contract Price.

After receiving this notice, GWA shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

11. DEFECTS LIABILITY

11.1 Completion of Outstanding Work and Remedying Defects

In order that the Project and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear expected) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:

- (a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as instructed by GWA; and

- (b) execute all work required to remedy defects or damage, as may be notified by GWA on or before the expiry date of the Defects Notification Period for the Project or Section (as the case may be).

If a defect appears or damage occurs, GWA shall notify the Contractor accordingly.

11.2 Cost of Remedying Defects

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- (a) the design of the Project;
- (b) Plant, Materials or workmanship not being in accordance with the Contract;
- (c) improper operation or maintenance which was attributable to matters for which the Contractor is responsible (under Sub-Clauses 5.5 to 5.7 or otherwise); or
- (d) failure by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, GWA shall give notice to the Contractor accordingly, and Sub-Clause 13.3 [*Change Order Procedure*] shall apply.

11.3 Extension of Defects and Notification Period

GWA shall be entitled subject to Sub-Clause 2.4 [*GWA's Claims*] to an extension of the Defects Notification Period for the Project or a Section if and to the extent that the Project, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage. However, a Defects Notification Period shall not be extended by more than three (3) years.

If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [*Suspension of Work*] or Sub-Clause 16.1 [*Contractor's Entitlement to Suspend Work*], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than three (3) years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired, unless otherwise extended via warranty.

11.4 Failure to Remedy Defects

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the GWA, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the GWA may (at its option):

- (a) carry out the work itself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.4 [*GWA's Claims*] pay to GWA the costs reasonably incurred by GWA in remedying the defect or damage;
- (b) agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [*Determinations*]; or
- (c) if the defect or damage deprives GWA of substantially the whole benefit of the Project or any major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, GWA shall then be entitled to recover all sums paid for the Project or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

11.5 Removal of Defective Work

If the defect or damage cannot be remedied expeditiously on the Site and the GWA gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

11.6 Further Tests

If the work or remedying of any defect or damage may affect the performance of the Project, the GWA may require the repetition of any of the tests described in the Contract, including Tests on Completion and/or Tests after Completion. The requirement shall be made by notice within twenty-eight (28) days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [*Cost of Remedying Defects*], for the cost of the remedial work.

11.7 Right of Access

Until the Certificate of Completion has been issued, the Contractor shall have the right of access to all parts of the Project and to records of the operation and performance of the Project, except as may be inconsistent with GWA's reasonable security restrictions.

11.8 Contractor to Search

The Contractor shall, if required by the GWA, search for the cause of any defect, under the direction of GWA. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Cost of the search plus reasonable profit shall be agreed or determined in accordance with Sub-Clause 3.5 [*Determinations*] and shall be added to the Contract Price.

11.9 Certificate of Completion

Performance of the Contractor's obligations shall not be considered to have been completed until GWA has issued the Certificate of Completion to the Contractor, stating the date on which the Contractor completed his obligations under the Contract

GWA shall issue the Certificate of Completion within twenty-eight (28) days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Project, including remedying any defects. If GWA fails to issue the Certificate of Completion accordingly:

- (a) the Certificate of Completion shall be deemed to have been issued on the date twenty-eight (28) days after the date on which it should have been issued, as required by this Sub-Clause; and
- (b) Sub-Clause 11.11 [*Clearance of Site*] and sub-paragraph (a) of Sub-Clause 14.14 [*Cessation of GWA's Liability*] shall be inapplicable.

Only the Certificate of Completion shall be deemed to constitute acceptance of the Project.

11.10 Unfulfilled Obligations

After the Certificate of Completion has been issued, each Party shall remain liable for the fulfillment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

11.11 Clearance of Site

Upon receiving the Certificate of Completion, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Project from the Site.

If all these items have not been removed within twenty-eight (28) days after GWA issues the Certificate of Completion, the GWA may sell or otherwise dispose of any remaining items. The GWA shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the monies from the sale shall be paid to the Contractor. If these monies are less than the GWA's costs, the Contractor shall pay the outstanding balance to GWA.

12. TESTS AFTER COMPLETION

12.1 Procedures for Tests After Completion

If Tests After Completion is specified in the Contract, this Clause shall apply. Unless otherwise stated in the Particular Conditions:

- (a) the GWA shall provide all electricity, fuel and materials, and make GWA's Personnel and Plant available;
- (b) the Contractor shall provide any other plant, equipment and suitably qualified and experienced staff, as are necessary to carry out the Tests After Completion efficiently; and
- (c) the Contractor shall carry out the Tests After Completion in the presence of GWA's and/or Contractor's Personnel as either Party may reasonably request.

The Tests After Completion shall be carried out as soon as is reasonably practicable after the Project or Section has been taken over by GWA. GWA shall give to the Contractor twenty-one (21) days notice of the date after which the Tests After Completion will be carried out. Unless otherwise agreed, these Tests shall be carried out within fourteen (14) days after this date, on the day or days determined by GWA.

The results of the Tests After Completion shall be compiled and evaluated by the Contractor, who shall prepare a detailed report. Appropriate account shall be taken of the effect of GWA's prior use of the Project.

12.2 Delayed Tests

If the Contractor incurs Cost as a result of any unreasonable delay by GWA to the Tests After Completion, the Contractor shall: (i) give notice to GWA; and (ii) be entitled subject to Clause 20 [*Contractor's Claims and Dispute Resolution Procedures*] to payment of any such Cost plus reasonable profit, which shall be added to the Contract Price.

After receiving this notice, GWA shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine this Cost and profit.

