



Republic of the Philippines
National Electrification Administration

25 August 2006

LEGAL ADVISORY NO. 14

**TO : ALL ELECTRIC COOPERATIVES
ALL NEA OFFICES CONCERNED**

SUBJECT : EC CONSTRUCTION CONTRACT FORM

The National Electrification Administration, as part of its efforts to help the Electric Cooperatives (EC) improve their competitiveness and viability as mandated by Section 58 of the EPIRA, has developed a construction contract form for the ECs. This proposed construction contract form has been exhaustively studied and researched to ensure that all important legal and construction concerns of the EC are covered and its interests and concerns are amply protected.

We suggest that all ECs adopt this legal form in order to:

1. Ensure adequate legal protection in cases of violation of construction specifications, time-table and/or other contract terms and conditions on the part of the contractor.
2. Serve as guide during construction contract negotiation or during the setting of bid terms of reference so that all necessary provisions are covered by any subsequent construction contract entered into.
3. Shield EC officials, PBAC members and other contract approving authorities from undue pressure, influence or temptation considering that they can not, without justified reasons, veer away from the duly prescribed construction contract form. Especially so if we take to mind that construction contracts normally involve huge amounts.
4. Serve as a psychological deterrent in discouraging contractors from violating any term or condition in the construction contract or any of its incorporated attachments considering that the EC, by the provisions of the contract, is adequately and fully protected. So that should any legal suit become necessary, the EC can be sure of winning such case.

Some protective clauses or provisions in the construction contract form that are not practicable for a smaller scale infrastructure project or that would unnecessarily increase some cost components (such as bond or insurance requirements) need not be adopted if the project is too small. What is important is that this construction contract form be adopted and used as guide for barangay energization projects and other small projects. It is up to the EC decision-makers to decide which protective clauses be dispensed with, taking into consideration the additional cost and/or time required by the protective clause vis-à-vis the resulting protective benefit of the clause or provision.

For your guidance and ready reference, we have enclosed a copy of the construction contract form.

9
ATTY. JOHN JOSEPH M. MAGTULLOY, CPA
Deputy Administrator for Legal Services

Noted by:

Edita S. Bueno
EDITA S. BUENO
Administrator

NATIONAL ELECTRIFICATION
ADMINISTRATION

IN REPLY TO, P.C. NO: HOR009134



NER-00009134

92
11/7/04

CONSTRUCTION CONTRACT

KNOW ALL MEN BY THESE PRESENTS:

This CONTRACT, made and entered into by and between:

_____ an electric cooperative duly organized and existing under and by virtue of Philippine laws with offices at _____ duly represented herein by _____ hereinafter referred to as the "OWNER"

- And -

_____ a construction company duly organized and registered under and by virtue of the Philippine laws, with principal offices at _____ duly represented herein by _____ hereinafter referred to as the "CONTRACTOR".

WITNESSETH, THAT:

WHEREAS, The OWNER needs the services of a competent and responsible contractor to undertake the construction and completion of Electrical/Mechanical/Masonry/Plumbing/Sewage/Iron Works of Plant/Building/Warehouse/Utility Building (Shell Partitioning, Plant Water System, Mechanical System, Fire Protection System, Electrical System & Finishing) of the ECs (substation/office/plant/warehouse) at _____, (the "PROJECT").;

WHEREAS, the CONTRACTOR, representing that it is an (electro-mechanical /building) contractor duly licensed to engage in the contracting business and that it possesses the technical expertise, manpower pool, equipment, resources and financial capability to provide the professional services and materials required to undertake and complete the PROJECT in accordance with the plans specifications and timetable required by the OWNER;

WHEREAS, the OWNER, on the representations made by the CONTRACTOR, agreed to award the contract and engage the services of the CONTRACTOR for the construction and completion of the Electrical/Mechanical/Masonry/Plumbing/Sewage/Iron Works of Plant/Building/Warehouse/Utility Building (Shell Partitioning, Plant Water System, Mechanical System, Fire Protection System, Electrical System & Finishing) of the ECs (substation/office/plant/warehouse) at _____ and the CONTRACTOR accepted the engagement pursuant to the terms and conditions herein contained;

NOW THEREFORE, for and in consideration of the above premises, and the covenants hereinafter stipulated, the parties hereto agree as follows:

Article 1. SCOPE OF WORK

- 1.1 The CONTRACTOR shall undertake the construction of the PROJECT for the OWNER in accordance with the Plans, Technical Specifications, General Conditions, Schedule and other Contract Documents listed in Article 2. Such scope of work is herein referred to as the "WORKS".

