cement, rebars, form lumber, labor rate, equipment rental, etc.). All new components of the new work item shall be fixed prices, provided the same is acceptable to both PPA and the CONTRACTOR, and provided further that the direct unit costs of new components shall be based on the CONTRACTOR's estimates as validated by PPA via documented canvass in accordance with existing rules and regulations. The direct cost of the new work item shall then be combined with the mark-up factor (i.e. taxes and profit) used by the contractor in his bid to determine the unit price of the new work item.

WITNESS:
JURELYN R. SALAC

15.04 Request for payment by the CONTRACTOR for any extra work shall be accompanied by a statement, with the approved supporting forms, giving a detailed accounting and record of amount for which he claims payment. Said request for payment shall be included with the CONTRACTOR's statement of progress payment.

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

ARTICLE XVI

SUSPENSION OF WORK

16.01 The PPA or its duly authorized representative shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, CONTRACTOR to correct bad conditions which are unsafe for workers or for the general public to carry out valid orders given by the PPA or to perform any provisions of the contract, or due to adjustment of plans to suit field conditions as found necessary during construction. The CONTRACTOR shall immediately comply with such order to suspend the work wholly or partly.

WITNESS:
BELTZASAR L. GELLA
Acting ESD Manager

In case of total suspension, or suspension of activities along the critical path, which is not due to any fault of the CONTRACTOR, the elapsed time between the effective order of suspending operation and the order to resume work shall be allowed the CONTRACTOR by adjusting the contract time accordingly.

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

ARTICLE XVII

INDIVISIBILITY OF OBLIGATION

17.01 It is the intent of the Contract that all the documents, annexes and addenda forming part thereof, shall be read together and that each and every provision or stipulation

WITNESS:
JUMELYN R. SALAC

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

WITNESS:
BELTZASAR L. GELLA
Acting ESD Manager

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

hereof be given full force, effect and applicability. However, in the event that one or more provisions or stipulations herein be declared null and void by the courts, or otherwise rendered ineffective, the remaining provisions and stipulations shall not be affected thereby.

ARTICLE XVIII

ARBITRATION, REMEDY AND RELIEF

18.01 Should there be any dispute or difference of any kind whatsoever which shall arise between the parties in connection with the implementation of this Contract, the Parties hereto shall make every effort to resolve amicably such dispute or difference by mutual consultation. In the event that such dispute or disagreement be not resolved to their mutual satisfaction, the matter shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Laws" and Republic Act No. 9285; otherwise known as the "Alternative Dispute Resolution Act of 2004". Provided, however that disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be submitted thereto. Provided, further that by mutual agreement the parties hereto may agree in writing to resort to other alternative modes of dispute resolution. Provided, finally that the arbitration proceeding shall be without prejudice to the right of PPA to rescind or terminate this contract in accordance with Article XIX, Section 19.04 hereof.

18.02 Should the PPA be constrained to resort to court action to enforce or safeguard its rights and interests under this Contract, the CONTRACTOR shall be liable to the PPA for attorney's fees in the amount equivalent to Twenty Percent (20%) of the total sum claimed in the complaint, exclusive of other damages and the expenses of litigation. Venue of all court actions in connection with or arising out of this contract shall be laid exclusively in the proper court of the City of Cotabato.

18.03 It is clearly understood that in the case a dispute or disagreement arises between the PPA and the CONTRATOR regarding the manner by which the latter is performing works, the CONTRACTOR shall follow the instruction of the PPA relative thereto, otherwise, it shall have no right to ask for arbitration or go to court for relief.

ARTICLE XIX

OTHER COVENANTS

19.01 It is expressly agreed and understood that in case of irreconcilable conflict between the provisions of this Contract and the provisions of any of the contract documents, the former shall be controlling.

19.02 It should also be clearly understood that any payment or failure of the PPA to demand compliance with any of the terms and conditions of this Contract or any act of liberality on the part of the PPA shall not be construed or considered as a waiver on the part of the PPA for the enforcement of this Contract. nor shall it relieve the CONTRACTOR of any of its obligations provided thereunder.

19.03 Under no circumstances shall the PPA be held liable for the payment of any extra work, or extra cost of work, change of work, or change order undertaken without the prior written approval of the PPA to perform said work.

