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**GOVERNMENT OF PUERTO RICO
DEPARTMENT OF HOUSING
PUERTO RICO PUBLIC HOUSING ADMINISTRATION**

AGREEMENT FOR CONSTRUCTION WORK

OF THE

**COMPREHENSIVE MODERNIZATION OF
EL COQUÍ PUBLIC HOUSING PROJECT**

THIS AGREEMENT FOR CONSTRUCTION WORK ("Agreement") is entered into in San Juan, Puerto Rico, this ____ of _____, 2012, by and between the **PUERTO RICO PUBLIC HOUSING ADMINISTRATION** (hereinafter, the "PRPHA"), Tax Identification Number 660-46-6229, a public agency created under Law Number 66 dated August 17, 1989, as amended, known as the Public Housing Administration Organic Act ("Organic Act"), with principal offices at 606 Barbosa Avenue, San Juan, Puerto Rico, herein represented by Miguel B. Hernández- Vivoni, Esq., in his capacity as Acting Administrator; and _____ (hereinafter, the "Contractor"), with principal offices in _____, Puerto Rico, herein represented by _____, in his capacity as President.

WHEREAS, the Organic Act requires the PRPHA to plan, organize, direct and coordinate all administrative activities necessary for the ordinary and extraordinary maintenance, cleaning, landscaping, modernization and general improvement of public housing projects.

WHEREAS, the PRPHA issued AVP-IFB-13-14-04 (hereinafter, the "IFB"), for the Comprehensive Modernization Works of El Coquí Public Housing Development, with AMP Identification Number RQ005003023, and Development Number (RQ-005210), respectively located in Cataño, Puerto Rico (hereinafter, the "Work").

WHEREAS, in response to the IFB, the Contractor timely submitted a sealed bid (hereinafter, the "Bid"), on _____ to perform the Work as described in the IFB and pursuant thereto.

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WHEREAS, after having reviewed and evaluated the Bid, the PRPHA selected the Contractor as the lowest responsive and responsible bidder under the terms and conditions of the IFB and applicable laws and regulations.

WHEREAS, in compliance with its applicable regulations and pursuant to the terms of the IFB, the Bid Board of the Department of Housing determined to award this Agreement for the performance of the Work to the Contractor; likewise, the Governing Board of the PRPHA has authorized the Administrator to enter into this Agreement.

WHEREAS, the PRPHA desires to enter into an agreement with the Contractor to perform the Work described in the IFB and to accept the Contractor's Bid, and the Contractor represents and warrants that it is ready, willing and able to fully perform said construction Work.

WHEREAS, this Agreement is a lump sum contract, under which the Contract Price (as defined herein) would only be subject to adjustment pursuant to the terms and conditions of the Contract.

WHEREFORE, in consideration of the mutual promises and the terms and conditions set forth herein, the PRPHA and the Contractor hereby agree as follows:

I) WORK DESCRIPTION AND SCOPE OF WORK:

A. -The Contractor's duties, responsibilities and work description under this Agreement are described in this Section I of this Agreement and all exhibits hereto. The Contractor shall furnish all the labor, materials, equipment, insurance, bonds, and services as required in IFB, in Contractor's Bid and this Agreement in order to perform and complete all the work required and included in the scope of work for the Comprehensive Modernization Works of El Coquí Public Housing Development.

B. -EXHIBITS: The following Exhibits attached hereto are made part of this agreement, further describe Contractor's duties and responsibilities under this Agreement;

1. Bid Package (Volume I Contract Documents, Volume II Technical Specifications and Original Drawings, Volume III Abatement Specifications & Subsoil Report).

2. Addenda.

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3. Final Drawings.
4. Contractor's Bid and Statement of Work.
5. Payment and Performance Bonds, Required Insurance of the General Conditions and Special Conditions.

C. - All the Exhibits mentioned in this Agreement, are to be duly signed by the PRPHA's authorized representative and by the Contractor, will be incorporated in their full text and made an integral part of this Agreement, and shall be complementary in such a way that whatever is stated or shown in them shall be binding as any terms and conditions of this executed Agreement. In the event of any inconsistency or conflict among the IFB, the Contractor's Bid and this Agreement, the Agreement shall prevail.

