WITNESS:

ARCHIE P. LOPEZ

JAA CONSTRUCTION AND SUPPLY
By:

JELMA C. FERNANDEZ
Authorized Managing Officer

WITNESS:

BELTZASAR L. GELLA
Acting ESD Manager

Philippine Ports Authority:
By:

ENGR. ASTERIO C. GALLARDO, JR
Acting Port Manager

3.02 Final and full payment of the consideration herein above-mentioned shall be upon full completion of the project and fulfillment by the CONTRACTOR of all the terms and conditions set forth in this contract.

However, it is agreed that no payment or payments made under this Contract, except the final payment upon issuance of Certificate of Completion and Acceptance, shall be understood as performance of this Contract, either wholly or in part, and no payment shall be construed to be an acceptance of defective work or improper implementation thereof.

3.03 Any payment due and payable to the CONTRACTOR maybe set off against liquidated damages and payable to the PPA by the CONTRACTOR under this Contract.

3.04 It is likewise understood that the CONTRACTOR shall show proof evidencing payments by the CONTRACTOR of labor, materials, supplies, insurance premiums, etc., used in the work, before any payment is made to it.

For this purpose, the CONTRACTOR shall, before payment is made on the works accomplished, submit an affidavit certifying to the fact of payments of said labor, materials, supplies, equipment, insurance premiums, etc.,

3.05 All payments shall be subject to existing government accounting and auditing rules and regulations.

3.06 Progress payments are subject to retention of ten percent (10%) referred to as the "retention money". Such retention shall be based on the total amount due to the contractor prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of works as determined by the PPA are completed. If after Fifty Percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall be imposed.

3.07 The total "retention money" shall be due for release upon final acceptance of the work. The CONTRACTOR may, however, request for the substitution of the retention money for each progress billing with irrevocable standby letter of credit from a commercial bank, bank guarantees or surety bond callable on demand issued by any reputable surety or insurance company duly accredited by the Office of the insurance Commission of amounts equivalent to the retention money substituted for and acceptable to PPA, provided that the project is on schedule and is satisfactorily

undertaken. Otherwise, the ten percent (10%) retention shall be made. Said irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be posted in favor of PPA shall be valid for a duration to be determined by the PPA and will answer for the purpose for which the ten percent (10%) retention is intended, i.e., to cover uncorrected discovered defects and third party liabilities.

WITNESS:
ARCHIE P. LOPEZ

ARTICLE IV

PERFORMANCE SECURITY

JAA CONSTRUCTION AND SUPPLY
By:
JEMIA C. FERNANDEZ
Authorized Managing Officer

4.01 To guarantee the faithful performance of the CONTRACTOR of its obligations under this Contract, it shall post prior to the signing of the Contract a performance security in the form of cash or cashier's / manager's check, bank draft/guarantee or irrevocable letter of credit issued by a Universal / or Commercial bank, surety bond callable on demand, issued by a surety or insurance company duly certified by the Office of the Insurance Commission as authorized to issue such security and acceptable to PPA or a combination thereof as may be required by PPA, in accordance with the following schedule:

a. Cash or cashier's / manager's check, bank draft / guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank – ten percent (10%) of the total contract price

b. surety bond callable upon demand issued by a surety or insurance company duly certified by the insurance Commission as authorized to issue such security – thirty percent (30%) of the total contract price

c. any combination of the foregoing – proportionate to share of form with respect to total amount of security

WITNESS:
BELTZASAR L. GELLA
Acting ESD Manager

4.02 This performance security shall be denominated in the Philippine Pesos and posted in favor of PPA, and shall be forfeited in favor of PPA in the event it is established that the CONTRACTOR is in default in any of its obligations under this Contract.

Philippine Ports Authority:
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4.03 Subject to the conditions of the Contract, the performance security may be released by PPA after the issuance of the Certificate of Acceptance of the project, provided that PPA has no claims filed against the CONTRACTOR or the surety company and there are no claims for labor and materials filed against the contractor.

