

#### II.1.34 DOMICILE AND REPRESENTATION

For all effects and purposes of this Contract, the parties agreed to set their present domicile in the City of Portoviejo and expressly waive their prior domicile.

In the same manner, the Contractor declares that his Legal Representative in Ecuador is Mr.

\_\_\_\_\_, who is vested with all the necessary powers to tend the whole execution of this Contract and he is the person responsible, in name of the Contractor, of all obligations acquired by it.

All the documentation between the parties will be sent to the following addresses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### II.1.35 COMPLEMENTARY CONTRACTS AND ADDITIONAL WORKS

In the event that were necessary to enlarge, modify and/or complement the Project works, it will be carried out in accordance with what is established in the Articles 101, 102, 103, 104, 105 and 106 of the Public Contracting Law.

#### II.1.36 RETENTIONS AND NOTARY RIGHTS

The Contractor will contribute with the equivalent to one percent (1%) of his main Contract to aid the functioning of the State General Comptroller's Office, State General Attorney's Office and the National Council of Science and Technology, in the following percentages, respectively, : 0.25%, 0.50% and 0.25%. This contribution will also be paid from the Complementary Contracts that may arise. Such values will be debited in advance from each statement, deducting the Advance Payment.

CRM, in each payment, will retain the service rate of 0.5% in favor of CEBCA, according to the regulations of the Executive Decree 2298 of September 13, 1983.

The Contractor will contribute with the equivalent to 1 % on the original Contract value in accordance with the Article 15 of the Category and Salaries Law of Civil Engineers of Ecuador as well as the volume increments of works, modifications or complementary contracts.

Such retained values will be deposited by CRM in the sole account of the national treasury, sub-account of the beneficiary entities:

- (1) Comptroller's Office, in the account Number 56329.6 "Consulting Services", of the Central Bank of Ecuador.
- (2) Attorney's Office, in the Account Number 0112705 "0.5 Public Contracting-Attorney's Office" of the Attorney's General Office, in the Central Bank of Ecuador.
- (3) Ecuadorian Commission of Capital Goods CEBCA account number 0112293-6, Central Bank of Ecuador.

In the same manner, the Contractor will cover the notary, registry rights and three certified copies and three simple copies of the Contract Deed that must be submitted to CRM.

The retentions and rights will be made effective in accordance with the Articles 117 and 118 of the Public Contracting Law actually in force and 134 of its General Regulation.

The retentions described above, that may be caused corresponding to the local currency portion of the cost of the Contract will be assumed by CRM.

#### II.1.37 CONTRACT EFFECTIVENESS

This Contract will be completely in force for the parties from the date of subscription of it until the Total Final Reception of the Works object of this Contract.

#### II.1.38 CONTRACT ACCEPTANCE

The Contracting Parties accept the total content of each and every one of the preceding Clauses, to which they subdue in express manner.

The Contractor \_\_\_\_\_

Represented by \_\_\_\_\_

The Contracting Entity Centro de Rehabilitación de Manabí (CRM).

Represented by \_\_\_\_\_

**VOLUME - I**

**PART - II SECTION 2**

**GENERAL DISPOSITIONS**

## PART II - SECTION 2

### GENERAL DISPOSITIONS

#### II.2.1 RELATIONS BETWEEN CRM, SUPERVISION AND CONTRACTOR

##### II.2.1.1 CRM as an Institution

CRM is the Centro de Rehabilitación de Manabí, with legal capacity of Public Right and with his own patrimony, which is constructing the "Water Transbasin Project for Chone-Portoviejo River Basins" in exercise of the authority given by law, through the reformative law No. 57 to the CRM Constituent law published in the Supplement Number 476 of the Official Registry of July 5, 1994, signed by the Constitutional President of the Republic of Ecuador.

##### II.2.1.2 CRM as the Contracting Party

CRM will remunerate the Works that the Contractor executes according to the stipulations of the Contract Documents and according to the best techniques of engineering and under complete subjection to the Specifications and within the established terms in these documents.

##### II.2.1.3 Functions Exercise

CRM at his own discretion, will directly execute the functions that correspond regarding the execution of this Contract, or will delegate them whole or in part to the Supervision.

#### II.2.2 THE SUPERVISION

##### II.2.2.1 General

CRM, will exercise the supervision of the Works subject of this Contract by itself or by delegating it, by means of an organization designed by CRM, which will be named the Supervision.

The Contractor will have the obligation to facilitate, as much as possible, the functions of the Supervision and to carry out what is provided by it.

##### II.2.2.2 Supervision Attributions

It will be attribution of the Supervision to check the strict fulfillment of this Contract and to demand that the Works be carried out within the terms foreseen and in strict accordance with the Drawings and Specifications that form part of the Contract Documents.

The Supervision will have under his charge the following rights and attributions as main:

- (1) To inspect the samples and to verify the tests of the materials and aggregates destined to the Works, exercising permanent control of such materials in its source point, as well as the deposits and storage sites in the work areas
- (2) To verify that the Works are executed according to the corresponding Drawings and Specifications. To reject and demand the replacement, at expense of the Contractor, of the works that at his judgment do not comply with the Drawings and Specifications.
- (3) To verify the number, type, characteristics, status and usage of the construction equipment proposed and destined to the Work. The Supervision could demand the Contractor, to withdraw or substitute the equipment that he may consider not appropriate to get the good quality of the works and/or for the fulfillment of the accepted terms.
- (4) To qualify the capability of the Contractor's personnel for the Works and to demand the removal of the personnel that to his judgment do not have the capacity or necessary experience for a good execution and adequate supervision of the works, including the Subcontractor's personnel.
- (5) To issue certificates of acceptability of the materials, equipment and works when required by the execution of this Contract.
- (6) To recommend to CRM the celebration of Complementary Contracts, regarding the modifications of Drawings or Specifications of the Work, if that was the case.
- (7) To measure the quantities of executed Works in accordance with the Drawings and Specifications and to check and approve the statements presented by the Contractor, and to put them to the consideration of CRM, within the term established.
- (8) To control the progress of the works in accordance with the approved programs and to study the changes or adjustments that the Contractor proposes to the programs in execution, approving them if they are convenient.
- (9) To quantify the delays that may occur during the execution of any of the programmed activities and to propose the corrective measures that he may consider convenient.
- (10) To supervise the installation and operation tests for the different elements of the Project.
- (11) To participate in the Provisional and Final Reception of the Works as an observer.
- (12) To approve the workshop design, fabrication and installation of permanent equipment of the Works.

(13) Other attributions that CRM delegates or the ones indicated in the Article 100 of the General Regulation of the Public Contracting Law and the Article 12 of the Agreement No. 0817 published in the Official Registry No. 779 of September 27, 1991.

#### II.2.2.3 Resident Supervisor

The Resident Supervisor will be the authorized representative of the Supervision at the works site. The appointment of the Resident Supervisor will be officially notified by CRM to the Contractor.

#### II.2.2.4 Scope of Instructions

The instructions and approval issued by the Supervision does not imply any acceptance of liability, regarding the costs, terms and, responsibility of any kind in general by the Supervision or CRM, as well as their representatives as employees, by the execution manner of the works under this Contract or by the use of methods and inadequate directions, whose responsibility will be solely of the Contractor. In the same manner, the lack of the Resident Supervisor to reject or object any defective work or material will not constitute acceptance of such works or materials, nor the loss of right of the Supervision to refuse to accept them and to request the reimbursement or demolition and eventual replacement, when the corresponding Specifications are not satisfied.

#### II.2.2.5 Appeal

If the Contractor considers himself affected by a decision of the Supervision, he could appeal in writing, in first instance to the Project Director and in last and definite instance, to the General Manager of CRM in order for it to study and to confirm or to modify or revoke it as the case may be. The processing of these appeals will not be considered as justification for delays in the execution of the Contract.

### **II.2.3 THE CONTRACTOR**

#### II.2.3.1 General

It corresponds to the Contractor, as independent and responsible agency before to CRM, to carry out the following:

- To execute and finish, in complete, correct and in timely manner, all of the Works in strict accordance with the terms of this Contract.
- To supply to the entire satisfaction of the Supervision, all the materials, equipment, technical direction, labour, services and other elements necessary for the execution of the Works object of this Contract.

- To comply and strictly follow the instructions and orders that CRM issues, by means of the Supervision, so as to clarify the stipulations of these documents and/or interpret the Technical Specifications.

### II.2.3.2 Contractor's Personnel

#### II.2.3.2.1 Representatives

Besides his General Manager or Legal Representative in Ecuador, the Contractor will assign by writing, before the commencement of the Works, an appropriate General Superintendent, to the satisfaction of CRM, with enough authority to act in the name and representation of the Contractor at the Work Site. The stipulations of the Professional Exercise of Civil Engineering Law, has to be abided by for the appointment of the General Superintendent.

Besides, the Contractor will appoint a chief engineer of construction, to the satisfaction of CRM, with permanent residency at the Work Site. This engineer will assume the functions of the General Superintendent during the temporary absences of the latter. In such cases the chief engineer will notify by writing to the Resident Supervisor, every time, the fact of assuming the direction of the Works.

The Contractor could neither be able to substitute the General Superintendent nor chief engineer of construction, during the execution of the Works, without having first obtained the approval from the Supervision for the people designated to replace them.

These staff members could not be able to abandon the Works, while they are not replaced by their respective substitutes at the Work Site.

#### II.2.3.2.2 Personnel Requirements

The Contractor will be responsible by the technical capacity of his employees and he will make everything possible within his reach to select in the best manner such personnel, particularly the foreign personnel destined to Ecuador.

The Contractor will provide all the personnel that the Work may require:

- (1) Technical directive personnel specialized and skilled in the various work branches, indicated in the pre-contractual documents, including an engineer of industrial safety, as well as: foremen, crew chiefs and inspectors in the adequate numbers and with the necessary experience, to provide an adequate direction to the works.
- (2) The skilled, semi-skilled and non-skilled laborers necessary to correctly execute the works stipulated in this Contract.
- (3) The Subcontractors and specialists that are required.

The skilled directive technical personnel that the Contractor assigns to the work in this Contract will need the previous approval of CRM. Therefore, the Contractor will have to present to CRM, with due time in advance, the list and the resume of such directive technical personnel.

The directive technical personnel and the foremen or crew chiefs of the Contractor will have to have preferably knowledge of the Spanish Language.

This technical personnel proposed by the Contractor shall be integrated in the list in his tender.

The percentage of foreign technical personnel, which the Contractor will employ for the execution of the Contract, in proportion with the Ecuadorian personnel, shall be as provided in the Ecuadorian Laws.

The Supervision, in case that he considers that the Contractor's personnel is not enough, could order the increment of such personnel and/or increment in the work shifts. Such orders will not give place to additional payments or claims of any kind by the Contractor.

#### II.2.3.3 Contracting

The Contractor will be at liberty to choose and hire his own personnel. However, he will have to abstain to get the services of the personnel working for CRM.

The work contracts that the Contractor may hold, originated by this Contract, will have to fully abide to the labor provisions of Ecuador and will be registered in one of the Labor Courts of the corresponding jurisdiction. The wages and salaries will be stipulated freely, but in any case they could not be less than the minimum wages established by law. The Contractor will not have any right to any additional compensation, over his Tender Prices, by reason of a higher value paid to his employees regarding the minimum salary for each category or by having supposed, in the tender preparation, lower salaries than the ones paid in reality.

#### II.2.3.4 Visas and Permits for the Foreign Personnel

CRM will provide help to the Contractor in the dealings with the corresponding authorities to get the entrance and departure visas from and to Ecuador and of any permit or license that may be required by the foreign personnel, approved by CRM, that provides services to the Contractor or his authorized Sub-contractors.

#### II.2.3.5 Personnel Reports

The Contractor will provide the Supervision, each semester, detailed written reports about the movement of the personnel at his service, indicating the name, nationality, identification document, date of entry, basic salary, position, entry and departure date and reason as the case may be.



### II.2.3.6 Personnel Withdrawal

The Supervision could demand the Contractor to withdraw immediately and definitely any member or employee of the Contractor or Subcontractor that, in the opinion of the Supervision, is not suitable to undertake the functions assigned, is negligent in the execution of his duties, has an unbecoming behavior or whose stay at the Works Site, by any reason, is inconvenient for the Project. Such decisions taken by the Supervision, for the withdrawal of personnel, will not justify any claims, neither will they imply modifications of the commitments acquired by the Contractor; but could be object to reconsideration by part of CRM, whose final decision will be compulsory for the Contractor. The selection costs withdrawal and replacement of said personnel will be at the Contractor's expense.

### II.2.3.7 Wages and Salaries

The Contractor and Sub-contractors will have to pay the wages and salaries or claims to all the employees, laborers and task worker at the site of the Works and without any other discounts that those authorized by law, in strict accordance with the legal regulations in force.

Will also be at the Contractor's expense, and at his charge, the payment of:

- (1) Social benefits to which the Contractor is obliged to under the Law and Labor Regulations and the Ecuadorian Institute of Social Security.
- (2) Indemnity and legal payment that may take place, due to reasons of law trespassing or labor law breaking. The lack of payment of wages and salaries, at the expiration date of the payment period agreed in the contracts of works, will be considered as a law trespassing of the regulations of this Contract and will be sanctioned according to what is established in Sub-clause II.2.10.4 of the General Dispositions.

### II.2.3.8 Holidays and Rest Days

The Contractor will obligatorily observe all holidays and rest days, indicated in the Labor Code.

### II.2.3.9 Legal Benefits

The Contractor will timely attend to the payment of all the additional remunerations, bonuses in general and legal benefits that correspond to his workers, according to the Ecuadorian Laws.

### II.2.3.10 Indemnities

The Contractor will equally pay his workers in timely fashion, all the indemnities that they have right to in virtue of the Labor Regulations of Ecuador, particularly by reason of unilateral termination of work contract, by professional illnesses or work accidents.

#### II.2.3.11 Transportation

The Contractor will undertake, at his own account and expense, the transport of all his personnel between the work sites and the camps and between these camps and the buses terminals of inter-urban service, when so required by the permitted rest days.

#### II.2.3.12 Personnel Return to His Place of Origin

The Contractor will have to provide the necessary means for the return to the places where all the people that he employed where hired for the execution of the works and he will have to be concern about their good health up to the date when they leave the country or the Work Site, as the case may be, which will have to be done within the thirty (30) following days to the completion of the labor relation.

#### II.2.3.13 Camps

The Contractor will provide housing, mess halls and the communitary services required by his personnel and the personnel of his Subcontractors. He will have to keep watch for the good hygienic state and conservation of all camps, facilities and rest areas.

#### II.2.3.14 Water Supply

It will correspond to the Contractor to provide, in convenient places within the work areas, drinking water in sufficient quantity for the personnel consumption, the provision and supply of drinking water for the Contractor's camp will be done according with what is stipulated in the Special Conditions.

#### II.2.3.15 Prohibited Use of Alcohol, Drugs and Firearms

The Contractor and his personnel could not be able, neither can he allow his Sub-contractors and/or the personnel at his charge, to carry weapons, nor can he permit the entry or distribution of alcoholic beverages or narcotics in the Project area.

#### II.2.3.16 Sanitation

It will be the obligation of the Contractor to establish and operate in or at the camps that he installs, the functioning in adequate and permanent manner, of the number and type of facilities required for first aid and for preventive medical treatment that the personnel may require, including the Sub-contractors, in accordance with the regulations for the "Functioning of Medical Services in the Firms" contained in the Decree No. 1404 of the Official Registry No. 698 of October 25, 1978.