II) COMMENCEMENT AND DURATION:

A. - Agreement Period and Time for Completion Period:

- 1) - The "Agreement Period" shall be effective against the parties hereto for a period of no more than _____ (00) calendar days, beginning on the date of execution of this Agreement. This time period includes all administrative tasks, the project start-up and Time for Completion, as such term is hereafter defined.
- 2) - The "Time for Completion", as set forth in the IFB and accepted by the Contractor by submission of its Bid and execution of this Agreement, is included within the Agreement Period and shall be as follows:
 - a. - For completion of the entire Work, one _____ (00) calendar days after the date of issuance of the Notice to Proceed or as otherwise specified therein.

III) PAYMENT

a. -- The PRPHA shall pay the Contractor as full compensation for services required and performed under this Agreement an amount not to exceed _____ dollars (\$000,000.00). Compensation shall be paid from Operational Fund Program _____, Account Number _____, Fiscal Year _____. This contract price may be modified depending upon change orders that may increase or decrease the

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Contractor's cost or the time required for the performance of the work within this Agreement. All change orders must be submitted to the PRPHA for its approval. The work to be covered by a change order shall not be commenced until the PRPHA approves it.

b.--The Contractor will submit an invoice to the PRPHA on a monthly basis. Said invoice must be certified in such detail as requested by the PRPHA. Each application for payment shall be certified and supported in such detail as required by the General Conditions and any supplementary conditions thereto. Payments to the Contractor shall be made by check or electronic funds transfer (EFT).

c.--In order for the Contractor to receive payment for any work performed hereunder, the following certification must be included in each application for payment or invoice submitted to the PRPHA for payment:

"Under penalty of absolute nullity, I certify that no public servant of the government entity is a party to or has an interest in the profits or benefits that are the product of the contract subject of this invoice, and to be a party to or have an interest in the profits or benefits of resulting from the contract, under this invoice a prior dispensation has been issued. The sole consideration to furnish the contracted goods or services subject of the contract is the payment agreed upon with the authorized representative of the parties. The amount that appears in the invoice is fair and correct. The work has been performed, the products have been delivered and the services rendered, and no payment has been received for them."

d.--The PRPHA shall withhold ten (10%) percent of all payments made to the Contractor for the Work completed under this Agreement and/or change orders as a retainer. The retained monies will be given to the Contractor when the work under this Agreement is completed and accepted by the PRPHA.

IV) OWNERSHIP AND USE OF DOCUMENT

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- A. -With the exception of the Contractor's working papers, the Contractor acknowledges the PRPHA ownership of all information, drafts, documents, reports, papers and other materials developed and prepared by the Contractor, its agents or representatives, for purposes of performing key obligations hereunder. In the event of any termination, the Contractor shall deliver such information, drafts, reports, papers and other materials to the PRPHA, in document form or as computer program data, and the Contractor recognizes the PRPHA's right to request such documentation or computer program data and if the Contractor fails to deliver said information, the PRPHA may seek a judicial order to enforce its rights.
- B. -Proof of payment on any authorized expenditures incurred on the Contractor's behalf shall be made available to the Contractor. The Contractor agrees to maintain accurate records and files of all contract documents, correspondence, book estimates, bills and other information related to the Contractor account. These documents shall be open for the PRPHA examination at all reasonable times within twelve (12) months.

V) **NON-DISCLOSURE AND CONFIDENTIALITY**

- A. -**Confidential Information (Definition):** The term "confidential information" as used throughout this Section, means any information concerning the PRPHA operations and that of its Contractor (e.g., the projects, computer processing systems, object and source codes and other PRPHA business and financial affairs). The term "Confidential Information" shall also be deemed to include all notes, analysis, compilation, studies and interpretation or other documents prepared by the Contractor, its agents or representatives, in connection with the PRPHA operations.
- B. -**Non-Disclosure:** The Contractor agrees to take all reasonable steps or measures to keep confidential all Confidential Information and will not, at any point in time, present or future, without the PRPHA express written authorization, signed by the Administrator of the PRPHA, use or sell, market or disclose any Confidential Information to any third party, firm, corporation, or association for any purpose whatsoever. The Contractor further agrees that, except as they relate to the normal course of the service, the

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Contractor will not make copies of the Confidential Information except upon the PRPHA express written authorization, signed by an authorized representative or the PRPHA, and will not remove any copy or sample of Confidential Information without prior written authorization from the PRPHA. The Contractor retains the right to control its work papers subject to these confidentiality provisions.

