

## GENERAL TERMS AND CONDITIONS

### I. DEFINITIONS

Contract contains legally binding provisions governing the Design & Build contractor and the Design & Build contractor's work during the construction and warranty period. Certain definitions pertaining to measurements and measurement quantities are set forth in a separate section below. Wherever in the Contract Documents the following terms are used, the intent and meaning shall be interpreted as follows:

### II. ABBREVIATIONS

Whenever in these Contract Documents the following abbreviations are used, the intent and meaning shall be interpreted as follows:

1. "AASHTO" means the American Association of State Highway and Transportation Officials.
2. "ACI" means the American Concrete Institute.
3. "AISC" means the American Iron and Steel Construction.
4. "AISI" means the American Iron and Steel Institute.
5. "ANSI" means the American National Standards Institute.
6. "API" means the American Petroleum Institute.
7. "ASCE" means the American Society of Civil Engineers.
8. "ASME" means the American Society of Mechanical Engineers.
9. "ASTM" means the American Society for Testing Materials.
10. "AWS" means the American Water Society.
11. "AWWA" means the American Water Works Association.
12. "FED. SPEC." means the Federal Specifications.
13. "IEEE" means the Institute Of Electrical and Electrical Engineers, Inc.
14. "NEC" means the National Electrical Code.
15. "NEMA" means the National Electrical Manufacturers' Association.
16. "NESC" means the National Electric Safety Code.
17. "NEPA" National Fire Protection Association.
18. "OSHA" means the Occupational Safety and Health Act (Federal And State)

19. "SSPC" means the Steel Structures Painting Council.
20. "UBC" means the Uniform Building Code.
21. "UL" means the Underwriters' Laboratories, Inc
22. "AS APPROVED," unless otherwise qualified, shall be understood to be followed by the words "by the Engineer and/or the Procurement Manager."
23. "AS SHOWN," AND "AS INDICATED" shall be understood to be followed by the words "on the technical specifications or drawings."
24. "BIDDER" means the person or persons, partnership, firm, or corporation that submitted a proposal or bid for the work contemplated under the IFB.
25. "CONTRACT" means the written agreement governing the performance of the work and the furnishing of labor, materials, incidental services, tools and equipment in the construction of the work. It includes supplemental agreements amending or extending the work contemplated and which may be required to complete the work in a substantial and acceptable manner. Supplemental agreements are written agreements covering alterations, amendments or extensions to the contract and include contract change orders.
26. "CONTRACT DOCUMENTS" has the same meaning as set forth in Section 4 of the instruction to bidders.
27. "CONTACTOR" means the person or persons, partnership, firm or corporation who enters into the contract awarded to it by the American Samoa Power Authority pursuant to a solicitation.
28. "CONTRACTING OFFICER," means the ASPA Procurement Manager.
29. "DAYS," unless otherwise specifically stated, will be understood to mean calendar days.
30. "ENGINEER" means the ASPA engineer, whose decisions concerning the acceptability of material and work shall be final.
31. "GOVERNMENT," OR "ASG" means the American Samoa Government.
32. "NOTICE", or the requirement to notify means a written communication delivered in person or by certified or registered mail to the individual, or to a member of the firm, or to an officer of the corporation for whom it is intended. Certified or registered mail shall be addressed to the last business address known to he/she who gives the notice
33. "OR EQUAL," shall be understood to indicate that the "equal" product is the same or better than the product named in function, performance, reliability, quality and general configuration. Determination of equality in reference to the project design requirements will be made by the engineer. Such "equal" products shall not be purchased or installed by the Design & Build contractor without the engineer's written approval.
34. "OWNER" means the American Samoa Power Authority.
35. "PLANS" means the drawings, plans, profiles, cross sections, elevations, details and other supplementary drawings or reproductions thereof, signed by the engineer, which

- show the location, character, dimensions and details of the work to be performed. Plans may either be bound in the same book as the balance of the contract documents or bound in separate sets and are a part of the contract documents, regardless of the method of binding.
36. "SPECIFICATIONS" means the terms, provisions and requirements contained herein. Where standard specifications, such as those of ASTM, ASSHTO, etc., have been referred to, the applicable portions of such standard specifications shall become a part of these contract documents.
  37. "SUBSTANTIAL COMPLETION," means that degree of completion of the project or a defined portion of the project, sufficient to provide ASPA, at its discretion, the full-time use of the project or defined portion of the project for the purposes for which it was intended.
  38. "WORK," means all material, labor, tools and all appliance, machinery, transportation and appurtenances necessary to perform and complete the contract, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated as required by good practice to provide a complete and satisfactory system or structure. as used herein, "provide" shall be understood to mean "provide complete in-place", that is, "furnish and install".
  39. "WORK SITE," means the location of at which the Design & Build contractor, including but not limited to the Design & Build contractor's employees, performs the tasks and responsibilities related to the completion of the contract.

### III. CONTRACT DOCUMENTS

#### 1. INTENT

The contract documents are complementary, and what is called off by one shall be as binding as if called for by all. The intent of the contract documents is to include all work (except specific items to be furnished by the ASPA) necessary for completion of the contract. Materials or work described in words which so applied have a well-known technical and trade meaning shall be held to refer to such recognized standards. Any discrepancies or omissions found in the contract documents shall be reported to the engineer immediately. The engineer will clarify discrepancies or omissions, in writing within a reasonable time.

#### 2. ALTERATION

This contract may be amended at any time during the term hereof, with or without additional consideration, provided, however, no amendments or other variation of this contract shall be valid unless in writing and signed by the Design & Build contractor and ASPA. ASPA, without invalidating the contract, may order changed in the work within the general scope of the contract by altering, adding to, or deducting from the work, the contract being adjusted accordingly. All such work shall be executed under the conditions of the original contract, except as specifically adjusted at the time of ordering such change. In giving instructions, the Engineer may order minor changes in the work

not involving extra cost and not inconsistent with the purposes of the project, but otherwise, except in an emergency endangering life or property, additions or deductions from the work shall be performed only in pursuance of an approved changed order from ASPA, signed by ASPA's Executive Director (and Board Chairman if exceed a certain amount). If the work is reduced by alterations, such action shall not constitute a claim for damages based on loss anticipated profits but an official change order shall be prepared and signed by both parties for change in contract price and scope of work.

### 3. VERBAL STATEMENT AND AGREEMENTS

No oral statements of any person whatsoever shall in any manner or degree, modify or otherwise affect the terms of the contract. The Design & Build contractor is advised that ASPA assumes no responsibility for any of its officers or agents prior to the execution of this contract, unless such understandings or representations by ASPA are expressly stated in writing in this contract. The Design & Build contractor shall thoroughly examine and become familiar with all of the various parts of the contract documents and determine the nature and location of the work, the general and local conditions, all other matters which can in any way affect the work under this contract. Failure to make an examination necessary for this determination shall not release the Design & Build contractor from the obligations of this contract. The Design & Build contractor warrants that no verbal agreement or conversation with any officer, agent, or employee of ASPA, or with the Engineer either before or after the execution of this contract, has affected or modified any of the terms or obligations herein contained.

### IV. DOCUMENTS TO BE KEPT ON THE JOB SITE

The Design & Build contractor shall keep one copy of the contract documents on the job site, in good order, available to the Engineer and to his representatives. The Design & Build contractor shall maintain on the job site, and make available to the engineer upon request, one current marked up set of the drawings that accurately indicate all approved variations in the completed work. This set of marked up drawings shall be used by the Design & Build contractor along with field notes and other appropriate data for the preparation of the final "as built" drawings.

### V. OWNERSHIP OF DRAWINGS

All plans, drawings, technical specifications and copies thereof furnished by the Engineer are his property. They are not to be used for any other work and, with the exception of the signed contract set, are to be returned to him/her on request at the completion of the work. Any reuse of these materials without specific written verification or adaptation by the engineer will be at the risk of the user and without liability or legal expense to the (ASPA) engineer.

### VI. DUTIES OF DESIGN & BUILD CONTRACTOR

Within the term provided, and in accordance with the provisions of this Contract, the Design & Build contractor shall faithfully and competently be responsible for accomplishing the duties and tasks (the "Work") as set forth in the Contract Documents.

## VII. SUPERCEDURE

If the contract is preceded by a letter of dispatch of intent, a notice of award, or a notice to proceed, anticipating the execution of the contract, then such aforementioned letter, dispatch, notice, or directive and all rights and obligations of the parties there under are superseded and merged into the contract. All acts of the Design & Build contractor and ASPA under said letter, dispatch, notice, or directive shall be deemed to have been under the contract. The American Samoa Power Authority (“ASPA”) will make no payment under the award until the formal contract has been prepared and executed by ASPA and the Design & Build contractor.

## VIII. REPRESENTATIONS

In order to induce ASPA to enter into this contract, Design & Build contractor makes the following representation(s): Design & Build contractor has familiarized itself with the nature and the extent of the contract documents, work site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance, or furnishing of the work. Design & Build contractor is duly licensed to perform the work as required by local laws and regulations.

## IX. DESIGN & BUILD CONTRACTOR’S LOCAL ADDRESS

The Design & Build contractor must provide and maintain a post office address within the territory of American Samoa and file the same with the engineer. Any written notice that is required or desirable shall be served on the Design & Build contractor personally, delivered to his representative on the site, left at the last known place of residence or business of the Design & Build contractor, and/or sent through the mails to previously mentioned local post office address or by email. All notices addressed in compliance with the said directions of the Design & Build contractor and properly mailed or emailed shall become effective when so mailed or at the time of delivery by any of the above methods.

## X. DESIGN & BUILD CONTRACTOR COMPOSITION

The term “Design & Build contractor,” whenever used herein, refers to and means the parties or party (individual, co-partnership, corporation or joint-venture) who or which shall have duly entered into a contract with ASPA to perform the work described in the contract documents. If the Design & Build contractor hereunder is comprised of more than one legal entity, Design & Build contractor expressly agrees that each such entity shall be jointly and severally liable hereunder. The Design & Build contractor must provide ASPA with legal documents for each entity for approval. Within thirty (30) days after receipt of notice to proceed or award of contract, the Design & Build contractor shall provide the engineer with a copy of any supplemental documents, which set forth in detail exactly how the contract will be sponsored, managed and controlled. The Design & Build contractor shall also provide, on or before this time, power(s) of attorney or other acceptable documents that attest to the authority and right of designated representatives to commit and sign documents for the Design & Build contractor.

