



COMMONWEALTH OF
PUERTO RICO
Puerto Rico Infrastructure
Financing Authority

CONSTRUCTION AND CONSERVATION AGREEMENT

BETWEEN

PUERTO RICO INFRASTRUCTURE FINANCING AUTHORITY

AND

"CONTRACTOR"

FOR

**"JOSÉ GAUTIER BENÍTEZ HIGH SCHOOL" "ESCUELAS DE
PRIMERA" PROGRAM**

CONTRACT No. 2014-

CONTRACT No. 2014-

This **BUILD AND CONSERVATION AGREEMENT** (this "Agreement") is made and entered into in San Juan, Puerto Rico as of the ____ day of _____, 2013 by and between:

The **PUERTO RICO INFRASTRUCTURE FINANCING AUTHORITY (PRIFA)**, an instrumentality and public corporation of The Commonwealth of Puerto Rico ("Puerto Rico") created and existing under Public Law Number 44 of June 21, 1988, as amended (the "Enabling Act"), represented herein by its Executive Director, Grace M. Santana Balado, of legal age, married, attorney at law, and resident of San Juan, Puerto Rico (hereinafter referred to as "PRIFA"); and _____, a corporation created, existing and authorized to do business under the laws of The Commonwealth of Puerto Rico, represented herein by its _____, _____, of legal age, _____, _____, and resident of _____, Puerto Rico (hereinafter referred to as the "CONTRACTOR")

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

Terms used herein which are not defined in this Agreement shall have the meanings assigned to them in the Contract Document entitled "Uniform General Conditions" (the "General Conditions"), which are incorporated by reference and made a part hereof.

ARTICLE 1 – BACKGROUND

The Parties acknowledge that the following facts constitute the background for this Agreement:

- 1.1.1 Pursuant to the Enabling Act, PRIFA has entered into an Interagency Memorandum of Understanding, PRIFA Contract No. 2011-A10002 executed on October 29th, 2010 between the Public Building Authority ("PBA"), the Department of Education ("DE"), the Department of Transportation and Public Works ("DTOP"), the Public Private Partnership Authority ("PPPA"), the Governmental Development Bank ("BGF") and the Puerto Rico Infrastructure Financial Authority ("PRIFA") (the "Assistance Agreement"). In accordance with the Assistance Agreement, PRIFA provides assistance by undertaking and implementing certain projects and activities of the "Escuelas de Primera" Program.
- 1.1.2 One such project is "**ESCUELAS DE PRIMERA**" José Gautier Benítez School at Caguas. (the project)

- 1.1.3 The Contractor agrees to perform the work for a non-existing public school indicated in article 1.1.2, as more particularly described in the Contract Documents.
- 1.1.4 Based on the Assistance Agreement, this Agreement will be executed between PRIFA and Contractor. PRIFA is acting also as representative of the school's Owner, which is the Department of Education (DE).
- 1.1.5 Both PRIFA and the Contractor desire to enter into an agreement with each other for the purpose of undertaking a contract for the execution of Work (as defined below), as established by the terms and conditions described in the Contract Documents.
- 1.1.6 PRIFA has designated a representative (the "PRIFA Representative") whom is authorized to act on behalf of PRIFA, and with whom the Contractor may consult, and whose instructions, requests and decisions will be binding upon PRIFA as to all matters pertaining to this Agreement. PRIFA's Representative will provide administration of the Project pursuant to the Contract Documents.
- 1.1.7 In accordance with the PPPA Regulation, under the Law No. 29 of June 8, 2009 an RFP was issued for the construction of the Project.
- 1.1.8 Under this Agreement the Contractor agrees to provide all materials and labor as needed to build and maintain the Project (infrastructure conservation). The infrastructure conservation will be for one (1) year, PRIFA may at its sole discretion award additional yearly contracts to the Contractor, to maintain the Project. Maintenance will be performed with the School Modernization Program Conservation Program, (Attachment _____)
- 1.1.9 PRIFA and the Contractor agree to perform all of their respective obligations set forth in the Contract as defined in the General Terms and Conditions and to be bound by all of the terms and conditions of the Contract.

ARTICLE 2 – CONTRACT

2.1 Scope of Contract

The Contractor shall furnish all labor, materials, supervision, tools and equipment required to build the Project, as more fully described in the Attachment ___ – Scope of Work, the ("Work") in strict accordance with the provisions of the Contract Documents, all of which are hereby made a part hereof. On or before the expiration or termination of the Contract, as part of its obligations thereunder, the Contractor shall return to PRIFA all diagrams, plans, sketches, maps and other documents used in the performance of the Work and for which a third party copyright or patent right would not be an impediment to such delivery.

