

**Pohnpei State, Federated State of Micronesia
Pohnpei - Project Management Office**

BID DOCUMENTS

For the

Kinakapw to Lehn Diadi Waterline Extension Project

in Pohnpei State, Federated States of Micronesia

**Under Compact Infrastructure Grant Funding by the
United States Department of the Interior (DOI)
Office of Insular Affairs (OIA)**

March 1, 2021

BID DOCUMENTS

**Kinakapw to Lehn Diadi Waterline Extension Project
in Pohnpei State Federated States of Micronesia**

Table of Contents

INVITATION FOR BIDS 3

INSTRUCTIONS TO BIDDERS 4

BID FORM..... 11

SCHEDULE OF BID ITEMS..... 12

RECEIPT OF ADDENDA..... 22

DESIGNATION OF SUBCONTRACTORS..... 23

CONTRACTOR’S QUALIFICATIONS STATEMENT 24

OWNER and CONTRACTOR AGREEMENT 26

GENERAL PROVISIONS 41

INVITATION FOR BIDS

The Pohnpei State – Project Management Office, (Hereinafter “PNI-PMO”) is inviting interested contractors to submit sealed bid proposals for the “Kinakapw to Lehn Diadi Waterline Extension Project” located in Pohnpei State, Federated States of Micronesia (FSM).

Electronic copies of the bidding packages may be requested by sending a written letter of interest by email to: projects@pnipmo.gov.fm.

1. **Contractor’s Qualification:** All bidders are required to submit a Contractor’s Qualification Statement. The Contractor’s Qualification Statement shall be submitted in PDF format by email to: projects@pnipmo.gov.fm no later than **4:00PM** Pohnpei local time (gmt+11) on Wednesday, **May 12, 2021**, and shall be evaluated by a review committee set up by the PNI-PMO. Within two weeks after the due time of submission of the qualification statements, the Contractors will be notified with the results of prequalification. Only qualified Contractors will be requested to submit their bids.
2. **Pre-Bid Conference:** Scheduled for **Thursday, June 10, 2021 at 4:00PM** Pohnpei time at the PNI-PMO Office in Kolonia, Pohnpei and/or via Zoom Conference due to Covid-19 travel restrictions. All questions or concerns by the bidders are to be presented at the Pre-Bid Conference.
3. **Bid Closing:** Qualified Contractors bid proposals shall be submitted no later than **4:00PM** Pohnpei local time (gmt+11) on **Thursday, July 29, 2021** Each proposal must include a Bid Security in the amount of five percent (5%) of the aggregate amount of the proposal. The Bid Security is refundable after execution of the contract with the Successful Bidder.
4. **Bid Opening:** All proposals received shall be opened immediately following the closing of the Bid. Contractor’s submitting proposals are invited to attend the Bid Opening at the PNI-PMO conference room.

Sealed bids will be received by the PNI-PMO Kolonia, Pohnpei State no later than the date indicated in the Notice to Bidders, at which time all bids will be publicly opened and read aloud. Bid envelopes shall be clearly marked with the project name “Kinakapw to Lehn Diadi Waterline Extension Project” upon submission. It is the bidder’s responsibility to ensure that bids sent through the post office or other courier services are received and stamped by PNI-PMO no later than the designated deadline. Bid proposals sent by mail must be sent to the address below:

Daniel S. Isaac
Acting Program Manager
Project Management Office,
Pohnpei State Government
P.O. Box 2246
Kolonia, Pohnpei FM 96941

The PNI-PMO reserves the right to reject any or all bids or to waive any informality in the bid documents. No bid shall be withdrawn for a period of one hundred twenty (120) days following the bid opening date without the consent of the PNI-PMO Program Manager

Thank you,

Daniel S. Isaac
Acting Program Manager

INSTRUCTIONS TO BIDDERS

1.0 DEFINED TERMS

- 1.1 Terms used in these Instructions to Bidders, which are defined in the General Conditions of the Contract for Construction, have the meaning as assigned in the General Conditions.
- 1.2 Throughout these Bidding Documents:
 - 1.2.1 the term “in writing” means communicated in written form and delivered against receipt;
 - 1.2.2 except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
 - 1.2.3 day” means calendar day.
 - 1.2.4 The term Successful Bidders means the lowest, qualified, responsible bidder to whom PNI-PMO (on the basis of PNI-PMO evaluation as hereinafter provided) makes an award.
 - 1.2.5 The term PNI-PMO is sometimes used in the Bidding Documents and is construed to be the same as the term Pohnpei Project Management Office.

2.0 FRAUD AND CORRUPTION

- 2.1 It is the policy of PNI-PMO to require that contractors and their subcontractors observe the highest standard of ethics during the procurement and execution of such contracts. ¹ In pursuance of this policy, the Employer:
- 2.2 Defines, for the purposes of this provision, the terms set forth below as follows:
 - 2.2.1 “corrupt practice”² is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - 2.2.2 “fraudulent practice”³ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - 2.2.3 “collusive practice”⁴ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - 2.2.4 “coercive practice”⁵ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

¹ In this context, any action taken by a bidder, supplier, contractor, or a sub-contractor to influence the procurement process or contract execution for undue advantage is improper.

² “another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes Pohnpei State Government staff and employees of other organizations taking or reviewing procurement decisions.

³ a “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

⁴ “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

2.2.5 “obstructive practice” is

- a) Deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators intended to materially impede a Pohnpei State Government investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
- b) Acts intended to materially impede the exercise of the Pohnpei State Government inspection and audit rights provided for under sub-clause 2.5 below.

- 2.3 Will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- 2.4 Will sanction a firm or individual, including declaring them ineligible, to be awarded an Pohnpei State Government contract if it at any time determines that they have, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a compact-financed contract; and
- 2.5 Will have the right to require that a provision be included in bidding documents and in contracts financed under the compact, requiring bidders, suppliers, contractors and consultants to permit Pohnpei State Government and/or the Employer to inspect their accounts and records and other documents relating to the Bid submission and contract performance and to have them audited by auditors appointed by Pohnpei State Government.

3.0 ELIGIBLE BIDDERS

- 3.1 A Bidder may be a combination of US License Engineers/Architect Consulting Firm and/or a regional Contractor or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture or association:
 - 3.1.1 the JVA shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JVA during the bidding process and, in the event the JVA is awarded the Contract, during contract execution.
- 3.2 A Bidder, and all partners constituting the Bidder, may have the nationality of any country. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related Services.
 - 3.2.1 Under this contract, materials supplied for the construction of this project shall be through normal shipping channels as defined by “WEST COAST USA”

⁵ a “party” refers to a participant in the procurement process or contract execution.

3.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

3.3.1 Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or

3.3.2 Bidder participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid;

3.3.3 Bidder or any of its affiliates has been hired (or is proposed to be hired) by the Employer for the Contract implementation.

4.0 COPIES OF BIDDING DOCUMENTS

A complete electronic copy of the Bidding Documents may be obtained by sending a written letter of interest by email to: projects@pnipmo.gov.fm.

4.1 Use only complete sets of Bidding Documents in preparing Bids. Neither PNI-PMO assumes any responsibility for error on misinterpretations resulting from the use of incomplete sets of Bidding Documents.

4.2 Bids will be publicly opened and read aloud at the time of the Bid Opening as specified in the Invitation for Bid.

5.0 EXAMINATION OF CONTRACT DOCUMENTS AND SITE

5.1 Before submitting a bid, each Bidder must:

5.1.1 Examine the Contract Documents thoroughly.

5.1.2 Visit the site to familiarize himself with the site conditions that may in any manner affect the cost or progress of the performance of the work.

5.1.3 Familiarize himself with the local laws, ordinances, rules and regulations that may in any manner affect the cost or progress of performance of the work.

5.1.4 Study and carefully correlate Bidder's observations with Contract Documents.

5.2 On request, OWNER will provide each Bidder access to the site to conduct such investigation and test as each Bidder deems necessary for submission of his Bid.

6.0 PRE-BID CONFERENCE

6.1 A Pre-Bid Conference will be held at the PNI-PMO Office in Kolinia, Pohnpei State as indicated in the Invitation for Bids. Attendance to the Pre-Bid Conference is not mandatory. A site visit may be requested by prospective Bidders and will follow after the Conference.

7.0 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

7.1 Bidders shall promptly notify the PNI-PMO PROGRAM MANAGER of any ambiguity, inconsistency or error, which they may discover upon examination of the Bidding Documents and reviewing the plans.

- 7.2 Bidders requiring clarification or interpretation of the Bidding Documents shall make a written request, which shall reach the Program Manager before one week prior to the closing date as indicated in the invitation to the Bidders by 5:00 PM, Pohnpei, FSM Time.
- 7.3 Any interpretation, correction or change of the Bidding Documents will be made by Addendum. Interpretation correction or changes of the Bidding Documents made in any other manner will not be binding and Bidders shall not rely upon such interpretation, correction and changes.

8.0 ADDENDA

- 8.1 Addenda will be emailed or delivered to all who are known by the Program Manager to have received a complete set of the Bidding Documents.
- 8.2 Copies of Addenda will be made available for inspection whenever Bidding Documents are on file for that purpose.
- 8.3 No Addenda will be issued later than 5-days prior to the receipt of Bids except an Addendum withdrawing the request for Bids or one that includes postponement of the date or receipt of Bids.
- 8.4 Each Bidder shall certify prior to submitting his bid that he received all addenda issued and he shall acknowledge their receipt in his Bid.

9.0 BONDING/ BID SECURITY / BID GUARANTEE

- 9.1 Bid Security in the amount of five percent (5%) of the aggregate amount of the proposal shall be payable to the Pohnpei State Finance in the form of a bid bond issued by a U.S. Treasury listed bonding company, certified cashier's check or money order. Personal or company checks will not be accepted.
- 9.2 Bid Security of unsuccessful bidders will be returned within 120 days of the bid opening.
- 9.3 The successful bidders all be required to submit a Performance Bond equivalent to one hundred percent (100%) of the bid amount and a Payment Bond (Labor and Materials Bond) equivalent to one hundred percent (100%) of the bid amount as a condition upon award of the contract. The bonding company must be registered with FSM Insurance Board/Commission. The list of FSM Insurance Board/Commission approved insurers are:
 - 1) Pacific Indemnity Insurance Company
 - 2) First Net Insurance Company
 - 3) Dongbu Insurance Company
 - 4) Liberty Mutual Insurance Company
- 9.4 An "FSM Domestic Contractor" is defined as a Micronesia owned business that is registered and headquartered in the Federated States of Micronesia. FSM Domestic Contractor's will be allowed to submit a Bid Guarantee in the form of bank cashier's check or an irrevocable letter of credit issued by a bank, acceptable to the Owner, in the amount of 20% of the contract value in lieu of providing 100% Performance and 100% Payment Bonds. The Bid Guarantee would be submitted within one month upon execution of the contract and shall be held by FSM Government until the completion of the project and thereupon exchanged for a similar guarantee in the amount of 5% of the contract value until the warranty period of the contract has expired.

9.5 The Contractor shall submit the construction schedule as contract document within one month after the Notice to Proceed (NTP) date. The construction schedule cannot be modified or revised except upon a written approval from the PNI-PMO Program Manager. If the contractor submits the Bid Guarantee in lieu of Performance and Payment Bonds, during the construction, the Owner will notify the Contractor when the construction schedule is 10% behind the approved schedule and will issue a second notice at 15% behind the approved schedule. The PNI-PMO Program Manager will issue a notice of termination of the contract to the Contractor once the construction is 20% behind the approved schedule. The Owner shall claim the 20% Bid Guarantee once the contract is terminated.

10.0 SUBSTITUTIONS

No request for substitution for materials and equipment will be considered during the bidding period. Substitution may be considered after award of Contract if it is necessary to negotiate with the Successful Bidder to reduce cost.

11.0 BID FORM

- 11.1** The Bid Form is attached. All blanks must be filled in.
- 11.2** Fill in Bid Form completely in ink or by type writer. State the total Bid Price on the form in words and numerals; in case of a conflict, words will take precedence.
- 11.3** Execute Bids by corporations in the corporate name by the president or designated corporate officer and the corporate seal must be affixed and attested by the president or the vice president.
- 11.4** Execute Bids by partnerships in the partnerships name and signed by partners whose title must appear under the signature and official address must be shown below the signature.
- 11.5** Type or print all names below the signatures.
- 11.6** Show the address to which communications regarding the Bids are to be directed.

12.0 SUBMISSION OF CONTRACTOR'S QUALIFICATION STATEMENT

Submit the contractor's Qualification Statement and other required documents in PDF format by email to projects@pnipmo.gov.fm with the subject: "CONTRACTOR'S QUALIFICATION STATEMENT FOR KINAKAPW TO LEHN DIADI WATERLINE EXTENSION PROJECT IN POHNPEI STATE".

13.0 REVIEW OF CONTRACTOR'S QUALIFICATION STATEMENT

Contractor's Qualification Statements will be reviewed by a committee to be set up by PNI-PMO Program Manager. The committee shall be composed of at least three (3) members. All bidders will be notified of the evaluation results. Only qualified contractors will be requested to submit their bids at the time and place indicated in the Notice of Bidders.

14.0 SUBMISSION OF BIDS BY QUALIFIED CONTRACTORS

Submit bids, bid security and other required documents together in an opaque sealed envelope, marked with the project title, name and address of the bidder at the time and place indicated in the Invitation to Bidders. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation on the face thereof, BID PROPOSAL FOR THE *(project name as noted within the Invitation to Bidders)*.

15.0 MODIFICATION AND WITHDRAWAL OF BIDS

Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a bid must be executed) and delivered to the place where bids are to be submitted at any time prior to the opening of Bids.

16.0 BIDS TO REMAIN OPEN

Bids shall remain open for 120-days after the day of the bid opening, but OWNER may in his sole discretion release any Bid and return the Bid Security prior to that date.

17.0 OPENING OF BIDS AND AWARD OF CONTRACT

- 17.1 Qualified CONTRACTORS' Bids will be read aloud and an abstract of the amount of the Bids will be made available after the opening of the Bids. If within 24 hours after bids are opened, any Bidder that files a duly signed written notice with the OWNER and promptly thereafter demonstrates to the reasonable satisfaction of the OWNER that there was a material or equipment mistake in the preparation of his bid, the Bidder may withdraw his bid and the Bid Security will be returned. Thereafter, that Bidder will be disqualified from further bidding on FSM work.
- 17.2 PNI-PMO Program Manager reserves the right to reject any and all bids and to waive any and all informalities and to negotiate contract terms with the Successful Bidder and the right to disregard all non conforming, non-responsive or conditional Bids. The extension on the bid form shall be expressed in dollars and cents and shall be an accurate multiplication of the unit price times quantity. The PNI-PMO Program Manager will verify the multiplication of the individual price and quantities and calculate the total price. Discrepancies between the calculated cost (unit price times quantity of any item(s) and the cost in the sum column will be resolved in favor of the PNI-PMO Program Manager's calculated cost. The totals of all bid items shall be expressed in numbers and written in words at the bottom of the form. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum as calculated by the PNI-PMO Program Manager. The PNI-PMO Program Manager's calculated sum shall govern if the CONTRACTOR's sum is different, but if the numerical sums are identical and if a bidder's proposal contains a discrepancy between unit bid prices written in words and unit bid prices written in numbers, the unit price written in words shall govern.
- 17.3 In evaluating bids, PNI-PMO Program Manager will consider whether or not the bids comply with the prescribed requirements and alternates and unit prices if requested in the Bid Forms.
- 17.4 PNI-PMO Program Manager may conduct such investigation; he deems necessary to assist in the evaluation of the responsiveness of any bid. PNI-PMO Program Manager reserves the right to reject the bid of any bidder who does not pass such evaluation to PNI-PMO Program Manager's satisfaction.
- 17.5 Citizen Bidder Preference—Code of FSM Title 55, Chapter 4 Article 404 and 405 is not applicable to this project.
- 17.6 The foreign contractor who is not registered and headquartered in FSM must provide a minimum of twenty percent (20%) of its bid value to either use FSM domestic subcontractor(s) or/and hire labors with FSM citizenship or/and purchase material from

FSM domestic supplier(s). The cost of using FSM domestic subcontractor(s), labor(s) and supplier(s) must be indicated with “FSM Citizen” in each payment application.