- 1.2 The CONTRACTOR shall provide and furnish all the necessary labor, supervision and management, tools, supplies, materials, equipment and plant, as well as power and other required utilities, and perform all acts and things necessary to carry out and complete the WORKS within the timetable and to the satisfaction of the OWNER, ready for service and occupancy, all in strict compliance with the foregoing hereof, and to the terms and conditions of this CONTRACT. In addition to the foregoing, CONTRACTOR shall carry out the Project in good and workmanlike manner, use only new and good quality materials that meet the specifications approved by the OWNER, employ sound and accepted construction methods, and engage only such skilled, semi-skilled and unskilled labor as are necessary.
- 1.3 The CONTRACTOR shall likewise be responsible for the following:
 - a. Construction of temporary facilities such as offices, bunkhouses and warehouses for the storage of construction materials including Owner Supplied Materials needed for the execution of the Works.
 - b. Maintain the general cleanliness and sanitation of the Project site during the entire contract period and undertake the cleaning and removal of construction debris resulting from its work. Before acceptance and final settlement, the CONTRACTOR shall remove all surplus materials, scaffoldings, apparatus, machinery, tools and equipment not part of the Works and clear the project site of all obstructions and hindrances.
- 1.4 The CONTRACTOR shall, at its own expense, also secure and be responsible for the following:
 - a. All applicable permits from the appropriate government authorities necessary to carry out and complete the Project.
 - b. All certificates of inspection or testing that may be required by authorities having jurisdiction over Project.
 - c. Testing of materials to be used for the Project. The results of the tests shall be made available to the OWNER upon the latter's request.
- 1.5 The CONTRACTOR shall not change, modify or alter the final plans and specifications of the Project approved by the OWNER without the prior written consent and permission of the OWNER. Tolerance by OWNER of such changes or modifications shall not constitute or be deemed as the former's approval.
- 1.6 The CONTRACTOR shall employ sufficient number of competent workmen and at all times maintain an adequate supply of tools, materials and equipment to carry out the various phases of the work in accordance with the agreed program, subject to any modification mutually agreed upon in writing by both parties.
- 1.7 The CONTRACTOR shall diligently supervise the Project until its completion and shall assign full-time Project Engineers who will be at all times be present at the project site during all the working shifts to ensure proper work and schedule implementation. The Project Engineers will be the CONTRACTOR's authorized representatives for the Project and the OWNER reserves the right to seek their replacement should it determine that their retention shall be detrimental to the progress of the Project.

- 1.8 The OWNER may order changes in the scope of work consisting of additions, deletions, or modifications, as well as options to purchase and supply materials therefore, in which case the Contract Price and, if warranted, the Construction Period shall be accordingly adjusted upon mutual agreement of the parties. All such changes, however, must be authorized in writing by the OWNER.

Article 2. CONTRACT DOCUMENTS

- 2.1 The following, collectively referred to as the "Contract Documents", shall be considered as integral parts of this Contract, to wit:

- a. This Construction Contract
- b. Particular Conditions of the Contract
- c. All Bid Documents
- d. Engineering Design, Plans Drawings and Specification approved by the Owner on _____ 20__.
- e. Bid Bulletins 1 to 17 and Clarificatory Meeting Minutes dated _____, 20__.
- f. Notice to Proceed issued by the OWNER and confirmed dated _____, 20__.
- g. Approved Construction Schedule (PERT_CPM / S-Curve).
- h. Approved Additive/Deductive Unit Costing
- i. CONTRACTOR's Revised Proposal dated _____, 20__.
- j. CONTRACTOR's Itemized Cost Breakdown
- k. CONTRACTOR's All Risk Policy
- l. Performance Bond
- m. Payment Bond
- n. Guaranty Bond
- o. CGL Bond
- p. Project Organizational Chart
- q. Manpower and Equipment Utilization Schedule
- r. Site Layout of Temporary Facilities

- 2.2 The foregoing Contract Documents shall be interpreted and constructed together so as to give harmonious effect between them and are arranged in the order of descending preference. In case of ambiguities or discrepancies, however, the same shall be explained, interpreted or resolved by the OWNER and shall thereupon issue to the appropriate instructions to the CONTRACTOR.