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Work shall be done under the supervision (directly or through its agents) and to the complete satisfaction of PRIFA.

The Contractor hereby agrees to perform the contracted work in accordance with the terms, conditions, technical specifications, drawings, the General Terms and Conditions and the RFP Number AFI-BP-14-10-AAPP which are hereby made part of this contract as if they were reproduced herein.

2.2 The Contract Documents consist of this Agreement and the following Exhibits which are made a part hereof: Exhibit A- Proposal Form; Exhibit A-1- Alternative Offer Proposal Form (Optional) Exhibit B- Statement of Proponent; Exhibit C- Sworn Statement; Exhibit D- Eligibility Affidavit; Exhibit E- Non-Collusive Affidavit; Exhibit F- Bid Security; Exhibit G- Statement Under Oath in Compliance with Law 428 (Partnerships); Exhibit G-1- Statement Under Oath in Compliance with Law 428 (Corporations and Limited Liabilities Companies); Exhibit G-2- Statement Under Oath in Compliance with Law 428 (for Individuals); Exhibit H- Scope of Work; Attachment 1: Release and Authorization Form; Attachment 2: Supplementary Conditions; Attachment 3: Uniform General Conditions; Attachment 4: Technical Specifications; Attachment 4: Conservation Program and modifications issued after execution of this Agreement, all of which form the Contract and are binding upon the parties. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements either written or oral.

2.3 Contract Attachments

The Contract Attachments are identified in Article 9 – Attachments.

2.4 Permits and Approvals

The Contractor shall timely perform all of its obligations contained in the General Conditions, Supplementary Conditions, Technical Specifications and Construction Drawings including, without limitation, securing and maintaining all Permits and Approvals legally required or imposed in connection with the performance of the Contract and the proper execution and completion of the Work, including compliance with the disposal of solid waste as stated in **Attachment C**.

**ARTICLE 3- CONTRACT PRICE, WITHHOLDING,
AND LIQUIDATED DAMAGES**

3.1 Contract Price

3.1.1 Contract Price. In accordance with the Contract Documents, PRIFA agrees to pay and the Contractor accepts, as full payment for the complete and proper performance of the Contract, the amount of _____ (\$ _____)

(the "Contract Price"), subject to any authorized increase or decrease by means of Change Orders, in accordance with Subsection 3.1.3 of this Agreement and in the General Conditions.

3.1.2 Submission of Applications for Payment. Prior to the submission of the first Application for Payment, the Contractor and PRIFA's Representative shall agree upon a date (the "Invoice Submission Date"), which shall be on or before the 15th day of the month following that of which the Contractor shall submit an Application for Payment in accordance with the General Conditions.

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

PRIFA reserves the right to request from Contractor any document it deems necessary in order to process any Application for Payment, including the retainage.

3.1.3 Allowances. There is an allowance included in the Contract Price.

3.2 Withholding

3.2.1 Resident Individual or Entity Contractors. Except as provided in Subsection 3.2.2 and 3.2.3 (in the case where the Contractor is a non-resident individual or a foreign corporation or partnership not engaged in a trade or business in Puerto Rico), PRIFA shall deduct and withhold at the source an amount equal to seven percent (7%) of the portion of any payments due to the Contractor under the Contract that relate to architectural, engineering design or consulting services rendered by the Contractor not including "construction of works", as defined in, and as required by, the Puerto Rico Internal Revenue Code of 2011, as amended, (the "Puerto Rico Tax Code") provided, however, that such deduction and withholding obligation shall not apply to the first \$1,500.00 of payments due to the Contractor during each calendar year; and provided, further, that if the Contractor is an individual and submits to PRIFA, on the date of execution of the Contract by the Contractor and on each anniversary thereof, a letter issued in the

name of the Contractor by the Puerto Rico Treasury Department and dated not more than sixty (60) days prior to such date or anniversary, as the case may be, stating that the Contractor is current in the payment of all taxes to the Puerto Rico Treasury Department, the amount to be deducted and withheld pursuant to this paragraph shall be reduced to five percent (5%).