XI. DESIGN & BUILD CONTRACTOR STATUS

It is agreed that the Design & Build contractor shall be an independent contractor of ASPA in the performance of this contract. The relationship of the parties hereto shall in no event be deemed or construed to be that of employer and employee of principal and agent, or of any other relationship other than the Design & Build contractor as an independent Design & Build contractor.

XII. ASSIGNMENT

Neither party to the contract shall assign the contract or sublet it as a whole, without the written consent of the other, nor shall the Design & Build contractor assign any monies due or to become due to it hereunder without the previous written consent of ASPA.

XIII. SUBCONTRACTORS

The Design & Build contractor agrees that it shall fully indemnify and hold harmless ASPA for the acts and/or omissions of its subcontractors, and of persons either directly or indirectly employed by such subcontractors. Nothing contained in the contract documents shall create any contractual relationship between any subcontractor and ASPA. ASPA shall not be liable to or pay any subcontractor for Design & Build contractor's failure to pay said subcontractor. ASPA shall approve all subcontractors used by Contractor.

XIV. COVENANT AGAINST CONTINGENT FEES

The Design & Build contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees or bonafide established commercial or selling agencies maintained by the Design & Build contractor for the purpose of securing business. For breach or violation of this warranty, ASPA shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract price of considerations, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

XV. PROHIBITED INTEREST

No official of ASPA who is authorized in such capacity and on behalf of ASPA to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction, or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly integrated personally in this contract or in any part thereof. No director, officer, employee, architect, attorney, engineer, or inspector of or for ASPA who is authorized in such capacity and on behalf of ASPA to exercise any legislative, executive, supervisory, or other similar functions in

connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply Design & Build contractor, subcontract, insurance contract, or any other contract pertaining to the project.

#### XVI. KICKBACKS PROHIBITED

ASPA may, by written notice to the Design & Build contractor, terminate the contract for cause if ASPA finds that any payment, gratuity (in the form of entertainment, gifts, or otherwise), or offer of employment was made by or on behalf of the Design & Build contractor to any ASPA director, employee, his/her representatives, family members, partners or assigns, any employee of the United States, any employee of the American Samoa Government, including members of the Fono of American Samoa; with a view toward securing an agreement or securing favorable treatment with respect to obtaining or performance of this contract in the event that ASPA terminates the contract under this subsection, ASPA shall be entitled to:

1. Pursue the same remedies against the Design & Build contractor which ASPA could pursue in the event of a breach of contract by the Design & Build contractor; and
2. Recover the full amount of such payment gratuity from the person so employed by ASPA.
3. The rights and remedies of ASPA provided for in this subsection shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract Documents.

#### XVII. COVENANT AGAINST COLLUSION

The Design & Build contractor warrants that neither it nor any of its employees have directly or indirectly entered into any secret or non-secret agreement, participated in any collusion, or otherwise taken any action in restraint of competition in connection with the bid or proposal submitted. For breach or violation of this warranty, ASPA shall have the right to annul this Contract without liability or in its discretion to pursue the same remedies against the Design & Build contractor that ASPA could pursue in the event of breach of contract by the Design & Build contractor, and as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages.

#### XVIII. REPORTS, RECORDS, DATA AND DRAWINGS

The Design & Build contractor shall submit to ASPA such schedules of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as ASPA may request concerning work performed or to be performed under the contract. The Design & Build contractor shall submit to ASPA an electronic copy of "as built" drawings either in AutoCAD 2010 and survey control points within 30 days at the end of the construction period. These drawings shall represent a complete and accurate record of the actual work accomplished and shall be based upon first hand observations by the project superintendent or his designated representative. A detailed survey of all in-place structures shall be conducted and this data

incorporated into said drawings. The Design & Build contractor shall include the following items in the "as built" drawings:

1. Project location and site (community and project description and number);
2. Name of project engineer, inspector and Design & Build contractor;
3. North arrow and scale;
4. Legend;

Requests for partial payments will not be approved if a set of marked drawings are not kept current, and request for final payment will not be approved until the drawings are delivered to the Engineer.

The Design & Build contractor agrees that ASPA, the Comptroller General of the United States of America, or the Secretary of the Interior, or any of their duly authorized agents or representatives, shall, until the expiration of three years after final payment under the Contract shall have access to and the right to examine any directly pertinent books, document, papers, and records of the Design & Build contractor involving transactions related to the Contract.

The Design & Build contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that ASPA, the Comptroller General of the United States, or the Secretary of the Interior, or any of their duly authorized agents or representatives, shall, until the expiration of three years after final payment under the subcontract, shall have access to and the right to examine any directly pertinent book, documents, papers and records of such subcontractor, involving transactions related to the Contract.

#### XIX. INSURANCE

The Design & Build contractor shall obtain the insurance coverage designated herein and pay all costs associated therewith. Such insurance shall be for the coverage, amounts and limits as set forth in subsection below. Before commencing the Work under the Agreement, the Design & Build contractor shall furnish ASPA with certificates of insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies. The Design & Build contractor's public/general liability and automobile liability policies shall name ASPA as an additional insured. The Design & Build contractor's insurance shall be maintained for the full period of this Agreement.

In the case of a breach of any provision of this section, ASPA, at its option, may take out and maintain, at the expense of the Design & Build contractor, such insurance as ASPA may deem proper and may charge the Design & Build contractor with such amounts due. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Design & Build contractor's responsibility for payments of damages resulting from its operations under this Agreement.

##### 1. Requirements

The Design & Build contractor shall maintain during the term of this Agreement such insurance as follows:



- a) Workmen's Compensation. The Design & Build contractor shall maintain such statutory amounts of workmen's compensation insurance as are set forth in the American Samoa Code Annotated and American Samoa Administrative Code.
- b) Employer's Liability. The Design & Build contractor shall maintain employer's liability insurance in the amount of Five Hundred Thousand Dollars (\$500,000.00 USD).
- c) Public/General Liability. Public/General liability shall include coverage for wrongful death claims, and shall not exclude coverage for explosion, collapse or underground exposure.
- d) Bodily/personal injury. The Design & Build contractor shall maintain public/general liability insurance covering third party bodily/personal injury for Five Hundred Thousand Dollars (\$500,000.00 USD) per person/per occurrence with an aggregate of One Million Dollars (\$1,000,000.00 USD).
- e) Property damage. The Design & Build contractor shall maintain public/general liability insurance covering property damage for One Hundred Thousand Dollars (\$100,000.00 USD) per person/per occurrence with an aggregate of Two Hundred Thousand Dollars (\$200,000.00 USD).
- f) Automobile Liability
  - i) Bodily/personal injury. The Design & Build contractor shall maintain automobile liability insurance covering third party bodily/personal injury for Five Hundred Thousand Dollars (\$500,000.00 USD). Per person/per occurrence with an aggregate of One Millions Dollars (\$1,000,000.00 USD).
  - ii) Property damage. The Design & Build contractor shall maintain automobile liability insurance covering property damage for One Hundred Thousand Dollars (\$100,000.00 USD) per person/per occurrence with an aggregate of Two Hundred Thousand Dollars (\$200,000.00 USD).
- g) Builder's Risk Insurance. Unless otherwise modified in the Supplementary Conditions, the Design & Build contractor shall secure and maintain during the life of the Contract Builders Risk Insurance coverage for 100 percent of the Contract amount. Such insurance shall not exclude coverage for earthquake, landslide, flood, collapse, or loss due to the results of faulty workmanship, and shall provide for losses to be paid to the Design & Build contractor and ASPA as their interests may appear.

The above policies shall protect the Design & Build contractor from claims for damages for personal injury, including accidental death, as well as from claims for direct property damage, which may arise from negligent operations under this Agreement, whether such operations are by itself or by ASPA employees.

When the construction is to be accomplished within a public or private right-of-way requiring special insurance coverage, the Design & Build contractor shall conform to the particular requirements and provide the required insurance. The Design & Build contractor shall include in

his liability policy all endorsements that the said authority may require for the protection of the authority, its officers, agents and employees. Insurance coverage for special conditions, when required, shall be provided as set forth in the Supplementary Conditions.

XX. INDEMNITY

The Contactor shall indemnify, defend and hold harmless ASPA, its directors, officers, employees and agents from and against any and all claims and demand whatsoever, including costs and attorney's fees, resulting from Design & Build contractors negligent acts or omissions, or any other tortuous conduct, in connection with performance of this Contract, Design & Build contractor shall indemnify, defend and hold harmless ASPA, its directors, officers, employees and agents from and against any and all claims and demands whatsoever, including costs and attorneys fees, under the doctrine of strict liability as it may be applied by a court of competent jurisdiction to Design & Build contractor's performance under this Contract.

XXI. PAYMENT OF TAXES

The Design & Build contractor shall pay and shall assume exclusive liability for ALL taxes levied or assessed on or in connection with its performance of the Contract, whether before or after acceptance of the work, including but not limited to federal payroll taxes or assessments, and Government of American Samoa income and excise taxes. The Design & Build contractor may be required to show that all taxes due or accrued to American Samoa have been paid or guaranteed before leaving American Samoa and before final contract payment is made by ASPA.

XXII. LAW, PERMITS AND LICENSES

The Design & Build contractor shall keep itself fully informed of all local and federal laws and regulations that affect in any manner the work set forth in the Contract Documents. The Design & Build contractor shall at all times comply with said laws and regulation, and protect and indemnify ASPA, its directors, officers, agents, representatives, and employees against any claim or liability arising from or based on the violation of any such laws or regulations. All permits licenses and inspection fees necessary for prosecution and completions of the work shall be secured and paid for by the Design & Build contractor, unless otherwise specified.

XXIII. SUPERINTENDENT

During the term of the Contract, the Design & Build contractor shall keep English speaking, competent supervisory personnel. The Design & Build contractor shall designate in writing, before starting work, an authorized representative acceptable to the Engineer who shall have complete authority to represent and act for the Design & Build contractor. The residential address and telephone number of the authorized representative shall be made available to the Engineer for emergency communication during off-hours. The Design & Build contractor shall give efficient supervision to the work, using his best skill and attention. The Design & Build contractor shall be solely responsible for all construction means, methods, techniques and

procedures, and for providing adequate safety precautions and coordinating all portions of the work under the Contract.

#### XXIV. ENGINEER'S FIELD OFFICE

Design & Build Contractor shall provide, maintain, and subsequently remove as its property a field office as specified below, for the exclusive use of Engineer and its representatives.