C.-Return Documents: Upon receipt of a written request from the PRPHA, the Contractor will return to the PRPHA all copies or samples of Confidential Information which, at the time of the notice, are in the Contractor's or its agent's possession. The Contractor reserves the right to retain a set of its work papers.

D.-Equitable Relief: The Contractor acknowledges and agrees that a breach of the provision of subparagraph B and C of this Section will cause the PRPHA to suffer irreparable damage that could not be remedied or compensated adequately only by mere monetary retribution. The Contractor further agrees that money damages may be a sufficient remedy for any breach of this Section. Accordingly, the Contractor agrees that the PRPHA shall have the right to seek injunctive relief and the specific performance of the provisions of this Section to enjoin a breach or attempted breach of the provisions hereof, such right being in addition to any and all other rights and remedies that are available to the PRPHA at law, in equity, or otherwise.

VI) TERMINATION

A.-Termination for Cause or Default: The PRPHA may terminate this Agreement, in whole or in part, for the Contractor's failure to fulfill its obligations. The PRPHA shall terminate this Agreement by delivering to the Contractor a notice of termination specifying the extent to which the performance of the service under this Agreement is terminated, the reason therefore and the effective date of termination. Upon receipt of such notice the Contractor shall immediately discontinue all services and deliver to the PRPHA all information, notes, drafts, documents, analysis, reports, compilations, studies and other materials accumulated or generated in performing the services contemplated in this Agreement, whether completed or in process. The PRPHA may withhold any

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payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the PRPHA by the Contractor.

B. -Termination for Convenience: The PRPHA may terminate this Agreement, in whole or in part, whenever the PRPHA determines that such termination is necessary or convenient to the Agency. The PRPHA will terminate this Agreement by delivering to the Contractor a thirty (30) day notice of termination specifying the extent to which the performance of the work under this Agreement is terminated, and the effective date of termination. Upon receipt of such notice, the Contractor shall immediately discontinue all services affected and deliver to the PRPHA all information, studies and other materials property of the PRPHA. In the event of a termination by Notice, the PRPHA shall be liable only for payment of services rendered up to and including the effective date of termination.

C. -Termination by Unilateral Abandonment: The PRPHA will consider this Agreement immediately terminated, in the event that the Contractor unilaterally and without prior notice, chooses to abandon (in any shape, form or fashion) cease and desist in the specific performance of its general and particular duties and responsibilities as agreed in this Agreement. Upon the knowledge of such event, the PRPHA will not be held liable and will immediately, automatically and retroactively deduct from any future reimbursement, all funds from the day such unilateral abandonment took place. The PRPHA will not be compelled to continue the performance of the Agreement, should the Contractor breach the Agreement by unilateral abandonment.

D. -Unilateral Termination: The PRPHA may terminate this Agreement, in whole or in part, at the PRPHA's sole discretion, with or without cause, at any time. The PRPHA will terminate this Agreement by delivering to the Contractor a seven (7) day notice of termination specifying the extent to which the performance of the work under this Agreement is terminated, and the effective date of termination. Upon receipt of such notice, the Contractor shall immediately discontinue all services affected and deliver to the PRPHA all information, studies and other materials property of the PRPHA. In the

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event of a termination by Notice, the PRPHA shall be liable only for payment of services rendered up to and including the effective date of termination.

E. -Termination by the Contractor: Should the Contractor consider that it is no longer willing and or able to continue the performance of its functions under this Agreement, it will give the PRPHA a notice thirty (30) days in advance of its intent to withdraw. Upon receiving such notice the PRPHA will immediately commence the termination process which may include a documentary and item inventory, thereby all information, notes, drafts, documents, analysis, reports, compilations, studies, as well as any and all other materials property of the PRPHA shall be returned. The Contractor will present for payment any remaining invoices within those thirty (30) days for the PRPHA's evaluation and approval. The PRPHA will accept no invoice for evaluation and potential payment after such thirty (30) day period.