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

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

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

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

3.3 Liquidated Damages

3.3.1 Measure of Damages. In the event that Substantial Completion is not achieved on or prior to the Scheduled Substantial Completion Date (as such date may be adjusted by means of a Change Order in accordance with the Contract Documents), whether or not the Contract is terminated pursuant to the General Conditions, the Contractor acknowledges that (a) PRIFA will suffer losses and damages on account of such delay, and (b) the amount of such losses or damages would be difficult, if not impossible, to ascertain and prove. The liquidated damage amount specified below shall be considered not as a penalty, but as fixed and agreed liquidated damages due to PRIFA from the Contractor by reason of interference with business, increased construction, engineering, inspection and administrative costs to PRIFA and other items which would result in an expenditure of public funds due to the delay in achieving Substantial Completion on or prior to the Scheduled Substantial Completion Date. PRIFA and the Contractor, having considered the nature and types of losses or damages that would be suffered by PRIFA, hereby agree for purposes of the Contract that, instead of requiring proof of actual damages, the amount of such damages will be computed as per section 9.5 of the General Conditions.

3.3.1.1 In achieving Substantial Completion on or prior to the Scheduled Substantial Completion Date (as adjusted in accordance with the Contract Documents); or

3.3.1.2 In the event of termination of the Contract pursuant to the General Conditions and PRIFA's replacement of the Contractor with another contractor to complete the Work, in achieving Substantial Completion measured from the Scheduled Substantial Completion Date.

The damages described in Clauses 3.3.1.1 and 3.3.1.2 above are referred to herein as "Liquidated Damages".

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

3.4 Collection Remedies

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

4 – CONTRACT TIME

4.1 Contract Time

The Contract Time will be effective and enforceable against the parties for a period of no more than **seven hundred calendar days (700)** from the date of signing. This time period includes all administrative tasks, the project start up, Construction Period, Infrastructure Conservation Period and final payment.

The Construction Period for the construction of this project as estimated by the engineer is **three hundred and five calendar days (305)** from the Notice to Proceed (NTP). On the other hand, the construction period as offered by the Contractor and accepted by PRIFA, is for the total of _____ **calendar days** from the issuance of the Notice to Proceed by PRIFA, or, if earlier, until the date on which the Contractor accepts Final Payment (the Contract Time), which time is included in the Contract Period. The construction Period will commence upon receipt and/or as specified on the Notice to Proceed from PRIFA to Contractor. The Contract Period may be adjusted in accordance with, and subject to the terms of the Contract Documents.

4.2 Substantial and Final Completion Dates

The Contractor shall commence the Work promptly upon receipt of the Notice to Proceed issued by PRIFA in accordance with the Contract Documents. The Contractor shall thereafter proceed to carry out the Work diligently in accordance with the schedule requirements set forth in the Contract Documents so as to ensure Substantial Completion of the Work not later than the date that is **three hundred and five calendar days (305)** after the date of issuance of the Notice to Proceed (the "Scheduled Substantial Completion Date").

The Scheduled Substantial Completion Date shall be subject to adjustment by means of a Change Order in accordance with the Contract Documents. Final Completion of the Work shall be achieved not later than **thirty (30) calendar days** following the date of achievement of Substantial Completion.

The one (1) year Infrastructure Conservation Program may commence with the issuance of a Notice to Proceed for the Infrastructure Conservation Program after the acceptance of the Final Completion, if Owner, at its sole discretion, determines that the Contractor has been diligently and satisfactorily pursuing all obligations and responsibilities under the contract, and the completion and/or correction of the punch list items after Substantial Completion.

The Administrative Closing shall be achieved within **one hundred and eighty (180) calendar days** from the date of Final Completion. Administrative Closing of the Construction Project is part of the contract term and included in the same period of **seven hundred calendar days (700) calendar days**.

Time is of the essence with respect to all of the obligations of the Contractor under the Contract. The failure to complete the work within the time established by this "Scheduled Substantial Completion Date" will subject the Contractor to liquidated damages as set forth in Section 3.3 above and/or early termination.

5 – CONTRACTOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Organization and Authority of Contractor

The Contractor represents and warrants to PRIFA that:

- 5.1.1 The Contractor is a Corporation duly formed, validly existing and in good standing under the laws of the Commonwealth of Puerto Rico of the state of its formation.
- 5.1.2 The Contractor is duly registered in the Puerto Rico Department of State under identification no. [REDACTED] and duly authorized to do business in Puerto Rico.
- 5.1.3 The Contractor has full power, authority and capacity to (a) carry on its business, profession or craft, (b) execute, deliver and perform its obligations under the Contract and (c) perform the Work in full.
- 5.1.4 The Contractor has taken all necessary corporate or other action to authorize its execution, delivery and performance of its obligations under the Contract.
- 5.1.5 The Contract has been duly executed and delivered by the Contractor and constitutes the legal, valid and binding obligation of the Contractor enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws of general application affecting the rights and remedies of creditors.