If, for reasons not attributable to the Contractor, a Test After Completion on the Project or any Section cannot be completed during the Defects Notification Period (or any other period agreed upon by both Parties), then the Project or Section shall be deemed to have passed this Test After Completion.

12.3 Retesting

If the Project, or a Section, fails to pass the Tests After Completion:

- (a) sub-paragraph (b) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying of Defects*] shall apply; and
- (b) either Party may then require the failed Tests, and the Tests After Completion on any related work, to be repeated under the same terms and conditions.

If and to the extent that this failure and retesting are attributable to any of the matters listed in sub-paragraphs (a) to (d) of Sub-Clause 11.2 [*Costs of Remedying Defects*] and cause GWA to incur additional costs, the Contractor shall subject to Sub-Clause 2.4 [*GWA's Claims*] pay these costs to GWA.

12.4 Failure to Pass Tests After Completion

If the following conditions apply, namely:

- (a) the Project, or a Section, fail to pass any or all of the Tests After Completion;
- (b) the relevant sum payable as non-performance damages for this failure is stated (or its method of calculation is defined) in the Contract; and
- (c) the Contractor pays this relevant sum to GWA during the Defects Notification Period,

then the Project or Section shall be deemed to have passed these Tests After Completion.

If the Project, or a Section, fail to pass a Test After Completion and the Contractor proposes to make adjustments or modifications to the Project or such Section, the Contractor may be instructed by (or on behalf of) GWA that right of access to the Project or Section cannot be given until a time that is convenient to GWA. The Contractor shall then remain liable to carry out the adjustments or modifications and to satisfy this Test, within a reasonable period of receiving notice by (or on behalf of) GWA of the time that is convenient to GWA. However, if the Contractor does not receive this notice during the relevant Defects Notification Period, the Contractor shall be relieved of this obligation and the Project or Section (as the case may be) shall be deemed to have passed this Test After Completion.

If the Contractor incurs additional Cost as a result of any unreasonable delay by GWA in permitting access to the Project or Plant by the Contractor, either to investigate the causes of a failure to pass a Test After Completion or to carry out any adjustments or modifications, the Contractor shall: (i) give notice to GWA; and (ii) be entitled subject to Clause 20 [*Contractor's Claims and Dispute Resolution Procedures*] to payment of any such Cost plus reasonable profit, which shall be added to the Contract Price.

After receiving this notice, GWA shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine this Cost and profit.

13. AMENDMENTS AND CHANGE ORDERS

13.1 Right to Vary

Change Orders or force account work may be initiated by GWA at any time prior to issuing the Take-Over Certificate for the Project, either by an instruction or by a request for the Contractor to submit a proposal. An amendment, change order or force account work shall not comprise the omission of any work which is to be carried out by others.

The Contractor shall execute and be bonded by such change order, unless the Contractor promptly gives notice to GWA stating (with supporting particulars) that: (i) the Contractor cannot readily obtain the Goods required for the modification; (ii) it will reduce the safety or suitability of the Project; or (iii) it will have an adverse impact on the achievement of the Performance Guarantees. Upon receiving this notice, GWA shall cancel, confirm or vary the instruction.

13.2 Value Engineering

The Contractor may, at any time, submit to GWA a written proposal which (in the Contractor's opinion) will, if adopted: (i) accelerate completion; (ii) reduce the cost to GWA of executing, Maintaining or operating the Project; (iii) improves the efficiency or value to GWA of the completed Project; or (iv) otherwise is of benefit to GWA.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [*Variation Procedure*].

13.3 Variation Procedure

If GWA requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) a description of the proposed design and/or work to be performed and a schedule for its execution;
- (b) the Contractor's proposal for any necessary modifications to the schedule according to Sub-Clause 8.3 [*Project Schedule*] and to the Time for Completion; and
- (c) the Contractor's proposal for adjustment to the Contract Price.

GWA shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [*Value Engineering*] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work while awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by GWA to the Contractor, who shall acknowledge receipt.

Upon instructing or approving a Variation, GWA shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine adjustments to the Contract Price and the Schedule of Payments. These adjustments shall include reasonable profit, and shall take account of the Contractor's submissions under Sub-Clause 13.2 [*Value Engineering*] if applicable.

13.4 Payment in U.S. Currency

All payments will be made in United States Dollars only.

13.5 Provisional Sums

Each Provisional Sum shall only be used, in whole or in part, in accordance with GWA's instruction, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as GWA shall have instructed. For each Provisional Sum, GWA may instruct:

- (a) work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [*Variation Procedure*]; and/or
- (b) Plant, Materials or services to be purchased by the Contractor, for which there shall be added to the Contract Price less the original Provisional Sums:
 - (i) the actual amounts paid (or due to be paid) by the Contractor; and
 - (ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the Contract.

The Contractor shall, when required by GWA, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

13.6 Force Account

For work of a minor or incidental nature, GWA may instruct that a modification shall be executed on a Force Account basis. The work shall then be valued in accordance with the force account schedule included in the change order and the following procedure shall apply.

Before ordering Goods for the work, the Contractor shall submit quotations to GWA. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the fore account schedule specifies that payment is not due, the Contractor shall deliver each day to the GWA accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:

- (a) the names, occupations and time of Contractor's Personnel;
- (b) the identification, type and time of Contractor's Equipment and Temporary Projects; and
- (c) the quantities and types of Plant and Materials used.

One (1) copy of each statement will, if correct, or when agreed, be signed by GWA and returned to the Contractor. The Contractor shall then submit priced statements of these resources to GWA, prior to their inclusion on the next Statement under Sub-Clause 14.3 [*Application for Interim Payments*].