F. -Suspension: The PRPHA may suspend this Agreement in whole or in part at any time for the PRPHA's convenience. The PRPHA shall give the Contractor seven days written notice of such suspension. Upon receipt of said notice the Contractor shall immediately discontinue all Services affected. If the suspension is stated to be for more than three (3) months, the Contractor shall deliver all work as described in this Agreement and the Contractor shall be entitled to compensation for all Services rendered in accordance with this Agreement. Upon the resumption of work following a suspension, the payments received by the Contractor shall be due under the terms of this Agreement. If suspension exceeds three (3) months, an equitable adjustment in compensation shall be negotiated to compensate for increase in costs caused by the suspension.

G. -Immediate Termination. In the event the Contractor is subjected to a criminal or civil action, suit, proceeding, inquiry or court of applicable jurisdiction, or any governmental agency, or the Contractor shall be subject to an order, judgment, or opinion, issued by any federal or local authority, a court of applicable jurisdiction, or any governmental agency, in connection with the execution, delivery, and performance by the Contractor of this Agreement or the Contractor of this Agreement has been noncompliant, breach,

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inaccuracy of any representation, warranties, covenants, or the certifications provided herein, whether the noncompliance, breach or inaccuracy takes place before or after the execution of this Agreement, the PRPHA shall have the right to the immediate termination of this Agreement notwithstanding, any provisions to the contrary herein. This section will apply in the event of any judgment that may obligate the PRPHA to terminate the Agreement pursuant to Government of Puerto Rico Act Number 458 of 2000 as amended, and/or by Act Number 84 of 2001, as amended.

H.-HUD Form 5370: Clauses 32 and 34 of the General Conditions for Construction Contract in **effect** at the time of the signing of this Agreement shall supplement this Termination Clause.

VII) ADDITIONAL SERVICES

- A.-**If any additional services other than those specified in Section I of this Agreement are ordered in writing by the PRPHA, a contract modification, signed by both parties, shall be issued which identifies the change in services and any resulting change in contract amount, period of performance, or any other term of this Agreement.
- B.-**The services described in this Section are optional. Such services are not included in the work description contained in Section I of this Agreement and shall only be provided if authorized and confirmed in writing by the PRPHA.
- C.-**The PRPHA will pay the Contractor only for additional services agreed to in an addendum or amendment to this Agreement executed by the PRPHA and the Contractor. Payments for all such additional services shall be in an amount and upon the terms set out in such amendment or addendum and agreed upon by the parties. Each such amendment or addendum shall provide for a fixed price or, where payment for such additional services is to be on an hourly basis or other unit pricing method, for a maximum amount; each such amendment or addendum shall also provide for a method of payment, including, at a minimum, whether it will be based upon percentage of completion or services billed for.

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VIII) NOTICES

All notices required or permitted to be given under the Agreement shall be in writing and shall be deemed given when delivered by hand or sent by registered or certified mail, return receipt requested, addressed as follows:

PRPHA: Miguel B. Hernández-Vivoni, Esq.
Acting Administrator
Puerto Rico Public Housing Administration
606 Barbosa Avenue
Hato Rey, Puerto Rico 00917

Contractor:

Each party may change its address by timely notice to the other party.

IX) THIRD PARTIES

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in of a third party against either the PRPHA or the Contractor.

X) CERTIFICATION OF COMPLIANCE WITH LEGAL REQUIREMENTS -

- A. Warranty of Payment of Contributions for Unemployment Benefits.** The Contractor certifies and warrants that at the moment of subscribing to this Agreement it has paid its contribution for insurance for unemployment due to temporary disability. This is an essential condition of this Agreement, and if the Contractor has failed to pay contributions for insurance for unemployment due to temporary disability, in whole or in part, that failure will be sufficient cause for the PRPHA to terminate this Agreement. In that event, the Contractor must return any amount of money received under this Agreement.
- B. Social Security and Income Tax Retentions.** The Contractor will be responsible for rendering and paying the Federal Social Security and Income Tax Contributions for any amount owed as a result of the income, from this Agreement.

