

**AGREEMENT BETWEEN GUAM DEPARTMENT OF EDUCATION AND
MEILBERT DE VERA LOPEZ DBA NORTHERN CONSTRUCTION
FOR SERVICES PURSUANT TO GDOE IFB 010-2023**

THIS AGREEMENT is entered into by and between the **GUAM DEPARTMENT OF EDUCATION** ("GDOE"), an agency of the government of Guam, whose address is 501 Mariner Avenue, Barrigada, Guam 96913 and **MEILBERT DE VERA LOPEZ DBA NORTHERN CONSTRUCTION** ("Contractor"), whose address is 586 Marine Corps Drive, Hafa Adai Commercial II, Unit 202, Yigo, Guam 96929 (collectively referred to herein as the "Parties").

WHEREAS, GDOE issued an Invitation to Bid ("IFB") **IFB 010-2023** soliciting for **F.B. Leon Guerrero Middle School Refurbishment Project (Multi-Step)** attached herewith as **Exhibit 1**;

WHEREAS, GDOE has determined it does not have adequate personnel or resources to perform the services contemplated in this agreement and it is in the best interests of GDOE to have such services performed under contract;

WHEREAS, GDOE may designate a third party to act as GDOE's Project Manager for the purpose of monitoring or reviewing Contractor's work as described herein;

WHEREAS, Contractor responded to the IFB by submitting a bid ("Bid") to provide services in accordance with the IFB, and was selected as the most qualified offeror;

WHEREAS, by submitting its Bid, Contractor warrants and represents that it possesses the necessary knowledge, resources and experience to perform the work and services herein described professionally, skillfully and diligently; and

WHEREAS, GDOE desires to retain Contractor for specific services on the terms and conditions set forth in this Agreement and Contractor has agreed to accept such terms and conditions;

WITNESSETH, in consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

I. Statement of Services to be Performed.

A. **Scope of Work.** The Contractor shall provide construction services as such services are described in the following documents that are incorporated herein and included as Exhibits to this Agreement:

(1) **GDOE IFB 010-2023**, including its Plans and Specifications and all attachments and amendments thereto **Exhibit 1**

(2) **Contractor's Bid Exhibit 2.**
The services to be performed hereunder are also referred to herein as "the work."

B. Contractor Provisions of Resources. Contractor agrees to furnish all qualified personnel, facilities, tools, equipment, materials and transportation to perform the services and work provided for in this Agreement. Contractor represents that it and its employees possess the professional and technical expertise necessary to perform the services called for in this Agreement in a competent, professional manner, in line with the services of a typical Contractor engaged in the same and similar field as Contractor herein. GDOE may, in its sole discretion and based upon availability, provide staff assistance to Contractor in furtherance of this Agreement. The Contractor shall insure that its employees engaged in work hereunder are informed of all relevant provisions of this Agreement.

C. Other Work. GDOE acknowledges and agrees that Contractor may provide services to other clients, persons or companies apart from the services performed in this Agreement, as long as the performance of such other services does not in any way conflict with or hinder the performance of services herein. In the event GDOE discovers or determines that the Contractor is providing services to a third party which conflicts with or hinders the performance of services under this Agreement, Contractor must immediately cease performing those third party services upon being provided written notice by GDOE and GDOE may invoke any further available remedies under the terms of this Agreement.

D. Location of Services. Contractor will perform the services under this Agreement at GDOE schools and buildings unless otherwise approved by GDOE.

II. Term of Agreement. This agreement shall be effective upon its full execution by all necessary parties and shall remain in effect until **one hundred twenty (120) days** after the issuance of a Notice to Proceed by GDOE unless otherwise agreed to in writing by the parties hereto. Work to be performed by the Contractor under this Agreement shall commence upon issuance of a Notice to Proceed issued by GDOE.

III. Compensation.

A. Compensation. Upon final completion, Contractor shall be compensated not exceeding the amount of **Six Million Two Hundred Fifty-Seven Thousand Two Hundred Seventeen Dollars and Twenty-Six Cents (\$6,257,217.26)**, unless otherwise agreed to pursuant to the terms of the Agreement.

B. Expenses. Contractor shall be solely responsible for all expenses incurred in the performance of services under this Agreement unless otherwise expressly provided for herein.

C. No Compensation Prior to Approval of Agreement. GDOE shall not be liable to Contractor for any services performed by Contractor prior to full execution of this Agreement by all parties, and Contractor expressly waives any and all claims for services performed in expectation of this Agreement prior to its full execution.

D. Final Payment. Final payment shall be made upon satisfactory performance of all services required to be performed by Contractor under this Agreement. Prior

to the final payment due Contractor, and as a condition precedent thereto, Contractor shall execute and deliver to GDOE a release in form approved by GDOE of claims against GDOE arising under this Agreement. Contractor expressly waives the provision of Section 82602 of Title 18, Guam Code Annotated.

E. Payment. All rates and prices and payments to the Contractor shall be in the currency of the United States.

IV. Termination/Modification for Lack of Funds. GDOE may terminate or modify this Agreement based upon a lack of funding. In such an event, GDOE shall promptly provide notice to Contractor and within twenty (20) days of the notice, the Parties shall renegotiate the terms of this Agreement in good faith. If the parties are unable to reach an agreement on the renegotiation, then either Party may terminate this Agreement pursuant to the terms herein.

V. Contact Person. The Contractor agrees that, during the term of this Agreement, it shall identify a primary contact person who is familiar with the services being performed hereunder and who shall be responsible to the questions and direction of GDOE. The contact person must be identified in writing within fifteen (15) days after full execution of this Agreement by all parties. GDOE reserves the right to request replacement of the contact person designated by the Contractor under this Agreement.

VI. Confidentiality.

A. Information. The Contractor hereby warrants that it shall not disclose any documents, materials or information, whether verbal, written, recorded magnetic media or otherwise (collectively, the "Information"), made available or acquired for the purpose of carrying out this Agreement. Only authorized persons shall use and have access to the Information, and then only for the period such access is required to perform services under this Agreement. All necessary steps shall be taken by the Contractor to safeguard the confidentiality of the Information in conformance with any applicable United States and Guam laws, statutes and regulations.

The Contractor shall keep copies of the Information and the provisions of this Section shall remain in effect as long as determined by GDOE. All of the Information shall be returned promptly after use to GDOE and all copies or derivations of the Information shall be physically and/or electronically destroyed. Contractor shall include a letter attesting to the complete return of Information and documenting the destruction of copies and derivations with the returned Information.

The Contractor shall not enter into any Agreements or discussions with a third party concerning such Information without the prior written consent of GDOE, and then only if the Contractor requires the third party(ies) to agree to the terms of the confidentiality set forth herein and the Information is provided to such third party(ies) only for purposes of enabling the Contractor to discharge its responsibilities under this Agreement.