Engineer's field office, equipped as specified below, shall be available for Engineer's use prior to the start of work at project site, and shall remain on the site for 30 days after final acceptance of all work. The field office shall be located where directed by the Engineer; leveled, blocked, tied down, and skirted as directed; and, relocated, when necessary, and approved.

Design & Build contractor shall maintain fully furnished field office in good repair and acceptable appearance. Provide daily cleaning service, maintenance, and replenishment, as applicable, of paper towels, paper cups, soap, tissue paper, and bottled water service.

Provide gravel or crushed rock under and around the field office to a minimum distance of 10 feet. Provide sanitary facilities in compliance with local health authorities.

Field office shall be trailer-type mobile structure or approved equal with the following features and equipment, new or like new in appearance and function:

1. Security guard screens on all windows.
2. Toilet and washbasin in separate compartments
3. Insulated double walls, floor, and roof.
4. Self-contained, window air conditioner.
5. Fluorescent ceiling lights.
6. Furniture

#### XXV. ENGINEER'S DIRECTION

The superintendent or other duly authorized representative of the Design & Build contractor shall represent the Design & Build contractor in all directions given to the Design & Build contractor by the Engineer. Directions of major importance will be confirmed in writing. Any direction will be so confirmed, in each case, on written request from the Design & Build contractor.

#### XXVI. EMPLOYEES

The Design & Build contractor shall employ American Samoa labor and professional staff to the fullest extent possible. It shall be responsible for hiring its own labor. It shall be the responsibility of the Design & Build contractor to ascertain that any foreign recruitment complies in full with all applicable laws may subject it to termination of the Contract for cause or withholding of amounts payable to the Design & Build contractor. The Design & Build contractor shall employ only competent, skillful workers to do the work, and whenever any person shall appear to be

incompetent or to act in a disorderly or improper manner; such person shall be removed from the work. Such removal shall not be the basis of any claim for compensation of damage against ASPA. In connection with the performance of work under his Contract, the Design & Build contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor. Design & Build contractor shall, at all times, provide competent, suitable personnel to survey and layout the work and perform construction as required by the Contract. Design & Build contractor shall at all times maintaining proper discipline and order at the work site.

#### XXVII. DISCREPANCY WITH LOCAL OR FEDERAL LAW

If any discrepancy or inconsistency is discovered between any provision of the Contract Documents and any law, ordinance, regulation, order decree of the American Samoa or United States government, the Design & Build contractor shall forthwith report the same to the Engineer in writing. The Design & Build contractor shall at times observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees, and shall protect and indemnify ASPA, its directors, officers, agents, representatives and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree, whether by the Design & Build contractor or by its employees. Particular attention is called to prevailing wage and overtime compensation.

#### XXVIII. HOURS OF WORK

The Design & Build contractor shall schedule all work to be performed during the period from 6:00 a.m. to 6:00 p.m., Monday through Friday and, if permitted, on Saturday. No work will be permitted on Sunday or holidays without specific approval of ASPA. The Design & Build contractor may be permitted to work at night, if it can satisfactorily demonstrate the need, in order to maintain the required progress or protect the work from the elements. If permitted to work at night, the Design & Build contractor shall provide sufficient and satisfactory lighting and other facilities therefore. For night work, if any be performed, the Design & Build contractor shall receive no extra payment, but compensation shall be considered as having been included in the price stipulated for the work. The Design & Build contractor shall, however, be charged for such additional inspection and administrative costs as ASPA may incur.

#### XXIX. EQUAL OPPORTUNITY

This subsection is applicable unless the Contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41CFR, ch. 60). During the performance of the Contract, the Design & Build contractor agrees as follows:

1. The Design & Build contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Design & Build contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and election for training, including apprenticeship. The Design & Build contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Engineer setting forth the provisions of this subsection.

2. The Design & Build contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Design & Build contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Design & Build contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Engineer, advising the labor union or workers' representative of the Design & Build contractor's commitments under this subsection, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Design & Build contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Design & Build contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Design & Build contractor's noncompliance with this subsection, or with any of the said rules, regulations, orders, the Contract may be cancelled, terminated, or suspended, in all or in part, and the Design & Build contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Design & Build contractor will include the provisions of this subsection in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Design & Build contractor will take such action with respect to any subcontract or purchase order as the government may direct as a means of enforcing such provisions, including sanctions for noncompliance.

### XXX. SAFETY REQUIREMENTS

The Design & Build contractor shall be solely and completely responsible for safety conditions on the site where work is to be performed, including that safety of all persons and property during the term of the Contract. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to United States Department of Labor, Occupational Safety, and Health Act ("OSHA") and other applicable laws. Design & Build contractor shall become thoroughly familiar with governing safety provisions and shall comply with the obligations set forth therein. Design & Build contractor shall develop and maintain for the duration of the Contract, a safety program that will effectively incorporate and implement required safety provisions. Design & Build contractor shall appoint a qualified employee who is authorized to supervise and enforce compliance with the safety program. The Engineer's duty to conduct construction review of the Design & Build contractor's performance is not intended to include a review or approval of the adequacy of Design & Build contractor's safety supervisor, safety program, or safety measures taken in, on, or near the construction site.

As part of the safety program, Design & Build contractor shall maintain at its office or other well-known place at the site of the work, safety equipment applicable to the work as prescribed by the governing safety authorities and articles necessary for giving first-aid to the injured. Design & Build contractor shall do all work necessary to protect the general public from hazards, including, but not limited to, surface irregularities and/or unramped grade changes in pedestrian sidewalk or walkway, and trenches or excavations in roadway. Barricades, lanterns, and proper signs shall be furnished in sufficient amount to safeguard the public and the work. Design & Build contractor shall construct and maintain satisfactory and substantial temporary chain link fencing, solid fencing, railing, barricades or steel plates, as applicable, at all openings, obstructions, or other hazards in streets, sidewalks, floors, roofs, and walkways. Such barriers shall have adequate warning lights as necessary or required for safety. The Design & Build contractor shall comply with Owner's safety rules while on the Owner's property.

If death or serious injuries or damages are caused, the accident shall be reported immediately by telephone or messenger to the Engineer. In addition, Design & Build contractor shall promptly report to ASPA in writing all accidents whatsoever arising out of, or in connection with, the performance of the work whether on or adjacent to the site, giving full details and statements of witnesses. If claim is made by anyone against the Design & Build contractor or any subcontractor on account of accident, Design & Build contractor shall promptly report the claim to ASPA in writing, giving full details of the claim.

The Design & Build contractor's tools and equipment used on the work shall be furnished in sufficient quantity and of a capacity and type that will safely perform the work specified, and shall be maintained and used in a manner that will not create a hazard to person or property, or cause a delay in the progress of work.

The Design & Build contractor will comply with the rules and regulations of the Territory authorities regarding closing or restricting the use of public streets or highways. No public or private road shall be closed, except by written permission of the proper authority. The Design & Build contractor will make every effort to avoid obstruction to traffic and normal commercial pursuits. Where traffic will pass over backfilled trenches before they are paved, the Design & Build contractor will maintain the top of the trench to allow normal vehicular traffic to pass over and provide temporary access driveways when required. Design & Build contractor agrees that its cleanup operations shall follow immediately after backfilling. When flagmen and guards are

required by regulation or when deemed necessary for safety, the Design & Build contractor will furnish them with appropriate apparel and other traffic control devices. Traffic control procedures and devices used on all rights-of-way shall meet the requirements of the applicable current laws and regulations for traffic control. Design & Build contractor will notify the fire and police departments before closing any street or portion thereof and notify said departments when the streets are again passable for emergency vehicles. The Design & Build contractor shall leave it night emergency telephone number or numbers with the police department, so that contact may be made easily at all times in case of barricade and flare trouble or other emergencies.

The Design & Build contractor shall perform all work in a fire safe manner. The Design & Build contractor shall furnish and maintain on site adequate firefighting equipment capable of extinguishing incipient fires. The Design & Build contractor shall comply with applicable American Samoa and United States fire prevention laws and regulations. Where these regulations do not apply, the Design & Build contractor agrees to follow the applicable parts of the National Fire Prevention Standard for Safeguarding Building Construction Operations (NFPS No.241).

#### XXXI. PROTECTION OF WORK AND/OR PROPERTY

The Design & Build contractor shall at all times safely guard ASPA's property from damage or loss. The Design & Build contractor shall at all times safely guard and protect from damaging its own work. All loss or damages arising from any unforeseen obstruction or defects which may be encountered in the prosecution of the work, or from the action of the elements, shall be sustained by the Design & Build contractor.

#### XXXII. MATERIALS AND WORKMANSHIP

Unless otherwise specified in the Contract Documents, the Design & Build contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, supplies, transportation and other facilities or incidentals necessary for the furnishing, performance, testing, start-up, execution and completion of the work. Design & Build contractor shall additionally furnish all fuel, power, light, telephone, water sanitary facilities, temporary facilities, and any other facilities or incidentals necessary for the furnishing, performance, testing, start-up, execution and completion of the work. Unless otherwise specified in the Contract Documents, all materials shall be new, and both workmanship and materials shall be of good quality. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the applicable supplier or industry standards. The Design & Build contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. All work shall be done and completed in a thoroughly workmanlike manner notwithstanding any omission from the Technical Specifications or the Drawings, and it shall be the duty of the Design & Build contractor to call the Engineer's attention to apparent errors or omissions and request instructions before proceeding with the work. All work performed by the Design & Build contractor after it learns or should have learned of an error or omission in the Technical Specifications or Drawings without notifying the Engineer will be at the Design & Build contractor's own expense. The Engineer may, by appropriate instructions, correct errors

and omissions, and these instructions shall be as binding upon the Design & Build contractor as though contained in the original Technical Specifications or Drawings. All defective work or materials shall be removed from the premises by the Design & Build contractor, whether in place or not, and shall be replaced or renewed as the Engineer may direct. All materials and workmanship of whatever description shall be subjected to the inspection of and rejection by, the Engineer if not in conformance with the Technical Specifications. Design & Build contractor shall repair or replace, at Design & Build contractor's sole expense, every portion of the work that is damaged or destroyed prior to the final completion of the work and caused in whole or in part by the acts or omissions of the Design & Build contractor.