- 5.1.6 The Contractor's execution, delivery and performance of its obligations under the Contract does not and will not (a) conflict with, result in a breach of, or constitute a default under, any agreement or other instrument to which the Contractor is a party, or (b) violate any federal, state or local law of The Commonwealth of Puerto Rico, regulation, ordinance, judgment, decree or order to or by which the Contractor or any of its assets may be bound or affected (collectively, "Laws of The Commonwealth of Puerto Rico and Orders").
- 5.1.7 The Contractor and its employees and agents (a) have complied with all Laws of The Commonwealth of Puerto Rico and Orders that relate to or could affect the Contractor's ability to perform the Work, (b) possess all necessary Permits and Approvals necessary to perform the Work, which Permits and Approvals are in full force and effect, and (c) are not aware of any legal, professional or ethical impediment of any kind to performing the Work.
- 5.1.8 The Contractor hereby accepts all terms and conditions of RFP No. AFI-BP-14-10-AAPP, under which contract was procured.

5.2 Contract Documents, Site and Work

The Contractor further represents and warrants to PRIFA that:

- 5.2.1 The Contractor has examined and carefully studied the Contract Documents.
- 5.2.2 The Contractor has visited the Site and is familiar with, and is satisfied as to, the general, local and Site conditions that may affect cost, progress, performance or furnishing of the Work.
- 5.2.3 The Contractor is familiar with, and is satisfied as to, all Laws of The Commonwealth of Puerto Rico and Orders that may affect costs, progress, performance or furnishing of the Work.
- 5.2.4 The Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been made available by PRIFA.
- 5.2.5 The Contractor is aware of the general nature of work to be performed by PRIFA and others at the Site that relates to the Work as indicated in the Contract Documents.
- 5.2.6 The Contractor has correlated (a) all information known to the Contractor, (b) all information and observations obtained from visits to the Site, (c) all reports and drawings identified in the Contract Documents, and (d) all additional

examinations, investigations, explorations, tests, studies and data, with the Contract Documents.

- 5.2.7 (a) The Contractor has given PRIFA written notice of all conflicts, errors, ambiguities or discrepancies that the Contractor has discovered in the Contract Documents, (b) the written resolution thereof by PRIFA is acceptable to the Contractor, and (c) the Contract Documents are generally sufficient to indicate and convey an understanding of all terms and conditions for performance and furnishing of the Work.
- 5.2.8 The Contractor accepts the trust and confidence established between the Contractor and PRIFA by this Agreement, and agrees to furnish reasonable skill and judgment and to cooperate with each other. The Contractor shall furnish procurement, construction, construction administration, maintenance and management services, and shall use the Contractor's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of PRIFA. PRIFA and the Contractor shall endeavor to promote harmony and cooperation between PRIFA and the Contractor and other persons or entities employed by PRIFA for the Project or the Contractor for the Work.
- 5.2.9 The Contractor accepts that the Contract Cost includes any and all overhead (job site and extended office overhead) that the Contractor may incur for up to One Hundred Twenty (120) days of delays whatever the cause of that delay may be. The contractor waives any type of claim for the overhead incurred during that period.

5.3 Tax Matters

- 5.3.1 **Certifications.** Prior to the execution of the Contract by the Contractor, in accordance with Article 5 of the RFQ No. AFI-BP-14-10-AAPP, and with the Puerto Rico Treasury Department Tax Circular Letter Núm. 1300-03-11 dated as of August 17, 2010, each of the Contractor and, in the event the Contractor is a partnership, each partner of the Contractor who is a resident of Puerto Rico shall have submitted to PRIFA all the required documentation.
- 5.3.2 **Representations and Warranties.** Each of the Contractor and, in the event the Contractor is a partnership, each partner of the Contractor who is a resident of Puerto Rico represents and warrants to PRIFA, as of the date of execution of the Contract by the Contractor, that each of them:
- 5.3.2.1 Has filed all required income tax returns with the Puerto Rico Treasury Department during the five (5) years prior to the date of the Contract and does not owe any income taxes to Puerto Rico, or has entered into a payment plan to pay any delinquent income taxes (a copy of which payment

plan the Contractor has submitted to PRIFA) and is in full compliance with the terms of such payment plan; and

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

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

If the Contractor or any such partner was not required to file any income tax returns during all or part of the five (5) year period referred to above for any of the reasons provided by the Puerto Rico Tax Code, the Contractor or such partner, as the case may be, shall have presented, prior to the execution of the Contract by the Contractor, a sworn statement, subject to the penalty of perjury (as defined in the Puerto Rico Penal Code of 2012), reciting the reason for which the Contractor or such partner was not required to file income tax returns.