It is specifically provided that the limitations contained in this paragraph A shall not apply:

- (i) to the extent required by applicable law,
- (ii) to the extent that any Information is now or hereafter becomes part of the public domain, but only to the limited extent that such Information, or any portion thereof, is in the public domain not as a result of any breach or violation of this Agreement, or,
- (iii) to the extent that a party is directed otherwise under the terms of a valid and effective order, issued by a court of competent jurisdiction.

B. **Liability.** Failure to comply with the provisions of Paragraph A shall subject the Contractor to liability, including all damages and injunctive relief.

VII. Conflicts of Interests/Ethics

A. The Contractor warrants and covenants that it has not violated and will not violate Guam's procurement law or regulations pertaining to ethics in public contracting.

B. It is expressly understood that breach of any of the covenants or warranties in this Section on the part of the Contractor is a material breach of this Agreement and shall entitle GDOE to immediately terminate this Agreement. Contractor agrees that in the event of a breach or violation of this Section, GDOE shall have the right to terminate this or any other Agreement with the Contractor without liability.

C. Notwithstanding the provisions contained in this Agreement with regard to the assignment or subcontracting of any work under this Agreement, Contractor agrees that with respect to any subcontractor it engages to perform any work contemplated by this Agreement that any Agreements it enters into with such subcontractor(s) will include provisions which parallel this Section VII and shall require any subcontractor to execute a statement of no conflict of interests to GDOE and provide such statement to GDOE.

VIII. Waiver. No waiver by any party of any right on any occasion shall be construed as a bar to or waiver of any right or remedy on any future occasion.

IX. Severability. If any provision of this Agreement shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable, the remaining provisions herein contained shall nonetheless continue to be valid, operative and enforceable as though the invalid, inoperative or unenforceable provision had not been included in the Agreement.

X. Survival of Warranties. All representations, warranties, agreements, covenants and obligations in this Agreement shall be deemed to have been relied upon by the other party, and shall survive the completion of this Agreement and shall not merge in the performance of any obligation by any party hereto.

XI. Fees and Expenses. Each of the Parties shall bear its own expenses in connection with the negotiation and consummation of the transactions contemplated by this Agreement.

XII. Notices. All invoices, reports, correspondence, notices, requests, demands and other communications hereunder shall be in the English Language, in writing. All notices required to be given under this Agreement by either party to the other may be effected by personal delivery, or by mail (registered or certified, postage, prepaid with return receipt requested). Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of the day of receipt or the fifth day after mailing, whichever occurs first. Notices shall be addressed and delivered to the parties as follows, provided that each party may change the address by giving the other party written notice in accordance with this section:

TO GDOE: **GUAM DEPARTMENT OF EDUCATION**
Attention: ADMINISTRATOR
Office of Supply Management
P.O. Box DE
Hagåtña, Guam 96932

With a copy to GDOE's Legal Counsel of Record.

TO CONTRACTOR: **MEILBERT DE VERA LOPEZ**
DBA NORTHERN CONSTRUCTION
586 Marine Corps Drive,
Hafa Adai Commercial II, Unit 202,
Yigo, Guam 96929

XIII. Assignment/Subcontractors. It is expressly acknowledged that Contractor is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not Contractor utilizes one or more subcontractors for such purpose. The right and interest of Contractor under this Agreement (including, but not limited to, Contractor's right to or interest in any part of or all payments under this Agreement) may not be assigned, transferred or subcontracted to any other person, firm, corporation or other entity, whether by agreement, merger, operation of law or otherwise, without the prior, express written consent of GDOE. In the event of a permissive subcontract or assignment of this Agreement by Contractor, Contractor agrees that any subcontractors retained by Contractor or assignees shall be subject to all provisions of this Agreement.

XIV. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of the Parties hereto and their respective successors, assigns and transferees, except as otherwise provided for under the terms of this Agreement.

XV. Scope of Agreement. This Agreement and its attachments, the IFB, and Bid collectively:

(i) supersede any and all other Agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and;

(ii) contain all of the covenants and Agreements between the Parties

with respect to such subject matter in any manner whatsoever. The Contractor and GDOE each acknowledge that no representations, inducements, promises or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in the Agreement shall be valid or binding.

XVI. Captions. All Section and paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the content of the Agreement.

XVII. Counterparts. This Agreement may be executed in counterparts, all of which taken together shall be deemed one original.

XVIII. Governing Law and Forum Selection. Except to the extent U.S. federal law is applicable, the laws and regulations of Guam shall govern the interpretation, effect, and validity of this Agreement. Any court action shall be exclusively in Guam.

XIX. Compliance with Laws.

A. In General The Contractor shall comply with all U.S. and Guam laws, statutes, regulations and ordinances applicable to this Agreement. The Contractor represents and warrants that it is fully licensed to do business in Guam to render the services to be provided herein.

B. Non-Discrimination in Employment. The Contractor agrees:
(i) not to unlawfully discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap; (ii) to include a provision similar to that contained in subsection (i) above in any subcontract or assignment agreement except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors and/or assignees to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause. Contractor shall comply with all conditions and requirements of Guam Law, including but not limited to Title 22 Chapter 5 Guam Employment Relations Act of the Guam Code Annotated (GCA).

C. Debarment and Suspension (Executive Orders 12549 and 12689). A contract award must not be made to parties listed on the government exclusions in the System for Award Management, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 and 12689, "Debarment and Suspension."

D. Procurement of Recovered Materials. GDOE shall comply with Sect. 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Parties agree to abide by and comply, to the extent applicable by Federal law. See 2 CFR Part 200, Appendix II, Para. J, & 2 CFR Sect. 200.322.

E. Clean Air Act & the Federal Water Pollution Control Act. Contractor shall abide by and comply with the Clean Air Act & the Federal Water Pollution Control Act, to the extent applicable by Federal law. See 2 CFR Part 200, Appendix II, Para. G.

F. Byrd Anti-Lobbying Amendment. In accordance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), Contractor shall not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by 31 U.S.C. 1352. See 2 CFR Part 200, Appendix II, Para. 1. Contractor agrees to abide by and comply with the Byrd Anti-Lobbying Amendment to the extent applicable by Federal law.

G. Contract Work Hours & Safety Standards Act. Contractor shall abide by the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), as applicable to the Agreement and under Federal law. Under 40 U.S.C. 3702 of the Act, Contractor must compute wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Contractor shall abide by 40 U.S.C. 3704, as applicable, to the construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. See 40 U.S.C. Sect. 3701-3708; 29 CFR Part 5; 2 CFR Part 200, Appendix II, Para E.