### XXXIII. PNRS CONDITIONS

The Design & Build contractor shall inform ASPA upon discovery of any historic artifacts or properties found at the construction site(s). Design & Build contractor must ensure that any excess dirt, cinder, spoils, concrete, pavement and/or drilling materials, must be properly disposed of. Any other uses of these materials shall require a separate land use permit. Associated costs shall be borne by the Design & Build contractor and shall be incidental to the undertaking of the scope of this project. The Design & Build contractor shall make every effort to prevent soil erosion and the escape of debris to the ocean. The Design & Build contractor shall not leave the project site in condition that would cause soil erosion in the future. The Design & Build contractor shall identify a staging area acceptable to the ASPA and the PNRS. Any other work not within the scope of this project conducted at this site shall require a separate land use permit application.

### XXXIV. THE ENGINEER

#### 1. Authority of the Engineer

The Engineer shall be ASPA's representative during the design and construction period. His authority and responsibility shall be limited to the provisions set forth in these Contract Documents. The Engineer shall have the authority to reject work and materials whenever such rejection may be necessary to ensure execution of the Contract in accordance with the intent of the Contract Documents.

#### 2. Duties and Responsibilities of the Engineer

The Engineer will make periodic visits to the site of the project to observe the progress and quality of the work and to determine, in general, if the work is proceeding in accordance with the intent of the Contract Documents. He shall not be required to make comprehensive or continuous inspections to check quality or quantity of the work, and he shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work. Visits and observations made by the Engineer shall not relieve the Design & Build contractor of his obligation to conduct comprehensive inspections of the work and to furnish materials and perform acceptable work, and to provide adequate safety precautions in conformance with the intent of the Contract.



The Engineer will make decisions, in writing, on all claims of ASPA or the Design & Build contractor arising from interpretation or execution of the Contract Documents. Such decision shall be necessary before the Design & Build contractor can receive additional money under the terms of the Contract. Changes in work ordered by the Engineer will be made in compliance with section entitled "Alterations."

One or more inspectors may be assigned to observe the work and to act in matters of construction under this Contract. It is understood that such inspectors shall have the power to issue instructions and make decisions within the limitations of the authority of the Engineer. Such inspection shall not relieve the Design & Build contractor of his obligations to conduct comprehensive inspections of the work, and to provide adequate safety precautions in conformance with the intent of the Contract.

XXXV. REJECTED MATERIAL

Any material condemned or rejected by the Engineer or his authorized inspector because of non conformity with the Contract Documents shall be removed at once from the vicinity of the work by the Design & Build contractor at his own expense, and the same shall not be used on the work.

XXXVI. UNNOTICED DEFECTS

Any defective work or material that may be discovered by the Engineer before the final acceptance of work, or before final payment has been made, or during the guarantee period, shall be removed and replaced by work and materials which shall conform to the provisions of the Contract Documents. Failure on the part of the Engineer to condemn or reject based on inferior work or materials shall make such deductions in the final payment therefore as may be just and reasonable.

XXXVII. RIGHT TO RETAIN IMPERFECT WORK

If any part or portion of the work done or material furnished under this Contract shall prove defective and not in accordance with the Technical Specifications and Drawings, and if the imperfection in the same shall not be of sufficient magnitude or importance as to make the work dangerous or unsuitable, or if the removal of such work will create conditions which are dangerous or undesirable, ASPA shall have the right and authority to retain such work but shall make such deductions in the final payment therefore as may be just and reasonable.

XXXVIII. SHOP DRAWINGS

After execution of the Contract, the Design & Build contractor shall submit, in quadruplicate, to the Engineer for his review, such shop drawings, electrical diagrams, and catalog cuts for fabricated items and manufactured items (including satisfactory identification of items, units and assemblies in relation to the Drawings and Technical Specifications). Unless otherwise approved by the Engineer, shop drawings shall be submitted only by the Design & Build contractor, who shall indicate by a signed stamp on the shop drawings, or the other approved means, that the

Design & Build contractor has checked the shop drawings, and that the work shown is in accordance with Contract requirements and has been checked for dimensions and relationship with work of all other trades involved. The practice of submitting incomplete or unchecked shop drawings for the Engineer too correct for finish will not be acceptable, and shop drawings which, in the opinion of the Engineer, clearly indicate that they have not been checked by the Design & Build contractor will be considered as non complying with the intent of the Contract Documents and will be returned to the Design & Build contractor for resubmission in the proper form.

When the shop drawings have been reviewed by the Engineer, two sets of submittals will be returned to the Design & Build contractor appropriately stamped. If major changes or corrections are necessary, the shop drawings may be rejected and one set will be returned to the Design & Build contractor with such changes or corrections indicated, and the Design & Build contractor shall correct and resubmit the shop drawings in quadruplicate, unless otherwise directed by the Engineer. No changes shall be made by the Design & Build contractor to resubmitted shop drawings other than those changes indicated by the Engineer.

The review of such shop drawings and catalog cuts by the Engineer shall not relieve the Design & Build contractor from responsibility for correctness of dimensions, fabrication details and space requirements, or for deviations from the Contract Drawings or Specification, unless the Design & Build contractor has called attention to such deviations in writing by a letter accompanying the shop drawings and the Engineer approves the change or deviation in writing at the time of submission; nor shall review by the Engineer relieve the Design & Build contractor from the responsibility for errors in the shop drawings. When the Design & Build contractor does call such deviations to the attention of the Engineer, the Design & Build contractor shall state in his letter whether or not such deviations involve any deduction or extra cost adjustment.

#### XXXIX. DETAILED DRAWINGS AND INSTRUCTIONS

The Engineer will furnish, with reasonable promptness, additional instructions by means of Drawings or otherwise, if, in the Engineer's opinion, such are required for the proper execution of the work. All such Drawings and instructions will be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom.

#### XL. WARRANTY OF TITLE

No material, supplies, or equipment for the work shall be purchased subject to any chattel mortgage security agreement or under a conditional sale or other agreement by which an interest therein or any part thereof is retained by the seller or supplier. The Design & Build contractor warrants good title to all material, supplies and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the premises together with all improvements and appurtenances constructed or placed thereon by it to ASPA free from any claim, lien, security interest, or charge and further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract shall have any right to a lien upon the premises or any improvements or appurtenances thereon, provided that this shall not preclude the Design & Build contractor from installing metering devices and other equipment of ASPA, the title of which is so commonly retained by ASPA. The provisions of this section shall

be inserted by the Design & Build contractor into all subcontracts, and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

#### XLI. SUBSTITUTION OF MATERIALS

Except for ASPA-selected equipment items, and items where no substitution is clearly specified, whenever any material, article, device, product, fixture, form, type of construction, or process is indicated or specified by patent or proprietary name, by name of manufacturer, or by catalog number, such specifications shall be deemed to be used for the purpose of establishing a standard of quality and facilitating the description of the material or process desired. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design. The Design & Build contractor may, in such cases, submit complete data to the Engineer, within thirty (30) days following the award of the Contract, for consideration of another material, type, or process which shall be substantially equal in every respect to that so indicated or specified. Substitute materials shall not be used unless approved by ASPA in writing. The Engineer will be the sole judge of the substituted article or material.

#### XLII. TESTS SAMPLES AND INSPECTIONS

The Design & Build contractor shall furnish, without extra charge, the necessary test pieces and samples, including facilities and labor for obtaining the same, as requested by the Engineer. When required, the Design & Build contractor shall furnish certificates of tests of materials and equipment made at the point of manufacture by a recognized testing laboratory. The Engineer, and authorized ASPA agents, and their representatives shall at all times be provided safe access to the work wherever it is in preparation or progress, and the Design & Build contractor shall provide facilities for such access and for inspection, including maintenance of temporary and permanent access. If the Technical Specifications, the Engineer's instructions, or any laws or regulations require any work to be specially tested or approved, the Design & Build contractor shall give timely notice of its readiness for inspection. Inspections to be conducted by the Engineer will be promptly made, and where practicable, at the source of supply. If any work should be covered up without approval or consent of the Engineer, it shall, if required by the Engineer, be uncovered for examination at the Design & Build contractor's expense. Re-examination of questioned work may be ordered by the Engineer, and, if so ordered, the work shall be uncovered by the Design & Build contractor. If such work is found to be in accordance with the Contract Documents, ASPA will pay the cost of reexamination and replacement. If such work is found to be not in accordance with the Contract Documents, the Design & Build contractor shall correct the defective work, and the cost of reexamination and correction of the defective work shall be paid by the Design & Build contractor.

#### XLIII. ROYALTIES AND PATENTS

The Design & Build contractor shall pay all royalty and license fees, unless otherwise specifies. The Design & Build contractor shall defend all suits or claims for infringement of any patent rights and shall defend, indemnify and hold harmless ASPA from any such suits or claims.

#### XLIV. DEFECTIVE WORK

The Design & Build contractor warrants and guarantees to ASPA that all work will be in accordance with the Contract Documents and will not be defective. Design & Build contractor hereby agrees to make, at its own expense, all repairs or replacements necessitated by defects in materials or workmanship, supplied under the Contract, which become evident to ASPA within one (1) year after the date of final acceptance of the work or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. If defective work is found, Design & Build contractor shall promptly, without cost to ASPA and in accordance with ASPA's written instructions, promptly either corrects such defective work, or if it has been rejected by ASPA, remove it from the work site and replace it with non-defective work. The Design & Build contractor further assumes responsibility for a similar guarantee for all work and materials provided by the subcontractors or manufacturers of all work and materials provided by the sub-contractors or manufacturers of packaged equipment components. The Design & Build contractor also agrees to defend, indemnify and hold harmless ASPA from and against liability of any kind arising from damage due to said defects. The Design & Build contractor shall make all repairs and replacements promptly upon receipt of written order for same from ASPA. If Design & Build contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk or loss of damage, ASPA may have the defective work corrected or the rejected work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by Design & Build contractor.

#### XLV. COMMENCEMENT OF THE WORK

Before work shall be started and materials ordered, the Design & Build contractor shall meet and consult with the Engineer to discuss the materials, equipment and all arrangements for prosecuting the work and work program. Work shall not commence until the Design & Build contractor receives the Notice of Proceed in writing from ASPA.

#### XLVI. SCHEDULES AND PROGRESS REPORTS

Prior to starting work, the Design & Build contractor shall accept ASPA's Milestone Schedule or submit to the Engineer its own progress schedule for acceptance showing approximately the dates on which each part or division of the work is expected to be started and finished, including an estimated timeline for use of the materials. ASPA's Milestone Schedule for purposes of progress payments ("Milestone Payments") to the Design & Build contractor shall determine ASPA's payment duties, unless the Engineer determines in writing that the Design & Build contractor's progress schedule shall be considered the official Milestone Schedule.