It will correspond to the Contractor to provide rest rooms, in convenient locations, for the use of all work personnel and to keep them always clean and in good sanitary conditions.

The Contractor will have to provide at the works site and in the housing and areas under his charge, continuous cleaning services and the adequate placing of trash collection containers and periodical services of disinfecting for insect, rodents control and epidemic prevention.

#### II.2.3.17 Keeping the Peace

The Contractor will exercise a complete and permanent control over his employees and subordinates and will adopt all the necessary precautions, with the help of the local authorities and/or private services, to avoid any illegal or scandalous behavior by his personnel or the Subcontractors' personnel; as well as to preserve the order, protect the residents and avoid damages to the property in the Project area. The Contractor and his employees will obey all the laws, regulations and orders issued by the Ecuadorian authorities and the regulations given by the Supervision and will immediately correct any violation that comes to his knowledge.

All the personnel employed in the Work by the Contractor will be under the disciplinary authority of the latter and not under the Supervision.

#### II.2.3.18 Fire Protection

The Contractor will have to take the necessary precautions in order to prevent fire occurrences in the Site. The Contractor will have to comply with all the laws and regulations regarding to fires and with the instructions given by the Supervision regarding fire prevention.

The Contractor will have to diligently fight any fire that may occur at the Site, in any place that the fire originates. The Contractor will employ the equipment required and the necessary personnel to fight the fire at the Site, including the personnel and equipment of his Sub-contractors.

### **II.2.4 BONDS AND INSURANCES**

#### II.2.4.1 General

It is the intention of this Contract that the Contractor, in consideration of the payment he receives for the executed works, assumes all the financial commitments or of any other kind derived from the execution of the Contract, so that CRM be free of any claim to hire and conserve at his own account and at his expense the bonds and insurances that are stipulated afterwards and, besides to authorize CRM for direct payment of the corresponding premiums when the Contractor doesn't do it on time. The value of these premiums will be deducted, from the value of the monthly statements or any other value that the Contractor is entitled to.

In case that the value of any of the bonds or insurances here indicated become unacceptable to CRM, according to what is stipulated in this Contract, CRM could demand the Contractor to replace the bond in question or to get an additional bond acceptable to CRM, which the

Contractor will have to comply within thirty (30) days following the receipt of the respective notice.

In the same manner, the Contractor commits himself to modify the value of any of the bonds, at the request of CRM, when changes are produced whose accumulated value exceeds the value of the Contract.

#### II.2.4.2 Performance Bond

In order to assure the performance of the Contract and to answer for the obligations to third parties acquired by motive of its execution, the Contractor will give to CRM, previous to the Contract signing, a performance bond in accordance with the Article 73 of the Public Contracting Law equivalent to five percent (5%) of the estimated Contract value.

This bond will be issued for an equal term to the term agreed for the execution of the Works.

This bond will be in force by its own means, it will be refunded at the moment of the Final Reception, real or presumptive, and in accordance with what is established in the Article 83 of the Public Contracting Law.

#### II.2.4.3 Advance Payment Bond

Before the payment of the advance payments and to assure the correct use of what the Contractor may request, in accordance with Sub-clause II.2.8.4.1 of the General Dispositions and to protect the immediate refund of the balances not amortized, in case of previous conclusion of the Contract, the Contractor will have to present the bonds acceptable to CRM and in accordance with what is established in the Article 74 of the Public Contracting Law that covers the total value of such advance payments.

#### II.2.4.4 Bond Fund - Retentions

CRM will carry out a retention of five percent (5%) of the total amount of the monthly payments that are paid to the Contractor. The amounts retained will be deposited by CRM in a savings account in the Banco Ecuatoriano de la Vivienda, where they will accrue interest at the rate established by the Bank for such deposits. These interest will belong to the Contractor, these retentions will be called Bond Fund and will constitute an additional bond to assure the due execution of all the works, the good quality of the materials and the correct execution of the Works by the Contractor.

The values of this bond will be refunded to the Contractor after the issuing of the Provisional Reception, real or presumptive, of the Work object of the Contract and in accordance with the Article 83 of the Public Contracting Law.

#### II.2.4.5 Insurance for Damages to the Works and Facilities and Responsibility to Third Parties

The Contractor, without contradicting all the responsibilities derived from the Contract or demanded by the Laws of Ecuador, will have to get at his own cost for a period comprised up to the Total Final Reception a general insurance of construction to cover the damages to the Works and facilities and to assure the civil responsibility to third parties and against all risks.

#### II.2.4.6 Insurance Policy Scope

This insurance policy will be obtained and paid by the Contractor, being understood that this insurance does not exempt the Contractor from the corresponding responsibility by loss whose amount is superior to the insurance amount contracted or by franchises, exclusions, deductions, etc. stipulated in the policy; as well as in case that the insurance companies do not pay the indemnities by any reason that may be.

#### II.2.4.7 Other Insurances

The Contractor will have to get, by his own account and cost and will have to keep in force during the whole period corresponding to the execution of the Works, insurance to cover risks not covered or covered partially by the Social Security and that result in professional illness, partial or total incapacity or death of his employees or laborers, own or his Sub-contractors' or task worker linked to the execution of this Contract, be it or not caused by negligence of the Contractor or his staff members, employees or laborers.

CRM will not have any obligation to attend the claims or to pay the indemnity costs for damages to people or goods, caused by the Contractor's or his Sub-contractor's personnel or equipment, and in the event that it is necessary by executed judicial judgment, to do it in the name of the Contractor, CRM will have the right to demand from the Contractor the refund of the paid value for such concept, plus the incurred costs. The Contractor will reimburse to CRM such amount within the sixty (60) following days since the presentation of the corresponding claim. CRM is authorized to impute such amounts from the total value of the monthly statements or any other statement that the Contractor had presented for payment, in case that the Contractor did not paid the amounts within the term determined herewith.

#### II.2.4.8 Renewal Notification

The original policies of the insurance that the Contractor gets by virtue of the provisions stipulated in this Contract will have to be submitted to CRM; in the same manner, a copy of the payment receipts of the corresponding premiums, to indicate that he has carried out the renewal.

## **II.2.5 EXECUTION OF THE WORKS**

### **II.2.5.1 General**

It corresponds to the Contractor to execute, complete and maintain all the works, in strict accordance with the terms of this Contract and at entire satisfaction of the Supervision; to supply all the materials, equipment, labor and other elements that may correspond.

The Contractor besides will have to comply and strictly follow the instructions and directions that CRM issues, by means of the Supervision, to clarify the stipulations of these documents or to interpret the Technical Specifications.

Before the authorization of CRM, required in accordance with Clause II.1.14 of the Draft Contract, the Contractor could execute part of the works by means of hiring Sub-contractors.

### **II.2.5.2 Communications at the Works Site**

All the communications between the parties, regarding the works at the Site, will be done in writing, in Spanish and addressed with duplicates as indicated below:

#### **(1) Communications to the Contractor**

These communications will be handed in directly at the address of the General Superintendent of the Contractor and the corresponding receipt will be issued.

#### **(2) Communications to CRM and/or Supervision**

These communications will be handed in directly at the Supervision's Office at the Works Site. The corresponding receipt will be issued.

#### **(3) Effective Date of the Communications**

All communications will be numbered in progressive fashion and will prevail from the date they are received.

### **II.2.5.3 Programs and Periodical Reports**

The Contractor will have to provide the Supervision with copies of all the programs that he prepares about the organization of the works and their development.

Within fifteen (15) days counted from the date of the Contract subscription, the Contractor will present for the approval of the Supervision a detailed program of organization of the works with necessary drawings and schemes. This program will comprise:

**(1) The CPM adopted for the Execution of the Works**

The definite Execution Schedule will be prepared from the same CPM used by the Contractor in his tender, duly up-to-date and extended to include all the main activities and tasks considered necessary to execute the Works object of this Contract.

**(2) Mobilization Program and Temporary Facilities**

This program will indicate the dates foreseen for the commencement of works at the Site and also the sequence of activities proposed for the construction of facilities and services at charge of the Contractor, according to what is established in Clause II.3.2 of the Special Conditions.

**(3) Use of Personnel Program**

This program will indicate the monthly necessities of personnel for the Project, indicating the name of the positions, the number of workers and the number of men-month required

**(4) Use of Sub-contractor's Program**

This program will indicate the assigned task to each one of the Sub-contractors proposed, the execution period, the work items and the Bill of Quantities that they will have to carry out each one of them.

**(5) Equipment Use Program**

This program will indicate the distribution and utilization of the construction equipment proposed to use for the execution of the main items of work.

**(6) Investments Program**

This program will be estimate of monthly investments, in foreign currency as well as in local currency (Sucre), by reason of labour, materials, equipment, administration and general expenses.

**(7) Program of Supply and Installation of Permanent Equipment**

**(8) Report about the Methodology**

The Contractor will coordinate all these programs by means of a illustrated report with graphics and drawings, in which the adopted methodology for the construction of the different elements of the Project under his charge, will be explained.

The approval of these programs by the Supervision, will not exempt the Contractor from his responsibility for the selection and adequate organization of the work elements.

These execution programs will have to be checked and brought up-to-date periodically by the Contractor, each time it becomes necessary and as a maximum each quarter of a year, on the dates agreed with the Supervision.

#### II.2.5.4 Reports about the Progress of the Works

The Contractor will present quarterly to the Supervision, from the commencement of the Works and in the form and number of copies required for the following:

- (1) A report regarding the progress of the works, indicating the actual state of each part of the Work, the effective progress, the estimated time for its completion and the occasional causes for delays. Such report will be accompanied of graphic illustrations and photographic documentation.
- (2) A chart of work progress that will indicate the percentage of completed Work, for each work item, in relation with the total considered in the Contract and the rate of total progress or delay registered at the end of period in consideration. The model of this chart will be prepared in mutual agreement between the Supervision and the Contractor and will serve as base to judge the work progress and the fulfillment of this Contract.
- (3) A summary chart of quantities and costs of the executed works in the period before, as it is indicated in Sub-clause II.2.8.3.1 of the General Dispositions.
- (4) PERT and CPM up to date.

#### II.2.5.5 Photographic and Cinematographic Documentaries

The Contractor will have to prepare periodically photographs, videos and cinematographic documentaries in 16 mm., about the progress of the Works in their initial stages, as complements to the reports regarding the work progress.

Such documentations under the direction and orientation of the Supervision, will be attained during the undertaking of the Works. The costs for such documentation will be at the Contractor's expense.

All the photographic and cinematographic negatives will be property of CRM and will have to be submitted to the Supervision. The photographs will have to be handed in to the Supervision in the number of copies and size to be agreed upon. The videos and movie films will have to be provided in two copies in color.

The Supervision will have access, at any time, to the information sources of the Contractor in order to make sure the veracity of the information given.



### **II.2.5.6 Accidents Report**

The Contractor will also have to provide:

- (1) A detailed monthly report, with statistics indexes, in relation to all the work and traffic accidents occurred in the month before, in which it will indicate:
  - (a) Place of accident,
  - (b) Causes,
  - (c) Probable incapacity of the injured,
  - (d) Duration of the absentee from work,
  - (e) Preventive measures advisable and available,
- (2) Copy of the report about work accidents and traffic accidents elaborated by the Contractor for the Insurance Company,
- (3) Special reports that the Supervision may require for CRM,
- (4) Special reports for the financial entities of the Project, and
- (5) Copy of all documents regarding the judicial or legal notices and that, under any aspect, may be related with the Contract.

### **II.2.5.7 Works Execution Drawings**

#### **II.2.5.7.1 General**

All the works matter of this Contract will be executed in strict accordance with the Drawings and Specifications provided with these documents and abiding to the instructions and additional or supplementary information that the Supervision may give during the execution of the Works.

#### **II.2.5.7.2 Tender Drawings**

The Tender Drawings have as object to establish the design of the main components of the Project as well as the scope of the contracted Works, to facilitate the computation of unit prices and the execution costs of the works matter of this Contract.

#### **II.2.5.7.3 Detail Design or Construction Drawings**

After the subscription of the Contract, the Tender Drawings will be replaced by the Detail Design or Construction Drawings

The submittal program of the drawings will be agreed periodically between the Supervision and the Contractor, based upon the Execution Schedule in force.

The Contractor will carefully examine all the Construction Drawings after receiving them and will notify the Supervision, within ten (10) days following the reception date of them, any incongruency that he may find. On the contrary it will be understood that he accepts them without any objection.

#### **II.2.5.7.4 Copy of Drawings and Specifications**

The Supervision will submit to the Contractor copies of the Drawings and Specifications of this Contract, as indicated as follows:

##### **(1) Tender Drawings**

A (1) reproducible set of each one of the Tender Drawings. The Supervision will provide additional sets of the Tender Drawings, in ozalid paper and original size, previous written request of the Contractor and at his expense (reproduction and handling).

##### **(2) Detailed Design Drawings**

A (1) reproducible set

##### **(3) Specifications**

Two (2) sets at no charge and additional sets of the Specifications will be provided, at reproduction and handling costs, previous written request by the Contractor.

#### **II.2.5.7.5 Registry Drawings**

The Contractor, during the progress of the works, will elaborate the drawings of Works already constructed, which will constitute a register of all the changes and corrections carried out to the Drawings and designs of the civil works.

#### **II.2.5.8 Fabrication Drawings and Assembling of Permanent Equipment**

##### **II.2.5.8.1 Method of Delivery**

The Contractor will send for approval of the Supervision, in complete manner and with the due time in advance, the drawings, specifications, operations instructions, maintenance

manuals and catalogs for all the permanent equipment that has to be provided by him. The notes, titles and descriptions that appear in the drawings will be written in the Spanish. The dimensions, weights and loads will be expressed in units of the metric system.

#### II.2.5.8.2 Equipment Installation Diagrams

The Contractor will submit to the Supervision for approval the drawings and diagrams of the equipment connection to be provided and the weights, loads, anchorage details and necessary dimensions with which he will elaborate the final drawings of the structures where such equipment will be installed and then will submit these drawings to the approval of the Supervision.

#### II.2.5.8.3 Workshop and Assembling Drawings

Before the manufacturing of the those permanent equipment that have to be provided by the Contractor, such as, ladders and other mechanical works, the Contractor will submit to the Supervision, for approval, the designs and calculations, specifications, assembling drawings, control diagrams and necessary connections to verify that all the parts coincide with the requirements of the Contract Document and with the demands for their installation, operation and maintenance. These drawings must coincide substantially with the corresponding Construction Drawings and will indicate the dimensions, tolerances, locations and size of the auxiliary connections.

#### II.2.5.8.4 Procedure for Approval

The Contractor will send two (2) copies of good quality of each one of the drawings submitted for approval of the Supervision. One of these copies will be returned to the Contractor within the fifteen (15) following days, marked "Approved" or "Approved except what is indicated", as the case may be. The marked copies will authorize the Contractor to proceed with the manufacture, fabrication or assembling of those sections that have been approved. The Contractor will make the necessary corrections provided by the Supervision in the originals of such drawings and will send to the Supervision two (2) reproducible copies over which the Supervisor will mark his approval.