END OF INVITATION TO BIDDERS

BID FORM

PROJECTNAME: **KINAKAPW TO LEHN DIADI WATERLINE EXTENSION PROJECT**
IN POHNPEI STATE, FEDERATED STATES OF MICRONESIA

NAME OF BIDDER: _____

BUSINESS ADDRESS: _____

TELEPHONE/FAX: _____

1. The undersigned Bidder proposes and agrees if this bid is accepted, to enter into an agreement with the PNI-PMO Program Manager on behalf of the OWNER, to commence and to complete all the works specified or indicated in the contract documents within a contract period specified in the contract documents. In submitting this bid, Bidder represents that: he has examined all the bidding documents, the work nature, scope of work for provision of specific materials and equipment, has examined the site and locality where the work is to be performed, and that this bid is genuine and that the Bidder has not taken part in any agreement of collusion with any other bidder or bidders to bid at a fixed price or to in anyway attempt to lessen or destroy free competition in bidding or awarding of the contract by such agreement.
2. Bidder agrees to complete all the works required for the project as specified or indicated in the bidding documents for the price indicated in this bid and in accordance with the other terms and conditions of the bidding documents.
3. The time for completion of the Contract shall be Seven Hundred Thirty (730) calendar days from Notice to Proceed and 120 day after the lifting of the COVID-19 travel restriction. This time applies to completion of all bid items. Liquidated damage shall be One Thousand Dollars (\$1,000.00) per calendar day.

SCHEDULE OF BID ITEMS

PROJECT: KINAKAPW TO LEHN DIADI WATERLINE EXTENSION

KINAKAPW TO LEHN DIADI WATERLINE EXTENSION PROJECT					
				Engineers Estimate April 2021	
Item #	Description	Unit	Quantity	Unit Cost	TOTAL AMOUNT
DIVISION 00-01	GENERAL CONDITIONS				
A	MOBILIZATION/DEMOLITION				
a.1	Mobilization/Demobilization	LS	1		
a.2	Traffic Control	LS	1		
DIVISION 02	EXISTING CONDITIONS				
02 41 00	DEMOLITION AND REMOVAL				
a	Sawcut/Removal of existing Asphalt Concrete pavement, including disposal	SF	2396		
b	Sawcut/Removal of existing Asphalt Concrete Driveway, including disposal	SF	362		
c	Sawcut/Removal of existing Concrete Driveway, including disposal	SF	228		
d	Remove/Relocate/ Reinstall Concrete Posts (Bollards)	EA	17		
e	Removal of Existing Riprap Wingwalls for bridge crossings, existing riprap ditch at Segment 2, including disposal	LS	1		
f	Remove and Restore Concrete Steps	LS	1		
g	Removal of Existing Trees	EA	18		
h	Locate Telecom Ductline (field inspection)	LS	1		
DIVISION 03	CONCRETE				
03 20 00.00 10	Concrete Reinforcing				
a	Pipe Concrete Encasement/Reinforced Concrete Jacket (Cross-Over & Cross-Under Pipes)	LF	797		
b	Pipe Concrete Encasement/Reinforced Concrete Jacket along rock outcrop	LF	324		
c	Water Tank Rebars Foundation Slab, in-place complete	LBS	16142.56		
d	Concrete Pipe Support (bridge crossing), in-	EA	4		

	place complete				
e	Pipe Support- I beam with concrete column (steel bridge crossing), in-place complete	LS	1		
03 30 50	Miscellaneous Cast-in-Place Concrete				
a	Pipe Concrete Encasement/Reinforced Concrete Jacket (Cross-Over & Cross-Under Pipes)	LF	797		
b	Pipe Concrete Encasement/Reinforced Concrete Jacket along rock outcrop	LF	324		
c	Concrete Slab with base course (well sites), in place complete	SY	136		
d	Concrete Thrust Blocks, in-place complete	EA	7		
e	Concrete Pipe Support (bridge crossing), in-place complete	EA	4		
g	Water Tank Rebars Foundation Slab, in-place complete	LBS	275.67		
h	Concrete Headwall/Riprap Wingwalls	LS	1		
i	Grouted Riprap (Ditch Canal)	LF	1286		
DIVISION 04	MASONRY				
04 20 00	Masonry	LS	1		
DIVISION 05	METALS				
05 05 23	Metal Fastenings	LF	168		
	Metal Guard Rails	LF	895		
05 50 03	Formed Metal Fabrications	LS	1		
DIVISION 13	SPECIAL CONSTRUCTION				
13 41 00	Glass-Fused (Epoxy) -to -Steel Storage Tank with Aluminum Dome Roof				
a	Water Tank Structure	LS	1		
DIVISION 22	PLUMBING				
22 00 00	Plumbing, General Purposes				
	Overflow Piping/Drain Pipes (from tank to concrete headwall)				
a	12"Ø Schedule 40 PVC Pipe	LF	25		
b	12"Ø x 90 D.I. Bend Flanged	EA	1		
c	12" Flexible Coupling D.I.	EA	1		
d	12"Ø x 90 PVC. Bend	EA	1		

e	12"Ø PVC Pipe SDR 35(including trenching, backfilling, non-metallic warning tape, tracer wire, crushed rock cradle), in place complete	LF	30		
f	12"Ø x 8"Ø PVC Wye	EA	1		
g	Flap valve	EA	1		
22 35 00	Provision for Solar Power, In-Reservoir Water Circulation Equipment	LS	1		
DIVISION 26	ELECTRICAL				
26 00 00.00 20	Basic Electrical Materials and Methods	LS	1		
26 05 00.00 40	Common Work Results for Electrical	LS	1		
DIVISION 31	EARTHWORKS				
31 11 00	Clearing and Grubbing				
a	Remove existing grass area, including preservation	LS	1		
31 23 00.00 20	Excavation and Fill				
a	Dewatering Works (along trench width/depth excavation)	LF	2000		
b	Rock Excavation (Hard Bazalt/Rock), including disposal)	CY	3000		
c	Water Tank Foundation Excavation including disposal	CY	225		
e	Pipe Trench Stabilization (using crushed rock = 0.148CY/LF)	CY	1036		
f	Geotextile Fabric (wrap the crushed rock trench stabilization)	LF	6998		
DIVISION 32	EXTERIOR IMPROVEMENTS				
32 12 16	Hot Mix Asphalt (HMA) for Roads				
a	Restoration of Asphalt Concrete Pavement/Driveway , in place complete	SY	306		
32 31 13.	Chain Link Fence and Gates				
a	6 ft High Security Fence with Barbed Wires on Top	LF	208		
b	10 ft Wide Double Swing Gate	LS	1		

DIVISION 33	UTILITIES				
33 11 00	Water Distribution				
A	Pipelaying Works		57927		
a.1	4"Ø HDPE Waterline and Pipeline for Waterwell Connections including trenching, backfilling, non-metallic warning tape, tracer wire, crushed rock cradle, in place complete	LF	11285		
a.1.1	4"Ø DI Waterline including trenching, backfilling, non-metallic warning tape, tracer wire, sand bedding, in place complete	LF	176		
a.2	8"Ø HDPE Waterline including trenching, backfilling, non-metallic warning tape, tracer wire, crushed rock cradle, in place complete	LF	30633		
a.2.1	8"Ø DI Waterline including trenching, backfilling, non-metallic warning tape, tracer wire, sand bedding, in place complete	LF	760		
a.3	10"Ø HDPE Waterline including trenching, backfilling, non-metallic warning tape, tracer wire, crushed rock cradle, in place complete	LF	14271		
a.3.1	10"Ø DI Waterline including trenching, backfilling, non-metallic warning tape, tracer wire, sand bedding, in place complete	LF	228		
a.4	4"Ø D.I. Pipe Bridge Crossing, including fittings and other incidentals, in place complete.	LF	228		
a.5	8"Ø D.I. Pipe Bridge Crossing, including fittings and other incidentals, in place complete.	LF	228		
a.6	10"Ø D.I. Pipe Bridge Crossing, including fittings and other incidentals, in place complete.	LF	118		
a.7	4"Ø HDPE 90 degree bend , in place complete.	EA	1		
a.8	4"Ø D.I. 45 degree bend , in place complete.	EA	38		
a.9	8"Ø D.I. 45 degree bend , in place complete.	EA	100		
a.10	10"Ø D.I. 45 degree bend , in place complete.	EA	32		
a.11	8"Ø D.I. 22.5 degree bend , in place complete.	EA	8		
a.11.1	10"Ø D.I. 22.5 degree bend , in place complete.	EA	7		
a.11.2	10"Ø D.I. 11.25 degree bend , in place complete.	EA	5		
a.12	8"Ø x 4"Ø HDPE reducer , in place complete.	EA	4		
a.13	10"Ø x 8"Ø HDPE reducer , in place complete.	EA	3		

a.14	4"Ø HDPE Adapter , in place complete.	EA	28		
a.15	6"Ø HDPE Adapter , in place complete.	EA	30		
a.16	8"Ø HDPE Adapter , in place complete.	EA	66		
a.17	10"Ø HDPE Adapter , in place complete.	EA	30		
a.18	4"Ø HDPE End Cap , in place complete.	EA	5		
a.19	8"Ø HDPE End Cap , in place complete.	EA	1		
a.20	10"Ø HDPE End Cap , in place complete.	EA	1		
B	Installation of Air Relief Valve Assembly, in-place complete				
b.1	Along 4"Ø HDPE new waterline, in-place complete	EA	20		
b.2	Along 8"Ø HDPE new waterline, in-place complete	EA	38		
b.3	Along 10"Ø HDPE new waterline, in-place complete	EA	14		
C	Installation of Blow-Off Valve Assembly, in-place complete				
c.1	Along 4"Ø HDPE new waterline, in-place complete	EA	19		
c.2	Along 8"Ø HDPE new waterline, in-place complete	EA	30		
c.3	Along 10"Ø HDPE new waterline, in-place complete	EA	12		
D	Installation of Fire Hydrant along 8"Ø Waterline				
d.1	8" x 8 x 6" HDPE TEE	EA	33		
d.2	6" Ø HDPE Adapter (FL x PE)	EA	33		
d.3	6" Ø x 3' D.I. Spool (FL X FL)	EA	33		
d.4	6" Ø x 6' D.I. Spool (FL X FL)	EA	33		
d.5	6"Ø Fire Hydrant Assembly (including Gate Valve, Hydrant Extension, Valve Box, Pipe Bollard), in-place complete	EA	33		
E	Installation of Fire Hydrant along 10"Ø Waterline				
e.1	10" x 10 x 6" HDPE TEE	EA	15		
e.2	6" Ø HDPE Adapter (FL x PE)	EA	15		
e.3	6" Ø x 3' D.I. Spool (FL X FL)	EA	15		
e.4	6" Ø x 6' D.I. Spool (FL X FL)	EA	15		
e.5	6"Ø Fire Hydrant Assembly (including Gate Valve, Hydrant Extension, Valve Box, Pipe Bollard), in-place complete	EA	15		
F	Installation of Water Service Stub-Out Assembly				

f.1	Along 4"Ø HDPE new waterline- 1" Tubing , in-place complete	EA	17		
f.2	Along 4"Ø HDPE new waterline- 2" Tubing , in-place complete	EA	21		
f.3	Along 8"Ø HDPE new waterline- 1" Tubing , in-place complete	EA	65		
f.4	Along 8"Ø HDPE new waterline- 2" Tubing, in-place complete	EA	40		
f.5	Along 10"Ø HDPE new waterline- 1" Tubing , in-place complete	EA	20		
f.6	Along 10"Ø HDPE new waterline- 2" Tubing, in-place complete	EA	12		
G	Installation of PRV to Customer Side of Water Service Stub-Out, in Place complete				
g.1	1"Ø PRV (Pressure Reducing Valves)	EA	66		
g.2	2"Ø PRV (Pressure Reducing Valves)	EA	44		
H	Installation of Pressure Reducing Valves (PRV) along Water Main	EA	2		
I	Installation of Line Valves (Gate Valves) along New Waterlines				
i.1	Installation of 8"Ø Line Valve along New Waterline, in-place complete	EA	39		
	8" Gate Valve				
	8" HDPE adaptor (Fx PE)				
	C.I. Valve Box				
	Concrete Valve Support				
i.2	Installation of 10"Ø Line Valve along New Waterline, in-place complete	EA	18		
	10" Gate Valve				
	10" HDPE adaptor (Fx PE)				
	C.I. Valve Box				
	Concrete Valve Support				
i.3	Installation of 4"Ø Line Valve along New Waterline, in-place complete	EA	17		
	4" Gate Valve				
	4" HDPE adaptor (Fx PE)				
	C.I. Valve Box				
	Concrete Valve Support				

J	Installation of Gate Valves				
j.1	Along Segment 1 Sta. 7+66.38 going to Segment 2	EA	1		
	8" Gate Valve		3		
	8" HDPE adaptor (Fx PE)		6		
	8" x 8" x 8" HDPE Tee		1		
	C.I. Valve Box		3		
	Concrete Valve Support				
j.2	Along Segment 1 Sta. 22+00.00 going to Segment 3	EA	1		
	8" Gate Valve		3		
	8" HDPE adaptor (Fx PE)		6		
	8" x 8" x 8" HDPE Tee		1		
	C.I. Valve Box		3		
	Concrete Valve Support				
j.3	Along Segment 1 Sta. 161+62.67 going to Mesihsou	EA	1		
	10" Gate Valve		3		
	10" HDPE adaptor (Fx PE)		6		
	10" x 10" x 10" HDPE Tee		1		
	C.I. Valve Box		3		
	Concrete Valve Support				
j.4	Along Segment 1 Sta. 168+10.83 going to Segment 4	EA	1		
	10" Gate Valve		3		
	10" HDPE adaptor (Fx PE)		6		
	10" x 10" x 10" HDPE Tee		1		
	C.I. Valve Box		3		
	Concrete Valve Support		10		
j.5	Along Segment 4 Sta. 34+46.55 going to Segment 5	EA	1		
	8" Gate Valve		3		
	8" HDPE adaptor (Fx PE)		6		
	8" x 8" x 8" HDPE Tee		1		
	C.I. Valve Box		3		
	Concrete Valve Support		3		
j.6	Along Segment 4 Sta. 48+24.57 going to Well No. 3	EA	1		

	4" Gate Valve		1		
	4" HDPE adaptor (Fx PE)				
	8" x 8" x 4" HDPE Tee		1		
	C.I. Valve Box		1		
	Concrete Valve Support				
j.7	Along Segment 4 Sta. 49+06.55 going to Well No. 1	EA	1		
	4" Gate Valve		1		
	4" HDPE adaptor (Fx PE)				
	8" x 8" x 4" HDPE Tee		1		
	C.I. Valve Box		1		
	Concrete Valve Support				
j.8	Along Segment 5 Sta. 0+43.00 going to Well No. 4	EA	1		
	4" Gate Valve		1		
	4" HDPE adaptor (Fx PE)				
	8" x 8" x 4" HDPE Tee		1		
	C.I. Valve Box		1		
	Concrete Valve Support				
j.9	Along Segment 5 Sta. 12+40.00 going to Well No. 2	EA	1		
	4" Gate Valve				
	8" Gate Valve				
	4" HDPE adaptor (Fx PE)				
	8" HDPE adaptor (Fx PE)				
	8" x 8" x 4" HDPE Tee				
	C.I. Valve Box				
	Concrete Valve Support				
K	Testing/Chlorination of new waterline	LS	1		
L	Utilities (water wells)				
	Spare Motor Pump for each well				
l.1	Deep Well (Motor) Pump for Well no. 1 & 2 (4")	EA	2		
l.2	Deep Well (Motor) Pump for Well no. 3 & 4 (4")	EA	2		

M	Installation of Valves and Appurtenances				
m.1	Altitude Valve Assembly (including gate valves, concrete slab, pipes/fittings & other appurtenances), in-place complete	LS	1		
m.2	Check Valve Assembly (including slab, pipes/fittings & other appurtenances), in-place complete	LS	1		
m.3	8" Ø Gate Valve (MJX MJ)	EA	1		
m.4	8" Ø x 45 PVC Bend SDR 35 with concrete thrust block	EA	1		
m.5	8"Ø PVC Pipe SDR 35	LF	10		
M	Contingency for Installation of Water Service Stub-Out Assembly				
m.1	Along 4"Ø HDPE new waterline- 1" Tubing , in-place complete	EA			
m.2	Along 4"Ø HDPE new waterline- 2" Tubing , in-place complete	EA			
m.3	Along 8"Ø HDPE new waterline- 1" Tubing , in-place complete	EA			
m.4	Along 8"Ø HDPE new waterline- 2" Tubing, in-place complete	EA			
m.5	Along 10"Ø HDPE new waterline- 1" Tubing , in-place complete	EA			
m.6	Along 10"Ø HDPE new waterline- 2" Tubing, in-place complete	EA			
N	Connection and Installation of Hose Bibb Assembly, in place complete	LS	1		
	Sub-Total - For Construction Design				
O	Engineering, Hydrology Study, Design Corrections	LS	1		
	Sub-Total - Design/Build/ Construction				
	Profit (10%)				
	Tax (3%)				

	TOTAL COST				

NOTE:

1. FSM Domestic Bidders (as defined in the Instructions to Bidders, Paragraph 9.4) may submit "20% Bid Guarantee" in lieu of submitting Performance and Payment Bonds, as defined in Section 9.0 of the Instructions to Bidders.
2. FSM Domestic Bidder is considered willing to submit "Performance and Payment Bonds" once cost of Division A-1 is filled out. Otherwise, please fill out Division A-1 with N/A.
3. If all Bidders fill out the cost for "Performance and Payment Bonds", the lowest bid amount on "Total Cost" is considered the winning bid.