The Design & Build contractor shall also forward to the Engineer, at the end of each month, an itemized report of the delivery status of major and critical items of purchased equipment and material, including the status of shop drawings and the status of shop and field fabricated work. These progress reports shall indicate the date of the purchase order, the current percentage of completion, estimated delivery and cause of delay, if any.

The Design & Build contractor's progress schedule must conform to the calendar days set forth for the completion of the work and shall be subject to modification by the Engineer. The Engineer shall be advised in advance by the Design & Build contractor when construction work is scheduled and the days when no construction work will take place. If the Design & Build contractor fails to notify the Engineer in advance of a the day or days when no construction work will be done, the Design & Build contractor will be charged the cost of inspection for that day or days and such charges may be deducted from any payment due the Design & Build contractor. If the completion of any part of the work or the delivery of materials is behind the approved schedule, the Design & Build contractor shall submit in writing a plan acceptable to the Engineer for bringing the work up to schedule.

ASPA shall have the right to withhold Milestone Payments for the work if the Design & Build contractor fails to prosecute the work in accordance with the Milestone Schedule. It is expressly understood and agreed that the time of beginning, rate of progress and time of completion of the work are the essence of the Contract. The work shall be prosecuted at such time, and in or on such part or parts of the project as may be required, to complete the project as contemplated in the Contract Documents and the approved Milestone Schedule.

#### XLVII. NIGHT WORK

The Design & Build contractor may be required to prosecute the work at night if, at any time, the Engineer deems it necessary for the progress of the work, or if emergencies arise, and the Design & Build contractor shall promptly comply with any such requirements made in writing by the Engineer. The Design & Build contractor will also be permitted to work at night if it shall satisfy the Engineer of the need therefore in order to maintain the required progress or protect the work from the elements. If ordered or permitted to work at night, the Design & Build contractor shall provide sufficient and satisfactory lighting and other facilities therefore. For night work, if any be performed, the Design & Build contractor shall receive no extra payment, but compensation shall be considered as having been included in the price stipulated for the work.

#### XLVIII. ASPA'S RIGHT TO PERFORM WORK

If in the opinion of the Engineer the Design & Build contractor neglects to prosecute the work in a timely manner or in accordance with the Milestone Schedule, or neglects or refuses at its own cost to perform and/or replace work rejected by the Engineer, then ASPA shall notify the Design & Build contractor and its surety of the condition, and after ten (10) days' written notice to the Design & Build contractor and the Surety, and without prejudice to any other right or remedy which ASPA may have under the Contract Documents, including the section entitled "ASPA's Right to re-Design & Build contractor Work," and take over that portion of the work which has

been neglected or improperly executed and make good the deficiencies and deduct its costs thereof from the payments then or thereafter due the Design & Build contractor.

#### XLIX. TERMINATION FOR CONVEINANCE

ASPA may terminate the Contract in whole or, from time to time, in part, if the Executive Director (the "ED") determines that a termination is in the best interest of ASPA. In such case, the ED shall terminate the Contract by delivering to the Contractor a two-week notice of termination specifying the extent of termination and the effective date. Within two weeks of termination, the Contractor shall cease its prosecution of the work, turn over to ASPA all data and other materials acquired for purposes of the Contract, and submit to ASPA a claim for materials acquired for purposes of the Contract, and submit to ASPA a claim for materials and/or labor supplied prior to termination. ASPA shall pay the Contractor an equitable price for materials purchased and labor expended by the Contractor prior to termination, provided that such price not to exceed a fair proportion of the original Contract price.

After receipt of a notice of termination issued pursuant to this section, and except as directed by the ED, the Design & Build contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this section:

1. Stop the supply and delivery of goods and labor as specified in the notice;
2. Place no further orders for goods, materials, services, labor or facilities, except as necessary to complete any continued portion or portions of the Contract;
3. Terminate all subcontracts to the extent they relate to the supply and delivery of goods terminated;
4. Assign to ASPA, as directed and approved by the ED, all right, title, and interest of the Design & Build contractor under the subcontracts terminated, in which case ASPA shall have the right to settle or to pay any termination settlement proposal arising out of those terminations;
5. With approval or ratification to the extent required by the ED, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this section;
6. Complete performance of the supply and delivery of goods not terminated;
7. Take any action that may be necessary or that the ED may direct, for the protection and preservation of the goods related to the Contract that is in the possession of the Design & Build contractor and in which ASPA has or may acquire an interest; and
8. Submit a final termination settlement proposal to the ED in the form and with the certifications prescribed by the ED. The Design & Build contractor shall submit the proposal promptly upon notice of termination, but no more than one (1) month from the effective date of termination, unless extended in writing by the ED upon written request of the Design & Build contractor within this one (1) month period. However, if the ED determines that the facts justify it, a termination settlement proposal may be received and acted on after one (1) month or any extension. If the Design & Build contractor fails to

submit the proposal within the time allowed, the ED may determine, on the basis of information available, the amount, if any, due to the Design & Build contractor because of the termination and shall pay the amount determined.

L. TERMINATION FOR CAUSE

ASPA may discharge the Design & Build contractor and terminate the Contract at any time when ASPA shall determine that it has sufficient cause arising from (a) Design & Build contractor's dereliction or unsatisfactory performance of a duty, (b) Design & Build contractor's failure to perform the work in accordance with the provisions of the Contract Documents, (c) misrepresentation by the Design & Build contractor, or (d) conviction of the Design & Build contractor or any of its directors and/or officers of a felony. If ASPA terminates the Design & Build contractor for cause prior to completion of the Design & Build contractor's duties, in addition to any other rights or remedies granted ASPA in the Contract Documents and at law, ASPA shall require repayment by the Design & Build contractor of all advanced payments or Milestone Payments made and may require delivery of any partially completed work. ASPA shall finish the remaining work to be performed by whatever method ASPA may deem expedient and the Design & Build contractor shall not be entitled to receive any further compensation. In the event that the cost, including additional managerial and administrative services, to ASPA to complete the work exceeds the contract price, such excess costs shall be paid by the Design & Build contractor.

LI. TERMINATION FOR DEFAULT

If the Design & Build contractor refuses or fails to perform any provision of the Contract or Contract Documents with such diligence as will ensure its completion within the time specified in the Contract or any extension thereof, otherwise fails to timely satisfy any provision set forth in the Contract Documents, or commits any other substantial breach of the Contract Documents, ASPA may notify the Design & Build contractor in writing of the delay or non-performance, and if not cured within ten (10) days or any longer time specified in writing to ASPA, ASPA shall terminate the Design & Build contractor's right to proceed under the Contract or such part of the Contract Documents as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part under this section, ASPA may procure similar supplies, materials and/or services in a manner and upon terms deemed appropriate by ASPA, as further set forth in the section entitled "ASPA's Right to Re-contract Work". Notwithstanding termination of the Contract and subject to any directions from ASPA, the Design & Build contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Design & Build contractor in which ASPA has an interest.

Payment for completed work shall be at the sole discretion of ASPA. Payment for the protection and preservation of property shall be in an amount agreed upon by the Design & Build contractor and ASPA. ASPA may withhold from amounts due the Design & Build contractor such sums as ASPA deems to be necessary to protect ASPA against loss because of outstanding liens or claims of former lien holders and to reimburse ASPA for the excess costs incurred in procuring similar goods, material and/or services.

Except with respect to defaults of subcontractors, the Design & Build contractor shall not be in default by reason of any failure in performance of the Contract in accordance with its terms if the Design & Build contractor has notified ASPA within ten (10) days after the cause of the delay and the failure arises out of causes such as acts of God, acts of the public enemy, acts of ASPA and any other ASPA entity in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargo, or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Design & Build contractor shall not be deemed to be in default, unless the supplies and/or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Design & Build contractor to meet the Contract requirements.

If, after notice of termination for default, it is determined for any reason that the Design & Build contractor was not in default under the provisions of this section, the rights and obligations of the parties shall, be the same as if the notice of termination had been issued pursuant to the subsection entitled "Termination for Convenience."

The rights and remedies provided in this subsection are in addition to any other rights and remedies provided by law or under the Contract Documents.

#### LII. TERMINATION FOR NATIONAL EMERGENCIES

ASPA shall terminate this Contract or portion thereof by written notice when the Design & Build contractor is prevented from proceeding with this Contract as a direct result of an Executive Order of the President or Governor of American Samoa with respect to the prosecution of war or in the interest of national defense. ASPA shall not be liable for any claims for loss of anticipated profits.

#### LIII. ASPA'S RIGHT TO RE-CONTRACT WORK

If (a) ASPA determines that the Design & Build contractor has abandoned the work, (b) the Design & Build contractor is adjudged to be bankrupt, (c) the Design & Build contractor makes a general assignment, with ASPA's approval, for the benefit of the Design & Build contractor's creditors, (d) a receiver is appointed on account of its insolvency, (e) the Design & Build contractor, on more than one working day, refuses or fails to supply enough properly skilled workers or proper materials, (f) the Design & Build contractor fails to make prompt payment to subcontractors for materials or labor, (g) the Design & Build contractor disregards the laws or regulations of American Samoa or the United States, or (h) ASPA finds that the Design & Build contractor is in material breach of any provision of the Contract Documents or any laws or regulations, then ASPA may, without prejudice to any other right or remedy provided to ASPA under the Contract Documents or at law, and after giving the Design & Build contractor and its surety ten (10) days' written notice of its intent to terminate for default, terminate the employment of the Design & Build contractor in accordance with this section and the section entitled "Termination for Default" and take possession of the premises and of all materials, tools and appurtenances thereon and finish the work by whatever method ASPA may deem expedient. In such case, the Design & Build contractor shall not be entitled to receive any further



compensation. In the event that the cost, including additional managerial and administrative services to ASPA to complete the work exceeds the contract price such excess costs shall be paid by the Design & Build contractor.

#### LIV. SUSPENSION OF THE WORK

ASPA shall have the authority to suspend the work wholly, or in part, for such period or periods as it may deem necessary, due to severe weather or such other conditions as are considered by ASPA to be unfavorable to the prosecution of the work. ASPA shall also have the authority to suspend the work for such time as is necessary due to the failure on the part of the Design & Build contractor to carry out orders given by ASPA or any other Contract (collectively all of the above shall constitute a "Foreseeable Suspension").