One of the reproducible copies will be returned to the Contractor in the term of the eight (8) following days. The complementary documents or information such as catalogs, illustrations, printed specifications or the like, will be submitted by triplicate. The Supervision will indicate afterwards the additional number of copies required. The approvals issued by the Supervision neither will exempt the Contractor of any of his responsibilities by virtue of this Contract nor from his responsibility for the correction of the errors that may be found in his drawings during the assembling of the structures or during the installation of the equipment, nor regarding the correct functioning of the equipment and/or system, once installed.

#### **II.2.5.8.5 File Copies**

The Contractor will provide at no cost to the Supervision, as the different phases of the works are being completed, the additional reproducible copies that the Supervision may require for the file of CRM.

#### **II.2.5.9 Location, Alignment and Levels**

The locations, alignments and levels of reference that are required by the Works, will be given by the Supervision, which will set the necessary benchmarks and landmarks to have a permanent reference, in accordance with what is specified in Sub-clause II.3.3.1 of the Special Conditions.

From these references, the Contractor will carry out the complementary works required for the laying out and detail leveling necessary for the construction of the Works, within the lines and levels set on the Drawings.

The Contractor will be responsible for the accuracy of the linking polygons and leveling that he carries out from the benchmarks of reference provided by the Supervision; also for the protection and adequate conservation of such reference benchmarks.

#### **II.2.5.10 Modifications in the Drawings, in the Location and Dimensions of the Works**

##### **II.2.5.10.1 At the Contractor's Request**

If the Contractor wishes to carry out observations, request clarifications or propose modifications to the Design Drawings, he will have to notify it so to the Supervision at least thirty (30) days before to initiate the corresponding works and the Supervision will resolve within fifteen (15) days following the presentation of such notice.

These changes or modifications will neither imply increment in the execution terms of the Works object of this Contract nor in the unit prices of them and, consequently, the Contractor will not alter nor suspend the sequence of Works, unless the Supervision states it otherwise.

##### **II.2.5.10.2 By Supervision's Order**

The Supervision will order the changes in the Drawings and Specifications and the modifications in the location and detail of the structures and Works elements object of this Contract, when for technical reasons or unpredicted causes, so provide.

In such circumstances the procedure will be adjusted to what is legislated in the Chapter VII of the Public Contracting Law, up to amounts that could not exceed 35 % of the actualized Contract value.

#### II.2.5.11 Administration Works by Cost Plus Percentage

The Contractor will execute by administration works not predicted and that can not be done otherwise, be it by their nature, by the difficulty to establish unit or lump sum prices adequate for their execution or other justified and approved causes by CRM, by means of the Supervision.

These work provisions will detail the type, kind and magnitude of the Work to be executed, the time and cost.

CRM and the Contractor, for the execution of the works under this mode, will follow the standards provided in the Article 106 of the Public Contracting Law and applying the rules contained in the Article 120 of the Regulation of said Law.

#### II.2.5.12 Claim for Modifications

The Contractor will have to proceed immediately to execute the modifications ordered by CRM or the Supervision. The Contractor will, within the fifteen (15) days after receiving the pertaining order, have the right to present claims that he considers justifiable by reason of these changes, when he judges that these imply variations in the costs and/or execution terms. These claims will be received and processed by the Supervision.

#### II.2.5.13 Simultaneous Works with Other Contractors

In the possibility that the other contractors may be executing works in the same place, in the surrounding areas or in the access roads, in such manner that the work of them could interfere with the work of the Contractor of this Contract, CRM will establish the coordination of the works through the Supervision and their priority order.

#### II.2.5.14 Patents

The Contractor will prove, previously, that he possesses the necessary authorization or that he has incurred in all the expenses that imply the use of patents, permits, licenses and other rights that he needs to use for the execution of the Contract. If the Contractor uses in the Works, matter of this Contract, devices, materials, equipment, installations or patented procedures, he will be the sole person responsible of all the results derived from the use.

The Contractor is not authorized to acquire commitments, of any kind, in the name of CRM and commits himself to refund any expense that CRM may be obliged to pay, at any time, by reason of copyrights, processes or patents about articles, manufactures or methods used by the Contractor, including the legal costs and the indemnity if any.

#### II.2.5.15 Cleanliness of the Works

The Contractor will have to keep the work areas, including the deposits and storage areas that he uses, in order and free of any accumulation of trash or debris.

At the end of the Works object of this Contract and as necessary condition for the Final Reception of the Works, the Contractor will have to dismantle and remove from the Project area the construction equipment, the non-used materials, trash or debris and all the objects of his property or that have been used by him during the execution of the Works; at the satisfaction of the Supervision.

In case that the Contractor does not comply with this obligation, the Supervision could carry out , at any time, the cleaning at the expense of the Contractor. For this reason, he will deduct the corresponding amount from the fund constituted by the retentions carried out over the payments made to the Contractor.

#### II.2.5.16 Industrial Security

- (1) It correspond to the Contractor to establish safety regulations for each one of the activities to be developed within this Contract and to impose the fulfillment in order to eliminate unnecessary risks and to provide a maximum security to all the personnel under his charge and to all the people in the Project area.
- (2) The Contractor will create an accident prevention department in accordance with what is established by the Ecuadorian Institute of Social Security (IESS) and will organize the adequate program of safety. The costs that this will give place to and the implementation, including signs, boards, notices, publications, guards and the supply of helmets, face masks, gloves and other safety equipment required, will be at the Contractor's expense.
- (3) The Supervision will keep watch, that the prevention rules, adopted by the Contractor, are adequate and that the methods that he adopts to promote obedience of them and the measures that he may impose for the risks control correspond to the necessities of the Project.
- (4) The safety measures that the Contractor takes or the instructions that he receives from the Supervision in no way will exempt the Contractor from his responsibility for accidents in the Works or for defects or damages to third parties as the result of the operations.
- (5) The Contractor will have to subject himself to the Law regarding manufacturing, importing, exporting, possession and traffic of weapons, ammunitions, explosives and accessories and, to the Regulations of such Law.
- (6) The location of magazines and the drawings for their construction will need the previous approval of the Supervision. In the same manner, the procedure that the Contractor wishes to establish for the transportation of dynamite and fuses within the work area and the methods that he proposes to implement for the use of explosives will have to be subject to the Supervision's approval.

- (7) The operations with explosives in each work front will be under the responsibility of a responsible staff officer, who will take care of keeping a daily register of consumption of explosives in the Work.
- (8) The storage and distribution of fuel will have to comply with the provisions of the national laws in force and to keep in account the standards of the National Fire Protection of the United States of North America. The site, structure type, and protection system will have to receive previous approval from the Supervision.
- (9) The Contractor will adopt, in the areas at his charge, measures for the prevention and the extinguishing of fires, provided in the national laws in force and the like to the ones established in the provisions of the National Fire Protection Association.

## **II.2.6 MATERIALS, EQUIPMENT AND SUPPLIES**

### **II.2.6.1 General**

The Contractor, within the unit and lump sum prices of his Tender, will include the costs of all the equipment and materials that in accordance with the Drawings and Specifications of this Project are required for the satisfactorily completion of the Works object of this Contract.

All the materials, equipment, supplies, services and other elements that are used in the execution of this Contract will be in all accordance with the Specifications that form part of these documents and with the instructions issued by the Supervision.

### **II.2.6.2 Materials**

#### **II.2.6.2.1 Available Materials at the Works Site**

The materials that the Project may require such as aggregates for the elaboration of concrete, filters, ripraps, road subbases, etc., and the ones corresponding for terraces, will be obtained by the Contractor from the places designated by the Supervision. However, the Contractor could get materials from other sources when he considers necessary, as long as the previous approval of the Supervision is issued. The research about the quality and availability required to determine the convenience of those materials of non-designated sites will be done by the Contractor at his own cost and verified by the Supervision at express request made by the Contractor. The Supervision could demand the Contractor new tests if he considers that the ones made by the Contractor are not enough.

A change of location of the materials exploitation sites, at the Contractor's request, will not give him the right to request an increase of costs due to overcarrying

#### **II.2.6.2.2 Materials not available at the Works Site**

The materials not available at the Works site, will be obtained preferably from Ecuadorian sources, but, if this were not possible then the Contractor will appeal to the foreign market and always in accordance with the Specifications.

#### **II.2.6.3 Construction Equipment, Repair Parts and Accessories**

##### **II.2.6.3.1 Equipment**

The Contractor, once obtained the approval from the Supervision for the Equipment Use Program referred to Clause II.1.18 of the Draft Contract, will elaborate the detailed listings required to obtain the corresponding permits to bring them in temporarily. These permits will be transacted by the Contractor in accordance with what is provided in Clause II.1.14 of the Draft Contract.

##### **II.2.6.3.2 Contractor's Responsibility**

The approval of the type, model, capacity and number of units of the equipment proposed in the Equipment Use Program and the submittal of the Import Permit for this equipment or for additional equipment, that the Contractor proposes to use in the execution of the Works, will not exempt him from the exclusive responsibility regarding the selection of the same, neither regarding the use and performance to comply with the established terms.

##### **II.2.6.3.3 Equipment Sufficiency**

The Contractor will have to have at the Works Site, duly installed and ready to work, the equipment programmed in each work front as well as the workshops and the repair parts stock necessary before the date indicated in the Equipment Use Program for the commencement of the corresponding works. The Contractor will have to increase or substitute such equipment when he considers it necessary or the Supervision orders it so, in order to assure the completion of the Work within the terms provided.

##### **II.2.6.3.4 Enrapture of Equipment**

It is clearly established that the equipment bought with Project Funds can not be object of trust, deposit or bond for obligations of the Contractor with third parties.

##### **II.2.6.3.5 Equipment Withdrawal**

Any withdrawal of the equipment from the Works site will require the written authorization of the Supervision.



## **II.2.6.4 Permanent Equipment and Materials**

### **II.2.6.4.1 Kind and Quality**

The total amount of equipment and materials that corresponds to the Contractor supply, to be definitively incorporated in the Works, will have to comply with the Specifications of these documents.

For the use of alternative type of equipment and materials, in replacement of what is established, the Contractor will have to request the authorization to the Supervision within sixty (60) days after subscription of the Contract, having as evidence that the replacement proposed is equal or better than the one specified. The Contractor could only supply such equipment or alternative material after receiving the written approval from the Supervision. The use of name brands, that could appear in these documents in order to identify the specified items, can not be interpreted as a constraint in the supply of such items, only constitutes a mean of reference to facilitate the comparison with the specified product.

### **II.2.6.4.2 Guaranty of Permanent Equipment and Materials**

The Contractor guarantees that the permanent equipment and materials that he supplies and installs by virtue of this Contract will have the characteristics specified in the Technical Specifications. The guaranties that are issued by the manufacturers of these permanent equipment or materials will be written down in favor of CRM.

The Contractor will replace the equipment found defective or broken down or will carry out the repairs that there may be required in immediate manner, at his own expense up to the date of the Final Reception.

The Contractor will also be responsible for the damages caused by him or his Sub-contractors, during the tests operations of installation and maintenance or while he undertakes any other activity of the operations that correspond to him in accordance with what is stipulated in these documents.

### **II.2.6.4.3 Installation**

The Contractor must refrain from executing the installation of permanent equipment before these installations had been duly notified by the Supervision. The installation must be done with previous approval, otherwise, it will be just cause for rejection by the Supervision.

## **II.2.6.5 Equipment and Materials Storage**

### **II.2.6.5.1 Materials**

The Contractor will supply the warehouses and facilities required to store the materials in an adequate manner and will provide the handling and care that they may require to preserve the quality and characteristics. The Supervision could demand, when he considers necessary,

that certain materials get appropriate protection treatment, that be placed over platforms or flat surfaces and under cover or that they be stored in silos or warehouses, without implying an increment of the prices and/or terms proposed. The stored materials, even when they may have been approved before their storage, will be inspected again before the use to verify its final good condition in accordance with the Specifications.

#### **II.2.6.5.2 Equipment**

The Contractor at his own initiative or when so is indicated by the Supervision, will store the equipment in safe places duly guarded to keep them from weathering and placed over adequate platforms, provided by the Contractor. The machinery or finished surfaces of all equipment, spare parts and accessories subject to damage by the humidity, solar light, dust or other external factors, will have to receive protection at the satisfaction of the Supervision.

#### **II.2.6.5.3 Receiving Notices of Equipment and Materials**

The Contractor will have to elaborate Reception Notices of all materials and equipment that CRM or the Contractor supply by reason of this Contract, sending a copy to the Supervision within ten (10) days following the receipt. These notices, numbered, dated and duly signed, will indicate in detail the elements received and also the state in which they were received and the storage place.

#### **II.2.6.6 Test for Materials and Equipment**

All the materials, equipment, accessories and other elements destined to the Work will be subject to tests indicated in the Specifications or ordered by the Supervision, in order to verify their properties, characteristics, compatibility with the requirements of the Specifications and the tolerances allowed for the use for what they have been destined. The materials, equipment, accessories or elements that are not accepted by the Supervision, or due that they do not comply with the required conditions, will have to be withdraw from the Work Site, at the Contractor's expense and replaced by others to the satisfaction of the Supervision.

##### **II.2.6.6.1 Execution of Tests at the Works Site or Out of the Site**

Unless the Specifications indicated it otherwise, it will correspond to the Supervision to supervise the tests about the aggregates for the concrete, including water, and the cement and the sample tests of concrete placed in the Works and will approve the mix proportion design, before the use of any class of concrete; equal provision will be applied for the construction materials of embankments or landfills. The tests that the Supervision carries in order to verify within the right time, will not give place for the Contractor to argue increments in the terms nor a variation in the Contract prices.

Some materials and equipment destined to the Work will also require, according to the Specifications, tests in the production or factory sites in deposits out of the Work Site. Such tests will be carried out by the manufacturer at his own expense or at the Contractor's

expense in the presence of a Supervision's representative. For such effect, the Contractor will have to notify the Supervision with enough time ahead, of the place and date for carrying out such tests so that the Supervision can send his representative.

#### **II.2.6.6.2 Sample Costs**

It will be at the expense of the Contractor the supply of samples, when so stipulated in the corresponding Specifications. The cost of the samples that the Supervision may require, in addition to those required by the Specifications, will also run at the Contractor's expense.

#### **II.2.6.6.3 Costs of Tests**

The costs for carrying out tests, will be at the Contractor's expense only when the Specifications establishes them.

The Supervision could carry out, at any time, tests that are not foreseen in the Specifications. The costs of such tests not foreseen or special tests ordered by the Supervision will only run at the Contractor's expense if the results indicate that the materials, construction methods or equipment do not satisfy the Specifications.

#### **II.2.6.6.4 Reports**

The Contractor will prepare reports of each one of the tests carried out and will keep a complete chronological register of such tests. The Contractor will have to send to the Supervision three (3) copies of each one of the reports, within ten (10) days following the completion of each test.

### **II.2.7 WORK AREAS, CAMPS, FACILITIES AND SERVICES**

#### **II.2.7.1 Areas for the Execution of the Works**

CRM will provide the Contractor within thirty (30) days before the commencement of each Work, in accordance with the approved Execution Schedule and area hand over chronogram, the approved areas for the execution of said works provided in the Drawings and other documents of this Contract. For such effect, it will carry out the dealings and will assume the expenses that may be required.