XX. Retention and Access to Records and Other Review. The Contractor, including subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to the services performed and costs incurred, and to make such materials available at its respective offices at all reasonable times during the Agreement period and for six (6) years from the date of the final payment under the Agreement, for inspection by GDOE. GDOE agrees to comply with reasonable requests of Contractor to provide access to all documents and GDOE property reasonably necessary to the performance of Contractor's services under this Agreement. The conditions of this section shall be placed in any subcontract or assignment arising under this Agreement.

XXI. Liability. GDOE not Liable. GDOE assumes no liability for any accident, loss, claim, judgment, action or injury that may occur to the Contractor and/or the Contractor's officers, directors, agents, servants, subcontractors and/or employees, and/or to the personal property of any such person or entity, arising out of the performance of services under this Agreement except to the extent caused or contributed to by the negligent act or omission of GDOE. In addition, no Board member, officer, agent, or employee of GDOE shall be liable personally under or by reason of this Agreement or any of its provisions. In addition, GDOE assumes no liability for any accident or injury that may occur to Contractor's officers, directors, employees, agents, or dependents while traveling to and from Guam in furtherance of this Agreement.

XXII. Modifications including those Due to Public Welfare, Change in Law or Change in Marketing Conditions. GDOE shall have the unilateral power to modify the Agreement at any time subject to the written agreement of Contractor. GDOE shall have the power to make changes in the Agreement and to impose new rules and regulations on the Contractor

under the Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare or due to a change in law. GDOE shall give the Contractor notice of any proposed change in the Agreement and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Contractor. In the event GDOE materially alters the obligations of the Contractor, or the benefits to GDOE, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of the Contractor, then the Contractor or GDOE shall be entitled to an adjustment in the rates and charges established under the Agreement. Contractor shall be entitled to terminate this Agreement rather than accept modified terms. Nothing contained in the Agreement shall require any party to perform any act or function contrary to law. GDOE and the Contractor agree to enter into good faith negotiations regarding modifications to the Agreement, which may be required in order to implement changes in the interest of the public welfare or due to changes in law. When such modifications are made to the Agreement, GDOE and the Contractor shall negotiate in good faith a reasonable and appropriate adjustment for any changes in services or other obligations required of the Contractor directly and demonstrably due to any modification in the Agreement under this clause.

XXIII. Independent Contractor and its Employees.

A. Status of Contractor. The Contractor and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for GDOE, and are not employees of GDOE. The Contractor and its officers, agents, servants and employees shall not accrue vacation or sick leave, participate in the Government of Guam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to Government of Guam employees as a result of this Agreement. Contractor agrees that Contractor and its aforementioned employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of GDOE at any time during the duration of this Agreement, and will otherwise comply with the provisions of the Guam Procurement Law regarding ethics in public contracting (Title 5 Guam Code Annotated, Chapter 5, Article 11, and its associated rules and regulations). Nothing in this Agreement or any action taken under this Agreement shall be deemed or construed in any manner or for any purpose to evidence or establish as between Contractor and GDOE a relationship of partnership, agency, association, joint venture or representative, nor does this Agreement authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by GDOE for the Contractor.

B. Liability. The Contractor assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, or any other payments required by the governments of the U.S. and Guam, if required. Contractor is responsible for paying when due any and all income taxes, gross receipts taxes, or any other taxes or assessments incurred as a result of the services performed by the Contractor and Contractor's employees or agents under this Agreement or the compensation paid to Contractor for services performed under this Agreement. Furthermore, Contractor shall maintain at the Contractor's expense all necessary insurance for its employees including but not limited to Worker's

Compensation, Errors and Omissions, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying IFB to this Agreement. Contractor agrees to hold harmless and indemnify GDOE, its officers, directors, employees, agents, representatives, successors and assigns, for any and all claims, demands, costs, losses, fees, penalties, interest, or damages, including attorney's fees, which may be brought or asserted due to (i) any injury, death, or property damage arising from the negligence or other wrongful or tortuous acts of Contractor or Contractor's employees, officers, contractors, directors, agents, representatives, successors, or assigns, or (ii) Contractor's failure to comply with terms of this subparagraph B.

C. Wage and Benefits Compliance. Contractor warrants it shall comply with all applicable federal and local laws, rules, and regulations regarding the payment of minimum wages and benefits, in particular in accordance with the Wage Determination for Guam issued and promulgated by the U.S. Department of Labor and with Guam Public Law 26-111. Contractor assumes all liability for, and hereby indemnifies GDOE from, any violation of any applicable law, rule, or regulation relating to the payment of wages or benefits.

XXIV. Disclosure. The Contractor hereby represents that it has disclosed to GDOE all matters regarding Contractor which if not disclosed to GDOE would materially affect GDOE's decision to enter into this Agreement with Contractor.

XXV. Disposition of Property and Materials; Intellectual Property Rights.

A. All plans, outlines, briefs, memoranda, studies, reports, analyses and all other work product and materials incidental or otherwise ("Work Product") which are produced by reason of this Agreement shall be and remain the property of GDOE, regardless of whether Contractor is in possession of such Work Product, and may be used by GDOE without permission from Contractor and without any additional costs to GDOE.

B. All Work Products, including any and all intellectual property rights in said Work Product, arising out of the Agreement shall be the sole and exclusive property of GDOE. Contractor explicitly acknowledges that GDOE possesses exclusive rights to the Work Product arising out of this Agreement. Contractor shall not use or permit others to use in any way or form the Work Product without the express written consent of GDOE.

XXVI. Mandatory Representations by Contractor:

A. Persons Convicted of Sex Offense. Contractor warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of Contractor while on government of Guam property, with the exception of public highways. If any employee of Contractor is providing services on government property and is convicted subsequent to an award of a contract, then Contractor warrants that it will notify GDOE of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services on government property. If Contractor is found to

be in violation of any of the provisions of this paragraph, then GDOE will give notice to Contractor to take corrective action. Contractor shall take corrective action within twenty-four (24) hours of notice from GDOE, and Contractor shall notify GDOE when action has been taken. If Contractor fails to take corrective steps within twenty-four (24) hours of notice from GDOE, then GDOE in its sole discretion may temporarily suspend this agreement.

B. Gratuities and Kickbacks. Contractor warrants it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 §11107.

C. Contingent Fees. Contractor warrants it has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies.

D. Ethical Standards. Contractor warrants it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

XXVII. Disputes.

A. GDOE and the Contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, this procurement and any resulting contract through mutual agreement. If the controversy is not resolved by mutual agreement, then the Contractor shall request the government in writing to issue a final decision within sixty days after receipt of the written request. If the government does not issue a written decision within sixty days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as though the government had issued a decision adverse to the Contractor.