13.7 Change Orders for Changes in Legislation

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change on the Laws of Guam (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the date of execution of this Contract.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to GWA and if agreed to by GWA, shall be entitled to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
- (b) payment of any such Cost, which shall be added to the Contract Price.

After receiving this notice, GWA shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

13.8 Change Orders for Changes in Cost

Not applicable.

14. CONTRACT PRICE AND PAYMENT

14.1 The Contract Price

Unless otherwise stated:

- (a) payment for the Project shall be made on the basis of the lump sum Contract Price, subject to adjustments in accordance with the Contract; and

- (b) the Contractor shall pay all taxes, duties and fees required to be paid by him under law, and the Contract Price shall not be adjusted for any of these costs, except as stated in Sub-Clause 13.7 [*Adjustments for Changes in Legislation*].
- (c) The Contractor shall provide GWA with all official receipts from the appropriate Tax Department for all taxes paid by Contractor (or Sub-Contractors) along with all documentation that GWA may require relative to recovering or offsetting taxes. If the Contractor fails to provide said documentation, GWA will be entitled to all costs incurred by GWA relative to the recovery of said documents.

14.2 Advance Payment

To be determined during negotiations.

14.3 Application for Interim Payment

To be determined during negotiation. However, in the event retention is appropriate or required, the retention shall be 5%.

14.4 Schedule of Payments

If the Contract includes a Schedule of Payments specifying the installments in which the Contract Price will be paid, then unless otherwise stated in the Schedule:

- (a) the installments quoted in the Schedule of Payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [*Application for Interim Payments*], subject to Sub-Clause 14.5 [*Plant and Materials Intended for the Works*]; and
- (b) if these installments are not defined by reference to the actual progress achieved in executing the Project, and if actual progress is found to be less than that on which the Schedule of Payments was based, the GWA may proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine revised installments, which shall take account of the extent to which progress is less than that on which the installments were previously based.

If the Contract does not include a Schedule of Payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within forty-five (45) days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Project.

14.5 Plant and Materials Intended for the Project

If the Contractor is entitled, under the Contract, to an interim payment for Plant and Materials which are not yet on the Site, the Contractor shall nevertheless not be entitled to such payment unless:

- (a) the relevant Plant and Materials are in on Guam and have not been marked as GWA's property in accordance with GWA's instructions; or
- (b) the Contractor has delivered, to GWA, evidence of insurance and a bank guarantee in a form and issued by an entity approved by GWA in amounts and currencies equal to such payment. This guarantee may be in a similar form referred to in Sub-Clause 14.2 [*Advance Payment*] and shall be valid until the Plant and Materials are properly stored on Sit and protected against loss, damage of deterioration.

14.6 Interim Payments

No amount will be paid until GWA has received and approved the Performance Security. Thereafter, GWA shall within thirty (30) days after receiving a Statement and supporting documents, give to the Contractor notice of any items in the Statement with which GWA disagrees, with supporting particulars. Payments due shall not be withheld, except that:

- (a) if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement has been completed; and/or
- (b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and has been so notified by GWA, the value of this work or obligation may be withheld until the work or obligation has been performed.

GWA may, by any payment, make any correction or modification that should properly be made to any amount previously considered due. Payment shall not be deemed to indicate GWA's acceptance, approval, consent or satisfaction.

14.7 Timing of Payments

To be determined during negotiations.

14.8 Delayed Payment

If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [*Timing of Payments*], the Contractor shall be entitled to receive financing charges in the amount of six percent (6%) compounded monthly on the amount unpaid during the period of delay.

The Contractor shall be entitled to this payment without formal notice, and without prejudice to any other right or remedy.

14.9 Payment of Retention Money

When the Taking-Over Certificate has been issued for the Project, and the Project has passed all specified tests (including the Tests After Completion, if any), the first half of the Retention Money shall be paid to the Contractor. If a Taking-Over Certificate is issued for a Section, the relevant percentage of the

first half of the Retention Money shall be paid when the Section passes all tests.

Promptly after the latest of the expiry dates of the Defects Notification Period, the outstanding balance of the Retention Money shall be paid to the Contractor. If a Taking-Over Certificate was issued for a Section, the relevant percentage of the second half of the Retention Money shall be paid promptly after the expiry date of the Defects Notification Period for the Section.

However, if any work remains to be executed under Clause 11 [*Defects Liability*] or Clause 12 [*Tests After Completion*], GWA shall be entitled to withhold the estimated cost of this work until it has been executed.

The relevant percentage for each Section shall be the percentage value of the Section as stated in the Contract. If the percentage value of a Section is not stated in the Contract, no percentage of either half of the Retention Money shall be released under this Sub-Clause in respect of such Section.

14.10 Statement at Completion

Within ninety (90) days after receiving the Taking-Over Certificate for the Project, the Contractor shall submit to GWA six (6) copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [*Application for Interim Payments*], showing:

- (a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Project;
- (b) any further sums which the Contractor considers to be due; and
- (c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

GWA shall then give notice to the Contractor in accordance with Sub-Clause 14.6 [*Interim Payments*] and make payment in accordance with Sub-Clause 14.7 [*Timing of Payments*].

14.11 Application for Final Payment

Within sixty (60) days after receiving the Certificate of Completion, the Contractor shall submit, to GWA, six (6) copies of a draft final statement with supporting documents showing in detail in a form approved by GWA;

- (a) the value of all work done in accordance with the Contract; and
- (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If GWA disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as GWA may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to GWA the final

statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

However, if following discussions between the Parties and any changes to the draft final statement which is agreed, it becomes evident that a dispute exists, GWA shall pay the agreed parts of the draft final statement in accordance with Sub-Clause 14.6 [*Interim Payments*] and Sub-Clause 14.7 [*Timing of Payments*]. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*] or Sub-Clause 20.5 [*Amicable Settlement*], the Contractor shall then prepare and submit to GWA a Final Statement.