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

5.3.3 Covenants.

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

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

In the event the Contractor or any such partner has filed all income tax returns but owes any taxes, the Contractor agrees to pay such taxes from the amounts to be paid under the Contract, by PRIFA withholding the corresponding amount. The Contractor shall require each Subcontractor to agree to in writing, and make and perform the representations, warranties and covenants contained in this Section 5.3. The Contractor shall furnish promptly such written agreements to PRIFA.

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

5.4 Warranty on Materials, Parts and Equipment

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

The warranty period will begin on the date on which PRIFA accepts the service and/or installation of the material, part or equipment and will continue for a period of one (1) year following Substantial Completion (the "Minimum Warranty Period") or for such longer period as the manufacturer or supplier of such material, part or equipment may provide in a separate warranty or as otherwise provided by law the Commonwealth of Puerto Rico. The Contractor shall, upon written notice from PRIFA during the applicable warranty period, fully remedy, free of any cost or expense to PRIFA, such defects or deficiencies as may exist with respect to any material, part, or equipment used or any service performed under the Contract, whether or not such remedy is commenced or completed prior to the expiration of the applicable warranty period; provided that, in the case

of a material, part or equipment, such material, part or equipment has been properly stored, maintained, and operated by PRIFA within the specified requirements for such material, part or equipment. Without limiting the generality of the foregoing, the Contractor shall, at its own cost and expense, repair or replace, transport-in from the Contractor's facilities to the Site, and transport-out from the Site to the Contractor's facilities any and all materials, parts, and/or equipment necessary to fully remedy all defects or deficiencies subject to the foregoing warranties or otherwise to enable the Contractor to fully comply with its obligations under this Section 5.4. The Performance Bond shall serve as a guarantee for the Contractor's obligations under this Section 5.4 during the Minimum Warranty Period, and shall cover any failure, in whole or in part, by the Contractor to properly perform any of such obligations. With respect to any material, part or equipment procured by the Contractor from the manufacturer thereof or supplier, the Contractor shall obtain from such manufacturer or supplier, and, upon acceptance of such material, part or equipment by PRIFA, legally tender or assign to PRIFA in full, a written warranty from such manufacturer or supplier with respect to such material, part or equipment at least as broad in scope and duration as the warranties contained in this Section 5.4.

5.5 Conflicts of Interest

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

The Contractor agrees and acknowledges that it has a conflict of interest when its conduct is described as such in the canons of ethics applicable to the Contractor and its personnel, or in the laws of The Commonwealth of Puerto Rico, regulations or ordinances of Puerto Rico.

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

The Contractor shall avoid even the appearance of a conflict of interest. The Contractor acknowledges that the Executive Director of PRIFA shall have the power to intervene in the acts of the Contractor or any Subcontractor or Sub-subcontractor and/or their respective agents and employees for the purpose of enforcing the restrictions set forth in this Section 5.5. In the event that the Executive Director of PRIFA should discover the existence of adverse interests with respect to the Contractor, the Executive Director shall inform the Contractor, in writing, of PRIFA's intention to terminate the Contract within a period of thirty (30) days. During such period, the Contractor may request a meeting with the Executive Director to present its arguments regarding the alleged conflict of interest, which meeting shall be granted by PRIFA in every case. In the event

that the Contractor does not request such a meeting during the specified thirty (30) day period or the controversy is not satisfactorily resolved during the meeting, the Contract shall be terminated by PRIFA.

5.6 Child Support

In the event the Contractor is an individual resident of Puerto Rico or a sole proprietor or partnership, the Contractor or each partner of the Contractor who is a resident of Puerto Rico, represents and warrants that the Contractor or such partner, as the case may be, has made all required child support payments and does not owe any child support, or has entered into a payment plan to pay any delinquent child support and is in full compliance with the terms of such payment plan. If the Contractor is a Corporation that has received one or more court orders requiring the Corporation to retain child support from its employee's salary, it certifies that it has made such retentions.

– CONDITIONS PRECEDENT

5.7 Conditions Precedent

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

- 5.7.1 Insurance.** All insurance required to be carried by or on behalf of the Contractor pursuant to the Contract Documents shall be in full force and effect, in accordance with the provisions of the General Conditions, and originals or certified copies of all required insurance certificates or policies shall have been provided to PRIFA in accordance with the provisions set forth in the General Conditions.
- 5.7.2 Bonds.** PRIFA shall have received duly authorized and executed originals of the Performance Bond and the Payment Bond, in the forms attached hereto, respectively, as **Attachment D** to this Agreement, in accordance with the General Conditions.
- 5.7.3 No Litigation.** There shall be no pending or threatened action, suit, investigation or proceeding (or basis therefore), at law of The Commonwealth of Puerto Rico or in equity, before or by any arbitration panel, court or governmental agency or body that (a) challenges, or might challenge, directly or indirectly, the selection of the Contractor to perform the Contract or the authorization, execution, delivery, validity or enforceability of the Contract, or (b) materially adversely affects the Contractor's ability to perform the Contract.
- 5.7.4 Tax Certifications.** The Contractor shall have complied with the requirements of Subsection 5.3.1. and Article 5 of RFQ No. AFI-BP-14-15-AAPP.