B. GDOE shall immediately furnish a copy of the decision to the Contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

C. GDOE's decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision.

D. This subsection applies to appeals of GDOE's decision on a dispute. For money owed by or to GDOE under this Agreement, the Contractor shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Office of the Attorney General no later than eighteen months after the decision is rendered by GDOE or from the date when a decision should have been rendered. For all other claims by or against GDOE arising under this Agreement, the Office of the Public Auditor has jurisdiction over the appeal from the decision of GDOE. Appeals to the Office of the Public Auditor must be made within sixty days of GDOE's decision or from the date the decision should have been made.

E. The Contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

F. The Contractor shall comply with GDOE's decision and proceed diligently with performance of the Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, the Agreement, except where the Contractor claims a material breach of the Agreement by GDOE. However, if GDOE determines in writing that continuation of services under the Agreement is essential to the public's health or safety, then the Contractor shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by GDOE.

XXVIII. Attachments, Exhibits, Schedules, and Entire Agreement. This Agreement, including its Attachments, Exhibits and Schedules, constitutes the entire Agreement and supersedes all prior written or oral understandings. No Agreement, oral or written, expressed or implied, has been made by any party hereto, except as expressly provided herein. All prior Agreements and negotiations are superseded hereby. This Agreement and any duly executed amendments hereto constitute the entire Agreement between the Parties hereto.

XXIX. Computation of Time. Whenever this Agreement provides for a time period of ten (10) days or less days, weekends and Government of Guam holidays are not included in the computation. When this Agreement provides for a time period of over ten (10) days, weekends and Government of Guam holidays are to be included in the computation.

XXX. Partial Invalidity. If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue to be in full force and effect.

XXXI. Amendments/Modifications. Any amendment or modification to this Agreement will be effective only if it is in writing and signed by both parties.

XXXII. Authorization for Change Orders. Any modifications to the quantities of services or equipment to be delivered pursuant to this Agreement, and the prices therefore, may be made by a written Change Order signed by an authorized representative of GDOE and Contractor. Change Orders may only be made on the conditions that the work to be performed by a Change Order is not inconsistent with the scope of work under this Agreement, and that where there is an increase in the costs for services, GDOE shall certify in writing that funds are available for the increased cost prior to such Change Order becoming effective.

XXXIII. Contract Performance and Payment Bonds.

A. **Performance Bonds.** Upon execution of this Agreement, Contractor shall deliver to GDOE a performance bond by a surety company authorized to do business in Guam or by such other method as may be approved by GDOE in the amount of one hundred percent (100%) of the price of services under this Agreement. Such Performance Bond shall be in the form attached herewith as **Exhibit 3**.

B. Payment Bonds. Upon execution of this Agreement, Contractor shall deliver to GDOE a payment bond by a surety company authorized to do business in Guam or by such other method as may be approved by GDOE in the amount of one hundred percent (100%) of the price of services under this Agreement. Such payment bond shall be in the form attached herewith as **Exhibit 4**. During performance of services under this Agreement and at its option, GDOE may reduce the required coverage of the payment bond as payments are made by the contractor for labor and material used or reasonably required in the performance of services under this Agreement.

XXXIV. Change Orders. GDOE, at any time and without notice to sureties, in a signed writing designated or indicated to be a change order may order (1) changes in the work within the scope of this Agreement; and (2) changes in the time for performance of services under this Agreement that do not alter the scope of the contract.

A. Changes in the Work. Changes in the work may be accomplished after execution of the Agreement by a written Change Order signed by GDOE subject to the limitations stated in this Agreement.

B. Change Orders. A Change Order is a written instrument prepared by GDOE and the Contractor stating their agreement upon a change in the work; the amount of the adjustment, if any, in the price under this Agreement; and the extent of the adjustment, if any, in the time for performance of the work under this Agreement.

C. Adjustments of Price or Time for Performance. If any such change order increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in contract price made pursuant to this section shall be determined in accordance with the Price Adjustment Clause herein. Failure of the parties to agree to an adjustment shall not excuse Contractor from proceeding with the Agreement as changed, provided that the territory promptly and duly makes such provisional adjustments in payments or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation or an extension of time for completion.

D. Written Certification. The Contractor shall not perform any change order in excess of Five Thousand Dollars (\$5,000.00) unless it bears, or the Contractor has separately received, a written certification, signed by an appropriate fiscal officer or other responsible official that funds are available therefore. If acting on good faith, the Contractor may rely upon the validity of such certification.

E. Time Period for Claim. Within 30 days after receipt of a written change order under this section, unless such period is extended by GDOE the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless GDOE is prejudiced by the delay in notification.

F. Claim Barred After Final Payment. No claim by the Contractor for an

adjustment hereunder shall be allowed if notice is not given prior to final payment under this Agreement.

G. Claims Not Barred. In the absence of change order, nothing in this section shall restrict the contractor's right to pursue a claim arising under this Agreement if pursued in accordance with the provision herein regarding claims based on GDOE's actions or omission or for breach of contract.

XXXV. Variations in Estimated Quantities.

A. Variations Requiring Adjustments. Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than 15% above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115% or below 85% of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, GDOE shall, upon receipt of a timely written request for an extension of time, prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of GDOE is justified.

B. Adjustments of Price. Any adjustment in price made pursuant to this section shall be determined in accordance with the Price Adjustment Clause herein.

XXXVI. Suspension of Work.

A. Suspension for Convenience. GDOE may order the contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as GDOE may determine to be appropriate for the convenience of the territory.

B. Adjustment of Cost. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of GDOE in the administration of this Agreement, or by the failure of GDOE to act within the time specified in this Agreement (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract necessarily caused by such unreasonable suspension, delay, or interruption and the Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent:

that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor, or

(1) for which an adjustment is provided for or excluded under any other provision of this contract.

C. Time Restriction on Claim. No claim under this clause shall be allowed:

(1) for any costs incurred more than twenty (20) days before the contractor shall have notified GDOE in writing of the act or failure to act involved (but this

requirement shall not apply as to a claim resulting from a suspension order); and

(2) unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

D. **Adjustments of Price.** Any adjustment in price made pursuant to this section shall be determined in accordance with the Price Adjustment Clause herein.

XXXVII. Differing Site Conditions.

A. **Notice.** The contractor shall promptly, and before such conditions are disturbed, notify GDOE of:

(1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or

(2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

B. **Adjustments of Price or Time for Performance.** After receipt of such notice, GDOE shall promptly investigate the site, and if it is found that such conditions do materially so differ and cause an increase in the contractor's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed as a result of such conditions, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in price made pursuant to this section shall be determined in accordance with the Price Adjustment Clause herein.

C. **Timeliness of Claim.** No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in this clause; provided, however, that the time prescribed therefore may be extended by GDOE in writing.