WITNESS:
ARQUIE P. LOPEZ

JAA CONSTRUCTION AND SUPPLY
By:
ELMA C. FERNANDEZ
Authorized Managing Officer

4.04 Should any surety upon the bond for the performance of this Contract become unacceptable to the PPA, the CONTRACTOR shall promptly furnish such replacement security as may be required from time to time up to the sum equal to the amount of the original surety.

4.05 The CONTRACTOR shall post an additional performance security following the schedule above to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of amendments to order or change orders, extra work orders and supplemental agreements as the case may be. The CONTRACTOR shall cause the extension of the validity of the performance security to cover approved contract time extensions.

4.07 In case of a reduction in the contract value or for partially completed work under this contract which are usable and accepted by PPA, and the use of which in the judgment of PPA shall not affect the structural integrity of the entire project, PPA may allow a proportional reduction in the original performance security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original performance security.

ARTICLE V

COMPLETION TIME: LIQUIDATED DAMAGES

WITNESS:
BELTZASAR L. GELLA
Acting ESD Manager

5.01 The CONTRACTOR agrees and obligates itself to perform and complete all works provided for in this Contract within **Twenty Eight (28) Calendar Days** (including Sundays and Holidays), reckoned not later than seven (7) calendar days from the date of issuance of the Notice to Proceed. Notice to Proceed shall be issued after this Contract has been signed by the Parties hereof.

Philippine Ports Authority:
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5.02 Time is of the essence of this Contract. Should the CONTRACTOR refuse or fail to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the CONTRACTOR shall pay the PPA for liquidated damages, and not by way of penalty, an amount as provided in the conditions of contract, equal to at least one-tenth (1/10) of one (1) percent of the cost of the unperformed portion of the works for everyday of delay.

5.03 The project or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the Port Management Office of PPA.

WITNESS:
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Authorized Managing Officer

5.04 It is understood that the damages herein provided are fixed and agreed liquidated damages and to be entitled to such damages, PPA does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due the CONTRACTOR under the contract and/or collect such liquidated damages from the retention money or other securities posted by the CONTRACTOR, whichever is convenient to PPA.

5.05 In case that the delay in the completion of the work exceed a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the CONTRACTOR, PPA may forfeit the CONTRACTOR'S performance security and take over the prosecution of the project or award the same to a qualified contractor through negotiated contract.

5.06 In no case, however, shall the total sum of liquidated damages exceed ten percent (10%) of the total contract price, in which event the contract shall automatically be taken over by PPA or award the same to a qualified contractor through negotiation and the erring CONTRACTOR'S performance security shall be forfeited. The amount of the forfeited performance security shall be aside from the amount of the liquidated damages that the CONTRACTOR shall pay PPA under Section 5.02 hereof and impose other appropriate sanctions.

WITNESS:
BELTZASAR L. GELLA
Acting ESD Manager

ARTICLE VI

EXTENSION OF CONTRACT TIME

Philippine Ports Authority:
By:
ENGR. ASTERIO C. BALLARDO, JR
Acting Port Manager

6.01 Should the amount of additional work of any kind or other special circumstances of any kind whatsoever occur such as to fairly entitle the CONTRACTOR to an extension of contract time, PPA shall determine the amount of such extension; provided that PPA is not bound to take into account any claim for an extension of time unless the contractor has prior to the expiration of time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claims have arisen, delivered to PPA notices in order that it could have investigated them at that time. Failure to provide such notice shall constitute a waiver by the CONTRACTOR of any claim. Upon receipt of full and detailed particulars, PPA shall examine the facts and extent of the delay and shall extend the contract time for completing the contract work when, in PPA's opinion, the findings of facts justify an extension.