6 – MISCELLANEOUS

6.1 Entire Agreement

The Contract Documents, as defined in the General Terms and Conditions, constitutes the entire integrated agreement by and between the parties, and any and all prior or contemporaneous promises, representations, agreements or understandings, whether oral or written, between or of the parties are expressly merged into the Contract, and superseded hereby.

6.2 Severability

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

6.3 Notices

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

If to PRIFA:

Puerto Rico Infrastructure Financing Authority
Ave. Muñoz Rivera #268
Suite 400
Hato Rey, PR 00918

PO Box 41207
Minillas Station
San Juan, PR 00940
Attn: Grace M. Santana Balado, Esq.
Executive Director

If to the Contractor:

Contractor

Attn:
Tel.
Cel.
Email.

6.4 No Waiver or Novation

The failure of PRIFA or PRIFA's Representative to enforce any provision of the Contract or any right or remedy available at law of the Commonwealth of Puerto Rico or in equity shall not be construed to be a waiver of any such provision, right or remedy, or to affect in any way the validity of the Contract or any part thereof. To be effective, a waiver of any right of PRIFA under the Contract must be express, in writing and specifically addressed to the Contractor.

PRIFA and the Contractor expressly agree that no amendment of the Contract or Change Order shall be understood or construed as a contractual novation of the Contract, unless both parties agree to the contrary specifically in writing. The foregoing provision shall be equally applicable in such other cases where PRIFA grants the Contractor an extension of time for compliance with any of the Contractor's obligations under the Contract, or where PRIFA fails to make any claim or demand with respect to any of its rights or remedies under the Contract.

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

6.5 Disclaimer of Liability and Indemnification

7.5.1 Disclaimer of Liability. In no event shall PRIFA be liable to the Contractor except for obligations expressly assumed by PRIFA under the Contract Documents, nor shall PRIFA ever be liable to the Contractor for indirect, special, incidental or consequential damages resulting from, arising out of, or in connection with, the Work, the Contract, any rescission, cancellation, termination or suspension of the Contract or any acceleration of the expiration of the Contract. No representative of PRIFA nor any officer, agent, consultant or employee of PRIFA (including, without limitation, PRIFA's Representative)

shall be charged personally by the Contractor with any liability or be held liable to it under any term or provision of the Contract, for any breach of the Contract by PRIFA, or otherwise in connection with performance under the Contract.

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

6.6 Governing Law and Jurisdiction

- 7.6.1 Governing Law.** The Contract shall be governed by, and construed in accordance with, the laws of Puerto Rico. The parties hereto expressly agree that their respective liability for damages under the Contract shall be governed by the Puerto Rico Civil Code and related case law of The Commonwealth of Puerto Rico as determined by the Supreme Court of The Commonwealth of Puerto Rico.
- 7.6.2 Jurisdiction and Venue.** Each of the parties hereto expressly and irrevocably (a) agrees that the state courts of The Commonwealth of Puerto Rico shall have sole and exclusive jurisdiction to settle any dispute or controversy between the parties regarding the terms and conditions of the Contract or any other matter involving the Project, (b) submits itself and its assets to the jurisdiction of such courts, (c) waives any objection or defense that such courts lack in personal jurisdiction over such party, (d) waives any objection or defense which it may have at any time to venue residing in such courts with respect to any proceedings involving the Contract or the Project, (e) waives any claim that any proceedings involving the Contract or the Project have been brought in an inconvenient forum, and (f) agrees not to seek redress or institute any action with respect to the Contract or the Project in any court or other forum, whether federal or state, other than in the state courts of The Commonwealth of Puerto Rico. Nothing contained in this Section shall preclude the parties from enforcing in any jurisdiction any judgment, award or order obtained in the state courts of The Commonwealth of Puerto Rico.
- 7.6.3 Change of Law.** Any change in law of The Commonwealth of Puerto Rico during the term of the Contract, including, without limitation, any changes in applicable tax law, that causes an increase in the Construction Manager's costs in supplying any products or services to PRIFA shall be the

Construction Manager's responsibility, and PRIFA shall not be obligated to make any additional payments or to pay any additional sums beyond the Contract Price.