D. **No Claim After Final Payment.** No claim by the contractor for an adjustment hereunder shall be allowed if asserted after final payment under this contract.

E. **Knowledge.** Nothing contained in this section shall be grounds for an adjustment in compensation if the contractor had actual knowledge of the existence of such conditions prior to the submission of bids.

XXXVIII. Price Adjustment Clause.

A. **Price Adjustment Methods.** Any adjustment in price pursuant to this Agreement shall be made in one or more of the following ways:

(1) by agreement on a fixed price adjustment before commencement of

the pertinent performance or as soon thereafter as practicable;

(2) by unit prices specified in the Agreement or subsequently agreed upon;

(3) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;

(4) in such other manner as the parties may mutually agree; or

(5) in the absence of an agreement between the parties, by a unilateral determination by GDOE of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by GDOE in accordance with generally accepted accounting principles and applicable sections under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions of Article 5, Chapter 5 of 5 GCA (Legal and Contractual Remedies) of the Guam Procurement Act.

B. Submission of Cost or Pricing Data. The contractor shall submit cost or pricing data for any price adjustments subject to the provisions of §3118 (Cost or Pricing Data) of the Guam Procurement Regulations.

XXXIX. Claims Based on GDOE's Actions or Omissions.

A. Notice of Claim. If any action or omission on the part of GDOE requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of GDOE, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(1) the contractor shall have given written notice to GDOE:

(a) prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission;

(b) within 30 days after the contractor knows of the occurrence of such action or omission, if the contractor did not have such knowledge prior to the commencement of the work; or

(c) within such further time as may be allowed by GDOE in writing.

This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. GDOE, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be

deemed advisable in the discretion of GDOE.

(2) the notice required by Subparagraph (a) of this section describes as clearly as practicable at the time the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and

(3) the contractor maintains and, upon request, makes available to GDOE within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

B. Limitations of Clause. Nothing herein contained, however, shall excuse the contractor from compliance with any rules of law precluding any territorial officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

C. Adjustments of Price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause herein.

XL. Termination for Default for Non-performance or Delay, Damages for Delay, Time Extensions.

A. Default. If the contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this Agreement or any extension thereof or fails to complete said work within such time, or commits any other substantial breach of this contract, and further fails within fourteen (14) days after receipt of written notice from GDOE to commence and continue correction of such refusal or failure with diligence and promptness, GDOE may by written notice to the contractor declare the contractor in breach and terminate the contractor's right to proceed with the work or such part of the work as to which there has been delay. In such event the territory may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore. Whether or not the contractor's right to proceed with the work is terminated, the contractor and the contractor's sureties shall be liable for any damage to the territory resulting from the contractor's refusal or failure to complete the work within the specified time.

B. Liquidated Damages upon Termination. If fixed and agreed liquidated damages are provided in the Agreement, and if the territory so terminates the contractor's right to proceed, the resulting damage will consist of such liquidated damages for such reasonable time as may be required for final completion of the work.

C. Liquidated Damages in Absence of Termination. If fixed and agreed liquidated damages are provided in the Agreement, and if the territory does not terminate the contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

D. Time Extension. The contractor's right to proceed shall not be so terminated nor the contractor charged with resulting damage if:

(1) the delay in the completion of the work arises from causes such as: acts of God; acts of the public enemy; acts of the territory, and any other territorial entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the territory; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnished to GDOE proof that the contractor has diligently made every effort to obtain such materials from all known sources within reasonable reach of the work, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and

(2) the contractor, within ten days from the beginning of any such delay (unless GDOE grants a further period of time before the date of final payment under the contract), notifies GDOE in writing of the causes of delay. GDOE shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of GDOE, the findings of fact justify such an extension.

E. Erroneous Termination for Default. If, after notice of termination of the contractor's right to proceed under the provisions of this section, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this section, the rights and obligations of the parties shall, if the Agreement contains a clause providing for termination for convenience of the territory, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstance, this Agreement does not contain a clause providing for termination for convenience of the territory, the contract shall be adjusted to compensate for such termination and the Agreement modified accordingly.

F. Additional Rights and Remedies. The rights and remedies of GDOE provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

XLI. Liquidated Damages. When the contractor fails to complete the work or any portion of the work within the time or times fixed in the Agreement or any extension thereof, the contractor shall pay to GDOE Fifty Dollars (\$50.00) for contracts less than One Hundred Thousand Dollars (\$100,000) and One Hundred Dollars (\$100.00) for contracts One Hundred Thousand Dollars (\$100,000) or more per calendar day of delay pursuant to the section of this contract entitled, "Termination for Default for Nonperformance or Delay - Damages for Delay - Time Extension."

XLII. Termination for Convenience.

A. Termination. GDOE may, when the interests of this territory so require,

terminate this Agreement in whole or in part, for the convenience of the territory. GDOE shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

B. Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. GDOE may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to GDOE. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

C. Right to Construction and Supplies. GDOE may require the contractor to transfer title and deliver to GDOE in the manner and to the extent directed by GDOE:

- (1) any completed construction; and
- (2) such partially completed construction, supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawing, information, and contract rights (hereinafter called "construction material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this Agreement. The contractor shall protect and preserve property in the possession of the contractor in which the territory has an interest. If GDOE does not exercise this right, the contractor shall use best efforts to sell such construction, supplies, and construction materials in accordance with the standards of 14 GCA §2706 (UCC). This in no way implies that GDOE has breached the contract by exercise of the Termination for Convenience section herein.

D. Compensation.

(1) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by Section 3118 (Cost or Pricing Data) of the Guam Procurement Regulations, bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, GDOE may pay the contractor, if at all, an amount set in accordance with Subparagraph (3) of this section.

(2) Absent complete agreement under Subparagraph (2) of this section, GDOE shall pay the contractor the following amounts, provided payments under Subparagraph (2) shall not duplicate payments under this Paragraph:

(a) with respect to all work performed prior to the effective date of the notice of termination, the total (without duplication of any items) of:

(i) the cost of such work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential

damages) less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(ii) cost of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (3)(a)(i) of this section.

(3) Cost claimed, agreed to, or established under Subparagraphs (2) and (3) of this section shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

XLIII. Remedies. Any dispute arising under or out of this Agreement is subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

XLIV. Ownership and Use of Drawings, Specifications. All drawings, specifications, plans or other instruments provided by GDOE or its consultants or Project Manager for the work under this Agreement are the property of GDOE.

XLV. Transmission of Data in Digital Form. If the parties intend to transmit any information or documentation in digital form, they shall establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement.