14.12 Discharge

When submitting the Final Statement, the Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all monies due to the Contractor under or in connection with the Contract. This discharge may state that it becomes affective when the Contractor has received the Performance Security and that the outstanding balance of this total, in which event the discharge shall be effective on such date.

14.13 Final Payment

In accordance with sub-paragraph (c) of Sub-Clause 14.7 [*Timing of Payments*], GWA shall pay to the Contractor the amount which is finally due, less all amounts previously paid by GWA and any deductions in accordance with Sub-Clause 2.4 [*GWA's Claims*].

14.14 Cessation of GWA's Liability

GWA shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Project, except to the extent that the Contractor shall have included an amount expressly for it:

- (a) in the Final Statement; and
- (b) also (except for matters or thing arising after the issue of the Taking-Over Certificate for the Project) in the Statement at completion described in Sub-Clause 14.10 [*Statement at Completion*].

However, this Sub-Clause shall not limit GWA's liability under its indemnification obligations, or GWA's liability in any case of fraud, deliberate default or reckless misconduct by GWA.

14.15 Currencies of Payment

The Contract Price shall be paid in United States currency only.

15. TERMINATION BY GUAM WATERWORKS AUTHORITY

15.1 Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, GWA may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

15.2 Termination by GWA

GWA shall be entitled to terminate the Contract if the Contractor:

- (a) fails to comply with Sub-Clause 4.2 [*Performance Security*] or with a notice under Sub-Clause 15.1 [*Notice to Correct*];
- (b) abandons the Project or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract;
- (c) without reasonable excuse fails to proceed with the Project in accordance with Clause 8 [*Commencement, Delays and Suspension*];
- (d) subcontracts the whole of the Project or assigns the Contract without the required agreement;
- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or
- (f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the Contract; or
 - (ii) for showing or forbearing to show favor or disfavor to any person in relation to the Contract,
 - (iii) or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

In any of these event or circumstances, GWA may, upon giving fourteen (14) days notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f), GWA may by notice terminate the Contract immediately.

GWA's election to terminate the Contract shall not prejudice any other rights of GWA, under the Contract or otherwise.

The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the GWA. However, the Contractor shall use his best efforts to comply

immediately with any reasonable instructions included in the notice: (i) for the assignment of any sub-contract; and (ii) for the protection of life or property or for the safety of the Project.

After termination, GWA may complete the Project and/or arrange for any other entities to do so. GWA and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

GWA shall then give notice that the Contractor's Equipment and Temporary Projects will be released to the Contractor at or near the Site. The Contractor shall promptly arrange removal, at the risk and cost of Contractor. However, if by this time the Contractor has failed to make a payment due to GWA, these items may be sold by GWA in order to recover the payment. Any balance of the proceeds shall then be paid to the Contractor.

15.3 Valuation at Date of Termination

As soon as practicable after a notice of termination under Sub-Clause 15.2 [*Termination by GWA*] has taken effect, GWA shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the value of the Project, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

15.4 Payment After Termination

After a notice of termination under Sub-Clause 15.2 [*Termination by GWA*] has taken effect, GWA may:

- (a) proceed in accordance with Sub-Clause 2.4 [*GWA's Claims*];
- (b) withhold further payments to the Contractor until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any) and all other costs incurred by GWA, have been established; and/or
- (c) recover from the Contractor any losses and damages incurred by GWA and any extra costs of completing the Project, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [*Valuation at Date of Termination*]. After recovering any such losses, damages and extra costs, GWA shall pay any balance to the Contractor.

15.5 GWA's Entitlement to Terminate

GWA shall be entitled to terminate the Contract, at any time for GWA's convenience, by giving notice of such termination to the Contractor. The termination shall take effect thirty (30) days after the later of the dates on which the Contractor receives this notice or GWA returns the Performance Security. GWA shall terminate the Contract under this Sub-Clause in order to execute the Project himself or to arrange for the Project to be executed by another contractor.

After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*] and shall be paid in accordance with Sub-Clause 19.6 [*Optional Termination, Payment and Release*].

16. SUSPENSION AND TERMINATION BY CONTRACTOR

16.1 Contractor's Entitlement to Suspend Work

If GWA fails to comply with Sub-Clause 2.3 [*GWA's Financial Arrangements*] or Sub-Clause 14.7 [*Timing of Payments*], the Contractor may, after giving not less than twenty-one (21) days notice to GWA, suspend work (or reduce the rate of work) unless and until the Contractor has received the reasonable evidence or payment, as the case may be and as described in the notice.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [*Delayed Payment*] and to termination under Sub-Clause 16.2 [*Termination by Contractor*].

If the Contractor subsequently receives such evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to GWA and shall be entitled subject to Clause 20 [*Contractor's Claims and Dispute Resolution Procedures*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
- (b) payment of any such Cost plus reasonable profit, which shall be added to the Contract Price.