19.04 Notwithstanding any provision to the contrary, the PPA has the right to terminate, cancel and/or rescind this contract **motu proprio,** in case of breach thereof by the CONTRACTOR, without need of judicial action by giving at least Ten (10) days written Notice to that effect to the CONTRACTOR, which notice shall be final and binding on all the parties. In such event, the PPA may take over and continue the project, and the contracts and agreements entered into by the CONTRACTOR with third parties, which the PPA in its discretion, may want to assume are hereby conclusively deemed assigned to PPA. For this purpose, the CONTRACTOR hereby agrees and obligates itself to incorporate or cause to be incorporated in any contract or agreement with third parties, as same is connected with or related to the performance of any or all of the CONTRACTOR's obligations and undertakings hereunder, a stipulation providing for its assignability to and assumption by the PPA, at the option of the PPA. It is further agreed and understood that upon receipt of the Notice mentioned above, the CONTRACTOR cannot remove, withdraw or pull-out any of the equipment, machinery, tools, materials, and/or supplies brought to the project site without the written approval of the PPA.

Within thirty (30) days after termination, cancellation or rescission of this Contract, the parties shall settle their respective accountabilities as of the date of termination, cancellation or rescission, including the refund of any and all advances made plus legal interest from date of receipt of the amount or amounts advanced.

19.05 It is expressly agreed that whenever the CONTRACTOR is behind schedule in its contract work and incurs ten (10%) percent or more negative slippage based on its approved PERT/CPM, the PPA may undertake the whole or portion of the unfinished work by administration or by negotiation through another qualified CONTRACTOR.

WITNESS:

JAMELYN R. SALAC

JV Constech
By:

ENGR. FLORANTE M. MAGBANUA
Proprietor/Project Manager

WITNESS:

BELTZASAR L. GELLA
Acting ESD Manager

Philippine Ports Authority:
By:

ENGR. ASTERIO O. GALLARDO, JR
Acting Port Manager

Whenever a work activity in the project is not being done on schedule per approved PERT/CPM, the PPA shall notify and direct the CONTRACTOR to immediately undertake such work activity. If within fifteen (15) days from receipt of such notice, the CONTRACTOR fails to start work and to show a satisfaction performance, PPA may take over the whole or portion of such work and have such work done by administration or award the same to another qualified contractor through negotiated contract at the current valuation price.

19.06 The PPA has the right to require the CONTRACTOR to supply and provide the required tools, materials, supplies, equipment, facilities, and to increase the number of workers assigned to the work when exigencies of the service so require. Should the CONTRACTOR fail, refuse or neglect to comply with the same, PPA shall have the option to take over the project in whole or in part or award the same to another CONTRACTOR through negotiated contract at the current valuation price. Any increase in cost which the PPA may incur as a result of its take-over of the project pursuant to Sections 19.04, 19.05 and 19.06 shall be borne by and charged to the CONTRACTOR.

19.07 The CONTRACTOR shall provide and do everything necessary to perform its obligations under this Contract according to the true intent and meaning of all the Contract Documents taken together, whether the same may or may not be shown or described particularly in the drawings, plans and specifications provided that the same can be inferred therefrom. Should the CONTRACTOR find discrepancy in the drawings, plans and specifications, it shall immediately refer the same to the PPA, whose decision shall be followed.

19.08 CONTRACTOR agrees and obligates itself to restore to its original condition on its own account, any public road, pavement, streets or open space and/or public or private property which are excavated or in any manner used by the CONTRACTOR in connection with the performance of its obligations under this Contract.

19.09 CONTRACTOR agrees and binds itself to hold and save PPA free and harmless from any damage, claims and rights of action by third parties arising out of or by reason of this contract and all injuries that may be suffered by PPA due to the failure, negligence, delay or conduct on the part of the CONTRACTOR and/or its employees in the performance of their obligation under this Contract.

19.10 No final payment of the contract shall be made to the CONTRACTOR without the Certificate of Completion and/or Acceptance from the Office of the City Engineer of the City concerned of the local works to be restored mentioned in paragraph 19.08 hereof, otherwise the cost of restoration shall be made available out of any collectable/receivable by the CONTRACTOR from the PPA.

WITNESS:
JIMELYN R. SALAC

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

WITNESS
BELTZASAR L. GELLA
Acting ESD Manager

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