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- C. Compliance with A. N. No. OE 1991-24.** Pursuant to Executive Order Number OE-1991-24 of June 18, 1991, the Contractor certifies and guarantees that at the signing of this Agreement it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. The Contractor furthermore certifies that it has complied and is current with the payment of any and all income taxes that are, or were due, to the Government of Puerto Rico. The Contractor shall hand out, to the satisfaction of the PRPHA and whenever requested by the PRPHA during the term of this Agreement, the necessary documentation to support its compliance of this clause. The Contractor will be given a specific amount of time by the PRPHA to produce said documents. During the term of this Agreement, the Contractor agrees to pay and/or to remain current with any repayment plan agreed to by the Contractor with the Government of Puerto Rico.
- D. Government of Puerto Rico's Income Tax.** The Contractor certifies and guarantees that at the signing of this Agreement has filed all the necessary and required income tax returns to the Government of Puerto Rico. The Contractor furthermore certifies to be current with the payment of any and all income taxes that are, or were due, to the Government of Puerto Rico. The Contractor shall present, to the satisfaction of the PRPHA and whenever requested by the PRPHA, the necessary documentation to substantiate the same throughout the course of this Agreement. The Contractor will be given a specific amount of time by the PRPHA to produce said documents. Throughout the course of this Agreement, the Contractor agrees to pay and/or to remain current with any repayment plan agreed to by the Contractor with the Government of Puerto Rico.
- E. Government of Puerto Rico Municipal Tax Collection Center (CRIM).** The Contractor certifies and guarantees that at the signing of this Agreement that it has no current debt with regards to property taxes that may be registered with the Government of Puerto Rico's Municipal Tax Collection Center (known in Spanish as "Centro de Recaudación de Ingresos Municipales" [CRIM]). The Contractor furthermore certifies to be current with the payment. The Contractor shall present, to the satisfaction of the PRPHA, the necessary documentation to substantiate the same. The Contractor will be given a specific amount of time by the

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PRPHA to produce said documents. Throughout the course of this Agreement, the Contractor agrees to pay and/or to remain current with any repayment plan agreed to by the Contractor with the Government of Puerto Rico with regards to its property taxes.

F. Income Tax Retention Law. Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, the PRPHA will retain when applicable any and all payments as required by Income Tax law (2011 Internal Revenue Code, Law No. 1 of January 2, 2011, known in Spanish as *Ley de Contribuciones sobre Ingresos*). The PRPHA will forward say withholdings to the Government of Puerto Rico's Treasury Department (known in Spanish as *Departamento de Hacienda del Gobierno de Puerto Rico*). The Contractor may request that the PRPHA not to make said withholdings if, to the satisfaction of the PRPHA, the Contractor provides the necessary release from the Government of Puerto Rico's Treasury Department. The PRPHA will not make such withholding to the entities excluded from such retention.

G. The Contractor also certifies, that at the moment of subscribing this Agreement, it does not owe any income tax, property taxes, tariff charges, or any other assessments as those indicated in the Circular Letter Number 1300-03-11 issued by the Department of Treasury of Puerto Rico dated August 17, 2010. The Contractor shall assume full responsibility for the payment of all federal, state and local taxes or contributions, as well as deliver any evidence that it is in compliance with any other requirement imposed or required by such Circular Letter and hereunder.

H. Government of Puerto Rico's Agency for the Collection of Child Support (ASUME). The Contractor certifies and guarantees that at the signing of this Agreement that the Contractor nor any of its Partners have any debt or outstanding debt collection legal procedures with regards to child support payments that may be registered with the Government of Puerto Rico's Agency for the Collection of Child Support (known in Spanish as the *Administración para el Sustento de Menores (ASUME)*). The Contractor hereby certifies that its Partners are current with the payment of any and all child support obligations that are or were registered with the Agency for the Collection of Child Support.

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The Contractor shall present, to the satisfaction of the PRPHA, the necessary documentation to substantiate the same. The Contractor will be given a specific amount of time by the PRPHA to deliver said documents. During the Term of this Agreement, the Contractor agrees its Partners will pay and/or to remain current with any child support payment obligations, including the repayment of any child support payment that may be in arrears, agreed to by its Partners and the Agency for the Collection of Child Support.