6.7 Force Majeure

Notwithstanding the provisions mentioned in the General Conditions, if either PRIFA or Contractor (individually, a "Party") is delayed at any time in the performance of its obligations hereunder by economic industry-wide strikes, fire, unusual delay in deliveries, unavoidable casualties, or other causes reasonably beyond such Party's control and which could not have been reasonably anticipated by such Party, then the time for performance of such Party shall be extended by one (1) day for each day of such delay.

6.8 Independent Contractor

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

6.9 No Contractual Relationship

The Contract Documents shall not be construed to create a contractual relationship of any kind (a) between PRIFA's Representative and the Contractor, (b) between PRIFA and any Subcontractor, or (c) between any persons or entities other than PRIFA and the Contractor, except as specifically set forth in the Contract. The Contractor understands and agrees that the Engineer's obligations are to PRIFA and, by performing those obligations properly, the Engineer may increase the burdens and expenses of the Contractor, its Subcontractors and Sub-subcontractors, or sureties of any of them.

6.10 Assignment

The Contractor shall not assign, delegate or subcontract any of its rights and obligations under the Contract, except with the prior written authorization of PRIFA. The request for such authorization shall contain a list of all subcontractors or assignees. The Awarded Contractor shall include all of the provisions of this agreement in every subcontract so that such provisions will be

binding upon each of its subcontractors or assignees. PRIFA have no obligation to agree to any assignment.

The Contractor shall be responsible to Owner for the acts and omissions of all of its Subcontractors, and Sub-Subcontractors, their respective agents and employees and/ or all other persons performing any of the Work or supplying any materials or equipment for the Work under their respective contracts with the Contractor. The Contractor shall rebuild, repair, restore and make good any damages to any portion of the Work that any subcontractor or assignee may cause, at its own cost and expense, before the final completion and acceptance of the Project.

6.11 Amendments

To the extent permitted by law of The Commonwealth of Puerto Rico, the terms of the Contract shall not be altered, modified, supplemented or amended in any manner whatsoever, except by a written instrument duly executed by PRIFA and the Contractor.

6.12 Captions

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

6.13 Execution in Counterparts

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

6.14 Dissemination of Information

Certain of PRIFA's confidential or proprietary information may come into the Contractor's possession in the course of performing its obligations under the Contract. The Contractor shall hold such information and all other information that it develops or obtains from PRIFA or otherwise regarding the Project in confidence, shall not use such information other than for performance of its obligations under the Contract, and shall require its employees, agents, Subcontractors and Sub-subcontractors to be bound to PRIFA by the same obligation of confidentiality. PRIFA reserves the right to release all information to the public and to the media relating to the Contract and the Work. The Contractor agrees, and to cause its employees, agents, Subcontractors and Sub-subcontractors, to refer all inquiries about the Contract or the Work to PRIFA.

6.15 Cancellation and Termination

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

7.16 Safety and Security

The Contractor hereby agrees to install the required signs or notices announcing the work under construction and to take all the necessary measures to prevent any kind of accident.

The Contractor must comply with all the applicable laws, ordinances, rules and regulations related to the safety and security of the people who work in the construction or who go near it, as well as of the property. To do so, The Contractor, will raise and maintain, as required by the existing conditions and by this Contract, sufficient safety and protection safeguards, including placing danger signs and any other announcement to warn against risks and hazards, and setting forth safety and security rules.

The Contractor will remedy any damages or losses to the property caused in whole or in part by the Contractor or by any person contracted directly or indirectly by him. Likewise, the Contractor will protect the pipes, wires, cables, materials and equipment that are to be added to the construction, and other existing utilities, from potential damages and, in case of breakage, he shall repair same expeditiously without any additional costs to PRIFA.

The Contractor will not close off any streets under any circumstances. If it were necessary to do so, the Contractor must coordinate with the Department of Public Works and with the Municipal Police Department with enough time before beginning the work, in order to take the necessary measures. The Contractor will require strict discipline and order among his employees and any third parties.

The Contractor will not employ inadequate or unqualified people to perform the works assigned to him hereunder. The Contractor will be responsible for leaving a clean work area and for returning the general conditions of the area to their optimum state.

The Contractor when finish the work required under this Contract, will remove from the project any and all waste, debris, tools that belong to the Contractor,

construction equipment, machinery and any other material that is left over. If he were to fail to do so, PRIFA may do it for him and the cost of the cleanup will be charged to the Contractor.

7 – CRIMINAL CHARGES CLAUSE

7.1 Certification

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

The sworn statement identified as Attachment _____ of the RFP is hereby incorporated to this Contract and by executing the same, the contractor acknowledges that those circumstances have not changed by this date.