The Contractor will acquire at buying title or will rent, for the time that is necessary, those areas located nearby and that he needs to occupy temporarily or by reason of the work or the placement of the temporary facilities. The special works, that the use of the construction areas require installation, relocation or replacement of fences, etc., will be at the Contractor's expense. CRM will equally take over to get and the payment of the right-of-way, servants, and permits that the work may require within the site area of them. To get similar services that the Contractor may require in other areas, as well as the toll, bridge toll payments and tax alike will be at the Contractor's expense.

The Contractor will have to provide adequate protection to the goods and real state and surrounding areas to the existing irrigation and drainage infrastructure and to the services that had been handed over for the Works; with the same purpose he will have to control the movements of the equipment and personnel in the access roads, right-of-ways and servants, whose use CRM had authorized.

The existing irrigation infrastructure cannot be removed nor destroyed by the Contractor unless he receives an specific order from the Supervision, dispositions that the Supervision will be giving in due time to the Contractor according to the progress of the Works and in complete accordance with the Execution Schedule of the Contract.

The Contractor will have to communicate the Supervision in due time in advance, his necessities over the occupation of the areas and the use of the services above mentioned and will have to abstain himself from occupying them before having got the corresponding authorization.

#### II.2.7.2 Disposal Area for Land and Surface Water and Drainage

The disposal of all water found during the execution of the Contract will be the responsibility of the Contractor. The Contractor will have to construct and maintain all the canals, open channels, drains and sumps and/or other temporary diversions and protection works; will have to supply all the materials required; will supply, install, operate and keep all the pump equipment and other necessary equipment to dispose the water from various parts of the Works and in order to maintain the foundations and the parts separated of the Works free from humidity as required for the construction. After serving their purpose, all the dikes, cofferdams, and other drainage installations will be removed or leveled to avoid interference in any manner with the operation of the canals and nearby structures. The Contractor will be responsible for, and will prepare at his own cost, any damage caused by flooding, water or failure of any section of the drainage installations or the protection works. Unless so stipulated otherwise, the Contractor will not interrupt and interfere with the irrigation of the rainy and dry seasons.

#### II.2.7.3 Camps, Facilities and Services

The construction of the camps, services and other facilities in the Project area, will be carried out as stipulated in Clause II.3.2 of the Special Conditions.

#### II.2.7.4 Traffic Maintenance and Existing Services

The Contractor will program his works in the site of the works, in such a way that they produce the minimum interference with the traffic of his own vehicles and the Supervision's vehicles or the other contractor's vehicles, if any. When that occurs the Contractor could, with the previous approval of the Supervision and the authorizations given by law, establish the detours of the main roads that are required, being understood that the Contractor is obliged to maintain the roads as well as detours in conditions that would allow the normal traffic during the carrying out of the Works.

Besides, before submitting his tender, the Contractor will have to carry his own investigations about the conditions of the public and/or private roads and the permits, restrictions, load limits of the bridges, and other constraints that could affect the transportation and entry/exit of the Site.

The Contractor will have to use any reasonable method in order to assure that all load limits and other constraints are obeyed and in the event that it becomes necessary to transport any extraordinary load of equipment or unit or pre-construction part of the works, the Contractor will have to, before mobilizing such extraordinary load, get the corresponding permits and authorizations from the competing authorities and comply with all the legal regulations.

The Contractor, will install and maintain all barriers, danger signs, notices and lights for life protection and safety of the users and will take all the additional protection measures that the Supervision may consider necessary. The Contractor will have to restore, at his own cost, the road, irrigation and drainage infrastructure, telegraphic and telephone or electric lines that may suffer damages due to his activities.

#### II.2.7.5 Construction Materials formed at the Site

Unless otherwise stated in these documents, all the soils, gravel, sand, rock minerals, timber and other materials that are found in the work area or that are found in the excavations or other works carried out by the Contractor, are of exclusive property of the Ecuadorian State.

#### II.2.7.6 Fossils and Objects of Historic Value

The fossils, coins, articles of archeological value, structures or ruins discovered at the work site, are exclusive property of the Ecuadorian State and are subject to what is provided by the Law of Cultural Patrimony over the archeological ruins and fossils. The Contractor is obliged to take the necessary precautions to avoid that his workers withdraw or damage such articles or structures, having to notified to the Supervision of such discoveries and immediately suspend all works in those sites, until receiving the re-start order from the Supervision.

### **II.2.8 MEASUREMENT AND BILLING FOR THE EXECUTED WORKS AND PAYMENTS TO THE CONTRACTOR**

#### II.2.8.1 Contract Prices

CRM will pay the Contractor, for the works actually executed by virtue of this Contract, the value that results from the application of the unit prices or the percentages of the lump sum prices that appear in the Bill of Quantities, at the calculation of actually executed work according to the Drawings and Specifications and accepted by the Supervision.

The parties confirm that these unit prices include all the costs, direct and indirect that the Contractor may have to incur for the carrying out of the works proposed according to the Specifications of this tendering, including equipment, labour, materials, insurance,

management and administration costs and the remuneration or profit of the Contractor. Therefore, the payments that CRM makes to the Contractor using such prices, unit or lump sum, will represent the total remuneration of the Contractor and will not give place to any additional claim, out of the readjustment that there might be in accordance with the Contract, as it is provided in Sub-clause II.2.8.5.

#### II.2.8.2 Measurement of Executed Work

The Supervision, in presence of the Contractor and with his intervention, will measure within the first five (5) days of each month, the quantities of satisfactorily executed Work by the Contractor during the immediate prior month. These work quantities will be placed on record in a report that the Supervision will prepare by triplicate in order to remit within the first ten (10) days of each month, the original to CRM and the duplicate to the Contractor, who will prepare his monthly statement.

If the Contractor does not receive the mentioned report from the Supervision within the term of five (5) additional calendar days of the term stipulated above, it will be considered approved the quantity relation sent by him to the Supervision and the Contractor could issue the corresponding valorization (monthly statement), without having to do the eventual changes in the next measuring and inclusive applying what is provided in Clause II.1.21 of the Draft Contract.

The measuring will be carried out utilizing the units contained in the Bill of Quantities. The measuring system will be the same as the one described in the corresponding Technical Specifications.

For such measuring effect of the work items stipulated as lump sum it will be understood that the work quantity to be executed, in each case, will be equal to one hundred (100) units and that the corresponding unit is the percentage (%). The measurement in this case will be the evaluation of the actual percentage executed.

These partial measuring of the Work does not represent hand over by the Contractor neither does it mean a reception by the Supervision of the measured quantities, since the received Works will only be at the completion of the Contract and following the procedure established for such effect.

It is also clarified that the work quantities that appear in the Bill of Quantities of the tender, are the estimated work quantities by CRM before the commencement of the Works and that the final quantities for each item could vary by excess or by defect in relation to such estimated quantities, without that meaning the modification of the obligation that the Contractor has to execute the total Works, or on the other hand, yields his rights to claim the modification or readjustment of the unit prices contained in the Tender or agreed upon afterwards, due to this circumstance.

The Contractor will have the right to request the readjustment of work volume measured by the Supervision when he considers that there were numerical or measuring errors. In such

case it will have to be done in writing, within the established terms and following the procedure stipulated in Sub-clause II.2.8.6.3. The work quantities not included in a given measuring, by reason of omission or discrepancies, will be included in the following measuring at the date that such discrepancy had been settled or that such omission had been noted.

### **II.2.8.3 Billings**

#### **II.2.8.3.1 Monthly Billing of Executed Work**

The Contractor will monthly prepare a statement in local currency (Sucres) and foreign currency (U.S. Dollars), in an original and five (5) copies, for billing to CRM the value of the executed Works, whose calculations were placed in the work quantity reports elaborated by the Supervision. These statements will be signed by the Contractor and the Supervision and remitted to CRM in an original and five (5) copies, preferably before the fifteenth (15th) day of each month. The Supervision will retain a sixth copy at the Works Site.

These statements will be prepared in the format approved by the Supervision.

The Contractor will present his statements with informative character that will consist of a summary chart that will indicate, for each work item, the order code, description, unit and value of the executed works up to the billing date and the quantity and the value of the executed Work in the period under consideration. This chart, indispensable requirement for transacting the corresponding statement, will be prepared with the billed values in Sucres and foreign currency.

The Contractor shall present, besides the documents demanded by the Ecuadorian Laws and those required by CRM for justification and transacting the payment before the financial entities linked to the Project.

The works that had been executed, by virtue of a provision issued by CRM, will be billed in the same monthly statements integrating, if possible the same items originally contracted at the same unit prices or in his defect, integrating new item to the unit prices previously agreed.

The billing for services provided by the Contractor in the execution of the Works for administration, equipment leasing, supply of implements or personnel, when CRM has so requested them in accordance with what is provided in Sub-clause II.2.5.11 of the General Dispositions, will be done in separated monthly statements that will be formulated, in agreement with the Supervision, for each case.

## II.2.8.4 Partial Payments to the Contractor

### II.2.8.4.1 Advance Payment

Once this Contract is perfected and when CRM had concluded that the bonds presented by the Contractor in order to back up the fulfillment of the Contract and the reimbursement of the advance payment in Sucres and foreign currency, in accordance with Clause II.1.8 of the Draft Contract are satisfactory, CRM will hand over to the Contractor as advance payment, for equipment acquisition, repair parts and materials destined to the Works, up to twenty percent (20%) of the total Contract value.

This advance payment that CRM will give the Contractor within the sixty (60) days after having received to whole satisfaction, the corresponding bonds, will be amortized by means of monthly deductions equivalent to the percentage of the advance payment given of the gross value of each monthly statement from the first statement presented.

### II.2.8.4.2 Executed Works Payments

CRM will pay each monthly statement that the Contractor elaborates correctly for billing the quantities of executed Works included in the reports elaborated by the Supervision, within the sixty (60) following days from the presentation of the statements, with the previous deductions:

- (1) Percentage deduction corresponding to the total value of the monthly statement in order to amortize the advance payment, from the first billing on.
- (2) Retention of five percent (5%) over the total statement value, as a bond for the execution of all the works, the good quality of the materials and the correct carrying out of all the Works.
- (3) Retention of the service rate of CEBCA, for a value of 0.5% of the statement.

### II.2.8.4.3 Scope of Partial Payments

The partial payments made by CRM to the Contractor will not exempt him from responsibilities regarding the quality of the Works, goods or services object of payment, for the repair that the Works may require neither from the damages or losses caused by this repairs nor from any of the other obligations acquired by reason of this Contract.

The partial payments will not imply the final or temporary reception of the Work object of payment; neither does it mean the acceptance of the materials used. Neither can it be interpreted as a commitment by CRM to acknowledge costs of overtime, extra work, special process, repairs and modifications that the Works object of partial payment may incur into, or that result from the system employed for its execution.



## II.2.8.5 Final Payment

### II.2.8.5.1 Payment of Balance for Executed Work

The value of the balances that result in favor or against the Contractor will be placed in the Total Provisional Reception Certificate of the Works. The invoice of settlement will have to be accompanied by a copy of such certificate and a relation of all payments received by the Contractor. CRM will verify balances and will pay the corresponding value to the Contractor making the respective deductions if any. In the same manner it will contain the final readjustment payment.

### II.2.8.5.2 Reimbursement of Retention Fund

In accordance with the Article 83 of the Public Contracting Law, in order to refund the Retention Fund and the respective interests, it will be enough for the Contractor to present the Provisional Reception Certificate or the judicial order from a competing judge in which notifies the owner of the Works of such assumed provisional reception at the Banco Ecuatoriano de la Vivienda.

### II.2.8.5.3 Final Payment in Case of Anticipated Termination.

In case of anticipated conclusion of the Contract, it will be proceeded in accordance with what is stipulated in Clause II.1.27 of the Draft Contract and in analogic manner to what is established in Sub-clause II.2.8.6.1.

## II.2.8.6 Payment Procedure

### II.2.8.6.1 Payment in Foreign Currency and Sucres

The payments of the Sucres component of the statements presented by the Contractor will be made directly by CRM. The payments of the foreign currency component of the monthly statement can be made directly by CRM or in a commercial bank designated by the Contractor by means of requests that, for each case, will be made to the OECF by CRM. They can also be paid by means of letters of credit issued in accordance with the regulations of the Governments Agreement of Ecuador-OECF.

### II.2.8.6.2 Verification of Contribution Payments to the IESS

The indispensable requirement for payment of the monthly statements and also for any of the final payments to the Contractor, will be the presentation of the last certificate of the Ecuadorian Institute of Social Security, stating that the Contractor is up to date in his payment of the contributions corresponding to the employees. Besides, he will have to present a copy of the payroll sent to the IESS of the Contractor's personnel, national as well as foreign personnel.

### **II.2.8.6.3 Discrepancies in the Statements**

If there were discrepancies between the statements presented by the Contractor and the verifying of them that the Supervision makes, CRM will pay these statements according to his own liquidation and will immediately notify the Contractor of the discrepancies found. If the Contractor does not respond absolving such discrepancies, within fifteen (15) days following the notice date made by CRM requesting the clarification, it will be understood that the Contractor has accepted the payment made by CRM.

## **II.2.9 SUSPENSION OF THE WORKS AND CONTRACT CONCLUSION**

### **II.2.9.1 Suspension of Works**

#### **II.2.9.1.1 Suspensions ordered by the Supervision**

The Supervision could order the Contractor to suspend a part or the total of the Works at any time and for the period that he considers necessary, in the following cases:

- (1) When he considers that the safety measures adopted by the Contractor are not adequate or insufficient to protect the lives of the Project personnel and the inhabitant settled in the work areas or the integrity of the existing facilities infrastructure or parts of the Work already constructed.
- (2) Due to disorganization of the Contractor or negligence in the work conduction.
- (3) When the Contractor repeatedly did not obey the orders given by CRM and/or Supervision in accordance with the contractual dispositions.

The Supervision will make these notifications for suspension in writing and also indicating, as much as possible, the exact duration of the suspension.

These suspensions will not give rise to additional payments or indemnities to the Contractor, neither will be considered for term extension.

#### **II.2.9.1.2 Suspension due to Force Majeure or Act of God**

The Contractor will have to interrupt his activities temporarily when the Supervision orders it so, in presence of force majeure conditions or Acts of God, as contained in the Article 30 of the Civil Code and in Clause II.1.28 of the Draft Contract.

## **II.2.10 SANCTIONS**

### **II.2.10.1 General**

If the Contractor does not finish the Works within the terms established in the approved Execution Schedule or within the extensions that CRM had authorized, the Contractor will have to compensate CRM, for the losses due to such delays, with the payment of the amounts stipulated here. Therefore, it will be the responsibility of the Contractor to notify CRM in due time regarding occurrences of any event that to his judgment could delay the execution of the Works in relation with the approved Schedule or that could impede the completion and will have to indicate the measures that have to be adopted in order to prevent such delays. This information has to be given within ten (10) days following the event; otherwise CRM will not consider such fact and the Contractor will not be able to make any claim afterwards.

### **II.2.10.2 Fines for Delays in the Completion for the Works**

The Contractor will have to pay CRM, as indemnity agreed for damages and losses due to delay in the total completion of the Works and in accordance with the final date due of the established term in Clause II.1.6 of the Draft Contract, the amount equivalent to one third of one per thousand (1 o/oo) of the Contract value for each calendar day of delay in the hand over of the works, in relation with the date of final completion established in the Execution Schedule in force, without exceeding the five percent (5%) of the Contract value.