XLVI. GDOE Representative. The Superintendent of the Guam Department of Education shall designate in writing a representative who may have express authority to bind GDOE with respect to all matters requiring GDOE's approval or authorization. Except as otherwise provided herein, GDOE's Project Manager does not have authority to bind GDOE without written approval from GDOE.

XLVII. Review of Contract Documents and Field Conditions By Contractor. Execution of this Agreement by the Contractor is a representation that the Contractor has visited the site where the work shall be performed, become generally familiar with local conditions under which the work is to be performed and correlated personal observations with requirements of this Agreement.

XLVIII. Supervision and Construction Procedures.

A. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement, unless the Agreement gives other specific instructions concerning these matters. If the Agreement gives specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines

that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to GDOE and the Project Manager and shall not proceed with that portion of the Work without further written instructions from GDOE. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, GDOE shall be solely responsible for any loss or damage arising solely from those GDOE-required means, methods, techniques, sequences or procedures.

B. The Contractor shall be responsible to GDOE for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

C. The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

XLIX. Labor and Materials.

A. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

B. The Contractor may make substitutions only with the consent of the GDOE in accordance with a Change Order.

C. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

L. **Warranty.** The Contractor warrants to GDOE that materials and equipment furnished under this Agreement will be of good quality and new unless the Agreement or GDOE permits otherwise. The Contractor further warrants that the Work will conform to the requirements of the Agreement and will be free from defects, except for those inherent in the quality of the Work the Agreement requires or permits. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by GDOE, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

LI. **Taxes.** The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor.

LII. Permits, Fees, Notices and Compliance with Laws.

A. Unless otherwise provided in this Agreement, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work.

B. The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

C. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume responsibility for such Work and shall bear the costs attributable to correction.

D. If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands, the Contractor shall immediately suspend any operations that would affect them and shall notify GDOE. Upon receipt of such notice, GDOE shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by GDOE but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the time or price for completion specified in this Agreement shall be made and addressed in accordance with the terms herein.

LIII. Contractor's Superintendent.

A. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the work site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

B. The Contractor, as soon as practicable after execution of this Agreement and no later than 15 days after issuance of a Notice to Proceed, shall furnish in writing to GDOE the name and qualifications of a proposed superintendent. GDOE may reply within 14 days to the Contractor in writing stating (1) whether GDOE has reasonable objection to the proposed superintendent or (2) that GDOE requires additional time to review. Failure of GDOE to reply within the 14 day period shall constitute notice of no reasonable objection.

C. The Contractor shall not employ a proposed superintendent to whom GDOE has made reasonable and timely objection. The Contractor shall not change the superintendent without the GDOE's consent, which shall not unreasonably be withheld or delayed.

LIV. Contractor's Construction Schedule.

A. The Contractor, promptly after execution of this Agreement and no later than 7 days after issuance of a Notice to Proceed, shall prepare and submit for GDOE's approval

Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under this Agreement, shall be revised at appropriate intervals as required by the conditions of the Work, shall be related to the work to the extent required by this Agreement, and shall provide for expeditious and practicable execution of the Work.

B. The Contractor shall prepare a submittal schedule, promptly after execution of this Agreement and no later than 17 days after issuance of Notice to Proceed, and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for GDOE's approval. GDOE's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow GDOE reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in time or price for performance of the work based on the time required for review of submittals.

C. The Contractor shall perform the Work in general accordance with the most recent schedules approved by GDOE.

LV. Documents and Samples at the Site. The Contractor shall maintain at the site for GDOE one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to GDOE and its Project Manager or other consultants or agents as GDOE may designate and shall be delivered to GDOE upon completion of the Work as a record of the Work as constructed.

LVI. Approval of Drawings by GDOE. The Contractor shall perform no portion of the Work for which this Agreement requires submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by GDOE or GDOE's consultants or agents as may be required by GDOE.

LVII. Deviations from Approved Drawings. The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of this Agreement by GDOE's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed GDOE in writing of such deviation at the time of submittal and (1) GDOE has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by GDOE's approval thereof.

LVIII. Specialized Services. The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by this Agreement for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically

required of the Contractor by this Agreement, GDOE will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to GDOE. GDOE shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided GDOE has specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section, GDOE and its Project Manager or other consultants or agents as GDOE may designate will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in this Agreement.

LIX. Use of Site. The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and this Agreement and shall not unreasonably encumber the site with materials or equipment.

LX. Cutting and Patching.

A. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by this Agreement.

B. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of GDOE or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by GDOE or a separate contractor except with written consent of GDOE and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from GDOE or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

LXI. Cleaning Up.

A. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the worksite.

B. If the Contractor fails to clean up as provided in this Agreement, GDOE may do so and GDOE shall be entitled to reimbursement from the Contractor.

LXII. Access to Work. The Contractor shall provide GDOE and its Project Manager or other consultants or agents as GDOE may designate access to the Work in preparation and progress

wherever located.

LXIII. Indemnification. To the fullest extent permitted by law the Contractor shall indemnify and hold harmless GDOE, its Project Manager and its Consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person under this Agreement.

LXIV. The Project Manager.

A. GDOE's Project Manager will have authority to act on behalf of GDOE only to the extent provided in this Agreement or Amendments thereto, or as otherwise may be provided for in a written notice signed by the Superintendent of the Guam Department of Education. GDOE's Project Manager shall not perform on GDOE's behalf the duties or responsibilities of an engineer, professional engineer, engineer intern, or architect as defined in 22 GCA §32101 et seq unless lawfully authorized to do so and specifically authorized to do so by GDOE. The Project Manager may perform its duties and make recommendations as described in this Agreement in consultation with any other consultant or agent that GDOE may designate.

B. The Project Manager or other consultants or agents as GDOE may designate will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with GDOE, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with this Agreement.

C. On the basis of the site visits and recommendations by other consultants or agents as GDOE may designate, the Project Manager will keep GDOE reasonably informed about the progress and quality of the portion of the Work completed, and report to GDOE (1) known deviations from this Agreement and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

D. Communications Facilitating Administration of the Work. Except as otherwise provided in this Agreement or when direct communications have been specially authorized, GDOE and Contractor shall endeavor to communicate with each other through the Project Manager about matters arising out of or relating to the work. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through GDOE.

E. Based on the Project Manager's evaluations of the Contractor's Applications for Payment, the Project Manager will review and make recommendations to GDOE regarding the amounts due the Contractor.

F. The Project Manager has authority to reject Work that does not conform to this Agreement. Whenever the Project Manager or other consultants or agents as GDOE may designate considers it necessary or advisable, the Project Manager will have authority to require inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Project Manager nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Project Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

G. The Project Manager, in conjunction with GDOE's Project Engineer or other GDOE consultants or agents as may be required by GDOE, will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; make recommendations to GDOE regarding the issuance of Certificates of Substantial Completion; receive and forward to GDOE, for GDOE's review and records, written warranties and related documents required by this Agreement and assembled by the Contractor.