- I. Ethics Clause.** No employee or officer of the PRPHA as well as any member of their families can have any interest in the earnings or benefits from this contract, according with Law No. 84, June 18, 2002. The Contractor also acknowledges receipt of the Ethics Code for Producers, Suppliers and Applicants of Economic Incentives from the Government of Puerto Rico Agencies known in Spanish as "*Código de Ética para Contratistas, Suplidores y Solicitantes de Incentivos Económicos de las Agencias Ejecutivas del Gobierno de Puerto Rico*".
- J. Drug Free Workplace.** The Contractor should establish procedures and policies to promote a "Drug Free Workplace" in compliance with the Federal Drug Free Work Place Act, 41 U.S.C. §701, et seq. Furthermore, the Contractor certifies that it has advised all employees and subcontractors of its policy for maintaining a "Drug Free Workplace", and the penalties that may be imposed for drug abuse violations occurring in the workplace. Furthermore, the Contractor shall notify the PRPHA if any of its employees is convicted or arrested of a criminal drug offense in the workplace no later than ten (10) days after such conviction or arrest.
- K. Interest of Member of the Congress.** Because of contract agreements between the PRPHA and HUD no member of the Congress, delegate or Congressional Resident Commissioner shall be admitted to any share or part of this Agreement or any benefit arising from it.
- L.** Abovementioned list notwithstanding, the Contractor also agrees to comply with all laws and regulations of the Government of Puerto Rico and the United States Government in connection with this Agreement, including without limitation the followings:

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- (1) 41U.S.C. §351.5(b)(1); The Minimum Wage remuneration AFTER deductions, retentions and withholdings. Minimum Wage remuneration BEFORE deductions, retentions and withholding is illegal.
- (2) "Law for the Compensation System for Accidents in the Workplace", Act No. 83 of October 29, 1992, 3 L.P.R.A. §1, et seq., and its related jurisprudence.
- (3) "1902 Law on Workman Security", 11 L.P.R.A. §131-140.
- (4) "Disability Benefit Act", Act No. 139 of June 26, 1968, as amended by Act No. 51 July 1, 1988, 11 L.P.R.A. §201-212.
- (5) "Workers Welfare, Safety and Occupational Health Fund Act", No 59 9th August 1991, 11 L.P.R.A. §251-260.
- (6) "Organization of Workmen's Compensation Service; Administrator of the State Insurance Fund; Industrial Commission", as amended by Act No. 63 of July 1, 1996 and Act No. 219 of September 12, 1996, 11 L.P.R.A. §8.
- (7) "Social Security Extension Act", 1822d September 1950, 29 L.P.R.A. §611.
- (8) "Contributions to Federal Government Act", 3 L.P.R.A. §819.
- (9) "Driver's Social Security", 26 L.P.R.A. §690.
- (10) "Insurance Compensation", 26 L.P.R.A. §37.
- (11) "2011 Internal Revenue Code", Law No. 1 of January 2, 2011, as amended by applicable regulations found on 13 L.P.R.A., et seq., which, among others, orders corresponding revenue special withholding.

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- (12) 29 L.P.R.A. §1; The Puerto Rico Secretary of Labor and Human Resources shall retain from the employer the amounts of the claims on wages or any other compensation, right or benefit that are due to a workman or employee under the cover of the current labor legislation, as a result of judicial or administrative steps by the workman or employee.
- (13) The Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in United States Department of Labor regulations (41 CFR Chapter 60) that during the term of this agreement it will not discriminate on the basis of race, color, age, sex, birth origin, social condition, political affiliation, religious or handicapped conditions.

XI) HUD REQUIREMENTS; PROCUREMENT OF SERVICES AND GOODS

The Contractor shall abide by and comply with all of the requirements, regulations and mandatory clauses established by HUD in Form 5370 attached hereto and made part of this Agreement. The Contractor will be responsible to acquire the necessary equipment, materials and services to effectively comply with this Agreement following the procurement procedures set forth for in 24 CFR § 85.36, and the PRPHA Procurement Manual, Regulation Number 6405, dated March 12, 2002, as amended.