RECEIPT OF ADDENDA

The undersigned acknowledges receipt of the following Addenda to Drawings, Specifications, and/or Contract Documents by recording the date of receipt in the space below.

Addendum No.1 _____

Addendum No.2 _____

Addendum No.3 _____

Addendum No.4 _____

Addendum No.5 _____

Addendum No.6 _____

Addendum No.7 _____

Addendum No.8 _____

Addendum No.9 _____

Addendum No.10 _____

The bidder guarantees to enter into a Contract for the lump sum bid price given above provided that the OWNER awards the contract to the Bidder within 120 days of the bid opening date.

Print Name and sign

Date

Title

DESIGNATION OF SUBCONTRACTORS

The following are the names and the principal places of business of all Subcontractors who will perform work or labor, or render services to the bidder in or about the Work, together with a statement of the portion and dollar value of the Work to be done by each Subcontractor.

1. Name: _____
Address: _____
Contract Item of Work: _____
U.S. Dollar Value of Work: \$ _____
_____ Prequalified FSM Citizen Subcontractor:
 Yes No

2. Name: _____
Address: _____
Contract Item of Work: _____
U.S. Dollar Value of Work: \$ _____
_____ Prequalified FSM Citizen Subcontractor:
 Yes No

3. Name: _____
Address: _____
Contract Item of Work: _____
U.S. Dollar Value of Work: \$ _____
_____ Prequalified FSM Citizen Subcontractor:
 Yes No

4. Name: _____
Address: _____
Contract Item of Work: _____
U.S. Dollar Value of Work: \$ _____
_____ Prequalified FSM Citizen Subcontractor:
 Yes No

5. Name: _____
Address: _____
Contract Item of Work: _____
U.S. Dollar Value of Work: \$ _____
_____ Prequalified FSM Citizen Subcontractor:
 Yes No

CONTRACTOR'S QUALIFICATIONS STATEMENT

1. PROJECT NAME: **KINAKAPW TO LEHN DIADI WATERLINE EXTENSION**

2. COMPANY NAME:

3. COMPANY ADDRESS:

4. NAME OF COMPANY OFFICIALS

President:

Vice President or Partner:

Provide the responses to the following questions on a separate sheet of paper:

5. List similar types of work your company has performed with your own work force (work that is not done by a Subcontractor).

6. Have you ever failed to complete any work awarded to you? Yes No

If Yes, when and why? Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of the contract is a strong factor to consider in determining satisfactory performance.

7. Have you ever been involved in a contract dispute or litigation(s) with Government agencies in Federated States of Micronesia? Yes No

If Yes, when and why? Please submit a detailed description of the contract dispute or litigation(s). A prospective Contractor that is or recently has been seriously deficient in contract performance shall be presumed to be non-responsible.

8. Have you ever sued the FSM government agencies relative to Compact-funded projects in the past 5 years? Yes No

If Yes, you may be presumed to be disqualified from bidding on this project if the dispute or litigation(s) is still ongoing or the court's decision is not in your favor.

9. List all projects your company has in progress, giving the name of the projects, Project Authority, Contract amount and schedule of completion date.

10. Provide organizational operational controls that may include, but are not limited to:

- a. Production controls
- b. Quality Assurance Program; and
- c. Appropriate safety programs

11. List similar projects your company has completed, giving the name of the project, project owner, contract and date completed.

12. Provide organizational chart for all permanent employees of the company to be involved in this project including their titles, qualifications, and experience.

13. Provide a list of equipment that would be available for the work

14. The Bidder shall furnish the PNI-PMO Program Manager satisfactory evidence of his/her financial responsibility. Financial responsibility shall be defined as the Bidders ability to undertake the project with a minimum of 25% cash on hand, allLetter of Credit for a value of

25% of the bid value, pr a combination of available cash and a Letter of Credit amounting to a minimum of 25% of the bid value. Such evidence of financial responsibility, unless otherwise specified, shall consist of one of the following: a confidential Bank statement or a Certified Bank report or a certified Audit report of the Bidder’s financial resources and liabilities as of the last calendar year or the Contractor’s last fiscal year. Such statements or reports shall be certified by an official of the Bidder’s Bank or the public accountant. At the time of submitting such financial statements or reports, the Bidder shall further certify whether his/her financial responsibility is approximately the same as stated or reported by a Bank Official or the public accountant. If the Bidder’s financial responsibility has changed, the Bidder shall qualify the public accountant’s statement or report to reflect his/her (Bidder’s) true financial condition at the time such qualified statement or report is submitted to the PNI-PMO Program Manager

15. Bank References:

The Contractor/Bidder affirms by his signature that the answers to the foregoing questions and all statements therein contained are true and correct.

Signed: _____ Date: _____

Name (type): _____

Title: _____

OWNER and CONTRACTOR AGREEMENT
BETWEEN POHNPEI STATE GOVERNMENT AND

CONTRACTOR

AGREEMENT

This Agreement is made effective as of this ____ day of _____, 2020 by and between the following parties, for services in connection with the Project identified below:

As the OWNER:

POHNPEI STATE GOVERNMENT
PROJECT MANAGEMENT OFFICE
P.O. BOX PS 2246
KOLONIA, POHNPEI FM 96941

And the CONTRACTOR:

Project: **KINAKAPW TO LEHN DIADI WATERLINE EXTENSION**
Pohnpei State, Federated States of Micronesia

This Agreement entered into as of this ____ day of _____ and year _____ first written above

OWNER:

Pohnpei State Government
Pohnpei State Project Management Office

Program Manager

CONTRACTOR:

Title:

Date: _____

Date: _____

Internal Use Only

A. Legal Sufficiency Determination

Attorney General

Date

B. Funding Availability

Account No.

Amount

_____ = _____

Total = _____

Director of Finance

Date

In consideration of the mutual covenants and obligations contained herein, PNI-PMO Program Manager on behalf of the OWNER and CONTRACTOR agree as set forth herein.

ARTICLE-1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 The Contract Documents are comprised of the OWNER and CONTRACTOR Agreement between Pohnpei State herein referred to as the PNI-PMO, and the CONTRACTOR, including all exhibits and attachments, the General Conditions of the Contract, the Drawings, the Specifications, and all Addenda and all Modifications to the Contract. A Modification is a Change Order, Contract Amendment, or written interpretation issued by the PNI-PMO Program Manager.

1.2 THE CONTRACT

1.2.1 The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties (the PNI-PMO and CONTRACTOR). This Contract may be amended or modified only by a Modification as defined herein.

THE WORK

1.3 1.3.1 THE WORK

1.3.1 The Work (**Design/Build**) comprises of the **engineering and construction services** as required by the Contract Documents, whether completed or partially completed and includes all tools and labor, materials, equipment and services provided or to be provided by the CONTRACTOR to fulfill the CONTRACTOR's obligations.

1.4 THE PROJECT

1.4.1 The Project is the total construction of which the Work performed under the Contract Documents may be the whole or part and which may include construction by the PNI-PMO or by separate contractors.

1.5 EXECUTION

1.5.1 Execution of the Contract by the CONTRACTOR is a presentation that the CONTRACTOR has visited the site, become familiar with the local conditions under which the Work is to be performed and correlated personal observation with requirements of the Contract Documents.

1.5.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the CONTRACTOR. The Contract Documents are complementary and what is required by one shall be as binding as if required by all, performance by the CONTRACTOR shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

ARTICLE-2

ADMINISTRATION OF THE CONTRACT

2.1 THE PNI-PMO PROGRAM MANAGER

2.1.1 The PNI-PMO Program Manager means the POHNPEI STATE (OWNER) or its Authorized Representative.

2.2 ADMINISTRATION OF THE CONTRACT

2.2.1 The PNI-PMO Program Manager will provide administration of the Contract as hereinafter

described.

2.2.2 The PNI-PMO Program Manager's Representative will be the OWNER's Representative during the construction stage and until final payment to CONTRACTOR and Subcontractor is due. He will advise and consult with the OWNER. All instructions to the CONTRACTOR shall be forwarded through the PNI-PMO Program Manager and/or his Representative. The PNI-PMO Program Manager and/or his Representative will have authority to act on behalf of the OWNER only to the extent provided in the Contract Documents.

2.2.3 The OWNER will visit the site at intervals appropriate to the stage of construction for familiarization with progress and quality of Work on going, and for compliance with the Contract Documents. While the PNI-PMO Program Manager and/or his Representative may not make exhaustive or continuous on-site inspection at that time, he will keep the OWNER abreast of progress of the work and will endeavor to guard the OWNER against defects and deficiencies in the Work of the CONTRACTOR.

PNI-PMO Program Manager and/or his Representative will neither be held responsible for, nor have control over construction means, methods, techniques, sequences, or procedures, nor for safety precautions and programs in connection with the work for which the CONTRACTOR has sole responsibility. Neither will he be held responsible for the CONTRACTOR's failure to carry out the Work in accordance with the PNI-PMO Program Manager and/or his Representative, nor exercise control over the acts or omissions of the CONTRACTOR, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

2.2.4 The OWNER and PNI-PMO Program Manager and/or his Representative shall at all times have access to the work and shall facilitate such access that he may perform functions under his cognizance.

2.2.5 The PNI-PMO Program Manager and/or his Representative, when designated, will schedule, and coordinate the work of all CONTRACTORS on the Project, and determine the availability of the site. He will keep the CONTRACTOR informed to enable finalization of the construction schedule to realize the completion of the project as envisaged by the Contract.

2.2.6 The PNI-PMO Program Manager and/or his Representative will review all Applications for Payment by the CONTRACTOR, including corresponding backup substantiating payment request. Similar procedure applies to the Final Payment Application and backup. Additionally, the CONTRACTOR shall show evidence of payment to Subcontractors and Independent Suppliers with Final Payment Application. Processing time for payment anticipated is approximately six weeks upon receipt of the Application for Payment. If corrections are required, the processing time extends correspondingly.

2.2.7 A Project Certificate for Payment will be issued by the PNI-PMO Program Manager and/or his Representative upon review of the documentation of progress provided for each Application for Payment during period under consideration, all in accordance with assessed evaluation, and Article-9, Paragraph 9.4, as applicable and receipt of evidence of payment to Subcontractors and Independent Suppliers as noted in Paragraph 2.2.6.

2.2.8 The PNI-PMO Program Manager and/or his Representative will interpret intent and meaning of the requirements of the Contract Documents and is judge of the performance there under by OWNER and CONTRACTOR.

2.2.9 Claims, disputes, and other matters in question between the CONTRACTOR and the OWNER relating to the Execution or progress of the Work or the interpretation of the Contract Documents, shall be referred initially to the PNI-PMO Program Manager and/or his Representative for decision, which will be rendered in due course.

- 2.2.10 Claims by either CONTRACTOR or OWNER must be initiated within 21 (twenty-one) days after occurrence of the event. Claim must be initiated by written notice to the PNI-PMO Program Manager and/or his Representative and the other party.
- 2.2.11 Pending final resolution of a Claim except as otherwise agreed in writing, the CONTRACTOR shall proceed diligently with performance of the Contract and OWNER shall continue to make payments in accordance with the Contract Documents.
- 2.2.12 The PNI-PMO Program Manager and/or his Representative will have authority to reject defective Work, and Works not in compliance with the Contract Documents, and to require special inspection or testing. Such measures will only be taken after consultation with the CONTRACTOR. In like manner, the PNI-PMO Program Manager and/or his Representative has authority to require special inspection or confirmation testing of the Work, regardless of whether such Work is in fabrication, or completed.
- 2.2.13 The PNI-PMO Program Manager and/or his Representative will review all Shop Drawings submitted by the CONTRACTOR, including Product Data and Samples. Such data shall be submitted in triplicate. One copy shall be returned approved, or approved as noted, or rejected for resubmission as applicable. Approvals will not include assemblies of which submitted Item/Items form an integral part of the assembly.
- 2.2.14 It is incumbent of the PNI-PMO Program Manager to take appropriate action on Change Orders in accordance with Article 12 and given the authority to order minor changes in the Work.
- 2.2.15 The Contractor will maintain at the project site one record copy of all Contracts, Drawings, Specifications, Addenda, Change Orders, and other Modifications pertaining to the Project, and marked to reflect all changes made during construction, including approved Shop Drawings, Product Data and Samples.
- 2.2.16 The PNI-PMO Program Manager and/or his Representative will be conducting inspections to determine the dates of Substantial Completion and Final Completion and will receive and forward to the OWNER for the OWNER's review written warranties and related documents required by the Contract and assembled by the CONTRACTOR. The PNI-PMO Program Manager and/or his Representative will issue a Final Project Certificate for Payment upon compliance with the requirements of Article-9, Paragraph 9.8.

ARTICLE-3

POHNPEI STATE PROJECT MANAGEMENT OFFICE

3.1 DEFINITION

- 3.1.1 The PNI-PMO Program Manager is the person or entity identified as the Owner, in the OWNER – CONTRACTOR Agreement. The Term "OWNER" also means the OWNER's Authorized Representative.
- 3.1.2 The PNI-PMO Program Manager is the person or entity assigned by OWNER to perform administration of the Contract and he shall be the Owner's Representative during construction.
- 3.1.3 The PNI-PMO Program Manager and/or his Representative shall forward all instructions to the CONTRACTOR.

3.2 PNI-PMO PROGRAM MANAGER'S RIGHT TO STOP THE WORK

- 3.2.1 If the CONTRACTOR fails to correct defective Work which is not in accordance with the requirements of the Contract Documents as required by Article 13, Paragraph 13.2.1 or persistently fails to carry out the Work in accordance with Contract Documents, the Pni-

PMO Program Manager by written order signed personally or by his representative specifically so empowered by the PNI-PMO Program Manager in writing, may order the CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

3.3 PNI-PMO PROGRAM MANAGER'S RIGHT TO CARRY OUT THE WORK

- 3.3.1 If the CONTRACTOR defaults or fails to carry out the Work in accordance with the Contract Documents and fails within 7 (seven) days after receipt of written notice from the PNI-PMO Program Manager to commence and continue correction of such default the PNI-PMO Program Manager may, without prejudice to other remedies the PNI-PMO Program Manager may make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the CONTRACTOR the cost of correcting such deficiencies.

ARTICLE-4

CONTRACTOR

4.1 DEFINITION

- 4.1.1 The CONTRACTOR is the person or entity identified as the CONTRACTOR. The term "CONTRACTOR" means the CONTRACTOR or his authorized representative.
- 4.1.2 The PNI-PMO Program Manager is the person or entity identified as the Owner, in the OWNER – CONTRACTOR Agreement. The Term "OWNER" also means the OWNER's Authorized Representative.

4.2 REVIEW OF CONTRACT DOCUMENTS

- 4.2.1 The CONTRACTOR shall carefully study and compare the Contract Documents and shall at once report to the PNI-PMO Program Manager and/or his Representative any error, inconsistencies, or omission he may discover. The CONTRACTOR shall perform no portion of the Work at anytime without Contract Document or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- 4.3.1 The CONTRACTOR shall supervise and direct the Work. CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract.

4.4 LABOR AND MATERIALS

- 4.4.1 Unless otherwise provided in the Contract Documents, the CONTRACTOR shall provide and pay for all labor, materials, equipment, tools, construction equipment, water, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

4.5 WARRANTY

- 4.5.1 The CONTRACTOR warrants to the OWNER and the PNI-PMO Program Manager that all materials and equipment furnished under this Contract will be new unless otherwise specified and that all works will be of good quality, free from faults and defects and in conformity to the Contract Documents. All works not conforming to these requirements, including substitutions not properly approved and authorized, maybe considered defective. The warranty period is set forth to be one year from the date of issuing the Substantial Completion Certificate.