LXV. Subcontractors. A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

LXVI. Award of Subcontracts and Other Contracts for Portions of the Work.

A. Unless otherwise stated in this Agreement, the Contractor, as soon as practicable after execution of this Agreement, shall furnish in writing to GDOE through the Project Manager the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. GDOE may reply within 14 days to the Contractor in writing stating (1) whether GDOE or the Project Manager has reasonable objection to any such proposed person or entity or (2) that GDOE requires additional time for review. Failure of GDOE to reply within the 14-day period shall constitute notice of no reasonable objection.

B. The Contractor shall not contract with a proposed person or entity to whom GDOE has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

C. The Contractor shall not substitute a Subcontractor, person or entity previously selected if GDOE makes reasonable objection to such substitution.

LXVII. Sub-contractual Relations. By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of this Agreement, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward GDOE. Each subcontract agreement shall preserve and protect the rights of GDOE under this Agreement with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights.

LXVIII. Construction Schedules. GDOE shall provide for coordination of the activities of GDOE's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and GDOE in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and GDOE until subsequently revised.

LXIX. Contractor Delay, Costs. The Contractor shall reimburse GDOE for costs GDOE incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction.

LXX. Damage to Construction or Property. The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of GDOE or separate contractors.

LXXI. GDOE's Right to Clean Up. If a dispute arises among the Contractor, separate contractors and GDOE as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, GDOE may clean up allocate the cost among those responsible.

LXXII. Progress and Completion.

A. Time limits stated in this Agreement are of the essence of the Contract. By executing this Agreement the Contractor confirms that the time specified herein for performance of the work is a reasonable period for performing the work.

B. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by this Agreement to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

LXXIII. Schedule of Values. Where this Agreement is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to GDOE, before the first application for payment, a schedule of values allocating the entire price under this Agreement to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as GDOE may require. This schedule, unless objected to by GDOE, shall be used as a basis for reviewing the Contractor's applications for payment.

LXXIV. Applications for Payment. At least ten days before the date established for each progress payment, the Contractor shall submit to GDOE an itemized Application for Payment prepared in accordance with the schedule of values, if required, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as GDOE may require, such as copies of requisitions from Subcontractors and material suppliers. Each Application for Payment shall

reflect retainage by GDOE of ten percent (10%) of the total amount of the Application. Such retainage shall be remitted to Contractor upon completion of the work as described in Section LXXVIII (E) herein, Substantial Completion.

A. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

B. Unless otherwise provided in this Agreement, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by GDOE, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to GDOE to establish GDOE's title to such materials and equipment or otherwise protect GDOE's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

C. The Contractor warrants that title to all Work covered by an Application for Payment will pass to GDOE no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from GDOE shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

LXXV. Certificates for Payment:

A. GDOE's Project Manager will, within seven days after receipt of the Contractor's Application for Payment, either issue to GDOE a Recommendation for Payment, with a copy to the Contractor, for such amount as the Project Manager determines is properly due, or notify the Contractor and GDOE in writing of the Project Manager's reasons for withholding recommendation for payment in whole or in part.

B. The issuance of a Recommendation for Payment will constitute a representation by the Project Manager to GDOE, based on the Project Manager's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Project Manager's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with this Agreement. The foregoing representations are subject to an evaluation of the Work for conformance with the Agreement upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from this Agreement prior to completion and to specific qualifications expressed by the Project Manager.

LXXVI. Decisions to Withhold Recommendation for Payment.

A. If GDOE's Project Manager is unable to recommend payment in the amount of the Application, the Project Manager will notify the Contractor and GDOE. If the Contractor and the Project Manager cannot agree on a revised amount, the Project Manager will promptly issue a Recommendation for Payment for the amount for which the Project Manager is able to make such representations to GDOE. The Project Manager may also withhold a Recommendation for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Recommendation for Payment previously issued, to such extent as may be necessary in the Project Manager's opinion to protect GDOE from loss for which the Contractor is responsible, including loss resulting from acts and omissions because of

- (1) defective Work not remedied;
- (2) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to GDOE is provided by the Contractor;
- (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the price for the work;
- (5) damage to GDOE or a separate contractor;
- (6) reasonable evidence that the Work will not be completed within the time for performance of the work, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- (7) repeated failure to carry out the Work in accordance with this Agreement.

B. When the above reasons for withholding Recommendation are removed, Recommendation will be made for amounts previously withheld.

LXXVII. Progress Payments.

A. After the Project Manager has issued a Recommendation for Payment and such recommendation has been approved by GDOE, GDOE shall make payment in the manner and within the time provided in this Agreement, and shall so notify the Project Manager.

B. GDOE has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by GDOE to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, GDOE shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither GDOE nor its Project Manager shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

C. A Recommendation for Payment, a progress payment, or partial or entire use or occupancy of the Project by GDOE shall not constitute acceptance of Work not in accordance with this Agreement.

LXXVIII. Substantial Completion.

A. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with this Agreement so that GDOE can occupy or utilize the Work for its intended use.

B. When the Contractor considers that the Work, or a portion thereof which GDOE agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to GDOE and the Project Manager a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with this Agreement.

C. Upon receipt of the Contractor's list, the Project Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Project Manager's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with this Agreement so that GDOE can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Project Manager. In such case, the Contractor shall then submit a request for another inspection by the Project Manager to determine Substantial Completion.

D. When the Work or designated portion thereof is substantially complete, the Project Manager will prepare a recommendation for the issuance of a Certificate of Substantial Completion that shall establish the date of Substantial Completion.

E. The Certificate of Substantial Completion shall be submitted by GDOE to Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, GDOE shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of this Agreement.

LXXIX. Final Completion and Final Payment.

A. Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Project Manager will promptly make such inspection and, when the Project Manager finds the Work acceptable under this Agreement and the work fully performed, the Project Manager will promptly issue a final Recommendation for Payment stating that to the best of the Project Manager's knowledge, information and belief, and on the basis of the Project Manager's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of this Agreement.

B. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to GDOE (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which GDOE or GDOE's property might be responsible or encumbered (less amounts withheld by GDOE) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Agreement to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the GDOE, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by this Agreement, (4) consent of surety, if any, to final payment and (5), if required by GDOE, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of this Agreement, to the extent and in such form as may be designated by GDOE. If a Subcontractor refuses to furnish a release or waiver required by GDOE, the Contractor may furnish a bond satisfactory to GDOE to indemnify GDOE against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to GDOE all money that GDOE may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

LXXX. Protection of Persons and Property.

A. Safety Precautions and Programs. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the work.

B. Safety of Persons and Property.

(1) The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(a) employees on the Work and other persons who may be affected thereby;

(b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

(c) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(2) The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

(3) The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including erecting construction fencing, posting danger signs and other warnings against hazards,

promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

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

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

(6) The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to GDOE and Project Manager.