After receiving this notice, GWA shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

16.2 Termination By Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the reasonable evidence within sixty (60) days after giving notice under Sub-Clause 16.1 [*Contractor's Entitlement to Suspend Work*] in respect of a failure to comply with Sub-Clause 2.3 [*GWA's Financial Arrangements*];
- (b) the Contractor does not receive the amount due within sixty (60) days after the expiry of the time stated in Sub-Clause 14.7 [*Timing of*

Payments] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.4 [*GWA's Claims*];

- (c) GWA substantially fails to perform its obligations under the Contract;
- (d) GWA fails to comply with Sub-Clause 1.7 [*Assignment*];
- (e) a prolonged suspension affects the whole of the Project as described in Sub-Clause 8.11 [*Prolonged Suspension*]; or
- (f) GWA becomes bankrupt or insolvent, goes into liquidation, or carries out business under a trustee for the benefit of its creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

In any of these events or circumstances, the Contractor may, upon giving fourteen (14) days notice to GWA, terminate the Contract. However, in the case of sub-paragraph (e) or (f), the Contractor may by notice terminate the Contract immediately.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

16.3 Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 15.5 [*GWA's Entitlement to Termination*], Sub-Clause 16.2 [*Termination by Contractor*] or Sub-Clause 19.6 [*Optional Termination, Payment and Release*] has taken effect, the Contractor shall promptly:

- (a) cease all further work, except for such work as may have been instructed by GWA for the protection of life or property or for the safety of the Project;
- (b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment; and
- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

16.4 Payment on Termination

After a notice of termination under Sub-Clause 16.2 [*Termination by Contractor*] has taken effect, GWA shall promptly:

- (a) return the Performance Security to the Contractor;
- (b) pay the Contractor in accordance with Sub-Clause 19.6 [*Optional Termination, Payment and Release*]; and
- (c) pay to the Contractor the amount of any loss of profit or other loss or damage sustained by the Contractor as a result of this termination.

17. RISK AND RESPONSIBILITY

17.1 Indemnities

The Contractor shall indemnify and hold harmless GWA, its governing board, GWA's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, execution and completion of the Project and the remedying of any defects, unless attributable to any negligence, willful act or breach of the Contract by GWA, its governing board, GWA's Personnel, or any of their respective agents; and
- (b) damage to or loss of any property, real or personal (other than the Project), to the extent that such damage or loss:
 - (i) arises out of or in the course of or by reason of the design, execution and completion of the Project and the remedying of any defects; and
 - (ii) is not attributable to any negligence, willful act or breach of the Contract by GWA, its governing board, GWA's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

GWA shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Contractor, the Contractor's Personnel, or any of their respective agents; and

The matters of which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [*Insurance Against Injury to Persons and Damage to Property*].

17.2 Contractor's Care of the Project

The Contractor shall take full responsibility for the care of the Project and Goods from the Commencement Date until the Taking-Over Certificate is issued under Sub-Clause 10.1 [*Taking Over of the Project and Section*] for the Project, when responsibility for the care of the Project shall pass to GWA. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section of the Project, responsibility for the care of the Section shall then pass to GWA.

After responsibility has accordingly passed to GWA, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Project, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [*GWA's Risks*], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Project, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

17.3 GWA's Risks

The risks referred to in Sub-Clause 17.4 [*Consequence of GWA's Risks*] below are:

- (a) war, hostilities (whether war to be declared or not), invasion, act of foreign enemies;
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within Guam;
- (c) riot, commotion, disorder within Guam by persons other than the Contractor's Personnel and other employees of the Contractor and Sub-contractors; and
- (d) munitions of war, explosive material, ionizing radiation or contamination by radio-activity, within Guam, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity.

17.4 Consequence of GWA's Risks

If an to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Project, Goods or Contractor's Documents, the Contractor shall promptly give notice to GWA and shall rectify this loss or damage to the extent required by GWA.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to GWA and shall be entitled subject to Clause 20 [*Contractor's Claims and Dispute Resolution Procedures*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
- (b) payment of any such Cost, which shall be added to the Contract Price.

After receiving this further notice, GWA shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

17.5 Intellectual and Industrial Property Rights

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In this Sub-Clause, "Infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Project; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within thirty (30) days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

GWA shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

- (a) an unavoidable result of the Contractor's compliance with GWA's Requirements; or
- (b) a result of any Projects being used by GWA:
 - (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract; or
 - (ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Bid Submittal date or is stated in the Contract.

The Contractor shall indemnify and hold GWA harmless against and from any other claim which arises out of or in relation to: (i) Contractor's design, manufacture, construction or execution of the Project; (ii) the use of Contractor's Equipment; or (iii) the proper use of the Project.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations or litigation upon being requested to do so by such other Party.

17.6 Limitation of Liability

GWA shall not be liable to the Contractor for loss of profit or for any indirect or consequential loss or damage which may be suffered by the Contractor.

The total liability of the Contractor to GWA shall not exceed the Contract Price.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by a defaulting Party.

18. INSURANCE

18.1 General Requirements for Insurances

In this Clause, "Insuring Party" means the Contractor.

Each insurance policy shall be effected with insurers and in terms approved by GWA. If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause: (i) the Contractor shall act under the policy on behalf of these additional joint insured except that GWA shall act for GWA's Personnel; (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer; and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each Party insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The Contractor shall not commence work under this contract until he has obtained and provided proof to GWA that they have purchased all insurance required by these Specifications (in the form and amounts required). All insurance under this bid is subject to the approval of GWA. In addition, the Contractor shall not permit any subcontractor to commence work on this project until all amounts of insurance required hereunder have been obtained and GWA has approved it as to form and content. Please note that all requests for approval of subcontractors must include proof of insurance in the amounts and manner specified under this bid. The Contractor (and its subcontractors) shall submit to GWA a copy of proof of such insurance as well as a full and complete copy of all policies required under this bid which clearly shows acts covered and all exclusions and limitations under the policy. However, notwithstanding the requirements for any insurance hereunder, the Contractor and its Subcontractors shall always remain liable for any damage to its property, injury to its personnel, damage to GWA property and the property of third parties, and injury to GWA personnel and third parties as a result of Contractor's act or the act of any of its subcontractors, acts or omissions, including deficiency judgments.