### **II.2.10.3 Fines for Partial Non-completion**

For delays in the fulfillment of the monthly production established in the work Execution Schedule in force, CRM will apply a fine equivalent to zero point zero three per thousand (0.03 o/oo) of the value of the work quantities not executed, for each calendar day of delay in the completion of the Schedule in force.

### **II.2.10.4 Fines for Other Reasons**

CRM will also be able to impose sanctions to the Contractor in the cases mentioned below. These sanctions will be applied administratively by the Executive Director of CRM and will oscillate at discretion of him, between Two hundred fifty thousand Suces (S/. 250,000.00) and one million five hundred thousand Suces (1,500,000.00) for each time or day, also at the criteria of the same Officer.

- (1) If the Contractor delays his payments to the personnel in a systematic manner.
- (2) If does not obey the orders or instructions from the Supervision.
- (3) When voluntarily obstaculizes and impedes the works of the other contractors, if any, or CRM's personnel.

- (4) By omission or negligence in demanding the fulfillment of the Industrial Safety Standards.
- (5) By non-fulfillment of the provisions or by incurring in prohibitions in a constant manner in the Contractual documents, without contradicting the imposing of other sanctions as contemplated in them.

#### II.2.10.5 Fines for No Presentation of Report

Without contradicting what is established in Sub-clause above, CRM could be able, by means of the Supervision, to suspend the payment for the monthly statements and/or any other statement, without originating a claim from the Contractor, when the Contractor does not comply with the due presentation of reports or up-to-date programs as stipulated in the Contract.

These suspensions will be lifted by the Supervision when the Contractor complies with his obligations.

### **II.2.11 INSPECTION AND WORKS RECEPTION**

#### II.2.11.1 Inspection

The Supervision can carry out at right time, inspections, controls, measurements or tests of the executed Works or under construction and also for the materials in use. Even when such inspection, controls, measurements or tests are directed towards verify that the works are being carried out in accordance with the Drawings and Specifications, and to verify the quality of the materials used, their execution will not exempt the Contractor from his responsibilities in this regard.

Staff members authorized by CRM, the Supervision, the State Comptrollers' Office and the OECF if any, will have permanent access to all the Works, whatever their status may be, being the responsibility of the Contractor to provide all kinds of facilities to carry out the inspections. With this purpose in mind, the Contractor will have to make available the equipment and material necessary for the inspection of the Work.

#### II.2.11.2 Acceptability Certificate

When the Works in progress reach a development stage, so that the execution of a later stage can not allow the inspection or the sample taking of the prior stage, the Contractor will have to, before continuing with the new stage, obtain the approval from the Supervision. The Supervision will carry out the requested verification and will give the authorization to continue with the works, if that is the case, indicating it so in the Orders Book or the Works Book as it may correspond. This approval will be called Acceptability Certificate. The expenses that may be incurred by the sample taking, inspection, sampling or tests in part of the Works that has been covered without having received the acceptance of the Supervision, including its total removal if that were the case, will be at the Contractor's expense.

### II.2.11.3 Defective or Non-authorized Works

The Contractor, when so requested by the Supervision, will investigate the cause of any defect or imperfection found in the Works carried out or under execution. If such defects or imperfections were of such a nature that exclude the responsibility of the Contractor, the Supervision will order the corrections that he may judge necessary and will provide protection to such activity according to what is stipulated in the Chapter VII of the Public Contracting Law. But if such defect or imperfection had origin in carelessness or negligence by the Contractor, in the use of materials not approved or as result of not abiding to the Drawings and Specifications corresponding to the instructions issued by the Supervision, the Supervision will order the corrections or modifications that there may be, by means of demolition and replacement of such Works, everything at the Contractor's expense.

It will be considered as non-authorized job the work carried out by the Contractor before receiving the instructions from the Supervision and/or approved Drawings for the Work in consideration or reference to place over the land the correct levels and alignments. For these reasons, they will be at the Contractor's expense the remedying or replacement that there may be; in the same manner the costs and time that may consume.

The Contractor could only have right to receive remuneration for the executed works in accordance with the Drawings and Specifications of this Contract as accepted by the Supervision; he will not have the right to additional compensation for the materials, labour and other expenses that may correspond to the execution of defective works not authorized or the removal and the availability of the remaining elements.

### II.2.11.4 Provisional Reception

In accordance with what is established in the Article 85 of the Public Contracting Law, CRM will carry out, at the Contractor's request, the Partial Provisional Receptions.

When the totality of the Works object of this were completed and they can function and be tested, at exclusive judgment of CRM, the corresponding Total Provisional Reception Certificate will be made.

Once the corresponding inspection for the total Works has been carried out at the Contractor's request, the parties will subscribe the Total Provisional Reception Certificate in which they will register: the final estimated amount of the Contract, the total of the payments made to the Contractor up to the date of the Certificate, the amount retained by reason of the Retention Fund and any other information that the Supervision may consider necessary to include. The term for the tests of twelve (12) months will start from the subscription date of the Total Provisional and Partial Reception Certificate.

### II.2.11.5 Maintenance of the Work from the Provisional Reception

CRM will take over the responsibility for the commissioning and keeping of the Works and also for the maintenance works from the Total Provisional Reception up to the date of the

**Final Reception.** These works will be undertaken at CRM's costs, however, the defects that are found due to the use of materials or labour not in accordance with the Contract or due to negligence by the Contractor to observe any express or implied obligation will run at account and expense of the Contractor. If within ten (10) days following the notice from the Supervision the Contractor has not been able to start the recovery works in the ordered manner, the Supervision could, without any notice, make the arrangements necessary for the satisfactory completion of the Works. The completion costs of the works will be deducted from the balance remaining to be paid that the Contractor may have in his favor.

#### II.2.11.6 Final Reception

Within twelve (12) months following the notice date from the Contractor regarding the completion of the Works as maximum, but not before having passed six (6) months counted from the Final Reception, real or presumptive, then the Final Reception, real or presumptive will take place, in accordance with the Articles 87 and 88 of the Public Contracting Law.

Having into account the actions detailed as follows, to carry out such Reception, this has to start with leisure for at least three (3) months.

Once the test period for the construction has passed, the Supervision will carry out a detailed inspection. If in the inspection that he makes during Final Reception a severe construction defect is found that was not observed during the Total Provisional Reception and that affects the behavior of the works, the whole process of Final Reception will be suspended until the damage is repaired at satisfaction of the Supervision. If the defect were not major in importance, at the judgment of the Supervision and could be repaired within the Final Reception process, then it can continue. The Final Reception Certificate will be signed when all and every one of the Works contracted are found executed and functioning at the entire satisfaction of the Supervision and within the term stipulated in the first paragraph.

#### II.2.11.7 Responsibility of the Members

The members of the Commission that subscribe the Reception Certificates will be civil and criminally responsible for what they subscribe in them.

#### **II.2.12 IMPORTS**

Regarding the importing of goods and payments that pertain to them, it will be subject to what is provided by the Law of Monetary Regime, Custom Law and Regulations of the Monetary Board.

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PART - II SECTION 3

SPECIAL CONDITIONS

## **PART II - SECTION 3**

### **SPECIAL CONDITIONS**

#### **II.3.1 INITIATION, EXECUTION AND COMPLETION OF THE WORKS**

The Contractor will have to start his construction activities within thirty (30) days following the issuing by CRM of the Commencement Order of the Works. Order that will be issued by CRM within three (3) days after the Advance Payment is made.

The Contractor shall execute all the Works in accordance with the Execution Schedule presented in his Tender, duly up-to-date and enlarged as provided for in Sub-clause II.2.5.3 of the General Dispositions. In any event, it will have to be elaborated obligatorily complying with the instructions that CRM had issued within the Execution Schedule.

The date for the latest completion of the total Works object of this Contract will have to be, in any case, 54 months counted from the date of the Commencement Order.

The Contractor will have to take into account that if the Works carried out were put in danger by the non-fulfillment of the goals specified in these Special Conditions, the repair and reconstruction of them, as well as all the damages that for this cause are incurred, will be of his sole responsibility at his own cost.

Once the Works are completed, the Contractor will have to proceed to a general cleaning of the areas as well as the camps and facilities. This final cleaning and any other job that does not interfere with the normal and continuous operation of the Project, could continue after the commissioning, but, it has to constitute a task before the corresponding Final Reception.

#### **II.3.2 AREA, CAMPS AND SERVICES**

##### **II.3.2.1 General**

This Clause describes the areas that will be supplied by CRM and the camps and special services that will be provided by the Contractor.

##### **II.3.2.1.1 Area available to the Contractor**

Once the Contract is signed, the Supervision and the Contractor will establish together the limits of the terrain required for the execution of the permanent Works, the work areas that will be made available to the Contractor as the construction of the Project advances, the areas available for the construction equipment and the areas required by the Contractor to install camps, offices and additional facilities. The Contractor will have to provide within the term of thirty (30) days following the Contract signing a complete general outline, providing the location of the facilities above mentioned.



### II.3.2.2 Supplemental Areas required by the Contractor

If the Contractor needs to use other areas of land from the ones provided, he will have to request it by writing to the Supervision with at least two (2) months in advance.

The use of terrain authorized by CRM, will be at no charge for the Contractor.

### II.3.2.3 Contractor's Organization over the Areas

The Contractor, based upon the information given in his tender, in relation to the manner in which he thinks to distribute the construction equipment that he proposes to use, will supply to CRM a layout of the organization of the various work areas.

This layout will indicate the form in which the different work areas, construction roads that will join them, the circulation schemes, the unloading and material storage areas corresponding to the equipment provided and the secondary installations such as electricity, water, sewer, communications, etc.

This layout will have to be approved by the Supervision in the term of eight (8) days after his presentation before the commencement of the corresponding works and will be brought up-to-date during the execution of them, each time there is an important change regarding the organization and manner that affect the construction areas.

The Supervision could be able to, at any time, ask the Contractor a layout or map in which appears the facilities, access roads and circulation of vehicles and the form in which these elements could affect the agricultural property nearby, road used by proprietors, existing irrigation and drainage canals or any other installation or construction. The Contractor will have the obligation to provide to the Supervision besides the map or layout any other additional information that he requests.

The Supervision can demand the Contractor the changes that he may consider necessary in order to minimize, as much as possible, the damages or losses to the farmers of the area due to the execution of the Works. In general, the Supervision will have to try to get an agreement with the Contractor to make these changes; if that does not occur, the Contractor will have to abide by the Supervision's instructions, no appeal to such decision can be made. The fulfillment will not give any right to compensations or indemnities of any kind.

If after there is an agreement or by decision of the Supervision there are still damages that have to be indemnified, these indemnities will be at charge of CRM. In the case that the Contractor does not obey the instructions given by the Supervision; all expenses and responsibility will solely be borne by him.

### II.3.2.4 Exploitation Area for Borrow Materials and Concrete Aggregates

CRM will hand over to the Contractor the borrow areas provided for execution of the Works indicated in the Drawings and Specifications.

If for his convenience the Contractor desires to use other additional borrow areas and different from those studied and proposed by CRM, he will have to make the necessary investigations at his own cost and under his responsibility and justify, to CRM, that the new borrow areas that he proposes are more favorable in quality and quantity than those provided initially. The Contractor will not have any right to an extension of the terms or an additional payment for the study or the exploitation of new borrows areas.

In general, the Contractor could not be able to start the construction of any embankment, gravel pavement, concrete, filters, etc., without before having got the Supervision's approval regarding the specific borrow areas from where the Contractor proposes to get the materials required. This authorization must be requested as much in advance as possible, but, not less than thirty (30) days in advance. The request must be accompanied with all the technical information (test, etc.), at his cost, that the Supervision could solve based upon the information submitted by the Contractor and, if the Supervision considers it necessary, he will carry out his own research to solve within the period of thirty (30) days following the submittal of the request. This term could be extended if technical reasons demand new test or laboratory testing.

The Contractor as well as the Supervision, will have to cooperate to reduce to minimum the elapsed time between the presentation of a request and the judgment from the Supervision.

The time elapsed between the presentation of the request and the decision of the Supervision, within the terms above stipulated, will not give the Contractor any right to demand modifications in the Drawings or unit prices or work programs or to claim compensation of any kind.

#### II.3.2.5 Final Arrangement of the Areas used by the Contractor

At the completion of the Works, the Contractor will proceed to arrange all the areas used by him, in accordance with the instructions given by the Supervision. This arrangement will include the construction areas, the areas where there were temporary facilities, camps and different type of equipment, the temporary roads and the borrow areas.

The Contractor will keep watch that it doesn't remain any unstable slopes, installation foundations that present danger in case of work afterwards in these areas or insecurity in any other element in relation with the works that could be developed afterwards.

The Supervision will not carry out the Final Reception of the Works until the Contractor had executed this final arrangement at the satisfaction of CRM.

#### II.3.2.6 Supplementary Construction Roads required by the Contractor

The Supplementary roads to the existing ones that the Contractor needs for the execution of the Works, will be constructed and maintained by him at his own cost. The Contractor will have to present to the Supervision a scheme of all the roads that he wants to construct, before initiating the works according to what is indicated in Sub-clause II.3.2.3. This

scheme will have to indicate the width proposed and the general dimensions. The Contractor will have to abide by the observations of the Supervision and introduce the changes that he may propose in order to reduce the interferences to a minimum. This scheme can be actualized during the execution of the Works.

The Contractor will have to avoid, by all means in his reach, that his vehicles and equipment or the ones from his Sub-contractors, causing damage to the main roads, in the access roads, his bridges and other existing works.

The Contractor shall maintain in good condition the access roads during the whole execution of the Works.

Once the construction has ended up, the Contractor will have to eliminate any vestige from the construction roads without use, in accordance with the requirements of environmental protection.

The existing public roads in the Project area, that the Contractor is going to use for transport, are of his free use; but, he will become subject to the regulations and limitations regarding loads, imposed by the Ministry of Public Works and Communications. Besides, he will have to clean the pavement and to eliminate waste and any obstacle to the transit that is originated by the transport activities of his vehicles in these roads.

#### II.3.2.7 Camps

The Contractor will have to insure to his personnel the necessary means for their housing, be it by means of construction of camps or by means renting of rooms in a town nearby or by means of other acceptable way to the Supervision. For such effect, the Contractor will present the Supervision the necessary information required to show the manner that he proposes to give facilities for housing to his personnel as well as the other services so to assure them an acceptable living.

When camps are constructed, these will have to be provided with potable water service, electricity, cleaning, sewers, drainage, sport and recreational areas. The Supervision, before issuing his approval, will make sure the housing, installations and public services allow acceptable living conditions.

The Contractor will have to provide mess halls for the feeding of all his personnel including his Sub-contractors, with an acceptable quality in criteria of the Supervisor.

All these facilities, once the Works are concluded, will be handed over to CRM, if CRM decide to do so.

#### II.3.2.8 Community Services provided by the Contractor

The Contractor will have to provide and operate in his camp, by himself or by third parties, the first aid services that will be available to all the personnel of the Contractor and the Sub-

contractors as well as the personnel from CRM that is assigned to the Project and the Supervision.

The first aid service will operate with the basic personnel and equipment and the medicine required. This first aid office will be attended by the medical and paramedic personnel specified by Law, during the hours open to the personnel as it will be established.

The doctors can be called out of consult hours in cases of emergencies. A complete ambulance service fully equipped has to be made available near the first aid office to transport the more severe cases to the hospitals or to attend the calls from the work fronts.