(7) The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

(8) Notice of Injury or Damage to Person or Property. If any person is injured by the Work, written notice of such injury or damage, whether or not insured, shall be given to the Project Manager within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

C. Hazardous Materials.

(1) The Contractor is responsible for compliance with any requirements included in this Agreement regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in this Agreement and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to GDOE and the Project Manager in writing.

(2) The Contractor shall indemnify GDOE for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations, except to the extent that the cost and expense are due to GDOE's fault or negligence.

D. Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss.

LXXXI. Insurance and Bonds. Contractor's Liability Insurance.

(1) The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in Guam the following insurance:

a. Commercial General Liability Insurance including coverage for bodily injury and property damage, contractual liability, products and completed operations, and if necessary, Broad Form Property Damage and Explosion, collapse, and Underground coverage. Coverage shall be extended for three years following issuance of a Certificate of Substantial Completion. Limits of liability shall be not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate.

b. Property or Builders All Risk insurance providing coverage for all risks of direct physical loss or damage, including flood, earthquake, and windstorm, to raw materials, work in progress, components, and completed construction throughout the job site and at temporary storage and prefabrication sites. The amount of coverage shall be not less than the total of the full replacement value of raw materials, components, work in process, and completed construction.

c. Commercial Automobile Liability insurance for all owned and non-owned vehicles used in connection with the Work under this Agreement in an amount not less than One Million Dollars (\$1,000,000) combined single limit of liability.

d. Workers Compensation and Employer's Liability insurance as required by applicable statute or regulation.

e. Transportation Insurance as necessary providing All Risk, including War Risk, coverage for loss or damage to building materials and components from the point of shipment to the site of Work.

(2) Insurance coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in this Agreement. All policies for coverage required by this Agreement shall contain an endorsement requiring insurers to provide GDOE with sixty days prior written notice of cancellation, non-renewal, or reduction of coverage or limits.

(3) Certificates of insurance acceptable to GDOE shall be filed with GDOE prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to GDOE. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account

of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor to GDOE with reasonable promptness.

(4) The Contractor shall cause the commercial and automobile liability and property coverage required to include (1) GDOE and its Directors, officers, agents, and employees and GDOE's Project Manager as additional insureds for claims arising out of the Work or under this Agreement.

(5) Deductibles, if any, for any required insurance coverage shall be approved by GDOE.

LXXXII. Uncovering and Correction of Work.

A. Uncovering of Work. If a portion of the Work is covered contrary to GDOE or the Project Manager's request or to requirements specifically expressed in this Agreement, it must, if requested in writing by GDOE, be uncovered for examination by the Project Manager or other consultants or agents as GDOE may designate and be replaced at the Contractor's expense without change in the time for performance of the work.

B. Correction of Work.

(1) Before or After Substantial Completion. The Contractor shall promptly correct Work rejected by GDOE or failing to conform to the requirements of this Agreement, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the services of the Project Manager or other consultants or agents as GDOE may designate and expenses made necessary thereby, shall be at the Contractor's expense.

(2) After Substantial Completion. If, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties or by terms of an applicable special warranty required by this Agreement, any of the Work is found to be not in accordance with the requirements of this Agreement, the Contractor shall correct it promptly after receipt of written notice from GDOE to do so unless GDOE has previously given the Contractor a written acceptance of such condition. GDOE shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from GDOE, the Owner may correct it in accordance with this Section.

(3) The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of this Agreement and are neither corrected by the Contractor nor accepted by GDOE.

(4) The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of GDOE or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of this Agreement.

(5) Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations the Contractor has under this Agreement. Establishment of the one-year period for correction of Work relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with this Agreement may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

C. **Acceptance of Nonconforming Work.** If GDOE prefers to accept Work that is not in accordance with the requirements of this Agreement, GDOE may do so instead of requiring its removal and correction, in which case the price for the work will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

D. **Tests and Inspections.**

(1) Tests, inspections and approvals of portions of the Work shall be made as required by this Agreement and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to GDOE, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Project Manager timely notice of when and where tests and inspections are to be made so that the Project Manager or other consultants or agents as GDOE may designate may be present for such procedures.

(2) If such procedures for testing, inspection or approval reveal failure of the portions of the Work to comply with requirements established by this Agreement, all costs made necessary by such failure including those of repeated procedures and compensation for the services of the Project Manager or other consultants or agents as GDOE may designate and expenses shall be at the Contractor's expense.

(3) Required certificates of testing, inspection or approval shall, unless otherwise required by this Agreement, be secured by the Contractor and promptly delivered to the Project Manager.

LXXXIII. Acceptance of Electronic Signatures. This Agreement may be signed by the parties hereto in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart by one party to the other may be made by electronic transmission.

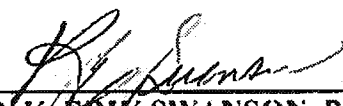
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IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year appearing below their respective signatures.


GUAM DEPARTMENT OF EDUCATION:


DR. K. ERIK SWANSON, PH.D.
Superintendent of Education
Date: 1/25/24


MEILBERT DE VERA LOPEZ
DBA NORTHERN CONSTRUCTION:


By: MEILBERT DE VERA LOPEZ
Its: Owner / Project Manager
Date: 01/09/2024

GUAM DEPARTMENT OF EDUCATION:

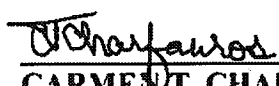

JAMES L.G. STAKE
Legal Counsel
Date: 1/24/24

CERTIFIED FUNDS AVAILABLE:

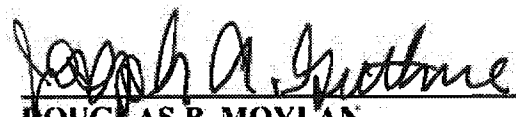
M. Garcia

CERTIFYING OFFICER
Department of Education
Date: 01/23/2024

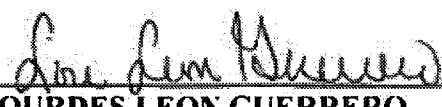
AMOUNT: \$6,257,217.26

REVIEWED BY:


CARMEN T. CHARFAUROS
Supply Management Administrator
Date: 1/23/2024

APPROVED AS TO FORM AND LEGALITY: APPROVED:


DOUGLAS B. MOYLAN
Attorney General of Guam
Date: 2/26/24


LOURDES LEON GUERRERO
Governor of Guam
Date: 3/5/2024