In the event that the Design & Build contractor is ordered by ASPA to suspend the Work for a Foreseeable Suspension, the period of shutdown shall be computed from the effective date of ASPA's order to suspend work to the effective date of ASPA's order to resume the Work. ASPA shall, at its sole discretion, determine whether a contract amendment is appropriate, whose determination will not be unreasonable. In the event that the Design & Build contractor is ordered by ASPA to suspend the Work for some unforeseen cause not otherwise provided for in this Agreement and over which the Design & Build contractor has no control (an "Unforeseen Suspension"), the period of suspension shall be computed from the effective date of ASPA's order to suspend work to the effective date of ASPA's order to resume the Work (the "Suspension Period"). In the event of an Unforeseen Suspension, ASPA and the Design & Build contractor shall execute an appropriate contract amendment extending the term of this Contract to account for the Suspension Period.

No provision of this section shall be construed as entitling the Design & Build contractor to compensation for delays due to inclement weather, for suspension made at the request of the Design & Build contractor, or for any other delay.

#### LV. EXAMINATION OF EXISTING FACILITIES

After the Contract is executed and before the commencement of work, the Design & Build contractor and Engineer shall make a thorough examination of all existing building, structures, and other improvements in the vicinity of the work, as applicable, which might be damaged by construction operations. Periodic examinations of existing buildings, structures, and other improvements in the vicinity of the work shall be made jointly by authorized representatives of the Design & Build contractor, Engineer, Owner, and the affected property owners. The scope of the examination shall include cracks in structures, settlement, leakage, and similar conditions. Records in triplicate of all observations shall be prepared by the Design & Build contractor and each copy of every document shall be signed by the authorized representatives of the Owner and Design & Build contractor and signed in the manner specified above. One signed copy of every document and photograph will be kept on file in the office of the Engineer. These records and photographs are intended for use as indisputable evidence in ascertaining whether, and to what extent, damage occurred as a result of the Design & Build contractor's operatives and are for the protection of the adjacent property owners, the Design & Build contractor, and the Owner.

#### LVI. DIFFERING SITE CONDITIONS

The Design & Build contractor shall promptly, and before such conditions are disturbed, notify the Engineer in writing of: (a) subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or (b) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as being work of the character provided for in the Contract. The Engineer shall promptly investigate the conditions, and if he/she finds that such conditions do materially so differ and cause an increase or decrease in the Design & Build contractor's cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made by ASPA and the Contract shall be modified in writing accordingly. No claim of the Design & Build contractor under this clause shall be allowed unless the Design & Build contractor has given the notice required above. No claim by the Design & Build contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

#### LVII. UNFORSEEN DELAYS

If the Design & Build contractor is delayed in the progress of the work by any act or neglect of ASPA, or by strikes, lockouts, fire, unusual weather conditions, or unavoidable casualties, the Design & Build contractor shall, within 48 hours of the start of the delay give notice to the Engineer of the cause of the delay and estimate the possible time extension involved. Within seven (7) days after the conclusion of the delay, the Design & Build contractor shall give notice to the Engineer of any actual time extension requested as a result of the aforementioned occurrence. No extension of time will be granted to the Design & Build contractor for delays occurring to parts of the work that have no measurable impact on the completion of the total work under the Contract, nor will extension of time be granted for delays to parts of work that are not located on the critical path if the Critical Path Method ("CPM") is used for scheduling the work. No extension of time will be considered for weather conditions normal to the area in which the work is being performed. Unusual weather conditions, if determined by the Engineer to be of a severity that would stop all progress of work, may be considered as cause for an extension of Contract completion time.

The Engineer may order the Design & Build contractor to suspend the work that may be subject to damage in climatic conditions. When delay is caused by an order to suspend work given on account of climatic conditions which, in the opinion of the Engineer, could have been reasonably foreseen, and for damage that could have been forestalled by diligent and reasonable action on the part of the Design & Build contractor, the Design & Build contractor will not be entitled to any extension of time on account of such order. The Design & Build contractor shall maintain all drainage ways through the work open and clear for drainage and store water flow. The Design & Build contractor's attention is directed to the average annual rainfall in American Samoa which is approximately 200 inches.

Delays in delivery of equipment or material purchased by the Design & Build contractor or his subcontractors (including ASPA selected equipment) shall not be considered as a just cause for

delay. The Design & Build contractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery and installation of all equipment and materials.

Within a reasonable period after the Design & Build contractor submits to the Engineer a written request for an extension of time, the Engineer will present his written opinion to the Design & Build contractor as to whether an extension of time is justified, and, if so, his recommendation as to the number of days for time extension. The Engineer will make the final decision on all requests for extension of time.

In no event shall the Design & Build contractor be entitled under the Contract to collect or recover any damages, loss or expense incurred by any delay other than as caused by ASPA.

#### LVIII. FAILURE TO COMPLETE THE WORK IN THE TIME AGREED UPON

It is agreed by the parties to the Contract that time is of the essence, and that in case all the work is not completed before or upon the expiration of the term of the Contract, damages will be sustained by ASPA, and it is therefore agreed that the Design & Build contractor will pay to ASPA the amount stipulated in the Contract Documents. A late penalty of Five Thousand Five Hundred Dollars (\$5500.00) per day shall be assessed by ASPA and shall be payable by the Design & Build contractor for each day the Design & Build contractor fails to successfully complete the Work before or upon the expiration of the term of the Contract. The parties explicitly agree that payment and acceptance of any late penalties shall not constitute accord and satisfaction of the Design & Build contractor's failure to complete the Work within the term of this Contract. In addition, ASPA will have the right to charge to the Design & Build contractor and to deduct from the final payment for the work the actual cost to ASPA of engineering, inspection, construction, review, and other overhead expenses, which are directly chargeable to the Contract and which accrue during the period of such delay.

In the event that the Design & Build contractor fails to complete the work within the term of the Contract, ASPA may then relet the Contract for the unfinished portion of the work, or complete it by Force Account. Such reletting or doing said work by Force Account shall not relieve the original Design & Build contractor or its Sureties from liabilities on their bonds, performance bond and other securities, or relieve the Design & Build contractor of its responsibilities set forth in the Contract Documents for all portions of this work completed by the Design & Build contractor.

#### LIX. DISPUTES

Except as otherwise provided in the Contract, any dispute concerning a question of fact arising under the Contract or the Contract Documents which is not disposed of by agreement, shall be decided by the Engineer, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Design & Build contractor. The decision of the Engineer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Design & Build contractor mails or otherwise furnishes to the Engineer a written appeal addressed to ASPA's Executive Director ("ED"). The decision of the ED or his/her duly authorized representative for the determination of such appeals shall be final and conclusive.

This provision shall not be pleaded in any suit involving a question of fact arising under the Contract as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged; provided, however, that any such decision shall be final and conclusive, unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantiating evidence. In connection with any appeal proceeding under this section, the Design & Build contractor shall be afforded an opportunity to be heard by the CEP and to offer evidence in support of its appeal. After a final decision by the ED of a dispute hereunder, and during any further appeals to a court of competent jurisdiction, the Design & Build contractor shall proceed diligently with the performance of the Contract and in accordance with the Executive Director's decision. This section does not preclude considerations of questions of law in connection with decisions provided for above.

#### LX. JURISDICTION

This Contract shall be construed according to the laws of American Samoa. All disputes under this Contract and all judicial proceedings shall be brought in the High Court of American Samoa. The Contractor hereby appoints the Treasurer of the American Samoa Government as agent for service within the jurisdiction, if an agent of the Design & Build contractor cannot be found in American Samoa after a reasonable search.

The Treasurer of American Samoa is hereby appointed agent of the Design & Build contractor for service of process in all judicial proceedings. At the time of service of papers upon the agent above-referenced, ASPA shall also cause confirming copies to be posted in the U.S. Mail, certified mail, properly stamped and addressed to the Design & Build contractor's address of record.

#### LXI. OTHER CONTRACTS

ASPA reserves the right to let other Contracts in connection with the work. The Design & Build contractor shall afford other Design & Build contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs. If any part of the work under the Contract depends on the prior acceptable completion of work by others under separate Contract(s), the Design & Build contractor shall inspect and promptly report to the Engineer any defects in such work that would adversely affect the satisfactory completion of the work under the Contract. The Design & Build contractor's failure to so inspect and report shall constitute acceptance of the work by others as being suitable for the proper reception and completion of the work under this Contract, excluding, however, those defects in the work by others that occur after the satisfactory completion of the work specified hereunder.

#### LXII. USE OF PREMISES

The Design & Build contractor shall confine its equipment, the storage of materials, and the operation of its workers to limits shown on the Functional Specifications and/or Drawing, and shall not unreasonably encumber the premises with its materials. The Design & Build contractor

shall provide, at its own expense, the necessary rights-of-way and access to the work which may be required outside the limits of ASPA's property or acquired right-of-way. The Design & Build contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger its safety.

#### LXIII. ENVIRONMENTAL CONTROLS

The Design & Build contractor, in executing the work, shall maintain affected areas within and outside project boundaries free from environmental pollution that would be in violation of applicable laws. The Design & Build contractor shall not impair the operation of existing water and wastewater systems and shall maintain original site drainage whenever possible.

#### LXIV. WATER POLLUTION CONTROLS

The Design & Build contractor, in executing the work, shall comply with all applicable laws prohibiting the pollution of marine waters, lakes, wetlands, streams, or river waters. Prior to commencing excavation and construction, the Design & Build contractor shall obtain the Engineer's approval of the Design & Build contractor's detailed plans showing procedures intended to handle and dispose of groundwater, and storm water flow, including dewatering pump discharges. Dewatering pump discharges shall be conveyed to an existing storm water outfall. The Design & Build contractor shall comply with the procedures outlined in the American Samoa and U.S. Environmental Protection Agency manuals entitled "Guidelines for Erosion and Sedimentation Control Planning and Implementation," "Processes, Procedures, and Methods to Control Pollution Resulting from All Construction Activity," and "Erosion and Sediment Control-Surface Mining in Eastern United States."