By means of spread information and the preventive diagnostic, the first aid facility will labor with the programs of Public Health and Illness Control, which could be a problem for the personnel in charge of the construction and operation. The Supervision will orientated the mentioned collaboration.

### **II.3.3 CONSTRUCTION ACTIVITIES**

#### **II.3.3.1 Works Laying Out**

##### **II.3.3.1.1 Works Details Laying Out**

Specifically, the Supervision will hand over to the Contractor a basic red of benchmarks duly referenced and described for the vertical and horizontal control, from which the Contractor will have to lay out and level all the structures. It will be the obligation of the Contractor to check and verify these references and if he finds differences, he must communicate to the Supervision immediately, to correct the problem; in any case, the Contractor will be responsible of the accuracy of the data given to the benchmark that the Supervision hands over.

The Contractor will lay out his work from the base lines and from the benchmark supplied and located by the Supervision and will be responsible for the measurings that he makes from them. The location and disposition of all structures are shown in the Drawings.

The Contractor will have to provide, at his own cost, all the stakes, platforms, equipment, tools and labor that can be necessary to lay out any part of the work from the base lines and levels established by the Supervision. It will be the Contractor's responsibility the maintenance and conservation of the stakes, benchmarks and any other reference located by the Supervision, until they are necessary no longer. The Supervision will demand the Contractor the restitution of them when they get damaged or destroyed. The Supervision will use the such reference points for his control works at any time and they have to be in good condition.

As general rule, the Contractor will lay out the routes of tunnel and access roads by means of the stakes every 20 m, adding stakes at closer distance when the Supervision considers it necessary. This staking will be made through the longitudinal axis of the routes or in the

manner that can be agreed between the Contractor and the Supervision. This staking will constitute the base for getting the transversal profiles that will serve as reference of the sections and for calculation of volume for payment purposes.

In general, for the minor work, the Supervision will hand over to the Contractor the additional references that he may think necessary for a better execution. The Contractor could be able to place these references by himself as long as requesting to the Supervision for the corresponding approval, before the initiation of the work.

In conclusion, no Work can be initiated without having first got the approval from the Supervision for the laying out made by the Contractor. In any case the Contractor shall be responsible for the correct execution of the Works.

#### **II.3.3.1.2 Laying Out and Leveling Control**

The Supervision could be able to execute periodically control of the laying out and leveling of the works. For this work, the Contractor will submit to the Supervision the topographic calculations that he had carried out.

If errors are found, a final check up will be made by the Contractor and the Supervision. If the error is confirmed, the Contractor will have to correct it as soon as possible. The tolerance will vary according to the importance and the type of the works considered; such tolerance will be determined by the Supervision in accordance with the usual technical standards.

#### **II.3.3.1.3 Revision before the Pouring of Concrete**

The Contractor will not pour any concrete before the Supervision had verified that the alignments, slopes and dimensions are within the tolerances indicated in the Specifications. The work program of the Contractor will have to provide enough time for this checking. The checking results will be reported in writing and registered in the Works Book.

#### **II.3.3.2 Mobilization and Repair Works**

##### **II.3.3.2.1 General**

The Contractor will develop his mobilization program in accordance with the activities program provided by him in his Tender and brought up-to-date afterwards, in accordance with what is set in Sub-clause II.2.5.3 of the General Dispositions of these documents.

This program will include all the facilities that the Contractor may require; construction equipment, transportation to the Project site of all his key personnel, foreign and local, and the access roads and areas of additional services.

### **II.3.3.3 Services in the Construction Areas**

#### **II.3.3.3.1 Notices and Signs**

The notices and signs that CRM resolves to place with information about the Project will be designed by the Supervision and will be furnished and installed by the Contractor at the sites were indicated. The maintenance of these notices will be done by the Contractor.

The Contractor could, with previous approval from CRM, install and maintain at his own cost other signs that may indicate his participation in the Project.

#### **II.3.3.3.2 Scaffolding**

The scaffolding used by the Contractor will be of his own design and responsibility. They must be of verified quality and of easy handling. The Contractor shall periodically control their stability and condition, so as to avoid any accident. The Supervision could demand changes in the scaffolding if at his criteria these do not offer enough safety. The Contractor will have to make the demanded changes at his own cost.

#### **II.3.3.3.3 Illumination at the Work Sites**

The illumination in all areas and work fronts shall have to be adequate, at the criteria of the Supervision, in order to allow the correct execution and inspecting of the works.

#### **II.3.3.3.4 Communications in the Work Areas**

The Contractor, with due approval from JETEL and MOP, will install a complete communications system between the different work areas. This system will have telephone lines and frequencies to communicate the important fronts and main places of the Works, including the Supervision's Offices. The system will be complemented by radio communications, with the use of fixed and portable equipment.

The Contractor will control on a daily basis that all communications between the several work sites are functioning correctly.

#### **II.3.3.3.5 Safety in the Construction Areas.**

It has to be considered that in the work area there will be farming population with their goods. The Contractor will have to adopt the maximum precautions to avoid damages and accidents of his personnel as well as of the existing population.

In all the places where is required, and in particular in the area where explosives are used, the Contractor will place guards and the flag bearers required to warn the public of the risks that could occur during the execution of the Works.

The Contractor will meet periodically with the Supervision to discuss the safety program and to reduce at a minimum the damages to the property of the farmers. The object of these meetings will be to discuss the problems that had been detected and to decide about the actions that have to be taken by the Contractor in order to remedy them.

The Contractor will notify immediately to the Supervision of any accident occurred to any worker of the Project or to people strange to it. He will also communicate, before forty eight (48) hours have passed, all the accidents that caused wounds to people or damages to property or materials, supply or equipment and all the cases of sickness due to the work.

The Contractor will present, in the work meetings to be held with the Supervision, the results of his investigations in each accident or conflict. Such information will have the objective to help in the accident prevention in the future and to solve the possible conflicts that could occur afterwards.

The Contractor will provide the first aid services in the main work areas.

#### **II.3.3.3.6 Removal of Temporary Facilities**

At the completion of the Works, the Contractor will have to withdraw from the Project area all his temporary facilities, except the ones that CRM has excluded.

The Supervision will control, that the Contractor does not abandon in the Project area used equipment or facilities of no use that could cause eventual inconveniences.

#### **II.3.3.4 Protection against the Waters**

##### **II.3.3.4.1 Protection against Floods from the Reservoir and/or Rivers**

The Contractor will be solely responsible for the protection of the works he construct, against floods from reservoirs, rivers, streams, rainfall, except in the case of force majeure or Acts of God.

The Contractor will design the protection works that are necessary and will submit these designs to the approval of the Supervision, without this meaning being exempt from any of his responsibilities.

The protection works will also include the protection against the direct infiltration from the river to the surrounding excavations that there might be. There will not be any extraordinary payments for this works, which will be understood to be included in the unit prices and/or lump sum prices of the affected items.

### **II.3.3.5 Materials provided by the Contractor**

#### **II.3.3.5.1 General**

The Contractor will have to supply all the necessary materials for the completion of the Works.

All the materials will have to be new and shall abide to the Technical Specifications.

The price of each item in the Bill of Quantities that include the material supply, will include the supply, transport, storage and corresponding handling costs. When the supply of any material that the Contractor requires does not appear as an independent item in the Bill of Quantities, it will be understood that the costs of the supply, transport, storage and handling are included in the price proposed for the work in which such material is required.

#### **II.3.3.5.2 Quality**

The Contractor shall provide the materials of the type and quality specified in the Specifications. When the materials specified can not be obtained, the Contractor could substitute them with other similar area after previous authorization of the Supervision is obtained. Such circumstance will not mean a change in the price tendered.

#### **II.3.3.5.3 Inspection**

The permanent materials and equipment of the Project will be subject to the final inspection of the Supervision at the site of incorporation to the Works.

The inspection of the materials and equipment or the lack of inspection will not exempt the Contractor from his obligations in the supply of the specific materials and equipment.

The Supervision could be able to reject those permanent materials or equipment, if at his judgment such materials do not comply with the Technical Specifications and could demand the Contractor the evidences that may consider convenient and that will allow the Supervision to qualify them as suitable, including new tests.

#### **II.3.3.5.4 Material Weight**

The weight of the materials, metallic elements, metal piping, reinforcement steel bars and similar articles, whose payment is made based upon the weight, will be determined by the Supervision.

The Supervision will take his determination in the most practical manner he may find, with base in the loading weights, manufacturing weights, standard weight, weight catalogs, estimate weight or similar information. The payments will be made based upon the net weights.



### **II.3.3.5.5 Standards and Specifications of Current Reference**

The materials that had been qualified with reference to standard specifications, will comply with the latest edition or with the most recent revision of them at the date of the Tender presentation.

### **II.3.4 FINANCIAL ENTITIES PROVISIONS**

#### **II.3.4.1 General**

The Water Transbasin Project for Chone-Poitoviejo River Basins will be financed by the Loan granted by the Overseas Economic Cooperation Fund (OECF).

#### **II.3.4.2 Origin and Source Country**

The reimbursement that the OECF makes with charge to the requests made by CRM by reason of this Contract, will be subject in all aspects to the terms and conditions of the Loan Agreement above mentioned.

#### **II.3.4.3 Other Provisions**

##### **II.3.4.3.1 Awarding of the Contract**

The awarding of this Tendering as well as the modifications to the Contract, object of this Tendering, or the Drawings or Specifications and the programs originally approved, will be subject to the consent of the OECF.

##### **II.3.4.3.2 Inspection of the Works**

According to the Loan Agreement that finances the Project, the authorized representatives of the OECF will have the right to inspect the Works at any given time and the Contractor will have the obligation to grant the information that they may reasonably request.

### **II.3.5 BILL OF QUANTITIES AND UNIT PRICES**

The Forms of the Bill of Quantities and Unit Prices will constitute the base of tender and will compulsorily be prepared in its entirety by the Tenderer for comparison purpose of the Tenders.

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PART - III

**PRINCIPLES AND CRITERIA FOR  
THE EVALUATION OF THE TENDERS**



## PART III

### PRINCIPLES AND CRITERIA FOR THE EVALUATION OF THE TENDERS

CRM will proceed to carry out a legal, technical and economic analysis of the Tenders that will be valued, in accordance with the percentages established in these evaluation criteria, that are ordered in base to the percentage attained.

#### III.1 FULFILLMENT IN THE DOCUMENTS PRESENTATION

- (1) Before proceeding with the detailed evaluation, the submitted documentation will be examined, to determine that it is according to and complies with the Tender Documents.
- (2) If the Tenderer is not adjusted or if he does not comply with the requirements indicated in Item (1) above, his Tender will be rejected.

#### III.2 DETAILED ANALYSIS - EVALUATION PARAMETERS

For the Tender evaluation, the following break down aspects have been considered:

- |                       |     |
|-----------------------|-----|
| (1) Technical Tender: | 50% |
| (2) Economic Tender:  | 50% |

The methodology of evaluation of the Tender, for each one of the indicated aspects, is detailed as follows:

##### III.2.1 TECHNICAL TENDER

- |  |           |
|--|-----------|
| (1) Project Execution:                 | 20%       |
| (2) Equipment and Auxiliary Services:  | 15%       |
| (3) Schedule and Period of Completion: | 13%       |
| (4) Miscellaneous:                     | <u>2%</u> |
| TOTAL                                  | 50%       |

##### III.2.1.1 Project Execution: 20%

- |                           |    |
|---------------------------|----|
| (1) Procedure:            | 9% |
| (a) Constructive criteria | 2% |

(b) Control	1%
(c) Planning	1%
(d) Acquisitions	0.5%
(e) Inspection	0.5%
(f) Delivery	0.5%
(g) Transport and unloading	0.5%
(h) Quality control	1.0%
(i) Usage control of materials	0.25%
(j) Construction	1.0%
(k) Measurements of physical progress	0.25%
(l) Cost and schedule control	0.50%
(2) Organization and Direction of the Work	11%
(a) Organization of headquarters	1%
(b) Organization in Camp	5%
(c) Organic chart of camp	2%
(d) Organic chart of security	1%
(e) Experience of main personnel	1%
(f) Control methods of subcontracted works and field works	0.5%
(g) Subcontractors' experience	0.5%

**III.2.1.2 Equipment and Auxiliary Services: 15%**

(1) Equipment and Materials to be incorporated to the Works:	4%
(a) Maintenance and operation facilities	1%

**Package 1**

(b)	Replacement facilities of equipment	2%	
(c)	Affinity with the existing local equipment	0.5%	
(d)	Training	0.5%	
(2)	Construction Equipment and Tools: (not incorporated to the Works)		10%
(a)	Heavy construction equipment	2%	
(b)	Light construction equipment	1%	
(c)	Specialized equipment	2%	
(d)	Equipment properties	5%	
(3)	Temporary Constructions:		1%
(a)	Temporary construction facilities	0.5%	
(b)	Temporary housing facilities	0.5%	
(c)	Safety	-	
(d)	Electric supply	-	
(e)	Workshops	-	
(f)	Water supply	-	
III.2.1.3	Schedule and Period of Completion:		13%
(1)	Execution term - shorter term, larger value:	5%	
(a)	Correspondence verification of the schedules, with the equipment list, personnel, etc., to be used.		
(b)	Reasonability and duration tests of the activities, programmed progress, investment flow, etc., are considered.		
(c)	Compatibility analysis among the several schedules are also made.		

(2)	Among others, the following will be considered:	8%
(a)	Manufacturing and supply	1%
(b)	Assembly and tests	1%
(c)	Equipment use	1%
(d)	Personnel use	1%
(e)	Starting operation	1%
(f)	Execution of Works valued	1%
(g)	Training	1%
(h)	Critical route	1%
III.2.1.4	Miscellaneous:	2%
(1)	The aspects to be considered that, contributing to a better development of the Project, have not been indicated in the tendering documents, such as:	
(a)	Technical assistance from suppliers and subcontractors	1%
(b)	Maintenance and service equipment	1%
III.2.2	<u>ECONOMIC TENDER</u>	
(1)	Economic:	40%
(2)	Disbursement Schedule:	10%
	<b>TOTAL</b>	<b>50%</b>

It is considered that the total cost for the Tender using the Sucre value is as referential currency, taking into account the exchange rate in force on the closing date of this Tender in the Intervention Market, at the selling rate of the Banco Central del Ecuador.

III.2.2.1 Economic: 40%

The best punctuation will be given to the best Tender, in terms of net present value, and to the other a proportional punctuation in relation to the best.

Package 1

III.2.2.2 Disbursement Schedule: 10%

Those disbursement schedules will be valued comparatively, in local currency as well as in foreign currency, so that the best use of the resources is assured.

### III.3 TENDER EVALUATION

For the Tender evaluation, it will be considered what is indicated in this instructive.

#### III.3.1 REVIEW OF UNIT AND LUMP SUM PRICES

The unit prices and the lump sum prices, as well as the quantities to be executed and the total cost proposed for the different items of each Tender, will be checked in order to correct arithmetical errors, if any, for this purpose the procedure will be as follows:

In case that the product of a unit price multiplied by the estimated quantity is not equal to the amount indicated in the Bill of Quantities, it will be understood that the unit price is correct and, the amount acceptable to CRM will be the product of the unit prices multiplied by the estimated quantity.

In case of difference between the Bill of Quantities listing, and the amount that appears in the Breakdown Form for Unit Prices, the price that appears in the Breakdown Form of Unit Prices will be considered correct.