4.6 TAXES

4.6.1 The CONTRACTOR shall pay all FSM national, state, and local taxes for the Work as legally required.

4.7 PERMITS, FEES AND NOTICES

4.7.1 The CONTRACTOR shall secure and pay for all the licenses, other permits, inspections, and governmental fees necessary for the proper execution and completion of the Work.

4.7.2 The CONTRACTOR shall give all notice and comply with all laws, ordinances, rules, regulations, or any public authority bearing on the performance of the Work.

4.7.3 The CONTRACTOR shall secure the earth moving permit, and all other permits and deeds as required.

4.8 SUPERINTENDENT

4.8.1 The CONTRACTOR shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during the performance of the Work. The superintendent shall represent the CONTRACTOR.

4.9 CONTRACTOR'S CONSTRUCTION SCHEDULE

4.9.1 The CONTRACTOR, promptly after being awarded the Contract, shall provide the PNI-PMO Program Manager with a construction schedule for the Work.

4.10 DOCUMENT AND SAMPLES AT THE SITE

4.10.1 The CONTRACTOR shall maintain at the site for the OWNER one record copy of all Documents, Specifications, Addenda, Samples, Change Orders, and other Modifications, in good order and marked currently to record all changes made during construction. These shall be available to the PNI-PMO Program Manager and/or his Representative and shall be delivered to him for the OWNER upon completion of the Work.

4.10.2 OWNER or any of its duly authorized representatives shall be allowed access to any books, documents, papers, and records of CONTRACTOR and its Subcontractors which are directly pertinent to work performed under the Contract or any Subcontracts, for the purpose of making audit, examination, excerpts, and transcriptions.

4.10.3 CONTRACTOR shall keep all required records for three years after OWNER makes final payment and all other pending matters are closed as defined by Article 9.8.

4.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.11.1 Shop Drawings are drawings, diagrams, schedules, and other data specifically prepared for the Work by the CONTRACTOR or any Subcontractor, manufacturer, or supplier to illustrate and/or detail some portion of the Work.

4.11.2 Product Data are illustrations, standard schedules, instructions, brochures, or other information furnished by the CONTRACTOR to illustrate a material or product for some portion of the Work.

4.11.3 Samples are physical examples, which illustrate material, equipment or workmanship and establish standards by which the Work will be judged.

4.11.4 The CONTRACTOR shall review, approve, and submit all Shop Drawings, Product Data and Samples required by the Contract Documents.

4.11.5 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the PNI-PMO Program Manager has approved submittal.

4.12 CUTTING AND PATCHING WORK

4.12.1 The CONTRACTOR shall not damage or endanger any portion of the Work or the Work of

the OWNER or any separate CONTRACTORS by cutting, patching, or otherwise altering any Work, or by excavation.

4.13 CLEANING UP

4.13.1 The CONTRACTOR at all times shall keep the premises and surrounding free from accumulation of waste materials or rubbish caused by his operations.

4.14 COMMUNICATIONS

4.14.1 The CONTRACTOR shall forward all communications to the OWNER through the PNI-PMO Program Manager.

4.15 INDEMNIFICATION

4.15.1 To the fullest extent permitted by law, the CONTRACTOR shall indemnify and hold harmless the OWNER and the PNI-PMO Program Manager and their agents and employees from and against all claims, damages, losses, and expenses arising out of or resulting from the performance of the Work.

ARTICLE 5

SUBCONTRACTOR

4.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct contract with the CONTRACTOR to perform Work at the site.

5.2 AWARD OF SUBCONTRACTS

5.2.1 As soon as practicable after the award of the Contract, the CONTRACTOR shall furnish to the PNI-PMO Program Manager in writing the names of the Subcontractor, manufacturers, or suppliers for each principal portion of the Work. They shall be subject to the approval of the PNI-PMO Program Manager.

5.2.2 The CONTRACTOR shall bind his Subcontractor by the terms of the Contract Documents to the extent the CONTRACTOR is bound to the Contract Documents.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS.

6.1.1 The OWNER reserves the right to perform Work related to the Project with his own forces and to award separate Contracts in connection with other portions of the Project.

6.1.2 The OWNER shall provide for coordination of the Work of the activities of the OWNER's forces and of each separate CONTRACTOR with the Work of the CONTRACTOR, who shall cooperate with them.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The Contract shall be construed according to the laws of the POHNPEI STATE GOVERNMENT. All judicial proceedings shall be in the STATE SUPREME COURT and the trial division of **the FSM SUPREME COURT** has the jurisdiction over all disputes if such disputes concerning a question or fact arising under this contract is not resolved by agreement. *(requires clarification by AG's office)*

7.2 ASSIGNS

- 7.2.1 Neither CONTRACTOR nor OWNER shall assign the Contract or sublet it as a whole without, written consent of the other, nor shall the CONTRACTOR assign any moneys due to become due to him, without the previous written consent of the OWNER.

7.3 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

- 7.3.1 The CONTRACTOR (as defined in "Instructions to Bidders" Paragraph 9.3) is required to provide a one hundred percent (100%) Surety Payment Bond and a one hundred percent (100%) Performance Bond within 30 days of award of project to the PNI-PMO Program Manager for review and approval.
- 7.3.2 An FSM Domestic CONTRACTOR (as defined in "Instructions to Bidder" Paragraph 9.4) is required to provide a Bid Guarantee in the form of a cashier's check or an irrevocable letter of credit issued by a bank in the amount of 20% of the contract value within 30 days of award of project to the PNI-PMO Program Manager for review and approval.

7.4 ENVIRONMENTAL REQUIREMENTS

- 7.4.1 For all construction contracts and subcontracts the CONTRACTORS and Subcontractors agree to comply with all applicable Federated States of Micronesia and Pohnpei State environmental laws and regulations.

ARTICLE 8

TIME

8.1 DEFINITIONS

- 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Document for Substantial completion of the Work.
- 8.1.2 The Date of Commencement of the Work is the date established in a Notice to Proceed. If there is no Notice to Proceed it shall be the date of the OWNER-CONTRACTOR Agreement or such date as maybe established therein.

Due to Covid-19 travel restrictions the Date of Commencement of the Work shall be by negotiation between the CONTRACTOR and the PNI-PMO Program Manager. However, the Date of Commencement of the Work shall be no later than the date of the Notice to Proceed and/or 120-day after the official lifting of Covid-19 travel restriction to Pohnpei State in the Federated States of Micronesia.

- 8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the date certified by the PNI-PMO Program Manager when construction is sufficiently complete in accordance with the Contract Documents, so the OWNER can occupy or utilize the Work or designated portion thereof for the use for which it was intended.
- 8.1.4 Substantial Completion of the Work shall be achieved no later than the number of days defined in paragraph 3 of the "Bid Form" and from the Date of Commencement as defined in Paragraph 8.1.2 above.

8.2 PROGRESS AND COMPLETION

- 8.2.1 The CONTRACTOR shall begin the Work on the Date of Commencement as defined in paragraph 8.1.2. The Contrator shall carry the Work forward with adequate force and shall achieve substantial completion within the Contract Time.
- 8.2.2 If the CONTRACTOR is delayed at anytime in the progress of the Work by any act of neglect of the OWNER or the PNI-PMO Program Manager, or by any separate CONTRACTOR employed by the OWNER or by Change Orders in the Work or by any cause which the PNI-

PMO Program Manager determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the PNI-PMO Program Manager may determine.

- 8.2.3 During the construction, the PNI-PMO Program Manager will notify the CONTRACTOR when the construction schedule is 10% behind the approved schedule and will issue a second notice at 15% behind the approved schedule. The PNI-PMO Program Manager will issue a notice of termination of the contract to the CONTRACTOR once the construction is 20% behind the approved schedule. The PNI-PMO Program Manager shall claim the Performance and Payment Guarantees or Bid Guarantee once the contract is terminated.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the OWNER-CONTRACTOR Agreement and is the total amount payable by the OWNER to the CONTRACTOR, including authorized adjustments thereto, for the performance of the Work under the Contract Documents.

9.1.2 The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Work subject to additions and deductions by Change Order as provided with Contract Documents, the Contract Sum as defined in the Owner-Contractor agreement.

9.2 SCHEDULE OF VALUES

9.2.1 Within 15 days after award of the Contract, the CONTRACTOR shall submit to the PNI-PMO Program Manager a Schedule of Values allocated to the various portions of the Work.

9.3 APPLICATION FOR PAYMENT

9.3.1 At least 10 days before the date for each progress payment established in the OWNER-CONTRACTOR Agreement, the CONTRACTOR shall submit to the PNI-PMO Program Manager an itemized Application for Payment supported by such data substantiating the CONTRACTOR's right to payment as PNI-PMO Program Manager may require.

9.4 CERTIFICATION FOR PAYMENT

9.4.1 The PNI-PMO Program Manager will, after the receipt of the CONTRACTOR's Application for Payment, either issue a certificate for payment for such amount as the PNI-PMO Program Manager determines is properly due or notify the CONTRACTOR of his reasons for withholding certification.

9.5 PROGRESS PAYMENTS

9.5.1 After the PNI-PMO Program Manager has issued a certificate for payment, the OWNER shall make payment in the manner provided in Paragraph 9.10.

9.5.2 The CONTRACTOR shall promptly pay each Subcontractor upon receipt of payment from the OWNER.

9.5.3 No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the OWNER, shall constitute as acceptance of any Work not in accordance with the Contract Documents.

9.6 PAYMENTS WITHHELD

9.6.1 The PNI-PMO Program Manager may decline to certify payment and may withhold his certificate for payment in whole or in part, to the extent necessary to protect the

OWNER, if in his opinion the progress payment does not accurately reflect Work completed or stored at the time of the request for payment. The PNI-PMO Program Manager may also decline to certify payment or may nullify the whole or any part of any certificate for payment previously issued, to such an extent as may be necessary in his opinion to protect the OWNER from loss because of:

Defective Work remedied:

- 9.5.1.1** Third party claims filed or reasonable evidence indicating filing of such claim;
- 9.5.1.2** Failure of the CONTRACTOR to make payments properly to Subcontractors or for labor, materials or equipment;
- 9.5.1.3** Evidence that the Work cannot be completed for the unpaid balance of the Contract;
- 9.5.1.4** Damage to the OWNER or another CONTRACTOR;
- 9.5.1.5** Evidence that the Work will not be completed within the Contract time or,
- 9.5.1.6** Persistent failure to carry out the Work in accordance with the Contract Documents.

9.6.2 When the grounds in Paragraph 9.5.1 are removed to the satisfaction of the OWNER, payment shall be made for the amount that has been withheld.

9.6.3 Retention Money: Progress payments are subject to retention of ten percent (10%) referred to as the "retention money". Such retention shall be based on the total amount due to the CONTRACTOR prior to any deduction or in accordance with the procedure set out in Article 9.4 Certification of Payment. The retention money shall be retained from every progress payment until the work is satisfactorily done. The total "retention money" shall be due for release upon issuance of the project Certificate of Completion.

9.7 SUBSTANTIAL COMPLETION

9.7.1 When the CONTRACTOR considers that the Work or designated portion thereof which is acceptable to the OWNER, is substantially complete as defined in Article 8, Paragraph 8.1.4, the CONTRACTOR shall prepare for submission to the PNI-PMO Program Manager a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents. When the PNI-PMO Program Manager determines that the Work is substantially complete, he will issue a certificate of Substantial Completion which shall establish the date of Substantial Completion and state the time within which the CONTRACTOR shall complete the items listed.

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final application for payment, the Program Manager will make such inspection and when they find the Work acceptable under the Contract Documents and the Contract fully performed, the PNI-PMO Program Manager will promptly issue a final certificate for payment.

9.8.2 The making of final payment shall constitute a waiver of all claims by the OWNER except those arising from:

- 9.8.2.1 Faulty or defective Work appearing after Substantial Completion, or,
- 9.8.2.2 Failure of the Work to comply with the requirement of the Contract

Documents.

9.8.3 The acceptance of final payment shall constitute a waiver of all claims by the CONTRACTOR.

9.9 LIQUIDATED DAMAGES

9.9.1 In the event the CONTRACTOR shall fail to substantially complete the Work within the time fixed for such completion set forth in the Contract Documents, or as otherwise agreed with the OWNER, the CONTRACTOR shall pay the OWNER as liquidated damages for each calendar day except for Sundays and Holidays of delay One Thousand Dollars and no cents (\$1,000.00). CONTRACTOR understands and accepts this amount as reasonable liquidated damages in this Contract where time is of the essence.

9.10 SCHEDULE OF PAYMENT

9.10.1 The CONTRACTOR has to submit the payment application within the first 5 (five) days of each month. The payment application shall be based on the Work as performed in the previous month. The OWNER shall make payment to the CONTRACTOR within 45 (fourty-five) days after receiving CONTRACTOR's payment application.

ARTICLE-10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions in connection with the Work.

10.1.2 The CONTRACTOR shall give all notices and comply with all applicable laws, ordinance, rules, regulations, and lawful orders of any public authority bearing on the safety of persons or property.

ARTICLE-11

INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The CONTRACTOR shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

9.5.1.6.1.1.1 Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

9.5.1.6.1.1.2 Claims for damages because of bodily injury, sickness, or disease, or death of any person other than his employees;

9.5.1.6.1.1.3 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR or (2) by any person;

9.5.1.6.1.1.4 Claims for damages other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from; and

9.5.1.6.1.1.5 Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

- 11.1.2 Contractual Liability Insurance for liability assumed by the CONTRACTOR under agreement with the OWNER. Such insurance as is afforded by the policy to the CONTRACTOR for contractual property damage liability insurance shall include coverage for property damage caused by blasting, collapse, structural injuries or damage to underground utilities. The minimum limit of liability for this insurance shall be indicated in either (A) or (B) that follows:
- 11.1.2.1 Bodily Injury Liability: \$500,000 each person; \$1,000,000 each occurrence.
 - 11.1.2.2 Property Damage Liability: \$250,000 each occurrence; \$4,000,000 aggregate.
 - 11.1.2.3 A single limit for Bodily Injury Liability and Property Damage Liability combined of \$500,000 for each occurrence; \$500,000 aggregate.
 - 11.1.2.4 The bodily injury portion shall include coverage for injury, sickness or disease, and death, arising directly or indirectly out of, or in connection with, the performance of work under this Contract.
- 11.2 The insurance required by subparagraph 11.1.1, should include contractual liability insurance applicable to the CONTRACTOR's obligations under paragraph 11.1.2.
- 11.3 Certificate of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the Work. These certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days after the project is completed.
- 11.4 The CONTRACTOR shall provide the insurance coverage for claiming the Payment for Material on Hand according to Section 90-7 of the General Provision of the Contract.
- 11.5 The insurance company must be registered or licensed with the FSM Insurance Board/Commission.

ARTICLE 12

CHANGES IN THE WORK

- 12.1 CHANGE ORDERS
- 12.1.1 A Change Order is a written order to the CONTRACTOR signed by the PNI-PMO Program Manager authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. A Change Order signed by the CONTRACTOR indicates his agreement therewith.
- 12.1.2 MINOR CHANGES IN THE WORK
- 12.1.3 The PNI-PMO Program Manager will authorize minor changes in the Work, not involving and adjustment in the Contract Sum or Contract time and not in consistent with the intent of the Contract Documents. Minor changes are the changes that do not incur extra time or cost to the CONTRACTOR. Such changes shall be by written order.

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

- 13.1 UNCOVERING OF WORK
- 13.1.1 If any portion of the Work should be covered contrary to the request of the PNI-PMO Program Manager or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the PNI-PMO Program Manager, be uncovered for his observation and shall be replaced at the CONTRACTOR's expense.
- 13.2 CORRECTION OF WORK
- 13.2.1 The CONTRACTOR shall promptly correct all work rejected by the PNI-PMO Program

Manager as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The CONTRACTOR shall bear all costs of correcting such rejected Work.