#### LXV. WASTE MATERIAL DISPOSAL

The Design & Build contractor shall comply with all ASPA and ASEPA pollution control, solid waste and landfill requirements, regulations and laws. The Design & Build contractor shall not burn or bury rubbish or waste materials on the premises. The Design & Build contractor shall not dispose of volatile wastes such as mineral spirits, oil, chemicals, or paint thinner in storm or sanitary drains. Disposal of wastes into streams or waterways is specifically prohibited. The Design & Build contractor shall provide acceptable containers for collection and disposal of waste materials, debris, and rubbish. The Design & Build contractor shall, prior to transporting any materials to the premises, submit to and obtain approval by the Engineer of all planned routes of passage. Routes shall be developed to minimize the impact of the additional traffic on the functioning of the transportation in American Samoa.

#### LXVI. USE OF PREMISES

The Design & Build contractor shall at all times, keep the work site free from waste, materials, and rubbish caused by his operations, including all materials, tools, equipment, machinery and surplus. Should it become necessary for ASPA to remove any of the aforementioned materials

from its facilities, ASPA may do so and charge all costs incurred thereof to the Design & Build contractor. Design & Build contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the work site, or a safe storage facility not adjacent to the work site. The Design & Build contractor shall not unreasonably encumber the work site with materials or equipment. Design & Build contractor shall be fully responsible for any damage to the work site or areas contiguous thereto resulting from the performance of the work. During the progress of the work, Design & Build contractor shall keep the work site free from accumulations of waste materials, rubbish, and other debris resulting from the work. At the completion of the work, Design & Build contractor shall remove all waste materials, rubbish and debris from and about the work site as well as the removal of all tools, construction equipment, machinery, and surplus material, and shall leave the work site clean.

#### LXVII. SUBSTANTIAL COMPLETION DATE

The Engineer may, at his/her sole discretion, issue a written notice of substantial completion for the purpose of establishing the date that ASPA will assume the responsibility for the cost of operating such equipment. Said notice shall not be considered as final acceptance of any portion of the work or relieve the Design & Build contractor from completing the remaining work within the specified time and in full compliance with the Contract Documents.

#### LXVIII. ASPA'S USE:

ASPA shall have the right to take possession of and use any completed or partially completed portions of the work. Such use shall not be considered as final acceptance of any portion of the work, nor shall such use be considered as cause for an extension of the Contract completion time, unless authorized in writing by ASPA.

If, after installation, the operation or use of the materials or equipment to be furnished under this Contract proves to be unsatisfactory to ASPA, ASPA shall have the right to operate and use such materials or equipment until it can, without damage to ASPA, be taken out of service for correction or replacement. Such period of use of the defective materials or equipment pending correction or replacement shall in no way decrease the guarantee period required for the acceptable corrected or replaced items of materials or equipment.

#### LXIX. PAYMENT

In consideration of the faithful performance of the work prosecuted in accordance with the provisions of these Contract Documents, ASPA promises to pay to the Design & Build contractor, the total contract amount.

#### LXX. GENERAL

In consideration of the faithful performance of the work prosecuted in accordance with the provisions of these Contract Documents, the American Samoa Power Authority (ASPA) will pay

the Design & Build Contractor in United States dollars for all such work on the basis of percentage of completion for lump sum items and unit price for all other items

#### LXXI. GUARANTEE OF STRUCTURES

The Contractor shall guarantee the work done under this Contract against leaks, breaks, malfunctions, or other unsatisfactory conditions due to defective equipment, materials, or workmanship for a period of 1 year from the date of his acceptance of the final payment under the Contract. Any repair work or replacement required, in the opinion of the Engineer, shall be done immediately by the Contractor at his own expense.

Neither the final certificate of payment nor any provision in the Contract nor partial or entire use or occupancy of the premises by ASPA shall constitute an acceptance of work not done in accordance with the Contract nor relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting there from which shall appear within a period of 1 year from the date of final acceptance of work. ASPA will give notice of observed defects with reasonable promptness.

ASPA may make such repairs, if, within 5 days after mailing of a notice in writing to the Contractor or to his agent, the Contractor shall neglect to make or undertake with due diligence the aforesaid repairs; provided, however, that if, in the opinion of the Engineer, delay would cause serious loss or damage, repairs may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof.

#### LXXII. CONTRACTORS' AND MANUFACTURERS' COMPLIANCE WITH SAMOAN SAFETY, OSHA AND OTHER CODE REQUIREMENTS

The completed work shall include all necessary permanent safety devices, such as machinery guards and similar ordinary safety items required by the federal (OSHA) industrial authorities and applicable local and national codes. Further, any features of the work (including ASPA-select equipment) subject to such safety regulations shall be fabricated, furnished and installed in compliance with these requirements. Contractors and manufacturers of equipment shall be held responsible for compliance with the requirements included herein. Contractors shall notify all equipment suppliers and subcontractors of the provisions of this Article.

In selecting and/or approving equipment for installation in the project, ASPA and Engineer assume no responsibility for injury or claims resulting from failure of the equipment to comply with applicable national, Samoan and local safety codes or requirements or the safety requirements of a recognized agency, or failure due to faulty design concepts, or defective workmanship and materials.

#### LXXIII. SUBSTITUTION OF MATERIALS

Except for ASPA-selected equipment items, and items where no substitution is clearly specified, whenever any material, article, device, product, fixture, form, type of construction, or process is

indicated or specified by patent or proprietary name, by name of manufacturer, or by catalog number, such specifications shall be deemed to be used for the purpose of establishing a standard of quality and facilitating the description of the material or process desired. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design, and shall be deemed to be followed by the words "or equal". The Contractor may, in such cases, submit complete data to the Engineer, within 35 days following award of Contract, for consideration of another material, type, or process, which shall be substantially equal in every respect to that so indicated or specified. Substitute materials shall not be used unless approved in writing. The Engineer will be the sole judge of the substituted article or material.

#### LXXIV. MATERIALS AND EQUIPMENT OF FOREIGN MANUFACTURE

Foreign-made materials and equipment proposed for use on this Contract shall meet with the full intent and purpose of these Contract Documents; and documentation substantiating compliance with the specified requirements shall be submitted in English to the Engineer for review and approval prior to the Contractor's purchase and delivery to the project site. The ready availability of manufacturer's services and replacement parts for maintenance purposes shall be described and warranted. Bidders shall notify prospective suppliers of foreign-made material of this requirement, and the requirement for correcting defective workmanship and materials for a period of one year following final acceptance of the work under this Contract.

#### LXXV. CORRECTION OF DEFECTIVE WORK AFTER FINAL ACCEPTANCE

The Contractor hereby agrees to make, at his own expense all repairs or replacements necessitated by defects in materials or workmanship, supplied under terms of this Contract, which become evident within 1 year after the date of final acceptance of the work or within 1 year after the date of substantial completion established by the Engineer for specified items of equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. The Contractor further assumes responsibility for a similar guarantee for all work and materials provided by subcontractors or manufacturers of all work and materials provided by the subcontractors or manufacturers of packaged equipment components. The Contractor also agrees to hold ASPA harmless from liability of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written order for same from ASPA. If the Contractor fails to make the repairs and replacement promptly, ASPA may do the work, and the Contractor and his Surety shall be liable for the cost thereof.

#### LXXVI. RELEASE OF LIENS AND CLAIMS

Before ASPA pays the Design & Build contractor the final payment for the work, the Design & Build contractor shall sign and deliver to ASPA a release of liens or claims sworn to under oath and duly notarized. The release shall state that the Design & Build contractor has satisfied all claims and indebtedness of every nature in any way connected with the work, including (but not



limiting the generality of the foregoing) all payrolls, amounts due to subcontractors, accounts for labor performed and materials furnished, incidental services, liens and judgments. If any lien or claim remains unsatisfied after all payments to the Design & Build contractor are made, the Design & Build contractor shall refund to ASPA all monies that the latter may be compelled to pay in discharging such a lien or claim, including all costs and attorney's fees. In addition to the above, final payment will not be made until the Design & Build contractor has filed with ASPA the following:

1. Consent of the surety for final payment;
2. Satisfactory evidence by affidavit or otherwise that the Design & Build contractor's debts resulting from the Contract have been fully paid or satisfactorily received;
3. Tax clearance from the American Samoa Government that all delinquent taxes levied or allowed under Territorial statutes have been paid; and
4. A properly executed non-gratuity affidavit.

#### LXXVII. FINAL PAYMENT

Upon completion of all the work under the Contract, the Design & Build contractor shall notify the Engineer, in writing, that it has completed the Contract and requests final payment. If the work has been completed as provided in the Contract Documents, the Engineer will recommend acceptance of the completed work and submit a final estimate for the amount due the Design & Build contractor under this Contract. Upon approval of this final estimate by ASPA and compliance with provisions in the section entitled "RELEASE OF LIENS OR CLAIMS," and other sections or provisions of the Contract Documents as may be applicable; ASPA shall pay to the Design & Build contractor all monies due it under the provisions of these Contract Documents.

The acceptance by the Design & Build contractor of the final payment shall release ASPA, its directors, officers, employees, agents and representative from any and all liability to the Design & Build contractor for every act or omission of ASPA relating to or arising out of the Contract or the work performed. No payment, however, final or otherwise, shall operate to release the Design & Build contractor or its sureties from obligations under the Contract Documents, the Payment Bond, and any other bonds and/or warranties as provided for in the Contract Documents.

#### LXXVIII. NO WAIVER OF RIGHTS

Neither the inspection by the Engineer, nor any order by ASPA for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the Engineer, nor any extension of time, nor any possession taken by ASPA or its employees, shall operate as a waiver of any provision of the Contract Documents, or any power therein reserved to ASPA, or any right to damages therein provided, nor shall any waiver of any breach of the Contract Documents be held to be a waiver of any other or subsequent breach.

#### LXXIX. MEASUREMENT DEFINITIONS

This Section includes specifications for measurement as they apply to the Work, and includes provisions applicable to lump sum prices, measurement by volume and unit prices as indicated.

Work to be paid for at a Contract price per unit measurement, as indicated in the Contract Documents, will be measured by the Engineer in accordance with United States Standard Measures.

1. LUMP-SUM MEASUREMENT

Lump-sum measurement will be for the entire item, unit of work, structure, or combination thereof, as specified and as indicated in the Bid Schedule of the Bid Form.

2. MEASUREMENT BY VOLUME

- a) Measurement by volume will be by the cubic dimension indicated in the Schedule. Method of volume measurement will be by the unit volume in place or removed as shown on the Contract Drawings as specified.
- b) When material is to be measured and paid for on a volume basis and it is impractical to determine the volume by the specified method of measurement, or when requested by the Design & Build contractor in writing and accepted by the Engineer in writing, the material may be weighed in accordance with the requirements specified for weight measurement. Such weights will be converted to volume measurement for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Design & Build contractor before such method of measurement of pay quantities will be accepted.