#### III.3.2 CONVERSION TO COMMON CURRENCY

In order to facilitate the evaluation of the Tenders, the Technical Commission will convert all the values of the Tenders to Sucres, using the official selling exchange rate in the Intervention Market at the Banco Central del Ecuador, in force at the closing date of the Tender presentation.

#### III.3.3 TENDER EVALUATION AND COMPARISON

Once the Technical Commission had determined that the Tenders are in accordance with the Tender Documents, it will proceed to the evaluation and comparison.

The analysis of the Tenders will consist of:

- (1) Checking each one of the schedules demanded, verifying its correspondence with the equipment, personnel listing, etc.,
- (2) Reasonability test for each one of the schedules in performance, sequence and activity duration, programmed progress, investment flow terms ,etc.,
- (3) Compatibility analysis among the several schedules,



- (4) Proposed construction methodology analysis in terms of technical feasibility, satisfying the construction and safety specifications of the Works,
- (5) Verification of the concordance between the proposed construction methodology and the several schedules, and
- (6) Congruency and reasonability analysis of the unit prices and lump sum prices and the total amount of the Tender.

#### **III.4 FINAL REPORT**

In function of the aspects expressed before, the Technical Commission will elaborate a final evaluation report of the Tenders presented, in which it will be the analysis carried out, accompanied of the calculation result and comparison charts of the Tenders, and will include the observations that allow the Contracting Committee to have the necessary information available for awarding the Contract to the Tenderer that had satisfactorily complied with all the requirements stipulated in the Tender Documents and Technical Specifications, and that had been evaluated as the Lowest Tender.

#### **III.5 CONTRACT AWARDING**

The Secretary of the Contracting Committee of CRM, within the following working day from the reception of the report presented by the Technical Commission, will make it known to the Contracting Committee which will check it and could ask for clarifications, to deepen or to revise the analysis, in the maximum term determined by them for such effect. When the Committee considers the report completed, it will let the Secretary notify and deliver to each of the Tenderers, in accordance with the Law, the Tenderers, within the term of five (5) days could formulate in writing the clarifications exclusively related to their Tender; the Contracting Committee will receive and valorize the observations formulated by the Tenderers. If it considers necessary, it can ask for the opinion of the Technical Commission. Before adopting a final decision about the awarding, the Contracting Committee of CRM will send to the OECF a copy of such report, together with the recommendations for the awarding. Once the OECF gives his favorable judgment, the Contracting Committee will make his decision known to the Tenderers in the terms established by Law.

VOLUME - I

PART - IV

**COMMITMENT, TRANSFER AND REIMBURSEMENT  
PROCEDURES OF OECF**



## PART IV

### COMMITMENT, TRANSFER AND REIMBURSEMENT PROCEDURES OF OECF

#### EXTRACTED FROM OECF'S GUIDELINE

#### COMMITMENT PROCEDURE

1. Payment for import of goods and services is often arranged under a commercial letter of credit, where under a commercial bank operating in the Supplier's country makes payment to the supplier against documents specified in the letter of credit and reimburses itself from funds made available by the importer through his bank. When such payment to the Supplier is eligible for financing under the Fund's Loan, the Purchaser may provide in the letter of credit that the paying bank will reimburse itself from an authorized Japanese foreign exchange bank in Tokyo (hereinafter referred to as "the Japanese Bank"). The Japanese Bank shall obtain the funds for reimbursement from the Fund under the assurance by the Fund. Such assurance, whenever provided, takes the form of a letter of commitment from the Fund to the Japanese Bank (hereinafter referred to as "the Letter of Commitment") whereby the Fund undertakes to disburse, on certain conditions, the amount to be reimbursed by the Japanese Bank under and in accordance with the specified letter of credit.
2.
  - (1) The Borrower or its designated authority shall conclude an agreement on a letter of credit with the Japanese Bank immediately after signing of the Loan Agreement.
  - (2) After receipt of the Notice as mentioned in Section 3.02 of General Terms and Conditions of Loan Agreement, the Borrower or its designated authority shall apply, for itself or on behalf of the Borrower, to the Japanese Bank for opening in favour of the Supplier an irrevocable letter of credit (hereinafter referred to as "L/C") by presenting the Application for Irrevocable Letter of Credit in duplicate in the Form OECF - COP attached hereto.

Note: The Borrower or its designated Authority shall furnish the Fund with the specimen signatures of the persons authorized to execute the Application for Irrevocable Letter of Credit.

The Japanese Bank shall request the Fund to issue the Letter of Commitment by submitting a copy of such application.

When the Fund finds such Application in order and in conformity with the provisions of the Loan Agreement and the terms of the Contract, the Fund shall issue to the Japanese Bank the Letter of Commitment in accordance with the attached Form OECF - LOC.

(3) Upon receipt of the Letter of Commitment, the Japanese Bank shall issue an L/C addressed to the Supplier substantially in accordance with the attached Form OECF - LC1 for the goods and OECF - LC2 for the services respectively.

(4) When a bank makes payment to the Supplier pursuant to the said L/C, the paying bank will reimburse itself from the Japanese Bank.

Upon receipt of request for such reimbursement, the Japanese Bank shall present to the Fund the Request for Disbursement in the Form OECF - RFD. The Fund shall immediately after examination thereof, make disbursement of the requested amount to the Japanese Bank under the provisions of the Letter of Commitment.

3. All banking charges or fees under the L/C are for the Borrower's account.

4. Claims and disputes in connection with the L/C shall be settled among the parties concerned and such claims or disputes shall not exempt the Borrower from any obligation incurred under the Loan Agreement concerned.

Application for Irrevocable Letter of Credit

To: \_\_\_\_\_  
(Name and address  
of Japanese Bank)

Date: \_\_\_\_\_  
Appl. Serial No.: \_\_\_\_\_

Gentlemen:

(1) Pursuant to the Loan Agreement No. \_\_\_\_\_ dated \_\_\_\_\_ between THE OVERSEAS ECONOMIC COOPERATION FUND and \_\_\_\_\_ (hereinafter referred to as "the Loan Agreement") and to the Agreement on a letter of credit concerning the Loan Agreement, No. \_\_\_\_\_ dated \_\_\_\_\_, between \_\_\_\_\_ and \_\_\_\_\_,  
(Japanese Bank) (Borrower or its designated authority)

the undersigned hereby, on behalf of the Borrower, request you to issue an Irrevocable Letter of Credit detailed below and to advise the undermentioned beneficiary of the issuing of the said Credit/by\* cable(L/T, \_\_\_\_\_)/airmail through your correspondents ( \_\_\_\_\_ )\* with/without adding their confirmation.

Contract: No. \_\_\_\_\_  
Date \_\_\_\_\_

Beneficiary's name and address \_\_\_\_\_  
(description of the contents of the Letter of Credit concerned)

- (2) The undersigned certifies to THE OVERSEAS ECONOMIC COOPERATION FUND (hereinafter sometimes referred to as "the Fund") that:
  - (a) the amount of this Application represents expenditures to be made for the purposes specified in the Loan Agreement;
  - (b) the undersigned has not previously applied for disbursement under the Loan Agreement for the purpose of meeting such expenditures and has not obtained nor will obtain funds for such purpose out of the proceeds of any other loan, credit or grant available to the Borrower;
  - (c) the concerned goods and services have been procured in accordance with the applicable procurement procedures agreed with the Fund pursuant to the Loan

\* Please delete inapplicable version

- (c) Agreement and the cost and terms of purchase thereof are reasonable;
- (d) the said goods and services are to be supplied by the above beneficiary and have been or are to be produced in the country eligible for the Fund's loan;
- (e) as of the date of this Application there is no existing default under the Loan Agreement, nor, to the best of the undersigned's knowledge and belief, under the Guarantee, if any.
- (3) Please furnish a second copy of this Application to the Fund and request the Fund to issue the Letter of Commitment as mentioned in the Commitment Procedure under the Loan Agreement. The above mentioned Credit shall be issued by only after receipt of the said Letter of Commitment.

This Application consists of \_\_\_\_\_ page(s).  
(number)

Very truly yours

\_\_\_\_\_  
(Name of the Borrower)

\_\_\_\_\_  
(Authorized Signature)

Package 1

Letter of Commitment

To: \_\_\_\_\_ Date: \_\_\_\_\_  
Commitment No.: \_\_\_\_\_

(Name and address of  
Japanese Bank)

Re: Your L/C \_\_\_\_\_,  
Our Loan No. \_\_\_\_\_ under  
Loan Agreement dated \_\_\_\_\_  
between THE OVERSEAS ECONOMIC COOPERATION  
FUND and \_\_\_\_\_

Gentlemen:

We hereby irrevocably undertake to reimburse you for a sum or sums not exceeding ¥ \_\_\_\_\_ against the Request for Disbursement accompanied by a copy of the draft(s) drawn by the beneficiary, on condition that the date of reimbursement shall be notified us in writing at least two (2) business days advance.

This Letter of Commitment shall expire on \_\_\_\_\_.

It is further understood that in reimbursing you pursuant to this Letter of Commitment, we shall in no way liable or responsible for the acts or omissions of the issuing bank, the negotiating bank, the beneficiary and/or any other parties concerned with the captioned Letter of Credit in connection with the issuance, negotiation, payments thereof or any other matters connected therewith.

Very truly yours,

\_\_\_\_\_  
(Authorized Signature)



Irrevocable Letter of Credit

To: \_\_\_\_\_  
(Name and address of  
Supplier)

Date:  
This Letter of Credit has been issued  
pursuant to Loan Agreement  
No. \_\_\_\_\_, dated \_\_\_\_\_,  
between (Borrower) and THE  
OVERSEAS ECONOMIC COOP-  
ERATION FUND.

Dear Sirs,

We advise you that we have opened our irrevocable credit No. \_\_\_\_ in your favor for account of \_\_\_\_\_ for the sum or sums not exceeding and aggregate amount of ¥ \_\_\_\_\_ (Say yen \_\_\_\_\_) available by your drafts at sight for full invoice value drawn on us. To be accompanied by the following documents:

Signed commercial invoice in \_\_\_\_\_ Full set of clean on board ocean bills of lading made out to order and blank endorsed and marked "Freight \_\_\_\_\_" and "Notify \_\_\_\_\_", and Other documents.

evidencing shipment of (brief description of goods to be shipped referring to Contract No. \_\_\_\_\_ (if any)

from \_\_\_\_\_ to \_\_\_\_\_

Partial shipments are permitted. Transshipment is permitted.

Bills of lading must be dated not later than \_\_\_\_\_

Drafts must be presented not later than \_\_\_\_\_

All drafts and documents under this credit must be marked "Drawn under \_\_\_\_\_ (irrevocable credit No. \_\_\_\_\_, dated \_\_\_\_\_) and Import Reference No. (s) \_\_\_\_\_ (if any)".

This credit is not transferable.

We hereby undertake that all drafts drawn under and in compliance with the terms of the credit shall be duly honored on due presentation and delivery of documents to the drawee.

Unless otherwise expressly stated, this credit is subject to "Uniform Custom and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce Publication No. 400.

**Special Instructions to the Negotiating Bank:**

1. After obtaining the reimbursement for our payment from THE OVERSEAS ECONOMIC COOPERATION FUND in accordance with the provisions of the Letter of Commitment issued thereby under the above mentioned Loan Agreement, we undertake to remit the amount of the drafts in accordance with the instructions issued by the negotiating bank.
2. The negotiating bank must forward the drafts and one complete set of documents to us together with the certificate stating that the remaining documents have to be airmailed direct to \_\_\_\_\_.
3. All banking charges under this credit are for account of (the Borrower) under the said Loan Agreement.

Yours faithfully

\_\_\_\_\_  
(Name of the Japanese Bank)

\_\_\_\_\_  
(Authorized Signature)

**PAYMENT TERMS**

The payment terms constitutes an integral part of our Letter of Credit No. \_\_\_\_\_.

**I. Initial Payment**

Amount : ¥ \_\_\_\_\_  
being \_\_\_\_\_ % of the total contract price.

Required documents:  
Latest presentation date:

**II. Intermediate Payment (if any)**

Amount : ¥ \_\_\_\_\_  
being \_\_\_\_\_ % of the total contract price.

Required documents:  
Latest presentation date:

**III. Payment against Shipping Documents**

Amount : ¥ \_\_\_\_\_  
being \_\_\_\_\_ % of the total contract price.

Note: This attached sheet is not required in case of full payment against shipping documents.

Irrevocable Letter of Credit

To: \_\_\_\_\_  
(Name and address of  
Supplier)

Date: \_\_\_\_\_  
This Letter of Credit has been issued  
pursuant to Loan Agreement  
No. \_\_\_\_\_, dated \_\_\_\_\_,  
between (Borrower) and THE  
OVERSEAS ECONOMIC COOP-  
ERATION FUND.

Dear Sirs,

We advise you that we have opened our irrevocable credit No. \_\_\_\_\_ in your favor for account of \_\_\_\_\_ for sum or sums not exceeding an aggregate amount of ¥ \_\_\_\_\_ (Say yen \_\_\_\_\_) available by beneficiary's drafts at sight for full Statement value drawn on us.

To be accompanied by the following documents in accordance with the Payment Schedule attached hereto, concerning (Contract No. \_\_\_\_\_ with regard to \_\_\_\_\_ Project).  
Drafts must be presented for negotiation not later than \_\_\_\_\_.

All drafts and documents must be marked "Drawn under irrevocable credit No. \_\_\_\_\_ Dated \_\_\_\_\_".

This credit is non transferable.

We hereby undertake that all drafts drawn under and in compliance with the terms of the credit shall be duly honored on due presentation and delivery of documents to the drawee.

Unless otherwise expressly stated, this credit is subject to "Uniform Custom and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce Publication No. 400".

Special Instructions to the Negotiating Bank:

1. After receipt of the original Statement of Performance issued by (Borrower or its designated authority) in accordance with the form attached hereto, payment(s) under this credit must be made in accordance with the Payment Schedule stipulated in the sheet attached hereto. In case of the initial payments, the beneficiary's Statement is required instead of the above mentioned Statement of Performance.



**PAYMENT SCHEDULE**

This payment schedule constitutes an integral part of our Letter of Credit No. \_\_\_\_\_.

**I. Initial Payment**

Amount : ¥ \_\_\_\_\_  
being \_\_\_\_\_ % of the total contract price.

Required documents: Beneficiary's Statement

Latest presentation date:

**II. Progress Payment**

Aggregate Amount : ¥ \_\_\_\_\_  
being \_\_\_\_\_ % of the total contract price to be  
paid as follows:

	<u>Amount due</u>	<u>Latest presentation date</u>
1st. Installment:	_____	_____
2nd Installment:	_____	_____

Required documents: A copy of Statement of Performance issued by (Borrower or its designated authority), a form of which is attached hereto.

Statement of Performance

Date:

Ref. No.:

To: \_\_\_\_\_

(Name and address of Supplier)

Re.: Letter of Credit No. \_\_\_\_ dated \_\_\_\_ issued  
by \_\_\_\_\_  
for ¥ \_\_\_\_\_ in favor  
of \_\_\_\_\_  
\_\_\_\_\_ concerning \_\_\_\_\_ (Project)  
under Loan Agreement No. \_\_\_\_\_

I, the undersigned, representing (Borrower), hereby issue a Statement of Performance to entitle \_\_\_\_\_ to receive the sum of ¥ \_\_\_\_\_ (Yen \_\_\_\_\_ only) from THE OVERSEAS ECONOMIC COOPERATION FUND in accordance with the Payment Terms stipulated in the Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between \_\_\_\_\_ and \_\_\_\_\_.