- 2.3 The parties hereto may execute such other documents relating to the Works after the execution of this Contract and such documents, when signed by the authorized representatives of the parties, shall also form part of the Contract Documents. Such subsequently executed documents shall be accordance preference in case of conflicts with other contract documents executed earlier.

- 2.4 The Contract Documents contain the entire agreement and understanding between the OWNER and CONTRACTOR as to the subject matter hereof, and the same supersedes all prior agreements, commitments, representations, writing, and discussions between them. All other documents relating to the subject matter executed by the parties prior to this Construction Contract but not forming part of the Contract Documents above enumerated are deemed waived and/or abandoned.

Article 3. CONTRACT PRICE

- 3.1 For and in consideration of the faithful and satisfactory accomplishment of the Works and all the obligations specified in this Contract, the OWNER agrees to pay the CONTRACTOR the Contract Price in the amount of PESOS: _____ and ___/100 (Php _____), the manner of payment of which shall be in accordance with Article 4.
- 3.2 This Contract Price shall include all expanded/creditable withholding tax, value added tax (VAT), contractor's tax, if any, and all other miscellaneous fees, charges or taxes, whether national or local. In this regard, the OWNER shall deduct all taxes/fees due from the CONTRACTOR under the Contract as withholding tax agent and remit the same to the proper Government Agency. The Contract Price shall be adjusted in the event that VAT rates are increased, provided that no adjustment for VAT rate increases shall be allowed beyond the Original Contract Period if the delay in the completion of the Work was by reason of sole fault or negligence to the CONTRACTOR.
- 3.3 Except as expressly provided in Article 6 for change orders and Article 7 for labor costs adjustments and Section 3.2 above on VAT rate increases, the Contract Price shall not be subject to any escalation due to fluctuations in the prices of materials and equipment. All other costs and expenses over and above the agreed Contract Price shall be for and the sole account of the CONTRACTOR.

Article 4. MANNER OF PAYMENT

- 4.1 The OWNER shall pay the CONTRACTOR a down payment in the amount of PESOS: _____ and ___/100 (Php _____), Downpayment shall be paid by the Owner within thirty (30) calendar days upon the execution of this Construction Contract and the submission by the CONTRACTOR of the Downpayment Bond, Performance Bond and the Contractor's All Risk Insurance as required in Article 8 hereof and provided that this down-payment shall be subject to re-couplement by the OWNER by way of deductions from the CONTRACTOR's semi monthly progress billings, until fully liquidated.
- 4.2 The balance of the Contract Price shall be paid to the CONTRACTOR through semi monthly progress billings based on percentage of actual accomplishment of the Work satisfactorily completed by the CONTRACTOR through a Summary of Accomplishment prepared by the Construction Manager and accepted by the OWNER, following the procedure set hereunder:
- a. The billing for the actual accomplishment as of the Fifteenth (15th) day and last day of the month, shall be submitted to the OWNER through the Construction Manager for verification, accompanied by:
 - i. a summary of accomplishment prepared by the CONTRACTOR and certified by the Construction Manager for approval of the OWNER.
 - ii. Semi-monthly progress report and photographs of the accomplishment
 - iii. a certification prepared by the CONTRACTOR that all wages of workers falling due within the billing period and all materials and equipment installed or utilized for the accomplished period have been

fully paid and settled. The Owner shall determine the wordings of such certification.

- iv. Copies of test results demonstrating that the items accomplished have passed the requirements of the plans and specifications.
- b. Billings of materials shall be limited to those actually installed in place, to exclusion of off-site fabrication works and materials with the exceptions as stipulated on the Particular Contract Conditions Item 3.
- c. Billings shall be deemed correct and accepted unless the OWNER, after verification, serves to the CONTRACTOR a written objection or exception to the billing within ten (10) calendar days from the date of actual receipt thereof and sets out the ground therefore.
- d. Billings not disputed shall be paid by the OWNER within thirty (30) calendar days from actual receipt of the billing and the required supporting documents. Contested billings, on the other hand, shall be paid by the OWNER within the twenty (20) calendar days from its resolution and/or settlement, provided that contested billings should be resolved not later than fifteen (15) days from receipt of the objection, otherwise, the CONTRACTOR may avail of its rights under Article 11 herein.
- e. The OWNER shall deduct from the progress billing payments the appropriate taxes to be withheld from the CONTRACTOR, as well as the recoupment of the down-payment until fully liquidated.
- f. The OWNER shall likewise retain an equivalent of TEN PERCENT (10%) from each of the progress billing payments, provided that the aggregate amount of retention shall not exceed FIVE PERCENT (5%) of the total Contract Price. This retention shall serve as security for the CONTRACTOR to repair and rectify defects and damages on the Works arising from or due to faulty workmanship and/or discovered before final acceptance and payment of the last billing. The balance of the retention, if any, shall be released to the CONTRACTOR with the payment of the final billing.