13.2.2 If, within twelve months after the date of Substantial Completion of the Work or designated portion thereof, unless otherwise stated in the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the CONTRACTOR shall promptly correct the defects with or without notice from the PNI-PMO Program Manager to do so.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the PNI-PMO Program Manager prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal or correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The CONTRACTOR may on 7 (seven) days written notice to the the PNI-PMO Program Manager terminate his Contract before the completion date hereof when for a period of 30 (thirty) days after a progress payment is due, through no fault of the CONTRACTOR, the PNI-PMO Program Manager fails to issue a certificate of payment, or if the OWNER fails to make the payment. On such termination the CONTRACTOR may recover from the OWNER payment for all Work completed and for any proven loss sustained by the CONTRACTOR for any materials, equipment, tools, construction equipment and machinery.

14.2 TERMINATION BY OWNER

14.2.1 The PNI-PMO Program Manager may, on 7 (seven) days written notice to CONTRACTOR, terminate this Contract before the completion date hereof, without prejudice to any other remedy he may have, when CONTRACTOR defaults in performance of any provision herein, or fails to carry out the construction in accordance with the provisions of the Contract Documents or persistently disregards laws, ordinance or rules or orders of a public authority. On such termination, the PNI-PMO Program Manager may take possession of the Work site and all materials, equipment, tools, construction equipment and machinery there on owned by the CONTRACTOR and finish the Work by whatever methods he may deem expedient. If the unpaid balance on the Contract Price at the time of such termination exceeds the expense of finishing the Work, the CONTRACTOR agrees to pay the difference to the OWNER.

14.2.2 The PNI-PMO Program Manager also reserves the right to terminate the Contract without default by the CONTRACTOR in the performance of the Contract. In such case the CONTRACTOR shall receive a written notice of termination. Within 7 (seven) days of receipt of such notice the CONTRACTOR shall submit to the PNI-PMO Program Manager a request for payment for all Work executed in accordance with the Contract Documents and for any proven loss sustained for any materials, equipment, tools, construction equipment and machinery, including a reasonable profit for all Work executed.

ARTICLE 15

PROHIBITION AGAINST GRATUITIES, KICKBACKS & CONTINGENT FEES

15.1 The parties expressly acknowledge that this agreement is subject to prohibitions against Gratuities, Kickbacks and Contingent Fees which provide as follows:

- 15.1.1 Gratuities. It shall be a breach of ethical standards for any person to offer, give or agree to give any FSM National or State employee to solicit, demands, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or In any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefore.
- 15.1.2 Kickbacks. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a Subcontractor under contract to the prime CONTRACTOR or higher tier Subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.
- 15.1.3 Contingent Fees. It shall be a breach of ethical standards for a person to be retained or to retain a person to solicit or secure the Authority's contracts upon agreement or understanding for a commission, percentage, brokerage, or contingent fees, except for retention of bonafide employees or bonafide established commercial selling agencies for the purpose of securing business.

GENERAL PROVISIONS

SECTION 10

DEFINITION OF TERMS

Whenever the following terms are used in these specifications, in the contract, in any documents or other instruments pertaining to construction where these specifications govern, the intent and meaning shall be interpreted as follows:

- 10-01 ASHTO. The American Association of State Highway and Transportation Officials, the successor association to AASHTO.
- 10-02 ACCESS ROAD. The right-of-way, the roadway and all improvements constructed there on connecting the project site to a public highway.
- 10-03 ADVERTISEMENT. A public announcement, as required by local law, inviting bids for work to be performed and materials to be furnished.
- 10-04 (ASTM). The American Society for Testing and Materials.
- 10-05 AWARD. The acceptance, by the Owner, of the successful bidder's bid.
- 10-06 BID GUARANTY. The security furnished with a bid to guarantee that the bidder will enter into a contract if his/her bid is accepted by the Owner.
- 10-07 BIDDER. Any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a bid for the work contemplated.
- 10-08 BUILDING AREA. An area on the project site to be used, considered, or intended to be used for project site buildings or other project site facilities or rights-of-way together with all project site buildings and facilities located thereon.
- 10-09 CALENDAR DAY. Everyday shown on the calendar.
- 10-10 CHANGE ORDER. A written order to the Contractor covering changes in the plans, specifications, or bid quantities and establishing the basis of payment and contract time adjustment, if any, for the work affected by such changes. The work, covered by a change order, shall be within the scope of the contract.
- 10-11 CONSTRUCTION MANAGER (CM). The Construction Manager will provide administration of this contract as described in Article 2 of the OWNER-CONTRACTOR AGREEMENT BETWEEN POHNPEI STATE GOVERNMENT AND CONTRACTOR.
- 10-12 CONTRACT. The written agreement covering the work to be performed. The awarded contract shall include but is not limited to: The Advertisement; The Contract Form; The Bid; The Performance Bond; The Payment Bond if required; any required insurance certificates; The Specifications; The Plans, and any addenda issued to the bidding documents.
- 10-13 CONTRACT ITEM (PAY ITEM). A specific unit of work for which a price is provided in the contract.
- 10-14 CONTRACT TIME. The number of calendar days or working days, stated in the bid, allowed for completion of the contract, including authorized time extensions. If a calendar date of completion is stated in the bid, in lieu of a number of calendar or working days, the contract shall be completed by that date.
- 10-15 CONTRACTOR. The individual, partnership, firm, or corporation primarily liable for the acceptable performance of the work contracted and for the payment of all legal debts pertaining to the work who acts directly or through lawful agents or employees to complete

the contract work.

- 10-16 CONTRACTOR QUALITY CONTROL OFFICER. The person identified as the Program Administrator in Section-100 of the Specifications.
- 10-17 CONSTRUCTION MANAGEMENT (CM). The Pohnpei State - Program Management Office (PNI-PMO) or individual, partnership, firm, or corporation duly authorized by the Owner to be responsible for day-to-day construction management and engineering field supervision of the contract work and acting directly or through an authorized representative.
- 10-18 CONTRACTING OFFICER. The term "Contracting Officer" shall mean the Program Manager of the Pohnpei State Project Management Office ("PNI-PMO Program Manager"), Federated States of Micronesia Government, or his designee.
- 10-19 DESIGN-BID-BUILD. A program for taking a project from design through construction.
- 10-20 DESIGN-BUILD. A program where a Contractor/Engineer establish a joint venture take responsibility for a project from concept design through construction to hand over to the Owner.
- 10-21 DRAINAGE SYSTEM. The system of pipes, ditches, and structures by which surface or subsurface waters are collected and conducted from the project area.
- 10-22 ENGINEER. The PNI-PMO, individual, partnership, firm, or corporation duly authorized by the OWNER to be responsible for engineering supervision of the contract work and acting directly or through an authorized representative.
- 10-23 EQUIPMENT. All machinery, together with the necessary supplies for upkeep and maintenance, and all tools and apparatus necessary for the proper construction and acceptable completion of the work.
- 10-24 EXTRA WORK. An item of work not provided for in the awarded contract as previously modified by change order or supplemental agreement, but which is found by the Engineer to be necessary to complete the work within the intended scope of the contract as previously modified.
- 10-25 FORCE ACCOUNT. Force account construction work is construction that is accomplished through the use of material, equipment, labor, and supervision provided by the Owner or by another public agency pursuant to an agreement with the Owner.
- 10-26 INSPECTOR. An authorized representative of the Engineer assigned to make all necessary inspections and/or tests of the work performed or being performed, or of the materials furnished or being furnished by the Contractor.
- 10-27 INTENTION OF TERMS. Whenever, in these specifications or on the plans, the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of the like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the PNI-PMO Program Manager is intended; and similarly, the words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to the PNI-PMO Program Manager, subject in each case to the final determination of the PNI-PMO Program Manager.
- Any reference to a specific requirement of a numbered paragraph of the contract specifications or a cited standard shall be interpreted to include all general requirements of the entire section, specification item, or cited standard that may be pertinent to such specific reference.
- 10-28 LABORATORY. The official testing laboratories of the PNI-PMO Program Manager or such other laboratories as may be designated by the PNI-PMO Program Manager.

- 10-29 LIGHTING. A system of fixtures providing or controlling the light sources used on or near the project site or within the project site buildings. The field lighting includes all luminous signals, markers, floodlights, and illuminating devices used on or near the project site.
- 10-30 MAJOR AND MINOR CONTRACT ITEMS. A major contract item shall be any item that is listed in the bid, the total cost of which is equal to or greater than 20 percent of the total amount of the award contract. All other items shall be considered minor contract items.
- 10-31 MATERIALS. Any substance specified for use in the construction of the contract work.
- 10-32 NOTICE TO PROCEED. A written notice to the Contractor to begin the actual contract work on a previously agreed to date. If applicable, the Notice to Proceed shall state the date on which the contract time begins.
- 10-33 OIA. The Office of Insular Affairs of the U.S. Department of Interior. When used to designate a person, OIA shall mean the Administrator or his/her duly authorized representative.
- 10-34 OWNER'S REPRESENTATIVE. The term Owner's Representative shall mean the PNI-PMO Program Manager, unless otherwise indicated.
- 10-35 PAVEMENT. The combined surface course, base course, and subbase course, if any, considered as a single unit.
- 10-36 PAYMENT BOND. The form of security approved by the Owner that is furnished by the Contractor and his/her surety as a guaranty that he will pay in full all bills and accounts for materials and labor used in the construction of the work.
- 10-37 PERFORMANCE BOND. The form of security approved by the Owner that is furnished by the Contractor and his/her surety as a guaranty that the Contractor will complete the work in accordance with the terms of the contract.
- 10-38 PLANS. The official drawings or exact reproductions which show the location, character, dimensions and details of the project and the work to be done and which are to be considered as a part of the contract, in conjunction with the specifications.
- 10-39 PNI-PMO PROGRAM MANAGER. The term "PNI-PMO Program Manager" as used herein means the person executing this contract on behalf of the Pohnpei State Government Agencies of the Federated States of Micronesia and includes a duly appointed successor or authorized representative. The term "PNI-PMO Program Manager" is interchangeable with the term "Owner."
- 10-40 PREQUALIFIED CONTRACTOR. A Contractor identified by the PNI-PMO Program Manager on its List of Prequalified Contractors for Compact Infrastructure Projects, as that list may be amended from time to time. The Owner may maintain separate lists of Prequalified Contractors for different types of contracts and a Contractor shall be deemed Prequalified only for the type(s) of specific contract for which it is listed.
- 10-41 PNI-PMO PROGRAM MANAGER. Owner's representative who is designated to manage the Compact Infrastructure Grant Funding
- 10-42 PROJECT. The agreed scope of work for accomplishing specific infrastructure development with respect to a particular location.
- 10-43 PROJECT MANAGEMENT OFFICE (PNI-PMO). The procurement, engineering and construction management unit within the POHNPEI STATE GOVERNMENT and is the authorized representative of the Owner primarily responsible for Compact Infrastructure projects funded through the OIA and directly managed, controlled and supervised by the PNI-PMO Program Manager.
- 10-44 PROPOSAL. The written offer of the bidder (when submitted on the approved proposal form)

to perform the contemplated work and furnish the necessary materials in accordance with the provisions of the plans and specifications.

- 10-45 PROPOSAL GUARANTY. The security furnished with a proposal to guarantee that the bidder will enter into a contract if his/her proposal is accepted by the PNI-PMO.
- 10-46 SPECIFICATIONS. A part of the contract containing the written directions and requirements for completing the contract work. Standards for specifying materials or testing which are cited in the contract specifications by reference shall have the same force and effect as if included in the contract physically. If by some error the Plans and the Specifications conflict, the Specifications prevail and should be followed.
- 10-47 STRUCTURES. Facilities such as bridges; culverts; catch basins, inlets, retaining walls, cribbing; storm and sanitary sewer lines; water lines; underdrains; electrical ducts, manholes, handholes, lighting fixtures and bases; transformers; flexible and rigid pavements; buildings; vaults; and, other manmade features of the project that may be encountered in the work and not otherwise classified herein.
- 10-48 SUB-GRADE. The soil which forms the pavement foundation.
- 10-49 SUPERINTENDENT. The Contractor's executive representative who is present on the work during progress, authorized to receive and fulfill instructions from the PNI-PMO Program Manager, and who shall supervise and direct the construction.
- 10-50 SUPPLEMENTAL AGREEMENT. A written agreement between the Contractor and the PNI-PMO covering (1) work that would increase or decrease the total amount of the awarded contract, or any major contract item, by more than 25 percent, such increased or decreased work being within the scope of the originally awarded contract; or (2) work that is not within the scope of the originally awarded contract.
- 10-51 SURETY. The corporation, partnership, or individual, other than the Contractor, executing payment or performance bonds which are furnished to the PNI-PMO by the Contractor.
- 10-52 WORK. The furnishing of all labor, materials, tools, equipment, and incidentals necessary or convenient to the Contractor's performance of all duties and obligations imposed by the contract, plans, and specifications.
- 10-53 WORKING DAY. A working day shall be any day other than a legal holiday or Sunday on which the normal working forces of the Contractor may proceed with regular work for at least 6 hours toward completion of the contract. Unless work is suspended for causes beyond the Contractor's control, Sundays and holidays on which the Contractor's forces engage in regular work, requiring the presence of an inspector, will be considered as working days.

END OF SECTION 10

SECTION 20

BID REQUIREMENTS AND CONDITIONS

- 20-01 ADVERTISEMENT (Notice to Bidders). The PNI-PMO Program Manager shall publish the advertisement by distributing it to all Prequalified Contractors and in accordance with all FSM and Pohnpei State regulations. The published advertisement shall state the time and place for submitting sealed bids; a description of the proposed work; instructions to bidders as to obtaining bid forms, plans, and specifications; bid guaranty required; and the PNI-PMO Program Manager's right to reject any and all bids.
- 20-02 PREQUALIFICATION OF BIDDERS. Each bidder shall furnish the PNI-PMO Program Manager satisfactory evidence of his/her competency to perform the proposed work. Such evidence of

competency, unless otherwise specified, shall consist of being determined to be a Prequalified Contractor through the prequalification process conducted by the PNI-PMO.

20-03 CONTENTS OF BID FORMS. The Owner shall furnish bidders with bid forms. All papers bound with or attached to the bid forms are necessary parts and must not be detached.

The plans, specifications, and other documents designated in the bid form shall be considered a part of the bid whether attached or not.

20-04 ISSUANCE OF BID FORMS. The PNI-PMO Program Manager reserves the right to refuse to issue a bid form to a prospective bidder should such bidder be in default for any of the following reasons:

- a. Failure to comply with any prequalification procedures of the PNI-PMO, if such procedures are cited, or otherwise included, in the bid as a requirement for bidding.
- b. Failure to pay, or satisfactorily settle, all bills due for labor and materials on former contracts in force (with the PNI-PMO) at the time the PNI-PMO issues the bid to a prospective bidder.
- c. Contractor default under previous contracts with the PNI-PMO.
- d. Unsatisfactory work on previous contracts with the PNI-PMO.

20-05 INTERPRETATION OF ESTIMATED BID QUANTITIES. A price/schedule of values for work to be done and materials to be furnished under these specifications is given in the bid. It is the result of careful calculations and is believed to be correct. It is given only as a basis for comparison of bids and the award of the contract. The owner does not expressly or by implication agree that the actual quantities involved will correspond exactly therewith; nor shall the bidder plead misunderstanding or deception because of such estimates of quantities, or of the character, location, or other conditions pertaining to the work. Payment to the Contractor will be made only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications. It is understood that the quantities may be increased or decreased as hereinafter provided in the subsection titled ALTERATION OF WORK AND QUANTITIES of Section 40 without in any way invalidating the unit bid prices.

20-06 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE. The bidder is expected to carefully examine the site of the proposed work, the bid, plans specifications, and contract forms. He shall satisfy himself as to the character, quality, and quantities of work to be performed, materials to be furnished, and as to the requirements of the proposed contract. The submission of a bid shall be prima facie evidence that the bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the proposed contract, plans, and specifications.

It is understood and agreed that any subsurface information, whether included in the plans, specifications, or otherwise made available to the bidder, was obtained, and is intended for design and estimating purposes only. Such information has been made available for the convenience of all bidders. It is further understood and agreed that each bidder is solely responsible for all assumptions, deductions, or conclusions which he may make or obtain from his/her examination of the geotechnical survey and other records of subsurface investigations and tests that are furnished by the PNI-PMO.

20-07 PREPARATION OF BID. The bidder shall submit his/her bid on the forms furnished by the owner. All blank spaces in the bid forms must be correctly filled in where indicated for each and every item for which a quantity is given. The bidder shall state the price (written in ink or typed) he proposes for each pay item furnished in the bid. The Bidder shall state the Project Total Cost in words and numerals for all work provided under the bid. In case of conflict between words and numerals, the words, unless obviously incorrect, shall govern.