\_\_\_\_\_  
(Name of the Borrower)

\_\_\_\_\_  
(Authorized Signature)

Special Instructions

The details of the actual performance shall be stated in the sheet attached hereto.

Request for Disbursement

Date:

To: OVERSEAS ECONOMIC COOPERATION FUND  
Tokyo, Japan

Attn.: Manager, Loan Department  
Re.: Your Loan Agreement No. \_\_\_\_\_ Country:  
Letter of Commitment No. \_\_\_\_\_  
Our Letter of Credit No. \_\_\_\_\_

Gentlemen:

We have received the documents concerning the supply of \_\_\_\_\_

(quantity and description of goods and services according to the L/C)

and found them in order and in conformity with the terms of the said Letter of Credit.

Pursuant to the above Letter of Commitment we hereby request you to disburse us from the above Loan with the following particulars:

- a) Amount of Disbursement: ¥ \_\_\_\_\_  
(Say Yen \_\_\_\_\_)
- b) Date of Disbursement:

Very truly yours,

\_\_\_\_\_  
(Name of the Japanese Bank)

Enclosed:

\_\_\_\_\_  
(Authorized Signature)





## **TRANSFER PROCEDURE**

The transfer procedure may apply for disbursement of the proceeds of the Loan for the purchase of goods and services from consultants of all countries other than the Republic of Ecuador (hereinafter referred to as "the Consultant(s)").

### **1. Request for Disbursement and Transfer**

When the Borrower receives Claims for payment from the Consultant (as per Form CFP attached hereto), the Borrower shall submit to the Fund a Request for Disbursement and Transfer (as per Form DRP attached hereto) accompanied by documents including the Claims for Payment and the Statement of Performance (as per Form SPD attached hereto) evidencing the amount to be paid to the Consultant. The Request for Disbursement and Transfer shall be signed by the Executing Agency acting on behalf of and under Authorization of the Borrower. The amount of the Request for Disbursement and Transfer shall be stated in Japanese Yens.

### **2. Disbursement**

When the Fund, after examination, finds the request for Disbursement and Transfer in order and in conformity with the provisions of the Loan Agreement and the terms of the Contract concerned, the Fund shall disburse the requested amount out of the proceeds of the Loan by crediting to the Borrower's non-resident Yen account to be opened by the Central bank on behalf of the Borrower with the Bank of Tokyo, Ltd., Tokyo (hereinafter referred to as "the Paying Bank") in accordance with the relevant Japanese laws and regulations.

### **3. Payment to the Consultant**

Immediately after the proceeds of the Loan disbursed by the Fund has been credited to the Borrower's non-resident Yen account mentioned in Item 2. above, the Borrower shall cause the Paying Bank to debit the same amount against the above-mentioned account for transfer to the account of the Consultant as specified in the instruction contained in the Request for Disbursement and Transfer.

At the same time, the Paying Bank shall inform the Central Bank, the Consultant concerned and the Fund by cable of the above mentioned transfer.

### **4. Banking Arrangement**

Appropriate Banking Arrangement for the handling of the above-mentioned matters shall be agreed on by the Paying Bank and the Central Bank (the latter acting on behalf of and under authorization of the Borrower) immediately after the signing of the Loan Agreement. A copy of the Banking Arrangement shall be submitted to the Fund.

**5. Delegation of Authority**

- (1) The Borrower hereby designates the Central Bank as its agent for the purpose of taking any action or entering into any agreement required or permitted under this Transfer Procedure.
- (2) Any action taken or agreement entered into by the Central Bank pursuant to the authority conferred on the Central Bank shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

**6. Arrangement**

The Borrower shall cause the Central Bank to make a necessary arrangement with the Paying Bank containing the following in accordance with the authorization conferred on the Central Bank set forth in Item 5. above:

- (a) To open the non-resident Yen account of the Central Bank on behalf of the Borrower with the Paying Bank.
- (b) To let the Paying Bank make cable advice to the Central Bank of the disbursement by the Fund.

**7.** The Fund's disbursement under this procedure shall be made upon its receipt from the Bank of Tokyo, Ltd., Tokyo of an amount equal to one-tenth percent (0.1%) of the disbursement amount as the handling charge.

**Claim for Payment**

**(Form CFP)**

Date: \_\_\_\_\_  
Loan  
No.: \_\_\_\_\_

To: (Name of the Borrower)

We hereby submit Claims for Payment to you for the progress of the work in the following content.

1. Contract No. and date:
2. Approval of Contract No. and date:
3. Description of goods and services accomplished:
4. Claimed Amount:
5. Accumulated amount already paid:
6. Total amount (4. + 5.):

Please pay the amount claimed in Item 4. above into our account \_\_\_\_\_  
with \_\_\_\_\_  
(account number) (name and address of a commercial bank in Tokyo)

\_\_\_\_\_  
(Name of the Consultant)

by: \_\_\_\_\_  
(signature)

date:

Loan No.: \_\_\_\_\_

App. Serial No.:

THE OVERSEAS ECONOMIC  
COOPERATION FUND  
Tokyo, Japan

Attention: Managing Director, Loan Department III

Gentlemen:

1. Pursuant to the Loan Agreement No. \_\_\_\_\_ dated \_\_\_\_\_ between THE OVERSEAS ECONOMIC COOPERATION FUND (hereinafter referred to as "the Fund") and the Government of the Republic of Ecuador and under the approval of the Contract No. \_\_\_\_\_, the undersigned hereby requests for disbursement under the said Loan Agreement, of the sum of Japanese Yen \_\_\_\_\_ (Say \_\_\_\_\_) for the payment of expenditures as described in the Summary Sheet(s) attached hereto.
2. The undersigned has not previously requested for disbursement of any amount from the Loan for the purpose of meeting the expenditures described in the attached Summary Sheet(s). The undersigned has not obtained nor will obtain funds for such purpose out of the proceeds of any other loan, credit or grant available to the undersigned.
3. The undersigned certifies that:
  - a) the expenditures described in the Summary Sheet(s) are made out for the purpose specified in the Loan Agreement;
  - b) the Claims for Payment attached hereto submitted by the Consultant(s) duly comply with the terms and conditions of the Contract concerned;
  - c) as of the date of this request there is no existing default under the Loan Agreement.
4. Please disburse the amount requested herein through the Bank of Tokyo, Ltd., Tokyo to effect immediate payment to the Consultant, Messrs. \_\_\_\_\_.

**Special Instructions to the Bank of Tokyo, Ltd., Tokyo:**

date: \_\_\_\_\_

Upon receipt of this instruction together with the proceeds disbursed by the Fund, please transfer the same immediately to the account of Messrs. \_\_\_\_\_ held with

\_\_\_\_\_ under advice to them, the Fund and ourselves in accordance with the banking Arrangements dated \_\_\_\_\_ concluded between the Central Bank of Ecuador and the Bank of Tokyo, Ltd., Tokyo.

For ( Name of the Borrower)

\_\_\_\_\_  
(Authorized Signature)

(Form SPD)

Statement of Performance

Date: \_\_\_\_\_

Ref. No.: \_\_\_\_\_

To: (Name and address of Consultant)

Re: Approval of Contract No. \_\_\_\_\_  
dated \_\_\_\_\_  
for (Amount of Contract) \_\_\_\_\_  
in favor of (Name of Consultant) \_\_\_\_\_

I, the undersigned, representing \_\_\_\_\_  
\_\_\_\_\_ on behalf of the Borrower, hereby issue the Statement of Performance to entitle  
(Name of Consultant) to receive the sum of \_\_\_\_\_ ( Say \_\_\_\_\_ only)  
from THE OVERSEAS ECONOMIC COOPERATION FUND in accordance with the  
payment terms stipulated in the Contract No. \_\_\_\_\_ dated \_\_\_\_\_,  
between \_\_\_\_\_ and (Name of the Consultant)

The details of the actual performance shall be stated in the sheet attached hereto.

For(Name of the Borrower)

\_\_\_\_\_  
(Authorized Signature)

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(Form DFP-a)

Date:

Ref. No.:

SUMMARY SHEET OF PAYMENT

1	2	3	4	5	6	7
Contract No.	Description of Goods and/or Services	Name and Address of Consultant	Contract Amount	Amount to be Paid	Accumulated Amount	Remarks
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
TOTAL						

Note Column 7 is to indicate, against each item, whether the payment is an advance payment, or a down payment, or installment payment (if so, the number of installment) or the final payment in full settlement.

For (Name of the Borrower

for \_\_\_\_\_  
(Authorized Signature)



## REIMBURSEMENT PROCEDURE

The procedure used for disbursement of the proceeds of the Loan for the purchase of goods and services from the Ecuadorian suppliers shall be in accordance with the REIMBURSEMENT PROCEDURE attached hereto, with the following supplemental stipulations:

1. With regard to the Section 2. (1) of REIMBURSEMENT PROCEDURE, when the Contract price is stated and payable in the currency of the Borrower's country, the amount of the Request for Disbursement shall be stated in United States Dollars. The exchange rate for the United States Dollar against the currency of the Borrower's country to be used for the Request for Disbursement shall be the T/T buying rate of an authorized foreign exchange bank in the country of the Borrower on the day on which the request for Disbursement is made.
2. With regard to the Section 3. of REIMBURSEMENT PROCEDURE, when the amount of the Request for Reimbursement is stated in United States Dollars, the exchange rate for the United States Dollars against the Japanese Yen to be used in calculating the amount in Japanese Yen to be reimbursed equivalent to the amount in United States Dollars shall be the T/T selling rate of an authorized foreign exchange bank designated under the provisions of Section 3. of REIMBURSEMENT PROCEDURE on the business day immediately preceding the day on which the reimbursement is made.
3. With regard to Section 3. of REIMBURSEMENT PROCEDURE, the authorized foreign exchange bank in Tokyo shall be the Bank of Tokyo, Ltd., Tokyo.
4. The Fund's reimbursement under this procedure shall be made upon the receipt from the Bank of Tokyo, Ltd., Tokyo of an amount equal to one-tenth percent (0.1%) of the reimbursement amount as handling charge.

## REQUEST FOR DISBURSEMENT

Date:

Loan No.: \_\_\_\_\_

App. Serial No.:

THE OVERSEAS ECONOMIC COOPERATION FUND  
Tokyo, Japan

Attention: Manager, Loan Department III

Gentlemen:

1. Pursuant to the Loan Agreement No. \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_ between The Overseas Economic Cooperation Fund (hereinafter referred to as "the Fund") and CENTRO DE REHABILITACION DE MANABI (hereinafter referred to as "CRM"), the undersigned hereby requests for reimbursement under said Loan Agreement, of the sum of US\$. \_\_\_\_\_.

In reimbursement of expenditures as described in the Summary Sheet No. 3 attached hereto.

2. The undersigned has not previously requested of any amount from the Loan for the purpose of reimbursement or of meeting the expenditures described in the attached Summary Sheet(s). The undersigned has not obtained nor will obtain fund for such purposes of the proceeds of any other loan, credit or grant available to the undersigned except short term loan or credits, if any established in anticipation of the reimbursement requested for herein and to be repaid with the funds reimbursed thereunder and any charges, commission or interest paid or payable under such anticipatory short-term credits are not included in the amount herein requested to be reimbursed.
3. The undersigned certifies that:
  - a) The expenditures, hereby sought to be reimbursed, were made for the purposes specified in the Loan Agreement.
  - b) The goods and services purchased with these expenditures have been procured in accordance with the applicable procurement procedures agreed with the Fund Pursuant to the said Loan Agreement and the terms of purchase thereof are reasonable.
  - c) The said goods and services were or will be supplied by the Supplier(s) specified in the attached Summary Sheet(s) and were or will be produced in

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(or in the case of services, supplied from) the country (countries) for the Fund loan;

- d) As of the date of this request there is no existing default under the Loan Agreement, no, to the best of the undersigned's knowledge and belief, under the Guarantee, if any.
4. Please reimburse the amount requested for herein by paying into the non-resident free yen account of BANCO CENTRAL DEL ECUADOR in favor of the Government of the Republic of Ecuador No. \_\_\_\_\_ in the Bank of Tokyo Ltd., 1-3-2 Hongoku-cho Nihonbashi, Chuo-ku, Tokyo, Japan.
5. This request consists of \_\_\_\_\_ pages and signed and numbered Summary Sheet(s).

Very truly yours

CRM

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**VOLUME - I**

**PART - Y**

**LIST OF MINIMUM EQUIPMENT REQUIRED**

**LIST OF MINIMUM EQUIPMENT REQUIRED (1/2)**

Description	Spec.	Required Number
Bulldozer with ripper	32 ton	9
Bulldozer	21 ton	3
Bulldozer	11 ton	6
Tractor shovel	2.2 m <sup>3</sup>	19
Tractor Shovel	1.2 m <sup>3</sup>	3
Backhoe	0.6 m <sup>3</sup>	1
Backhoe	0.3 m <sup>3</sup>	3
Dump Track	11 ton	71
Dump Track	8 ton	3
Crawler drill	7 m <sup>3</sup> /min	2
Crawler drill	10 m <sup>3</sup> /min	1
Air compressor	10 m <sup>3</sup> /min	2
Air compressor	13.5 m <sup>3</sup> /min	1
Tamping roller	20 ton	4
Vibrating roller	10 ton	2
Vibrating roller	4 ton	1
Vibrating roller	1 ton	2
Concrete plant	1 m <sup>3</sup>	2
Agitator truck	3 m <sup>3</sup>	12
Concrete bucket	1.0 m <sup>3</sup>	2
Concrete pump car	45 m <sup>3</sup> /hr	1
Truck crane	30 ton	1
Truck crane	20 ton	1
Trailer	20 ton	1
Compactor	100 kg	5
Concrete vibrator	55 mm	12
Arm type tunneling machine	110 kW	3
Muck loader, inclined	0.4 m <sup>3</sup>	2
Muck car	4.5 m <sup>3</sup>	30
Battery locomotive	8 ton	6
Air compressor	16 m <sup>3</sup> /min	3
Vent fan	300 m <sup>3</sup> /min	19

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**LIST OF MINIMUM EQUIPMENT REQUIRED (2/2)**

Description	Spec.	Required Number
Vent fan	100 m <sup>3</sup> /min	6
Winch	150 kW	3
Winch	100 kW	3
Leg hammer	2.7 m <sup>3</sup> /min	12
Jack hammer	2.4 m <sup>3</sup> /min	6
Stopper drill	2.7 m <sup>3</sup> /min	6
Shotcrete spray gun	10 m <sup>3</sup> /hr	3
Concrete placer	6 m <sup>3</sup>	6
Battery locomotive	6 ton	6
Agitator car	4.5 m <sup>3</sup>	6
Concrete vibrator	55 mm	12
Sliding form, 3.7 m dia.	12 m	3
Boring machine	5.5 kW	6
Grout pump	11 kW	4
Grout mixer	200 x 2	4
Diesel generator	300 kVA	6
Diesel generator	150 kVA	1
Diesel generator	100 kVA	1
Diesel generator	50 kVA	1
Motor grader	3.7 m	2
Macadam roller	10 ton	1
Tire roller	20 ton	2
Water sprinkler	5.5 klit	3
Dredger	200 HP	1

**Package 1**









JICA