XII) ENTIRE AGREEMENT

This Agreement and all its Exhibits represent the entire and integrated agreement between PRPHA and the Contractor and supersede all prior negotiations, representations, agreements and/or understandings of any kind. This Agreement may be amended only by written document signed by both the PRPHA and the Contractor.

XIII) MODIFICATION OF AGREEMENT

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Any modification of this agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if written and signed by both parties, and its authorized representatives.

XIV) BINDING EFFECT

This Agreement shall be binding upon and shall inure to the benefit of the PRPHA and the Contractor, their successors and assigns.

XV) ASSIGNMENT OF RIGHTS

The rights of each party hereunder are personal to that party and may not be assigned or otherwise transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

XVI) NON-WAIVER

The failure or delay of either party to insist upon the performance of and/or the compliance with any of the terms and conditions of this Agreement shall not be construed as a waiver of any such terms and conditions or the right to enforce compliance with such terms and conditions.

XVII) GOVERNING LAW JURISDICTION

This Agreement shall be governed as to performance and interpretation in accordance with Federal laws and the laws of Puerto Rico including, but not limited to, the Puerto Rico Rules of Civil Procedure, the Federal Rules of Civil Procedure, the local rules of the United States District Court for the District of Puerto Rico and the rules governing the United States First Circuit Court. In the event of a conflict between the Agreement and any applicable law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order.

XVIII) SEVERABILITY

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If any provision of this Agreement shall operate or would prospectively operate to invalidate the Agreement in whole or in part, then such provision only shall be deemed severed and the remainder of the Agreement shall remain operative and in full effect.

XIX) COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of whom shall be deemed to be an original, however, all of which together shall constitute one and the same instrument.

XX) EQUAL OPPORTUNITY

The Contractor agrees that during the time in which it will provide services to the PRPHA it will not discriminate on the basis of race, color, age, sex, birth of origin, social condition, political affiliation, religious ideals and/or handicapped condition.

XXI) LIQUIDATED DAMAGES

It is specifically declared and agreed that time is of the essence in completing the scope of work under this contract. The Contractor and its Surety shall be liable and pay to the PRPHA the amount of TWO THOUSANDS (\$2,000.00) as fixed and agreed to liquidate damages for each calendar day of delay in the completion of the work under this Agreement not beyond the control of the Contractor, until the work is completed to the satisfaction of the PRPHA.

XXII) DISPUTE RESOLUTION

In the event of a dispute arising under this Agreement, the Contractor shall notify the PRPHA promptly in writing and submit its claim in a timely manner. The PRPHA shall respond to the claim in writing in a timely manner. The Contractor shall proceed with its work hereunder in compliance with the instructions of the PRPHA, but such compliance shall not be a waiver of the Contractor's rights to make such a claim.

In case of any dispute arising from this Agreement, including, but not limited to, any claim for damages for an alleged breach of contract not settled in this Agreement, the Contractor agrees to file suit in a court of competent jurisdiction, notwithstanding the procedures established in

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Clause 31 (Disputes) of the General Conditions for Construction Contract (HUD Form 5370) and Article 14 Dispute and Appeal Supplementary General Conditions.

Statute of Limitations: Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run no later than either the date of Substantial Completion for acts or failure to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.

XXIII) BANKRUPTCY

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the PRPHA, as established in Section VIII (NOTICES). This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of the government contract numbers and contracting offices for all government contracts against which final payment has not been made. This obligation remains in effect until final payment under this Agreement.

XXIV) FORCE MAJEURE

In the event of war, flood, earthquake, natural disaster, hurricane, riot, act of governmental authority in its sovereign capacity or act of God (hereinafter collectively referred to as "Force Majeure") during the term of this Agreement, neither the PRPHA nor the Contractor shall be liable to the other party for nonperformance during the conditions created by such event.

XXV) INDEPENDENT CONTRACTOR

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Contractor remains an independent contractor with respect to the services to be performed under this Agreement. The PRPHA shall be exempt from payment of all unemployment compensation,

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FICA, retirement, life and medical insurance and Worker's Compensation Insurance and/or other employee benefits.