All insurance provided for hereunder shall contain an explicit "Waiver of Subrogation" and all policies shall also specifically name GWA as an "additional insured."

This insurance requirement does not prohibit the Contractor from obtaining additional amount of coverage for his own protection.

Neither approval by the Guam Waterworks Authority of any insurance supplied by a Contractor or subcontractor, nor failure to disapprove such insurance shall relieve the Contractor or subcontractors of their obligation to

maintain in full force during the life of the contract all required insurance as set forth in this paragraph.

GWA may, require other insurance as it necessary to perform under this agreement. If such insurance is required due to fault, error or omission on the part of Contractor, the Contractor shall be solely responsible to pay for such insurance. If however, the insurance is required by GWA though no fault of the Contractor, GWA shall pay for the reasonable costs of the insurance not specified herein.

The Contractor shall, prior to the execution of the Contract, submit to GWA:

- (a) evidence that the insurances described in this Clause has been effected; and
- (b) copies of the policies for the insurances described in Sub-Clause 18.2 [*Insurance of Project and Contractor's Equipment*] and Sub-Clause 18.3 [*Insurance Against Injury to Persons and Damage to Property*].

The Contractor and all Subcontractors shall keep the insurers informed of any relevant changes to the execution of the Project and ensure that insurance is maintained in accordance with this Clause.

The Contractor shall allow insurer make any material alteration to the terms of any insurance without the prior approval of GWA. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to GWA.

If the Contractor fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, GWA may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The Contractor shall pay the amount of these premiums to GWA, and the Contract Price shall be adjusted accordingly.

Notice in this Clause limits the obligations, liabilities or responsibilities of the Contractor of GWA, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or GWA in accordance with these obligations, liabilities or responsibilities. However, if the Contractor fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any monies which should have been recoverable under this insurance shall be paid by the Contractor.

Payments by one Party to the other Party shall be subject to Sub-Clause 2.4 [*GWA's Claims*] or Clause [*Contractor's Claims and Dispute Resolution Procedures*], as applicable.

18.2 Insurance for the Project and Contractor's Equipment

The insuring Party shall insure the Project, Plant, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit in an amount not less than two million dollars (\$2,000,000) including but not limited to fire, theft, natural disasters or other unspecified hazards which are reasonably foreseen. This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause 18.1 [*General Requirements for Insurances*], until the date of issue of the Taking-Over Certificate for the Project.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Certificate of Completion, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor or Subcontractors in the course of any other operations (including those under Clause 11 [*Defects Liability*] and Clause 12 [*Tests After Completion*]).

The Contractor and all Subcontractors shall insure their Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment.

Unless otherwise states in the Particular Conditions, insurances under this Sub-Clause:

- (a) shall be effected and maintained by the Contractor as insuring Party;
- (b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated between the Parties for the sole purpose of rectifying the loss or damage;
- (c) shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [*GWA's Risks*];
- (d) shall also cover loss or damage from the risks listed in Sub-paragraph (c) of Sub-Clause 17.3 [*GWA's Risks*], with deductibles per occurrence of not more than fifty thousand dollars (\$50,000);
- (e) may however exclude loss of, damage to, and reinstatement of:
 - (i) a part of the Project which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damages as a direct result of this defective condition and not as described in sub-paragraph (ii) below;
 - (ii) a part of the Project which is lost or damaged in order to reinstate any other part of the Project if this other part is in a defective condition due to a defect in design, materials or workmanship;

- (iii) a part of the Project which has been taken over by GWA, except to the extent that the Contractor is liable for the loss or damage; and
- (iv) Goods while they are not in the country, subject to Sub-Clause 14.5 [*Plant and Materials intended for the Project*].

If, more than one (1) year after the bid submission date, the cover described in sub-paragraph (d) above ceases to be available at commercially, reasonable terms, the Contractor shall (as insuring Party) give notice to GWA, with supporting particulars. GWA shall then: (i) be entitled subject to Sub-Clause 2.4 [GWA's Claims] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover; and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 18.1 [*General Requirements for Insurances*].

18.3 Insurance Against Injury to Persons and Damage to Property

The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [*Insurance for Project and Contractor's Equipment*]) or to any person (except persons insured under Sub-Clause 18.4 [*Insurance for Contractor's Personnel*]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Certificate of Completion.

The insurance shall be for a limit per occurrence of not less than the amount of five million dollars (\$5,000,000.00), with no limit on the number of occurrences. If an amount is not stated in the Contract, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions, the insurances specified in this Sub-Clause:

- (a) shall be effected and maintained by the Contractor as insuring Party;
- (b) shall be in the joint names of the Parties;
- (c) shall be extended to cover liability for all loss and damage to GWA's property (except things insured under Sub-Clause 18.2 arising out of the Contractor's performance of the Contract; and
- (d) may however exclude liability to the extent that it arises from:
 - (v) GWA's right to have the Permanent Project executed on, over, under, in or through any land, and to occupy this land for the Permanent Project;
 - (vi) Damage which is an unavoidable result of the Contractor's obligations to execute the Project and remedy any defects; and
 - (vii) A cause listed in Sub-Clause 17.3 [*GWA's Risks*], except to the extent that cover is available at commercially reasonable terms.