The bidder shall sign his/her bid correctly and in ink according to all requirements in the Bid Instructions

20-08 IRREGULAR BIDS. Bids shall be considered irregular for the following reasons:

- a. If the bid is on a form other than that furnished by the PNI-PMO, or if the PNI-PMO's form is altered, or if any part of the bid form is detached.
- b. If there are unauthorized additions, conditional or alternate pay items, or irregularities of any kind which make the bid incomplete, indefinite, or otherwise ambiguous.
- c. If the bid does not contain a unit price for each pay item listed in the bid, except in the case of authorized alternate pay items, for which the bidder is not required to furnish a unit price.
- d. If the bid contains unit prices that are obviously unbalanced.
- e. If the bid is not accompanied by the bid guaranty specified by the PNI-PMO.

The PNI-PMO reserves the right to reject any irregular bid and the right to waive technicalities if such waiver is in the best interest of the owner and conforms to local laws and ordinances pertaining to the letting of construction contracts.

20-09 BID GUARANTEE. Each separate bid shall be accompanied by a certified check in the amount specified in the bid form. Such checks shall be made payable to the owner.

20-10 DELIVERY OF BID. Each bid submitted shall be placed in a sealed envelope plainly marked with the project number and name and business address of the bidder on the outside. When sent by mail, preferably registered, the sealed bid, marked as indicated above, should be enclosed in an additional envelope. Bids must be received at the place specified in the advertisement before the time specified for opening all bids. Bids received after the bid opening time shall be returned to the bidder unopened.

20-11 MODIFICATION OR WITHDRAWAL OF BIDS. Bids may be modified or withdrawn by written notice received by the PNI-PMO Program Manager not later than the time set for bid opening. Modifications or withdrawals received after the time set for opening bids shall not be considered prior to selection. However, if the successful bidder had submitted a late modification, such modification, will be reviewed by the PNI-PMO Program Manager and if in the judgment of the PNI-PMO Program Manager it makes the terms more favorable to the POHNPEI STATE Government, it will be considered.

20-12 BID OPENING. Bids will be opened publicly, in the presence of all bidders who choose to attend. The bid opening will take place at the time and place as stated in the Notice to Bidders.

20-13 DISQUALIFICATION OF BIDDERS. A bidder shall be considered disqualified for any of the reasons set forth in **Part 4 of the Regulations**, including the following:

- a. Submitting more than one bid from the same partnership, firm, or corporation under the same or different name.
- b. Evidence of collusion among bidders. Bidders participating in such collusion shall be disqualified as bidders for any future work of the PNI-PMO until any such participating bidder has been reinstated by the PNI-PMO as a qualified bidder.
- c. If the bidder is considered to be in "default" for any reason specified in the subsection titled 20-04 ISSUANCE OF BID FORMS of this section.

END OF SECTION 20

SECTION 30

AWARD AND EXECUTION OF CONTRACT

30-01 CONSIDERATION OF BIDS. After the bids are publicly opened and read, they will be compared on the summation of the individual bid items. If a Bidder's bid contains a discrepancy between unit bid prices written in words and unit bid prices written in numbers, the unit price written in words shall govern.

Until the award of a contract is made, the PNI-PMO reserves the right to reject a bidder's bid for any of the following reasons:

- a) If the bid is irregular as specified in the subsection titled IRREGULAR BIDS of Section 20.
- b) If the bidder is disqualified for any of the reasons specified in the subsection titled DISQUALIFICATION OF BIDDERS of Section 20.

In addition, until the award of a contract is made, the PNI-PMO reserves the right to reject any or all bids, waive technicalities, if such waiver is in the best interest of the owner and is in conformance with applicable state and local laws or regulations pertaining to the letting of construction contracts; advertise for new bids; or proceed with the work otherwise. All such actions shall promote the Owner's best interests and be in accordance with the Regulations.

30-02 AWARD OF CONTRACT. The award of a contract, if it is to be awarded, shall be made within 120 calendar days of the date specified for publicly opening bids, unless otherwise specified herein.

Award of the contract shall be made by the PNI-PMO to the lowest, responsible, qualified bidder whose bid conforms to the cited requirements of the PNI-PMO.

30-03 CANCELLATION OF AWARD. The PNI-PMO reserves the right to cancel the award without liability to the Bidder, except return of bid guaranty, at any time before a contract has been fully executed by all parties and is approved by the PNI-PMIO in accordance with the subsection titled APPROVAL OF CONTRACT of this section.

30-04 RETURN OF BID GUARANTY. All bid guaranties, except those of the three lowest bidders, will be returned immediately following the bid opening and checking and evaluation of the bids. The successful bidder's bid guarantee will be returned after a satisfactory performance bond and payment bond has been provided to the PNI-PMO and the contract has been executed. The retained bid guarantees of the other two bidders will be returned within seven working days after execution of the contract with the successful bidder.

30-05 PERFORMANCE AND PAYMENT BONDS. The successful Bidder shall be required to post a performance bond equivalent to one hundred percent (100%) of the bid and a payment bond equivalent to one hundred percent (100%) of the bid as a condition upon award.

Successful FSM Domestic Bidders will be allowed to submit a Bid Guarantee in the form of bank cashier's check, or an irrevocable letter of credit issued by a bank, acceptable to the Owner, in the amount of 20% of the contract value in lieu of providing 100% Performance and 100% Payment Bonds

30-06 EXECUTION OF CONTRACT. The successful bidder shall sign (execute) the necessary agreements for entering into the contract and return such signed contract to the PNI-PMO, along with the fully executed surety bond or bonds, if required, specified in the subsection titled REQUIREMENTS OF PERFORMANCE AND PAYMENT BONDS of this section, within 15 calendar days from the date mailed or otherwise delivered to the successful bidder. If the contract is mailed, special handling is recommended.

30-07 APPROVAL OF CONTRACT. Upon receipt of the contract and contract bond or bonds, if

required, that have been executed by the successful bidder, the pni-pmo shall complete the execution of the contract in accordance with local laws or ordinances and return the fully executed contract to the Contractor. Delivery of the fully executed contract to the Contractor shall constitute the PNI-PMO Project Manager's approval to be bound by the successful Bidder's bid and the terms of the contract.

30-08 FAILURE TO EXECUTE CONTRACT. Failure of the successful bidder to execute the contract and furnish an acceptable surety bond or bonds, if required, within the 15 calendar day period specified in the subsection titled REQUIREMENTS OF PERFORMANCE AND PAYMENT BONDS of this section shall be just cause for cancellation of the award and forfeiture of the bid guaranty, not as a penalty, but as liquidation of damages to the owner.

END OF SECTION 30

SECTION 40

SCOPE OF WORK

40-01 INTENT OF CONTRACT. The intent of the contract is to provide for construction and completion, in every detail, of the work described. It is further intended that the Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the plans, specifications, and terms of the contract.

40-02 ALTERATION OF WORK AND QUANTITIES. The PNI-PMO reserves and shall have the right to make such alterations in the work as may be necessary or desirable to complete the work originally intended in an acceptable manner. Unless otherwise specified herein, the PNI-PMO Program Manager shall be and is hereby authorized to make such alterations in the work as may increase or decrease the originally awarded contract quantities, provided that the aggregate of such alterations does not change the total contract cost or the total cost of any major contract item by more than 25 percent (total cost being based on the unit prices and estimated quantities in the awarded contract). Alterations which do not exceed the 25 percent limitation shall not invalidate the contract nor release the surety, and the Contractor agrees to accept payment for such alterations as if the altered work had been a part of the original contract. These alterations which are for work within the general scope of the contract shall be covered by "Change Orders" issued by the PNI-PMO Program Manager. Change orders for altered work shall include extensions of contract time where, in the PNI-PMO Program Manager's opinion, such extensions are commensurate with the amount and difficulty of added work.

Should the aggregate amount of altered work exceed the 25 percent limitation hereinbefore specified, such excess altered work shall be covered by supplemental agreement. If the Owner and the Contractor are unable to agree on a unit adjustment for any contract item that requires a supplemental agreement, the owner reserves the right to terminate the contract with respect to the item and make other arrangements for its completion.

40-03 OMITTED ITEMS. The PNI-PMO Program Manager may omit from the work any contract item, except major contract items. Major contract items may be omitted by a supplemental agreement. Such omission of contract items shall not invalidate any other contract provision or requirement.

Should a contract item be omitted or otherwise ordered to be nonperformed, the Contractor shall be paid for all work performed toward completion of such item prior to the date of the order to omit such item. Payment for work performed shall be in accordance with the subsection titled PAYMENT FOR OMITTED ITEMS of Section 90.

40-04 EXTRA WORK. Should acceptable completion of the contract require the Contractor to

perform an item of work for which no basis of payment has been provided in the original contract or previously issued change orders or supplemental agreements, the same shall be called Extra Work. Extra work that is within the general scope of the contract shall be covered by written change order. Change orders for such extra work shall contain agreed unit prices for performing the change order work in accordance with the requirements specified in the order and shall contain any adjustment to the contract time that, in the PNI-PMO Program Manager's opinion, is necessary for completion of such extra work.

The PNI-PMO Program Manager may order the Contractor to proceed with extra work by force account as provided in the subsection titled PAYMENT FOR EXTRA AND FORCE ACCOUNT WORK of Section 90.

Extra work that is necessary for acceptable completion of the project but is not within the general scope of the work covered by the original contract shall be covered by a Supplemental Agreement as hereinbefore defined in the subsection titled SUPPLEMENTAL AGREEMENT of Section 10.

Any claim for payment of extra work that is not covered by written agreement (change order or supplemental agreement) shall be rejected by the PNI-PMO.

40-05 [Intentionally left blank]

40-06 REMOVAL OF EXISTING STRUCTURES. All existing structures encountered within the established lines, grades, or grading sections shall be removed by the Contractor, unless such existing structures are otherwise specified to be relocated, adjusted up or down, salvaged, abandoned in place, reused in the work or to remain in place. The cost of removing such existing structures shall not be measured or paid for directly but shall be included in the various contract items.

Should the Contractor encounter an existing structure (above or below ground) in the work for which the disposition is not indicated on the plans, the PNI-PMO Program Manager shall be notified prior to disturbing such structure. The disposition of existing structures so encountered shall be immediately determined by the PNI-PMO Program Manager in accordance with the provisions of the contract.

Except as provided in the subsection titled RIGHTS IN AND USE OF MATERIALS FOUND IN THE WORK of this section, it is intended that all existing materials or structures that may be encountered (within the lines, grades, or grading sections established for completion of the work) shall be utilized in the work as otherwise provided for in the contract and shall remain the property of the owner when so utilized in the work.

40-07 RIGHTS IN AND USE OF MATERIALS FOUND IN THE WORK. Should the Contractor encounter any material such as (but not restricted to) sand, stone, gravel, slag, or concrete slabs within the established lines, grades, or grading sections, the use of which is intended by the terms of the contract to be either embankment or waste, he may at his/her option either:

- a. Use such material in another contract item, providing such use is approved by the PNI-PMO and is in conformance with the contract specifications applicable to such use; or,
- b. Remove such material from the site, upon written approval of the PNI-PMO Program Manager; or
- c. Use such material for his/her own temporary construction on site; or,
- d. Use such material as intended by the terms of the contract.

Should the Contractor wish to exercise option a., b., or c., he shall request the PNI-PMO Program Manager's approval in advance of such use.

Should the PNI-PMO Program Manager approve the Contractor's request to exercise option a., b., or c., the Contractor shall be paid for the excavation or removal of such material at the applicable contract price. The Contractor shall replace, at his/her own expense, such removed or excavated material with an agreed equal volume of material that is acceptable for use in constructing embankment, backfills, or otherwise to the extent that such replacement material is needed to complete the contract work. The Contractor shall not be charged for his/her use of such material so used in the work or removed from the site.

Should the PNI-PMO Program Manager approve the Contractor's exercise of option a., the Contractor shall be paid, at the applicable contract price, for furnishing and installing such material in accordance with requirements of the contract item in which the material is used.

It is understood and agreed that the Contractor shall make no claim for delays by reason of his/her exercise of option a., b., or c.

The Contractor shall not excavate, remove, or otherwise disturb any material, structure, or part of a structure which is located outside the lines, grades, or grading sections established for the work, except where such excavation or removal is provided for in the contract, plans, or specifications.

40-08 [intentionally left blank]

40-09 FINAL CLEANING UP. Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. He shall cut all brush and woods within the limits indicated and shall leave the site in a neat and presentable condition. No materials shall be deposited on adjacent properties without written approval by the PNI-PMO Program Manager and written acceptance of the adjacent property owner. Material cleared from the site and deposited on adjacent property will not be considered as having been disposed of satisfactorily unless the Contractor has obtained the written permission of such property owner.

END OF SECTION 40

SECTION 50

CONTROL OF WORK

50-01 AUTHORITY OF THE PNI-PMO PROGRAM MANAGER. The PNI-PMO Program Manager shall decide any and all questions which may arise as to the quality and acceptability of materials furnished, work performed, and as to the manner of performance and rate of progress of the work. He shall decide all questions which may arise as to the interpretation of the specifications or plans relating to the work, the fulfillment of the contract on the part of the Contractor, and the rights of different Contractors on the project. The PNI-PMO Program Manager shall determine the amount and quality of the several kinds of work performed and materials furnished which are to be paid for the under contract.

50-02 CONFORMITY WITH PLANS AND SPECIFICATIONS. All work and all materials furnished shall be in reasonably close conformity with the lines, grades, grading sections, cross sections, dimensions, material requirements, and testing requirements that are specified (including specified tolerances) in the contract, plans or specifications.

If the PNI-PMO Program Manager finds the materials furnished, work performed, or the finished product not within reasonably close conformity with the plans and specifications but that the portion of the work affected will, in his/her opinion, result in a finished product having a level of safety, economy, durability, and workmanship, he will have the authority to

determine that the affected work be accepted and remain in place. In this event, the PNI-PMO Program Manager will document his/her determination and on a basis of acceptance which will provide for an adjustment in the contract price for the affected portion of the work. The PNI-PMO Program Manager's determination and recommended contract price adjustments will be based on good engineering judgment and such tests or retests of the affected work as are, in his/her opinion, needed. Changes in the contract price shall be covered by contract modifications (change order or supplemental agreement) as applicable.

If the PNI-PMO Program Manager finds the materials furnished, work performed, or the finished product are not in reasonably close conformity with the plans and specifications and have resulted in an unacceptable finished product, the affected work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with the PNI-PMO Program Manager's written orders. For the purpose of this subsection, the term "reasonably close conformity" shall not be construed as waiving the Contractor's responsibility to complete the work in accordance with the contract, plans, and specifications. The term shall not be construed as waiving the PNI-PMO Program Manager's right to insist on strict compliance with the requirements of the contract, plans, and specifications during the Contractor's prosecution of the work, when, in the PNI-PMO Program Manager's opinion, such compliance is essential to provide an acceptable finished portion of the work.

For the purpose of this subsection, the term "reasonably close conformity" is also intended to provide the PNI-PMO Program Manager with the authority to use good engineering judgment in his/her determinations as to acceptance of work that is not in strict conformity but will provide a finished product equal to or better than that intended by the requirements of the contract, plans and specifications.

50-03 COORDINATION OF CONTRACT, PLANS, AND SPECIFICATIONS. The contract, plans, specifications, and all referenced standards cited are essential parts of the contract requirements. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, calculated dimensions will govern over scaled dimensions; contract technical specifications shall govern over contract general provisions, plans, and cited standards for materials or testing; contract general provisions shall govern over plans, and cited standards for materials or testing; plans shall govern over cited standards for materials or testing.

The Contractor shall not take advantage of any apparent error or omission on the plans or specifications. In the event the Contractor discovers any apparent error or discrepancy, he shall immediately call upon the PNI-PMO Project Manager for his/her interpretation and decision, and such decision shall be final.

50-04 COOPERATION OF CONTRACTOR. The Contractor will be supplied with a CD of the electronic files of the plans and specifications and will be responsible, at his expense, to print the required number of hard copy sets as referenced in these specifications. He shall have available on the work at all times one copy each of the plans and specifications.

The Contractor shall give constant attention to the work to facilitate the progress thereof, and he shall cooperate with the PNI-PMO Program Manager and his/her inspectors and with other contractors in every way possible. The PNI-PMO Program Manager shall allocate the work and designate the sequence of construction in case of controversy between contractors. The Contractor shall have a competent superintendent on the work at all times who is fully authorized as his/her agent on the work. The superintendent shall be capable of reading and thoroughly understanding the plans and specifications and shall receive and fulfill instructions from the PNI-PMO Program Manager or his/her authorized representative.

