WITNESS:
JUDELYN R. SALAC

JV Constech
By:
ENGR. FLORANTE M. MAGBANUA
Proprietor/Project Manager

WITNESS:
BELTASAR L. GELLA
Acting ESD Manager

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

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.

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.

ARTICLE VI

EXTENSION OF CONTRACT TIME

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:
JUDELYN R. SALAC

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Proprietor/Project 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.

WITNESS:
BELTZASAR L. GELLA
Acting ESD Manager

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.

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

WITNESS:
JAMELYN R. SALAC

JV Constech
By:
ENGR. FLORANTE M. MAGBANUA
Proprietor/Project Manager

WITNESS:
BELTAZAR L. GELLA
Acting ESD Manager

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

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.

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.

ARTICLE IX

RESPONSIBILITY OF THE CONTRACTOR

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.

WITNESS:
JIMELYN R. SALAC

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 **ENGR. FLORANTE M. MAGBANUA** arising out of or in the course of this Contract, shall be understood and binding as an act of **JV Constech** or vice-versa.

ARTICLE X

INSPECTION & CONSTRUCTION OF CONTRACT WORK

JV Constech
By:
ENGR. FLORANTE M. MAGBANUA
Proprietor/Project Manager

10.01 Inspection of the contract work shall be made by the PPA while such contract work is in progress to ascertain that the completed works or stages comply in all respects, with the standards and requirements set forth in the Contract Documents. Notwithstanding such inspection, the CONTRACTOR shall be held responsible for the acceptability of the finished works. The CONTRACTOR shall promptly correct all works determined by the PPA as failing to meet requirements, at CONTRACTOR'S own expense.

ARTICLE XI

NON-ASSIGNMENT AND NO SUBCONTRACT

WITNESS:
BELTAZAR L. GELLA
Acting ESD Manager

11.01 The CONTRACTOR shall not, without the written approval of the PPA, assign, transfer, pledge, sub-contract or make any other disposition of interest in this Contract. Any unapproved assignment, transfer, pledge, sub-contract, or any other disposition, shall be sufficient ground for the PPA to terminate or cancel this Contract **motu propio** without need of judicial action pursuant to Section 19.04 hereof. Should the PPA give its written approval, such consent shall not relieve the CONTRACTOR of its responsibilities under the Contract. The CONTRACTOR shall insure that the terms and conditions of any such sub-contract shall comply and conform with the terms and conditions of the Contract. The CONTRACTOR shall be responsible for the observance by any such sub-contractor of the terms and conditions of the Contract.

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

11.02 If any portion of the project sub-contracted is not prosecuted faithfully in accordance with the Contract, the sub-contractor shall be removed or replaced immediately upon the written request of the PPA, provided, however, that any failure of PPA to make such a request shall not relieve the CONTRACTOR of its obligations under the Contract. PPA shall not be responsible for the delays or costs incurred by the