18.4 Insurance for Contractor's Personnel

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

GWA shall also be indemnified under the policy of insurance, except that this insurance may exclude losses and claims to the extent that they arise from any act or intentional acts of GWA or of GWA's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Project. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

19. FORCE MAJEURE

19.1 Definition of Force Majeure

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control;
- (b) which such Party could not reasonably have foreseen prior to entering into the Contract;
- (c) which, having arisen, such Party could not reasonably have avoided or overcome; and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as condition (a) to (d) above are satisfied:

- (i) war, hostilities (whether war to be declared or not), invasion, act of foreign enemies;
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
- (iii) riot, commotion, disorder strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Sub-contractors;
- (iv) munitions of war, explosive material, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

19.2 Notice of Force Majeure

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within fourteen (14) days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused of performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party Under the Contract.

19.3 Duty to Minimize Delay

Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

19.4 Consequences to Force Majeure

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [*Notice of Force Majeure*], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Clause 20 [*Contractor's Claims and Dispute Resolution Procedures*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [*Definition of Force Majeure*] and, in the case of sub-paragraphs (ii) to (iv), occurs in Guam, payment of any such Cost.

After receiving this notice, GWA shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree to determine these matters.

19.5 Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Project to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events

or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

19.6 Optional Termination. Payment and Release

If the execution of substantially all the Project in progress is prevented for a continuous period of ninety (90) days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [*Notice of Force Majeure*], or for multiple periods which total more than one hundred forty (140) days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect seven (7) days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*].

Upon such termination, GWA shall pay to the Contractor:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the cost of Plant and Materials ordered for the Project which have been delivered to the Contractor, or of which Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) GWA when paid for by GWA, and the Contractor shall place the same at GWA's disposal;
- (c) any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Project;
- (d) the cost of removal of Temporary Projects and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the Cost of repatriation of the Contractor's staff and labor employed wholly in connection with the Project at the date of termination.

19.7 Release from Performance Under the Law

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance.

20. CONTRACTOR'S CLAIMS AND DISPUTE RESOLUTION PROCEDURES

20.1 Informal Dispute Resolution.

All Claims by the Contractor shall be submitted in writing to the General Manager for the Guam Waterworks Authority. All claims must state with specificity the underlying basis for the claim and be supported by all relevant

photos, documents, memoranda or other materials that the Contractor feels is necessary to support the claim. Claims not adequately supported will be denied on those grounds and the Contractor may resubmit the claim if appropriate.

Once a claim has been submitted to the GWA General Manager, the claim will be either approved or denied within 15 days following receipt of the claim. If the claim is denied, the denial shall state with specificity the underlying justification for the denial.

20.2 Formal Dispute Resolution.

All formal claims will be processed in accordance with the laws of Guam that relate to the handling of such claims.

4. OPERATIONAL GUARANTEE

4.1 General

This Section sets out;

- a) the operational guarantees referred to in the Contractors proposal ref
- b) the preconditions to the validity of the operational guarantees, either in production and / or consumption, set forth below;
- c) the minimum level of the operational guarantee;
- d) the formula for calculation of liquidated damages for failure to attain the operational guarantees.

4.2 Preconditions

No precondition

4.3 Preconditions

i) Raw Materials and Utilities Consumption

a) Specific Electricity Consumption (SEC) – Tamuning SPS

The specific electricity consumption measurement shall be made at the electricity meter located at the inlet of the plant (which shall cover all consumptions) which shall be compared with the water measured at the outlet of the plant. These two measurements shall be based on 168 hours continues operation, during this period all resins and filters shall be cleaned and/or backwashed as often as necessary but at least once. The specific electricity consumption shall be lower than [xxxxx].

The calculation formula shall be:

$$\text{SEC (xxxxx)} = \frac{\text{plant inlet electricity meter 168 hours}}{\text{outlet flow measured during 168 hours}}$$

SEC % = Spec Electricity Cons.(xxxxx)
xxxxx xxxx/m3

c) Chemicals

| Name | Consumption (xxxx) | Remark |
|------|-----------------------|--------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

5. CHANGE ORDERS AND AMENDMENTS

For any variations to the Contract as instructed by GWA under Clause 13 of the Contract, the Contractor shall provide a full detailed cost for each such modification. The value of each modification shall be agreed between the Contractor and GWA. Failing any agreement on the value of such change, GWA shall determine such value under Sub-Clause 3.5 of the Contract.

6. FORCE ACCOUNT WORK

In the event any additional Force Account Work is instructed pursuant to Clause 13.6 of the Contract the following Force Account Work Schedule shall be used to assess their value for payment;

| Cost Element | Unit | Rate in US\$ |
|----------------------------------|----------------------------------------------------------------------------|--------------|
| Labor | Labor rates to include welfare, insurance, plus any and all other benefits | |
| Labor Rate –Labor | Per hour | |
| Labor Rate – Carpenter | Per hour | |
| Labor Rate – Steel bending labor | Per hour | |
| Labor Rate – Bricklayer | Per hour | |
| Labor Rate – Stringer | Per hour | |
| Labor Rate – Odd-job worker | Per hour | |
| Labor Rate – Engineer | Per hour | |
| Labor Rate – Manager | Per hour | |

| Cost Element | Unit | Rate in US\$ |
|---------------------------------|-------------------|--------------|
| Overheads (as % of above rates) | | |
| Permanent Material | % on direct costs | |
| Consumables/ temp materials | % on direct costs | |
| Temporary Utilities | % on direct costs | |
| Plant and Equipment | % on direct costs | |

In the event no applicable rate or price appears in the above Force Account Schedule the Contractor and the Employer shall agree a new rate or price in accordance with prevailing market costs.

In Witness whereof, the parties hereto have cause this Agreement to be executed on the day and year that the last signature is affixed hereto.