XXVI) CONFLICTS OF INTEREST

Based in part on federal regulations (24 C.F.R. § 85.36(b)) and contractual agreements between the PRPHA and Federal Department of Housing and Urban Development (HUD), no employee, officer, or agent of the PRPHA (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

A. Other Requirements

- (a) **Limited Denial of Participation:** The Contractor certifies that it will not subcontract with any person or firm that has been placed in HUD's or PRPHA's Limited Denial Participation lists or that has been barred from doing business or participating in procurement procedures with the federal government or the Government of Puerto Rico. The Contractor will periodically check federal and local notices and Limited Denial Participation lists to ensure compliance with this requirement throughout the performance of this Agreement.
- (b) **Interest by Members of Local Authority and Governing Body:** Since the PRPHA is an Agency of the Government of Puerto Rico, no member of the local government or employee, officer or public official who exercises any functions or responsibilities with respect to the Project shall, during his tenure, and for one year thereafter, have any interest, direct, or indirect, in this agreement or the proceeds thereof.
- (c) **Covenant against Contingent:** The Contractor warrants that he didn't ask any employee or person to solicit or secure this Agreement upon an agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warrantee shall give the PRPHA the right to terminate this Agreement or, at its discretion, to deduct from the Contractor's fee the amount of such commission, brokerage, or contingent fee.

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XVII) NON-CONVICTION

The Contractor certifies that it has not been convicted nor accused of a felony or misdemeanor against the government, public faith and function, or that involves public property or funds, neither federal nor local in origin. Furthermore, the Contractor also certifies that:

- A.-It has not been convicted, nor has pleaded guilty at a state or federal court, in any jurisdiction of the United States of America, of crimes consisting of fraud, embezzlement or misappropriation of public funds, as stated in Article 3 of Act No.458 of December 29, 2000 of Puerto Rico, as amended, which prohibits the award of bids or government contracts to those convicted of fraud, misappropriation of public fund.

- B.-It understands and accepts that any guilty plea or conviction for any of the crimes specified in Article 3 of said Act, will also result in the immediate cancellation of any contracts in force at the time of conviction, between the undersigned and whichever Government Agencies, Instrumentalities, Public Corporations, Municipalities and the Legislative or Judicial Branches.

- C.-It declares under oath the above mentioned in conformity with what is established in Article 6 of Act No. 458 of December 29, 2000, as amended, which prohibits awarding bids for government contracts, to those convicted of fraud, embezzlement or misappropriation of public funds.

The Contractor represents and guarantees that none of its employees, officials or agents have been convicted of a felony or misdemeanor. Moreover, the Contractor agrees to notify the PRPHA should any employee, official, or agent is convicted of a felony or misdemeanor after the date of this contract. Said notice shall be made within ten (10) days from the time of the conviction.

XVIII) HEADINGS

The titles to the paragraphs of this Agreement are solely for reference purposes and the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

SB *WJ*

XIX) SEVERABILITY

If any provision of this Agreement shall operate or would prospectively operate to invalidate the Agreement in whole or in part, then such provision only shall be deemed severed and the remainder of the Agreement shall remain operative and in full effect.

XX) COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of whom shall be deemed to be an original, however, all of which together shall constitute one and the same instrument.

XXI) ACT NUMBER 18 OF OCTOBER 30, 1975

The parties to this Agreement agree that its effective date will be subject to the due registration and remittance to the Office of the Comptroller of Puerto Rico. No rendering or consideration subject matter of this Agreement will be required before its registration at the Office of the Comptroller of Puerto Rico pursuant to Act No. 18 of October 30, 1975, as amended. The Contractor will be responsible for ensuring that this Agreement has been registered before the rendering of services by requesting a copy of the registered Agreement with its proper number and date of registry. No services under this Agreement will continue to be delivered after its effective date unless at the expiration date, an amendment signed by both parties and duly registered exists. No services performed in violation of this provision will be paid. The party violating this clause will be doing so without any legal authority, this action constituting and ULTRA VIRES.

IN WITNESS THEREOF, the parties hereto execute this Agreement in the place and on the date first above written.

PRPHA

CONTRACTOR

Handwritten signature in blue ink, possibly initials "A6" and "Wd".

Miguel B. Hernández-Vivoni, Esq.
Acting Administrator
Tax Identification Number xxx-xx-xxxx

President
Tax Identification Number xxx-xx-xxxx

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