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

8 – ATTACHMENTS

8.1 Incorporation

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

Attachment A	Scope of Work
Attachment B	Contractor's Proposal Form submitted _____
Attachment C	Solids Waste Disposal
Attachment D	Bonds
Attachment E	Insurances
Attachment F	Cancelled Stamps
Attachment G	Other Documents
Attachment H	Contract Documents (CD)

9 – LAW NUMBER 85

9.1 Eligibility Certificate

In accordance with the dispositions of the Law of The Commonwealth of Puerto Rico Number 85 of June 18, 2002, the contractor is submitting the Eligibility Certificate from the "Administración de Servicios Generales" No. _____. Attachment No. _____ to the RFP.

10 – BUDGET CLAUSE

10.1 Budget Clause

The professional services rendered under this agreement are budgeted and will be paid from "Escuelas de Primera", Account No. _____.

11

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

12 – ETHICS AND SWORNED STATEMENT

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

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

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

**PUERTO RICO INFRASTRUCTURE
FINANCING AUTHORITY**

CONTRACTOR

Executive Director
Tax I.D 660-48-0699

Tax I.D

ATTACHMENT A SCOPE OF WORK

The Department of Education of Puerto Rico (DE) is promoting the rehabilitation of an old historic structure to maintain its educational purposes. The history of this building, within the urban complex of the city, and its impact on the (secondary) education of its students, makes this structure one of importance. For these reasons, the improvements involved in this construction project must comply with the requirements established by the Puerto Rico Institute of Culture and must be in conformance with the Space Program established by the Planning Department of the DE. This project uses the facades and floor plans developed in 2008 for a restoration project prepared for the Municipality of Caguas. In recent years (2008-2012) modifications to the facility were made to the bathrooms, ceilings and walls painting, and termite eradication.

1. This Project's objective is to restore, remodel and improve the exterior and interior of the existing concrete structure facilities and its infrastructure. The structure is distributed in two (2) floors with a total area of 25,212 square feet. The old historic structure will continue to be used as a high school, providing a total of 20 academic modules and administrative offices. Improvements to the basketball court, termite eradication treatment, waterproofing roof treatment, installation of a chair lift, an electric generator and a water cistern tank will also be provided to complement the school needs. Contractor must account for corrective work needed to address existing conditions of sanitary and storm drainage infrastructure problems.

2. Contractor must provide one (1) year of maintenance services as per specifications and guidelines described in the **Conservation Program**.

**FOR A DETAILED SCOPE OF WORK REFER TO CONSTRUCTION DOCUMENTS:
DRAWINGS AND TECHNICAL SPECIFICATIONS, ALSO SEE GENERAL &
SUPPLEMENTARY CONDITIONS**

**ATTACHMENT B
CONTRACTOR'S PROPOSAL FORM
SUBMITTED ON DATE**

SEE ATTACHED

ATTACHMENT C SOLIDS WASTE DISPOSAL

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

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

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

ATTACHMENT D BONDS

- Performance Bonds
- Labor and Material Payment Bond
- Bond to Guarantee Payment of Salaries

**ATTACHMENT E
INSURANCES**

- Automobile Insurance – Combined Single Limit (CSL): \$1,000,000 per occurrence / \$1,000,000 Aggregate
- Standard Hold Harmless Agreement
- Written evidence of payment to Insurance Company
- Certificate (original) from the State Insurance Fund

**ATTACHMENT F
CANCELLED STAMPS**

CIA Stamps

- Contract Amount \$
- CIA Stamps Cancelled (0.001 x Contract Amount) \$
- Department of the Treasury Stamp Cancelled \$

**ATTACHMENT G
OTHER DOCUMENTS**

- Eligibility Certificate – Proponents Register
- Certificate of Status or Existence from the Department of State
- Certificate of Compliance from the Office of Child Support Enforcement (ASUME)
- Statement Under Oath in compliance with Act No. 428 of September 22, 2004
- Certificate of Corporate Resolution authorizing an official to sign the contract documents
- Certificate of Good Standing

ATTACHMENT H
CONTRACT DOCUMENTS

The attached Package identified as " " contains the following documents:

1. Contract Book
 - a. Contract Form
 - b. Uniform General Conditions
 - c. Supplementary Conditions
 - d. Special Conditions
2. Drawings
3. Instructions to Proponents
4. Technical Specifications
5. Special Provisions - Conservation Program
6. Adenda (If applicable)

The parties certify that they have examined the contents of the aforementioned Package and agree that it represents a true and exact copy of the documents that were distributed to all proponents during RFP Process No.AFI-BP-14-10-AAPP.