The Guam Waterworks Authority

Signature: _____
Leonard J. Olive
GWA General Manager

Date: _____

The Contractor:

Signature: _____
Authorized Representative

Date: _____

CORPORATE CERTIFICATION AS TO AUTHORIZATION TO BIND

(must be filled out prior to contract execution)

I, _____ certify that I am
the duly elected Secretary of the corporation named as Contractor herein; that
_____ who signed this contract on behalf of the Contractor, was
then _____ of said corporation by authority of said
corporation of its governing body, and is within the scope of its corporate powers to bind said
corporation to the terms and conditions of this Contract.

Signed: _____

Date: _____

(CORPORATE SEAL)

ATTACHMENT A

FORM OF IRREVOCABLE LETTER OF CREDIT

Issuing Date: _____

To: The Guam Waterworks Authority (GWA)

Irrevocable Letter of Credit No. _____

This Irrevocable Letter of Credit is hereby issued to serve as the performance security of (name of the Contractor) (hereinafter called the "Contractor"), for Contract No. _____ dated _____ between you and the Contractor for the design, finance and construction of the Moratorium Project as set forth in GWA's Bid ("Project").

The (name of bank) (hereinafter called the "Bank") hereby unconditionally and irrevocably guarantees and binds itself, its successors and assigns to pay you, without recourse, up to the total amount of (currency used in the Contract) representing fifteen percent (20%) of the Contract Price in (name of currency) and accordingly covenants and agrees as follows:

- (1) On the Contractor's failure of the faithful performance of all the Contract Documents, agreed modifications, amendments, additions and alternations thereto that may hereinafter be made including replacement and/or making good of defective work (hereinafter called the "failure of performance") and determined by you and notwithstanding any objection by the Contractor, the Bank shall immediately, on GWA's demand at any branch located on Guam in a written notification stating the failure of performance by the Contractor, pay you such amount or amounts as required by you not exceeding the aggregate total as stated above in the manner specified in the said notification.
- (2) Any payment hereunder shall be made free and clear of and without deduction for or on account of any present or future taxes, duties, charges, fees, deductions or withholding of any nature whatsoever and by whoever imposed.
- (3) The covenants herein contained constitute an unconditional and irrevocable direct obligation of the Bank. No alteration in the terms of the Contract to be performed thereunder and no allowance of time by you or any other act or omission by you which but for this provision might exonerate or discharge the Bank shall in any way release the Bank from any liability hereunder.
- (4) This guarantee shall remain valid and in full force and effect until the expiration of the warranty period specified in the Terms and Conditions of the Contract.

Very truly yours,

Issuing Bank: _____

Signed by: _____

(Printed name and designation of officials authorized to sign on behalf of issuing bank)

Signature: _____

Official Seal: _____

ATTACHMENT B

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENT, that _____
(Name of Contractor)

hereinafter called the Contractor and _____
(Name of Surety)

a corporation or company duly organized under the laws of the Territory of Guam and otherwise authorized to transact business in the Territory of Guam, as Surety, are held and firmly bound unto the Guam Waterworks Authority, as obligee, hereinafter called the "Authority" for use and benefit of claimants as herein below defined, in the amount of _____ Dollars (\$ _____) for the payment whereof the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Contractor has, by written Agreement dated _____, 200__ entered into a Contract with the Authority for the _____ (project), in accordance with Drawings and Specifications prepared by Guam Waterworks Authority, which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION is such that, if the contractor shall promptly and faithfully perform said Contract, and shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for used in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- A. The Surety hereby waives notice of any alteration or extension of the time made by the Authority provided the same is within the scope of the Contract.
- B. Whenever the contractor shall be and is declared in default by the Authority to be in default under the Contract, the Authority having performed its obligations hereunder, the Surety may promptly remedy the default or shall promptly:
 - 1. Complete the Contract in accordance with its terms and conditions; or

2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Authority and the Surety of the lowest responsible bidder, arrange for a Contract between such bidder and the Authority, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts or completion arranged under this paragraph) sufficient funds to pay the cost of completion less than balance of the Contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph shall mean the total amount payable by the Authority to Contractor under the Contract and any amendments thereto, less the amount properly paid by the Authority to Contractor. No right of action shall accrue on this bond to or for use of any person or corporation other than the Authority or successors of the Authority.

C. A claimant is defined as one having a direct contract with the Contractor or with a subcontractor of the Contractor for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

The above named Contractor and Surety hereby jointly and severally agree with the Authority 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 of 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 use of such claimant, prosecute the suit to final judgment to final judgment for such sum or sums as may be justly due the claimant, and have execution thereon. The Authority shall not be liable for the payment of any costs or expenses of any such suit.

D. No suit or action shall be commenced hereunder by any claimant:

1. Unless claimant, other than one having a direct contract with the contractor, shall have given written notice to any two (2) of the following:

The Contractor, the Authority, or the Surety above named, 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 personally served by mailing the same by registered

mail or certified mail, postage prepaid, in an envelope addressed to the Contractor at any place the principal maintains an office or conducts its business.

2. After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.

3. Other than in a court of competent jurisdiction in and for the Territory of Guam.

E. The amount of the payment bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

SIGNED AND SEALED THIS _____ day of _____, 20____, A.D.

IN THE PRESENCE OF:

*(Note: If the Principals are Partners,
each must execute the Bond)*

(WITNESS)

(CONTRACTOR)

(SEAL)

(TITLE)

(MAJOR OFFICER OF SURETY)

(MAJOR OFFICER OF SURETY)

(TITLE)

(TITLE)

(RESIDENT GENERAL AGENT)