WITNESS:
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By:
JELMA C. FERNANDEZ
Authorized Managing Officer

WITNESS:
BELTZASAR L. GELLA
Acting ESD Manager

Philippine Ports Authority:
By:
ENGR. ASTERIO C. GALLARDO, JR
Acting Port Manager

6.02 No extension of contract time shall be granted the CONTRACTOR due to (a) ordinary unfavorable weather conditions (b) inexcusable failure or negligence of CONTRACTOR to provide the required equipment, supplied or materials.

6.03 Extension of contract time may be granted only when the affected activities fall within the critical path of the PERT/CPM network.

6.04 No extension of contract time shall be granted when the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection.

6.05 Extension of contract time shall be granted for rainy/unworkable days considered unfavorable for the prosecution of the works at the site, based on the actual conditions obtained at the site, in excess of the number of rainy/unworkable days predetermined by the PPA in relation to the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection and/or for the equivalent period of delay due to major calamities such as exceptionally destructive typhoons, floods and earthquakes, and epidemics, and for causes such as non-delivery on time of materials, working drawings, or written information to be furnished by the PPA, non-acquisition of permit to enter private properties within the right of way resulting in complete paralization of construction activities, and other meritorious causes as determined by the PPA's authorized Engineer and approved by the PPA. Shortage of construction material, general labor strikes, and peace and order problem that disrupt construction operation through no fault of the CONTRACTOR maybe considered as additional grounds for extension of contract time provided they are publicly felt and certified by appropriate government agencies such as DTI, DOLE, DILG and DND, among others. The written consent of bondsmen must be attached to any request of the CONTRACTOR for extension of contract time and submitted to the PPA for consideration and that the validity of the performance security shall be correspondingly extended.

ARTICLE VII

ENTIRE CONTRACT

7.01 Provisions to the contrary notwithstanding, it is agreed that this is an entire contract for one whole complete work and that the partial payments on account by the PPA or the use of parts of the work or equivalent shall not constitute an acceptance of any

part of the work before its entire completion and final acceptance in writing by the PPA.

WITNESS:
ARCHIE P. LOPEZ

ARTICLE VIII

CONTRACTOR'S LIABILITY

8.01 The Parties, likewise, hereby agree that the employees of the CONTRACTOR are not employees of the PPA; hence, the PPA shall not in any way be liable or responsible for any person injury or damages, including death sustained or caused by any of the employees of the CONTRACTOR and/or his sub-contractor or agent or supplier whether or not occurring during the performance of their duties. The CONTRACTOR agrees and bind itself to indemnify the PPA for whatever injuries or damages caused or occasioned or contributed to by the failure, negligence or conduct of the CONTRACTOR and/or its employees, sub-contractors, agent and supplier or consultants arising out of or in connection with or on occasion of the performance of this Contract. The CONTRACTOR shall, at all times, stand solely liable and/or responsible for the enforcement of and compliance with all existing laws, rules and regulations and binds itself to save and hold the PPA free and harmless from any and all liability in respect thereof and/or arising therefrom and/or by reason of this Contract and its implementation.

JAA CONSTRUCTION AND SUPPLY
By:
JELMA C. FERNANDEZ
Authorized Managing Officer

ARTICLE IX

RESPONSIBILITY OF THE CONTRACTOR

WITNESS:
BELTZASAR C. GELLA
Acting ESD Manager

9.01 The CONTRACTOR shall assume full responsibility for the entire contract work until its final acceptance by the PPA and shall be held responsible for any damage or destruction of work until such final acceptance.

9.02 The CONTRACTOR shall be fully responsible for the safety, protection, security and convenience of its personnel, third parties and the public at large, as well as the works, equipment, installation and the like to be affected by the construction work.

9.03 Any actionable act or acts of **JELMA C. FERNANDEZ** arising out of or in the course of this Contract, shall be understood and binding as an act of **JAA Construction and Supply** or vice-versa.

Philippine Ports Authority:
By:
ENGR. ASTERIO G. GALLARDO, JR
Acting Port Manager

ARTICLE X