3. LINEAR MEASUREMENT

Linear measurement will be by the linear dimension listed or indicated in the Contract Documents. Unless otherwise indicated, items, components, or work to be measured on a linear basis will be measured at the centerline of the item in place.

LXXX. THIRD PARTY BENEFICIARY

This Contract is not intended to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.

LXXXI. PROHIBITION AGAINST INTEREST IN THIS CONTRACT

No member of or delegate to the Congress of the United States or FONO of American Samoa shall be admitted to any share or any part of this Contract or to any benefit to arise from the same; provided that the foregoing provision of this contract is made with a corporation for its general benefit. No employee of ASPA who exercises any functions or responsibilities in connection with the carrying out of the project to which this Contract pertains shall have any private interest, direct or indirect, in this Contract.

LXXXII. FORCE MAJEURE

Neither party shall be construed to be in default with respect to any obligation hereunder if performance of such obligation is prevented by uncontrollable forces. The term uncontrollable forces is deemed for the purpose of this Contract to mean any cause beyond the control of the party affected, including, but not limited to, flood, earthquake, severe storm, drought, lightning, fire, war, riot, civil disturbance, labor disturbance, sabotage, or restraint by a court order or other regulatory agency, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid. Any party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch. Nothing contained herein shall be construed to obligate a party to settle a strike against its will.

LXXXIII. NOTICES

All notices and correspondence required to be sent to either party hereunder shall be delivered personally or by certified or registered mail and addressed as follows and deemed effective when so mailed (subject to the right to designate a different address by notice similarly given):

IF TO DESIGN & BUILD CONTRACTOR: \_\_\_\_\_

Pago Pago, American Samoa 96799

IF TO ASPA:

\_\_\_\_\_

Executive Director

American Samoa Power Authority

P.O. Box PPB

Pago Pago, American Samoa 96799

LXXXIV. MISCELLANEOUS

LXXXV. ASSIGNMENT

The Design & Build contractor shall neither assign nor subcontract any portion of this Agreement without the express written approval of ASPA.

LXXXVI. AMENDMENTS

This Contract may be amended at any time during the term hereof, provided, however, that no amendments or other variation of this Contract shall be valid unless in writing and signed by the Design & Build contractor and a duly authorized representative of ASPA.

#### LXXXVII. RELATIONSHIP OF THE PARTIES

The relationship of the parties hereto shall in no event be deemed or construed to be that of employer and employee or of principal and agent, or of any other relationship other than as an independent Design & Build contractor providing the services specified in this Contract.

#### LXXXVIII. ENTIRE AGREEMENT

This Contract and all documents incorporated herein constitute the entire agreement between the parties and supersede any oral or written understandings or agreements.

#### LXXXIX. SEVERABILITY

Each part of this Contract is intended to be severable. In the event that any part of this Contract is found by the High Court of American Samoa to be illegal or unenforceable, such provision or provisions shall be severed or modified to the extent necessary to render it enforceable, and as so severed or modified, this Contract shall continue in full force and effect.

#### XC. SECTION HEADINGS, NUMBERS AND LETTERS

The section headings and section numbers and letters in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.

#### XCI. FURTHER ASSURANCES

In addition to the instruments and documents to be made, executed and delivered pursuant to this Agreement, the parties hereto agree to make, execute and deliver or cause to be made, executed and delivered, to the requesting party such other instruments and to take such other actions as the requesting party may reasonably require to carry out the terms of this Contract and the transactions contemplated hereby.

#### XCII. EXECUTION IN COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

#### XCIII. WAIVER

Any waiver at any time by ASPA of its rights with respect to this Contract, or with respect to any other matter arising in connection with this Contract, shall be deemed a waiver of that specific

instance only and shall not be deemed a waiver with respect to any other matter arising thereafter in connection with this Contract.

#### XCIV. AUTHORITY

Each party represents and warrants that it has the necessary corporate and/or legal authority to enter into this Contract and to perform all of its duties and obligations imposed by this Contract. Each party further represents that the individuals executing this Contract on their respective behalf have been duly authorized to do so and that such execution creates a valid, binding and legally enforceable obligation of each party.

#### XCV. CONFLICTS

In the event a court of competent jurisdiction finds that a conflict exists between two or more provisions of the Contract Documents, the provisions of the Contract shall first prevail, followed by the Notice to Bidders, Instruction to Bidders, Technical Specifications, Drawings and then Bid Form, in that order.

#### XCVI. BONDS AND OTHER PERFORMANCE SECURITY

The Design & Build contractor shall provide the following performance bond and labor and material payment bond or other performance security: Performance Bond at 100% of the total bid amount and Payment Bond at 100% of the total bid amount.

#### XCVII. ATTACHMENT E (PERFORMANCE BOND INSTRUCTIONS)

The Performance Bond – A performance and surety bond must be provided prior to or concurrent with the execution of the written contract. The performance bond shall be in the amount of (the total project cost) \_\_\_\_\_ Dollars (\$). The Performance Bond shall be filed with an authorized surety company listed in Circular 570 (4810-35; 2006

Revision of the U. S. Department of Treasury), approved or issued by a surety acceptable to ASPA. The costs of said bond shall be included in the contract price. The most current list of Treasury authorized companies is available through the Internet at <http://ww.fms.treas.gov/c570>. The Performance Bond will be in force until the work is completed following the Notice to Proceed that will be issued no later than \_\_\_\_\_

The undersigned understands that the American Samoa Power Authority reserves the right to reject any or all proposals or to waive any informality or technicality in any proposal in the interest of the American Samoa Power Authority.

Attached hereto is an affidavit in proof that the undersigned has not entered into any collusion with any person in respect to this proposal or any other proposal or the submitting of proposals for the contract for which this proposal is submitted.

RESPECTFULLY SUBMITTED BY:

---

(OFFEROR SIGNATURE)

---

(BY)

---

(TITLE)

---

(BUSINESS ADDRESS)

XCVIII. ATTACHMENT F (PERFORMANCE BOND)

No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS that (here insert full name and address or legal title of Contractor)

\_\_\_\_\_, as Principal hereafter called the Contractor, and  
(Bonding Company),

\_\_\_\_\_, a duly admitted insurer under the laws of  
the American

Samoa Power Authority, as Surety, hereinafter called Surety are held firmly bound unto the American Samoa Power

Authority as obligee, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_),  
for payment of whereof Contractor and Surety bind themselves, their heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Contractor has by written agreement dated \_\_, entered into a contract with the American Samoa Power Authority for (describe project and insert project number)  
\_\_\_\_\_ which contract is by reference made a  
part hereof, and is hereinafter referred to as the Contractor.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract then the obligation shall be null and void, otherwise it shall remain in full force and effect. The

Surety hereby waives notice of any alternation or extension provided the same be within the scope of the contract.

Whenever Contractor shall be and is declared by the American Samoa Power Authority to be in default under the

Contract, the American Samoa Power Authority having performed territorial obligations thereunder, the Surety may promptly remedy the default or shall promptly:

1. Complete the Contract in accordance with its terms and conditions; or
2. Obtain an offer or offers for completing Contract in accordance with its terms and conditions, and upon determination by the American Samoa Power Authority and the Surety jointly of the lowest responsive, responsible Offeror, arrange for a contract between such Offeror and the American Samoa Power

Authority, and make available as work progresses (even though there should be a default under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract prices; but not exceeding, including other cost and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The terms balance of the contract price, as use in this paragraph shall mean the total amount payable by the American Samoa Power Authority to Contractor under the Contract and any amendments thereto, less

the amount properly paid by the American Samoa Power Authority to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the American Samoa Power Authority or successors of the American Samoa Power Authority.

Signed and sealed this day of 2010.

\_\_\_\_\_  
(PRINCIPAL) SEAL

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(MAJOR OFFICER OF SURETY) (MAJOR OFFICER OF SURETY)

\_\_\_\_\_  
(MAJOR OFFICER OF SURETY) (MAJOR OFFICER OF SURETY)

\_\_\_\_\_  
(RESIDENT GENERAL AGENT)



XCIX. SUPPLEMENTARY CONDITIONS

GENERAL

The following shall supplements shall modify, delete, and or add to the General Conditions. Where any article, paragraph, or sub paragraph in the General Conditions is supplemented by one of the following paragraphs, the provisions of such article, paragraph, or sub paragraph shall remain in effect and supplemental provisions shall be considered as added thereto. Where any article, paragraph in the General Conditions is amended, voided, or suspended by any of the following paragraphs, the provisions of such article, paragraph or sub paragraph not so amended, voided, or superseded shall remain in effect.

Federal Labor Standards Provisions. For Federally Assisted Construction Contracts. United States Department of Labor. CFR Code of Federal Regulations Pertaining to ESA. (Federal Davis-Bacon Wages). Title 29, Chapter I, Part 5, Subpart A (29 CFR 5.5)

Section Name: Contract provisions and related matters.

(a) The Recipient shall assure that the sub recipient(s) insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the applicable FY appropriation requirements, the following clauses:

(1) Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional

classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## (2) Withholding.

The loan or grant recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency or SRF program) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## (3) Payrolls and Basic Records

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the SRF program if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the SRF program. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at

<http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and

subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the SRF program if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the SRF program, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the loan or grant recipient or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### (4) APPRENTICES AND TRAINEES

**(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona

vide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio

permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

**(5) Compliance with Copeland Act requirements.**

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**(6) Subcontracts**

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the SRF program may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**(7) Contract termination**

Debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**(8) Compliance with Davis-Bacon and Related Act requirements**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**(9) Disputes concerning labor standards**

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**(10) Certification of eligibility**

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be

awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**(b) Contract Work Hours and Safety Standards Act.** The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**(2) Violation;** liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

**(3) Withholding for unpaid wages and liquidated damages.** The government may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

**(c)** In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in Sec. 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such

records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the loan or grant recipient and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**Minimum Wage.** The minimum wage in American Samoa for the construction industry was set at \$4.60 per hour on May 25, 2008, for Federally Assisted Construction Projects. Any changes in minimum wage during the term of this contract must be complied with at no increase in the contract sum. The Act also provides for additional increases in the minimum wage of \$0.50 an hour each year on May 25.