50-05 COOPERATION BETWEEN CONTRACTORS. The Owner reserves the right to contract for and perform other or additional work on or near the work covered by this contract.

When separate contracts are let within the limits of any one project, each Contractor shall conduct his/her work so as not to interfere with or hinder the progress of completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with his/her contract and shall protect and save harmless the owner from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by him because of the presence and operations of other Contractors working within the limits of the same project.

The Contractor shall arrange his/her work and shall place and dispose of the materials being used so as not to interfere with the operations of the other Contractors within the limits of the same project. He shall join his/her work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

50-06 CONSTRUCTION LAYOUT AND STAKES. The Contractor shall establish horizontal and vertical control. The Contractor must establish all layouts required for the construction of the work. In case of negligence on the part of the Contractor, or his/her employees, resulting in the destruction of such stakes or markings, the Contractor shall replace the stakes and markings at his own expense.

50-07 AUTOMATICALLY CONTROLLED EQUIPMENT. Whenever batching or mixing plant equipment is required to be operated automatically under the contract and a breakdown or malfunction of the automatic controls occurs, the equipment may be operated manually or by other methods for a period 48 hours following the breakdown or malfunction, provided this method of operations will product results which conform to all other requirements of the contract.

50-08 AUTHORITY AND DUTIES OF INSPECTORS. Inspectors employed by the PNI-PMO shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. Inspectors are not authorized to revoke, alter, or waive any provision of the contract. Inspectors are not authorized to issue instructions contrary to the plans and specifications or to act as foreman for the Contractor.

Inspectors employed by the PNI-PMO are authorized to notify the Contractor or his/her representatives of any failure of the work or materials to conform to the requirements of the contract, plans, or specifications and to reject such nonconforming materials in question until such issues can be referred to the PNI-PMO Program Manager for his/her decision.

50-09 INSPECTION OF THE WORK. All materials and each part or detail of the work shall be subject to inspection by the PNI-PMO. The PNI-PMO shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the PNI-PMO Program Manager requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as extra work; but should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at the Contractor's expense.

Any work done or materials used without supervision or inspection by an authorized representative of the PNI-PMO may be ordered removed and replaced at the Contractor's expense unless the PNI-PMO's representative failed to inspect after having been given reasonable notice in writing that the work was to be performed.

Should the contract work include relocation, adjustment, or any other modification to existing facilities, not the property of the (contract) owner, authorized representatives of the owners of such facilities shall have the right to inspect such work. Such inspection shall in no sense make any facility owner a party to the contract and shall in no way interfere with the rights of the parties to this contract.

50-10 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK. All work which does not form to the requirements of the contract, plans, and specifications will be considered unacceptable, unless otherwise determined acceptable by the PNI-PMO Program Manager as provided in the subsection titled CONFORMITY WITH PLANS AND SPECIFICATIONS of this section.

Unacceptable work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause found to exist prior to the final acceptance of the work, shall be removed immediately and replaced in an acceptable manner in accordance with the provisions of the subsection titled CONTRACTOR'S RESPONSIBILITY FOR WORK of Section 70.

Work done contrary to the instructions of the PNI-PMO, work done beyond the lines shown on the plans or as given, except as herein specified, or any extra work done without authority, will be considered as unauthorized and will not be paid for under the provisions of the contract. Work so done may be ordered removed or replaced at the Contractor's expense.

Upon failure on the part of the Contractor to comply forthwith with any order of the PNI-PMO made under the provisions of this subsection, the PNI-PMO Program Manager will have authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs (incurred by the owner) from any monies due or to become due the Contractor.

50-11 LOAD RESTRICTIONS. The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the work. A special permit will not relieve the Contractor of liability for damage which may result from the moving of material or equipment.

The operation of equipment of such weight or so loaded as to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed. No loads will be permitted on a concrete pavement, base, or structure before the expiration of the curing period. The Contractor shall be responsible for all damage done by his/her hauling equipment and shall correct such damage at his/her own expense.

50-12 MAINTENANCE DURING CONSTRUCTION. The Contractor shall maintain the work during construction and until the work is accepted. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces so that the work is maintained in satisfactory condition at all times.

In the case of a contract for the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations.

All costs of maintenance work during construction and before the project is accepted shall be included in the unit prices/schedule of values, and the Contractor will not be paid an additional amount for such work.

50-13 FAILURE TO MAINTAIN THE WORK. Should the Contractor at any time fail to maintain the

work as provided in the subsection titled MAINTENANCE DURING CONSTRUCTION of this section, the PNI-PMO Program Manager shall immediately notify the Contractor of such noncompliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. The time specified will give due consideration to the exigency that exists.

Should the Contractor fail to respond to the PNI-PMO Program Manager's notification, the PNI-PMO Program Manager may suspend any work necessary for the owner to correct such unsatisfactory maintenance condition, depending on the exigency that exists. Any maintenance cost incurred by the owner, shall be deducted from monies due or to become due the contractor.

50-14 PARTIAL ACCEPTANCE. If at any time during the execution of the project the Contractor substantially completes a usable unit or portion of the work, the occupancy of which will benefit the owner, he may request the PNI-PMO Program Manager to make final inspection of that unit. If the PNI-PMO Program Manager finds upon inspection that the unit has been satisfactorily completed in compliance with the contract, he may accept it as being completed, and the Contractor may be relieved of further responsibility for that unit. Such partial acceptance and beneficial occupancy by the owner shall not void or alter any provision of the contract.

50-15 FINAL ACCEPTANCE. Upon due notice from the Contractor of presumptive completion of the entire project, the PNI-PMO Program Manager will make an inspection. If all construction provided for and contemplated by the contract is found to be completed in accordance with the contract, plans, and specifications, such inspection shall constitute the final inspection. The PNI-PMO Program Manager shall notify the Contractor in writing of final acceptance as of the date of the final inspection.

If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the PNI-PMO Program Manager will give the Contractor the necessary instructions for correction of same and the Contractor shall immediately comply with and execute such instructions. Upon correction of the work, another inspection will be made which shall constitute the final inspection, provided the work has been satisfactorily completed. In such event, the PNI-PMO Program Manager will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of final inspection.

50-16 CLAIMS FOR ADJUSTMENT AND DISPUTES. If for any reason the Contractor deems that additional compensation is due him for work or materials not clearly provided for in the contract, plans, or specifications or previously authorized as extra work, he shall notify the PNI-PMO Program Manager in writing of his/her intention to claim such additional compensation before he begins the work on which he bases the claim. If such notification is not given or the PNI-PMO Program Manager is not afforded proper opportunity by the Contractor for keeping strict account of actual cost as required, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the PNI-PMO Program Manager has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Contractor shall, within 10 calendar days, submit his/her written claim to the PNI-PMO Program Manager for consideration.

Nothing in this subsection shall be construed as a waiver of the Contractor's right to dispute final payment based on differences in measurements or computations.

50-17 COST REDUCTION INCENTIVE. The provisions of this subsection will apply only to contracts awarded to the lowest bidder pursuant to competitive bidding. On projects with original

contract amounts in excess of \$100,000, the Contractor may submit to the PNI-PMO Program Manager, in writing, proposals for modifying the plans, specifications or other requirements of the contract for the sole purpose of reducing the cost of construction. The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, design and safety standards. This provision shall not apply unless the proposal submitted is specifically identified by the Contractor as being presented for consideration as a value engineering proposal.

As a minimum, the following information shall be submitted by the Contractor with each cost reduction proposal:

- a. A description of both existing contract requirements for performing the work and the proposed changes, with a discussion of the comparative advantages and disadvantages of each;
- b. An itemization of the contract requirements that must be changed if the proposal is adopted;
- c. A detailed estimate of the cost of performing the work under the existing contract and under the proposed changes;
- d. A statement of the time by which a change order adopting the proposal must be issued;
- e. A statement of the effect adoption of the proposal will have on the time for completion of the contract; and
- f. The contract items of work affected by the proposed changes, including any quantity variation attributable to them.

The Contractor may withdraw, in whole or in part, any cost reduction proposal not accepted by the PNI-PMO Program Manager, within the period specified in the proposal. The provisions of this subsection shall not be construed to require the PNI-PMO Program Manager to consider any cost reduction proposal which may be submitted.

The Contractor shall continue to perform the work in accordance with the requirements of the contract until a change order incorporating the cost reduction proposal has been issued. If a change order has not been issued by the date upon which the Contractor's cost reduction proposal specifies that a decision should be made, or such other date as the Contractor may subsequently have requested in writing, such cost reduction proposal shall be deemed rejected.

The PNI-PMO Program Manager shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings from the adoption of all or any part of such proposal. In determining the estimated net savings, the PNI-PMO Program Manager may disregard the contract bid prices if, in the PNI-PMO Program Manager's judgment, such prices do not represent a fair measure of the value of the work to be performed or deleted.

The PNI-PMO may require the Contractor to share in the PNI-PMO's costs of investigating a cost reduction proposal submitted by the Contractor as a condition of considering such proposal. Where such a condition is imposed, the Contractor shall acknowledge acceptance of it in writing. Such acceptance shall constitute full authority for the PNI-PMO to deduct the cost of investigating a cost reduction proposal from amounts payable to the Contractor under the contract.

If the Contractor's cost reduction proposal is accepted in whole or in part, such acceptance will be by a contract change order which shall specifically state that it is executed pursuant to this subsection. Such change order shall incorporate the changes in the plans and specifications

which are necessary to permit the cost reduction proposal or such part of it as has been accepted and shall include any conditions upon which the PNI-PMO Program Manager's approval is based. The change order shall also set forth the estimated net savings attributable to the cost reduction proposal. The net savings shall be determined as the difference in costs between the original contract costs for the involved work items and the costs occurring as a result of the proposed change. The change order shall also establish the net savings agreed upon and shall provide for adjustment in the contract price that will divide the net savings equally between the Contractor and the Owner.

The Contractor's 50 percent share of the net savings shall constitute full compensation to the Contractor for the cost reduction proposal and the performance of the work.

Acceptance of the cost-reduction proposal and performance of the cost-reduction work shall not extend the time of completion of the contract unless specifically provided for in the contract change order.

END OF SECTION 50

SECTION 60

CONTROL OF MATERIALS

[to be added]

SECTION 70

LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC

[to be added]

SECTION 80

EXECUTION AND PROGRESS

80-01 SUB-LETTING OF CONTRACT. The Contractor shall at all times when work is in progress be represented either in person, by a qualified superintendent, or by other designated, qualified representative who is duly authorized to receive and execute orders of the PNI-PMO Program Manager.

Should the Contractor choose, decide, or elect to assign his/her contract, said assignment shall be concurred in by the surety, shall be presented for the consideration and approval of the PNI-PMO, and shall be consummated only on the written approval of the PNI-PMO. In case of approval, the Contractor shall file copies of all subcontracts with the PNI-PMO Program Manager.

The Contractor shall perform, with his organization, an amount of work equal to at least 25 percent of the total contract cost.

80-02 NOTICE TO PROCEED. The notice to proceed shall state the date on which it is expected the Contractor will begin the construction and from which date contract time will be charged. The Contractor shall begin the work to be performed under the contract within 10 days of the date

set by the PNI-PMO Program Manager in the written notice to proceed, but in any event, the Contractor shall notify the PNI-PMO Program Manager at least 24 hours in advance of the time actual construction operations will begin.

80-03 EXECUTION AND PROGRESS. Unless otherwise specified, the Contractor shall submit his/her progress schedule for the PNI-PMO Program Manager's approval within 10 days after the effective date of the notice to proceed. The Contractor's progress schedule, when approved by the PNI-PMO Program Manager, may be used to establish major construction operations and to check on the progress of the work. The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the project in accordance with the plans and specifications within the time set forth in the bid.

If the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the PNI-PMO Program Manager's request, submit a revised schedule for completion of the work within the contract time and modify his/her operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the execution of the work be discontinued for any reason, the Contractor shall notify the PNI-PMO Program Manager at least 24 hours in advance of resuming operations.

80-04 [intentionally left blank]

80-05 CHARACTER OF WORKERS, METHODS, AND EQUIPMENT. The Contractor shall, at all times, employ sufficient labor and equipment for executing the work to full completion in the manner and time required by the contract, plans, and specifications.

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.

Any person employed by the Contractor or by any subcontractor who violates any operational regulations and, in the opinion of the PNI-PMO Program Manager, does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the PNI-PMO Program Manager, be removed forthwith by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the work without approval of the PNI-PMO Program Manager. Should the Contractor fail to remove such persons or person or fail to furnish suitable and sufficient personnel for the proper execution of the work, the PNI-PMO Program Manager may suspend the work by written notice until compliance with such orders.

All equipment which is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the work shall be such that no injury to previously completed work, adjacent property, will result from its use.

When the methods and equipment to be used by the Contractor in accomplishing the work are not prescribed in the contract, the Contractor is free to use any methods or equipment that will accomplish the work in conformity with the requirements of the contract, plans, and specifications.

When the contract specifies the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the PNI-PMO Program Manager. If the Contractor desires to use a method or type of equipment other than specified in the contract, he may request authority from the PNI-PMO Program Manager to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with

contract requirements. If, after trial use of the substituted methods or equipment, the PNI-PMO Program Manager determines that the work produced does not meet contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality or take such other corrective action as the PNI-PMO Program Manager may direct. No change will be made in basis of payment for the contract items involved nor in contract time as a result of authorizing a change in methods or equipment under this subsection.

80-06 TEMPORARY SUSPENSION OF THE WORK. The PNI-PMO Program Manager shall have the authority to suspend the work wholly, or in part, for such period or periods as he may deem necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for the execution of the work, or for such time as is necessary due to the failure on the part of the Contractor to carry out orders given or perform any or all provisions of the contract.

In the event that the Contractor is ordered by the PNI-PMO Program Manager, in writing, to suspend work for some unforeseen cause not otherwise provided for in the contract and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the work during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the effective date of the PNI-PMO Program Manager's order to suspend work to the effective date of the order to resume the work. Claims for such compensation shall be filed with the PNI-PMO Program Manager within the time period stated in the PNI-PMO Program Manager's order to resume work. The Contractor shall submit with his/her claim information substantiating the amount shown on the claim to, the PNI-PMO Program Manager for consideration in accordance with local laws or ordinances. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, for suspensions made at the request of the PNI-PMO, or for any other delay provided for in the contract, plans, or specifications.

If it should become necessary to suspend work for an indefinite period, the Contractor shall store all materials in such manner that they will not become an obstruction nor become damaged in any way. He shall take every precaution to prevent damage or deterioration of the work performed and provide for normal drainage of the work.

80-07 DETERMINATION AND EXTENSION OF CONTRACT TIME. The number of calendar or working days allowed for completion of the work shall be stated in the bid and contract and shall be known as the CONTRACT TIME.

Should the contract time require extension for reasons beyond the Contractor's control, it shall be adjusted as follows:

a. CONTRACT TIME based on WORKING DAYS shall be calculated weekly by the PNI-PMO. The PNI-PMO Program Manager will furnish the Contractor a copy of his/her monthly statement of the number of working days charged against the contract time during the week and the number of working days currently specified for completion of the contract (the original contract time plus the number of working days, if any, that have been included in approved CHANGE ORDERS or SUPPLEMENTAL AGREEMENTS covering EXTRA WORK).

The PNI-PMO Program Manager shall base his/her monthly statement of contract time charged on the following considerations:

(1) No time shall be charged for days on which the Contractor is unable to proceed with the principal item of work under construction at the time for at least 6 hours with the normal work force employed on such principal item. Should the normal work force be on a double-shift, 12 hours shall be used. Should the normal work force be on a triple-shift, 18 hours shall apply.

Conditions beyond the Contractor's control such as strikes, lockouts, unusual delays in transportation, temporary suspension of the principal item of work under construction or temporary suspension of the entire work which have been ordered by the PNI-PMO for reasons not the fault of the Contractor, shall not be charged against the contract time.

(2) The PNI-PMO Program Manager will not make charges against the contract time prior to the effective date of the notice to proceed.

(3) The PNI-PMO Program Manager will begin charges against the contract time on the first working day after the effective date of the notice to proceed.

(4) The PNI-PMO Program Manager will not make charges against the contract time after the date of final acceptance as defined in the subsection titled FINAL ACCEPTANCE of Section 50.

(5) The Contractor will be allowed 1 week in which to file a written protest setting forth his/her objections to the PNI-PMO Program Manager's monthly statement. If no objection is filed within such specified time, the weekly statement shall be considered as acceptable to the Contractor.

The contract time (stated in the bid) is based on the originally estimated quantities as described in the subsection titled INTERPRETATION OF ESTIMATED BID QUANTITIES of Section 20. Should the satisfactory completion of the contract require performance of work in greater quantities than those estimated in the bid, the contract time shall be increased in the same proportion as the cost of the actually completed quantities bears to the cost of the originally estimated quantities in the bid. Such increase in contract time shall not consider either the cost of work or the extension of contract time that has been covered by change order or supplemental agreement and shall be made at the time of final payment.

b. CONTRACT TIME based on CALENDAR DAYS shall consist of the number of calendar days stated in the contract counting from the effective date of the notice to proceed and including all Saturdays, Sundays, holidays, and nonwork days. All calendar days elapsing between the effective dates of the Owner's orders to suspend and resume all work, due to causes not the fault of the Contractor, shall be excluded.

At the time of final payment, the contract time shall be increased in the same proportion as the cost of the actually completed quantities bears to the cost of the originally estimated quantities in the bid. Such increase in the contract time shall not consider either cost of work or the extension of contract time that has been covered by a change order or supplemental agreement. Charges against the contract time will cease as of the date of final acceptance.

c. When the contract time is a specified completion date, it shall be the date on which all contract work shall be substantially completed.

If the Contractor finds it impossible for reasons beyond his/her control to complete the work within the contract time as specified, or as extended in accordance with the provisions of this subsection, he may, at any time prior to the expiration of the contract time as extended, make a written request to the PNI-PMO Program Manager for an extension of time setting forth the reasons which he believes will justify the granting of his/her request. Requests for extension of time on calendar day projects, caused by inclement weather, shall be supported with data showing the actual amount of inclement weather exceeded which could normally be expected during the contract period. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the PNI-PMO Program Manager finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, he may extend the time for completion in such amount as the conditions justify. The extended time for completion shall then be in full force and effect, the same as though it were the original time for completion.

80-08 FAILURE TO COMPLETE ON TIME. For each calendar day or working day, as specified in the contract, that any work remains uncompleted after the contract time (including all extensions and adjustments as provided in the subsection titled DETERMINATION AND EXTENSION OF CONTRACT TIME of this Section) the sum specified in the contract and bid as liquidated damages will be deducted from any money due or to become due the Contractor or his/her surety. Such deducted sums shall not be deducted as a penalty but shall be considered as liquidation of a reasonable portion of damages including but not limited to additional engineering services that will be incurred by the PNI-PMO should the Contractor fail to complete the work in the time provided in his/her contract.

Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the PNI-PMO of any of its rights under the contract.

80-09 DEFAULT AND TERMINATION OF CONTRACT. The Contractor shall be considered in default of his/her contract and such default will be considered as cause for the PNI-PMO to terminate the contract for any of the following reasons if the Contractor:

- a. Fails to begin the work under the contract within the time specified in the "Notice to Proceed" or
- b. Fails to perform the work or fails to provide sufficient workers, equipment, or materials to assure completion of work in accordance with the terms of the contract, or
- c. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
- d. Discontinues the execution of the work, or
- e. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- g. Allows any final judgment to stand against him unsatisfied for a period of 10 days, or
- h. Makes an assignment for the benefit of creditors, or
- i. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

Should the PNI-PMO Program Manager consider the Contractor in default of the contract for any reason hereinbefore, he shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the PNI-PMO's intentions to terminate the contract.

If the Contractor or surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then the PNI-PMO will, upon written notification from the PNI-PMO Program Manager of the facts of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power and authority without violating the contract, to take the execution of the work out of the hands of the Contractor. The PNI-PMO may appropriate or use any or all materials and equipment that have been mobilized for use in the work and are acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof or use such other methods as in the opinion of the PNI-PMO Program Manager will be required for the completion of said contract in an acceptable manner.

All costs and charges incurred by the PNI-PMO, together with the cost of completing the work

under contract, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the Owner the amount of such excess.

80-10 TERMINATION FOR NATIONAL EMERGENCIES. The PNI-PMO shall terminate the contract or portion thereof by written notice when the Contractor is prevented from proceeding with the construction contract as a direct result of an Executive Order of the President of the FSM with respect to the prosecution of an emergency order or in the interest of national security.

When the contract, or any portion thereof, is terminated before completion of all items of work in the contract, payment will be made for the actual number of units or items of work completed at the contract price or as mutually agreed for items of work partially completed or not started. No claims or loss of anticipated profits shall be considered.

Reimbursement for organization of the work, and other overhead expenses, (when not otherwise included in the contract) and moving equipment and materials to and from the job will be considered, the intent being that an equitable settlement will be made with the Contractor.

Acceptable materials, obtained or ordered by the Contractor for the work and that are not incorporated in the work shall, at the option of the Contractor, be purchased from the Contractor at actual cost as shown by receipted bills and actual cost records at such points of delivery as may be designated by the PNI-PMO Program Manager.

Termination of the contract or a portion thereof shall neither relieve the Contractor of his/her responsibilities for the completed work nor shall it relieve his/her surety of its obligation for and concerning any just claim arising out of the work performed.

80-11 [intentionally left blank]

END OF SECTION 80

SECTION 90

MEASUREMENT AND PAYMENT

90-01 MEASUREMENT OF QUANTITIES. All work completed under the contract will be measured by the PNI-PMO using United States Customary Units of Measurement.

The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures (or leave-outs) having an area of 9 square feet or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing by the PNI-PMO Program Manager.

Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.

Unless otherwise specified, all contract items which are measured by the linear foot such as electrical ducts, conduits, pipe culverts, underdrains, and similar items shall be measured parallel to the base or foundation upon which such items are placed.

In computing volumes of excavation, the average end area method or other acceptable

methods will be used.

The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fraction of inches.

The term "ton" will mean the short ton consisting of 2,000 pounds. All materials which are measured or proportioned by weights shall be weighed on accurate, approved scales by competent, qualified personnel at locations designated by the PNI-PMO. Trucks used to haul material being paid for by weight shall be weighed empty daily at such times as the PNI-PMO directs, and each truck shall bear a plainly legible identification mark.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the PNI-PMO, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery.

When requested by the Contractor and approved by the PNI-PMO Program Manager in writing, material specified to be measured by the cubic yard may be weighed, and such weights will be converted to cubic yards for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the PNI-PMO Program Manager and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.

Bituminous materials will be measured by the gallon or ton. When measured by volume, such volumes will be measured at 60 F (15 C) or will be corrected to the volume at 60 F (15 C) using ASTM D 1250 for asphalts or ASTM D 633 for tars.

Net certified scale weights or weights based on certified volumes will be used as a basis of measurement, subject to correction when bituminous material has been lost from the vehicle or the distributor, wasted, or otherwise not incorporated in the work.

When bituminous materials are shipped by truck or transport, net certified weights by volume, subject to correction for loss or foaming, may be used for computing quantities.

Cement will be measured by the ton.

Timber will be measured by the thousand feet board measure (M.F.B.M.) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

The term "lump sum" when used as an item of payment will mean complete payment for the work described in the contract.

When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

Rental of equipment will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the work. Special equipment ordered by the PNI-PMO in connection with force account work will be measured as agreed in the change order or supplemental agreement authorizing such force account work as provided in the subsection titled PAYMENT FOR EXTRA AND FORCE ACCOUNT WORK of this section.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gage, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more

stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

Scales for weighing materials which are required to be proportioned or measured and paid for by weight shall be furnished, erected, and maintained by the Contractor, or be certified permanently installed commercial scales.

Scales shall be accurate within one-half percent of the correct weight throughout the range of use. The Contractor shall have the scales checked under the observation of the inspector before beginning work and at such other times as requested. The intervals shall be uniform in spacing throughout the graduated or marked length of the beam or dial and shall not exceed one-tenth of 1 percent of the nominal rated capacity of the scale, but not less than 1 pound. The use of spring balances will not be permitted.

Beams, dials, platforms, and other scale equipment shall be so arranged that the operator and the inspector can safely and conveniently view them.

Scale installations shall have available ten standard 50-pound weights for testing the weighing equipment or suitable weights and devices for other approved equipment. Scales must be tested for accuracy and serviced before use at a new site. Platform scales shall be installed and maintained with the platform level and rigid bulkheads at each end.

Scales "overweighing" (indicating more than correct weight) will not be permitted to operate, and all materials received subsequent to the last previous correct weighting-accuracy test will be reduced by the percentage of error in excess of one-half of 1 percent.

In the event inspection reveals the scales have been "underweighing" (indicating less than correct weight), they shall be adjusted, and no additional payment to the Contractor will be allowed for materials previously weighed and recorded.

All costs in connection with furnishing, installing, certifying, testing, and maintaining scales; for furnishing check weights and scale house; and for all other items specified in this subsection, for the weighing of materials for proportioning or payment, shall be included in the unit contract prices for the various items of the project.

When the estimated quantities for a specific portion of the work are designated as the pay quantities in the contract, they shall be the final quantities for which payment for such specific portion of the work will be made, unless the dimensions of said portions of the work shown on the plans are revised by the PNI-PMO. If revised dimensions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the authorized changes in the dimensions.

90-02 SCOPE OF PAYMENT. The Contractor shall receive and accept compensation provided for in the contract as full payment for furnishing all materials, for performing all work under the contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof.

When the "basis of payment" subsection of a technical specification requires that the contract price (price bid) include compensation for certain work or material essential to the item, this same work or material will not also be measured for payment under any other contract item which may appear elsewhere in the contract, plans, or specifications.

90-03 COMPENSATION FOR ALTERED QUANTITIES. When the accepted quantities of work vary from the quantities in the bid, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract price for the accepted quantities of work actually complete and accepted. No allowance, except as provided for in the subsection titled ALTERATION OF WORK AND QUANTITIES of Section 40 will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by

the Contractor which results directly from such alterations or indirectly from his/her unbalanced allocation of overhead and profit among the contract items, or from any other cause.

90-04 PAYMENT FOR OMITTED ITEMS. As specified in the subsection titled OMITTED ITEMS of Section 40, the PNI-PMO Program Manager shall have the right to omit from the work (order nonperformance) any contract item, except major contract items, in the best interest of the Owner.

Should the PNI-PMO omit or order nonperformance of a contract item or portion of such item from the work, the Contractor shall accept payment in full at the contract prices for any work actually completed and acceptable prior to the PNI-PMO Program Manager's order to omit or nonperform such contract item. Acceptable materials ordered by the Contractor or delivered on the work prior to the date of the PNI-PMO Program Manager's order will be paid for at the actual cost to the Contractor and shall thereupon become the property of the PNI-PMO.

In addition to the reimbursement hereinbefore provided, the Contractor shall be reimbursed for all actual costs incurred for the purpose of performing the omitted contract item prior to the date of the PNI-PMO Program Manager's order. Such additional costs incurred by the Contractor must be directly related to the deleted contract item and shall be supported by certified statements by the Contractor as to the nature the amount of such costs.

90-05 PAYMENT FOR EXTRA AND FORCE ACCOUNT WORK. Extra work, performed in accordance with the subsection titled EXTRA WORK of Section 40, will be paid for at the contract prices or agreed prices specified in the change order or supplemental agreement authorizing the extra work. When the change order or supplemental agreement authorizing the extra work requires that it be done by force account, such force account shall be measured and paid for based on expended labor, equipment, and materials plus a negotiated and agreed upon allowance for overhead and profit.

a. Miscellaneous - No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

b. Comparison of Record - The Contractor and the PNI-PMO shall compare records of the cost of force account work at the end of each day. Agreement shall be indicated by signature of the Contractor and the PNI-PMO Program Manager or their duly authorized representatives.

c. Statement - No payment will be made for work performed on a force account basis until the Contractor has furnished the PNI-PMO with duplicate itemized statements of the cost of such force account work detailed as follows:

- (1) Name, classification, date, daily hours, total hours, rate and extension for each laborer and foreman.
- (2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (3) Quantities of materials, prices, and extensions.
- (4) Transportation of materials.
- (5) Cost of property damage, liability and workman's compensation insurance premiums, unemployment insurance contributions, and social security tax.

Statements shall be accompanied and supported by a receipted invoice for all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such materials were taken from his/her stock, that the quantity claimed was actually used, and that the price and

transportation claimed represent the actual cost to the Contractor.

90-06 PARTIAL PAYMENTS. Partial payments will be made at least once each month as the work progresses. Said payments will be based upon estimates prepared by the PNI-PMO of the value of the work performed and materials complete in place in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with the subsection titled PAYMENT FOR MATERIALS ON HAND of this section.

No partial payment will be made when the amount due the Contractor since the last estimate amounts to less than five thousand dollars (U.S. \$5,000).

When not less than 95 percent of the work has been completed the PNI-PMO Program Manager may with the consent of the surety, prepare an estimate from which will be retained an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder will then be certified for payment to the Contractor.

It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the bid or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the PNI-PMO Program Manager to be a part of the final quantity for the item of work in question.

No partial payment shall bind the PNI-PMO to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in the subsection titled ACCEPTANCE AND FINAL PAYMENT of this section.

The Contractor shall deliver to the PNI-PMO a complete release of all claims for labor and material arising out of this contract before the final retained percentage or final payment is made. If any subcontractor or supplier fails to furnish such a release in full, the Contractor may furnish a bond or other collateral satisfactory to the PNI-PMO to indemnify the Owner against any potential lien or other such claim. The bond or collateral shall include all costs, expenses, and attorney fees the Owner may be compelled to pay in discharging any such lien or claim.

90-07 PAYMENT FOR MATERIALS ON HAND. Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the contract, plans, and specifications and are delivered to acceptable sites or at other sites in the vicinity that are acceptable to the PNI-PMO. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- a. The material has been stored or stockpiled in a manner acceptable to the PNI-PMO at or on an approved site.
- b. The Contractor has furnished the PNI-PMO Program Manager with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- c. The Contractor has furnished the PNI-PMO Program Manager with satisfactory evidence that the material and transportation costs have been paid.
- d. The Contractor has furnished the Owner legal title (free of liens or encumbrances of any kind) to the material so stored or stockpiled.
- e. The Contractor has furnished the PNI-PMO evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at anytime prior to use in the work.

It is understood and agreed that the transfer of title and the PNI-PMO's payment for such stored or stockpiled materials shall in no way relieve the Contractor of his/her responsibility for furnishing and placing such materials in accordance with the requirements of the contract, plans, and specifications.

In no case will the amount of partial payments for materials on hand exceed the contract price for such materials or the contract price for the contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this subsection.

90-08 (intentionally left blank)

90-09 ACCEPTANCE AND FINAL PAYMENT. When the contract work has been accepted in accordance with the requirements of the subsection titled FINAL ACCEPTANCE of Section 50, the PNI-PMO will prepare the final estimate of the items of work actually performed. The Contractor shall approve the PNI-PMO Program Manager's final estimate or advise the PNI-PMO Program Manager of his/her objections to the final estimate which are based on disputes in measurements or computations of the final quantities to be paid under the contract as amended by change order or supplemental agreement. The Contractor and the PNI-PMO Program Manager shall resolve all disputes (if any) in the measurement and computation of final quantities to be paid within 30 calendar days of the Contractor's receipt of the PNI-PMO Program Manager's final estimate. If, after such 30-day period, a dispute still exists, the Contractor may approve the PNI-PMO Program Manager's estimate under protest of the quantities in dispute, and such disputed quantities shall be considered by the PNI-PMO as a claim in accordance with the subsection titled CLAIMS FOR ADJUSTMENT AND DISPUTES of Section 50.

After the Contractor has approved, or approved under protest, the PNI-PMO Program Manager's final estimate, final payment will be processed based on the entire sum, or the undisputed sum in case of approval under protest, determined to be due the Contractor less all previous payments and all amounts to be deducted under the provisions of the contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

If the Contractor has filed a claim for additional compensation under the provisions of the subsection titled CLAIMS FOR ADJUSTMENTS AND DISPUTES of Section 50 or under the provisions of this subsection, such claims will be considered by the PNI-PMO in accordance with local laws or ordinances. Upon final adjudication of such claims, any additional payment determined to be due the Contractor will be paid pursuant to a supplemental final estimate.

END OF SECTION 90