4.3 The foregoing provisions notwithstanding, the OWNER shall have the right to withhold any payment being claimed by the CONTRACTOR in case of non-compliance or defective or irregular compliance with any of the CONTRACTOR's obligation under the Contract Documents; provided that the OWNER may withhold only such amount pertaining to the contested portion of the Works and only when the CONTRACTOR fails to rectify the such portion of the Work within five (5) days from receipt of written notice from the OWNER; provided further that the parties hereto shall endeavor to resolve the dispute within a period of fifteen (15) days from the time of withholding. The OWNER shall release the amounts withheld after the CONTRACTOR shall have rectified such defects and other obligations to the satisfaction of the OWNER or upon the resolution of the dispute. While the OWNER is withholding a payment due to the CONTRACTOR pursuant to this provision, any suspension of work on the part of the CONTRACTOR shall be deemed a material breach of the Contract.

4.4 The payment of the progress billings and the release of the amounts retained by the OWNERS to the CONTRACTOR shall not be construed to mean admission by the OWNER that the CONTRACTOR has satisfactorily performed the Works in

accordance with the Contract Documents, or that such Works are free from defects of any kind, hidden or otherwise.

Article 5. CONTRACT PERIOD

5.1 The CONTRACTOR shall complete the Works required under this Contract within _____ (____) calendar days reckoned ten (10) days from receipt of the Notice to Proceed.

5.2 It is agreed that time is an essential consideration of this Contract and that, in the event that CONTRACTOR fails to complete and deliver the Works within the Contract Period, unless the delay or non-completion is due to justifiable reasons allowed under this Contract, the CONTRACTOR agrees to pay the OWNER liquidated damage equivalent to one tenth of one percent (1/10 of 1%) of the Contract Price for each and every calendar day of delay (Sundays and legal holidays included) until Works are finally completed and delivered in accordance with the specifications of this Contract; provided that the total liquidated damages shall not exceed ten percent (10%) of the total Contract Price. The OWNER may deduct such liquidated damages from any amount due or to become due to the CONTRACTOR under this Contract. Milestone Details of Liquidated Damages are stipulated on the Particular Contract Conditions Item 1.

The foregoing notwithstanding, no liquidated damages shall be assessed against the CONTRACTOR if the Works are NINETY SEVEN PERCENT (97%) complete provided that the OWNER can already enter, occupy and use the premises and the remaining Works to be done do not impair the integrity of the entire Works.

5.3 The Contract Period may be extended by the OWNER in favor of the CONTRACTOR in case of the following justifiable causes of delay of the Project.

- a. Force majeure or events attributable to natural or human causes or phenomena beyond the control of the CONTRACTOR which make it impossible for the CONTRACTOR to carry out in whole or in part its obligations under this CONTRACT.
- b. exceptional adverse climatic conditions.
- c. substantial alteration in the Work approved and ordered by the OWNER.
- d. Site inaccessibility not attributable to the fault or negligence of the CONTRACTOR.
- e. failure of OWNER to deliver owner-supplied materials on time.
- f. Any other event not attributable to the act, fault or negligence of the CONTRACTOR which make it impossible for the CONTRACTOR to carry out its obligations under this Contract.

5.4 In the event that the CONTRACTOR encounters any of the justifiable causes or reasons for delay as allowed herein, the CONTRACTOR shall, within five (5) calendar days after encountering such cause or causes, submit to the OWNER a written request for an extension of the Contract Period, indicating therein the specific reason/s for the delay and the extension period requested.

- 5.5 The foregoing provisions notwithstanding, no extension of the Contract Period shall be granted in the following instances:
- a. Ordinary unfavorable weather conditions or monsoon rains
 - b. Non-availability of laborers, supervisors, technical people, equipment or materials, including power, water and other utilities, that are supposed to be taken care of or supplied by the CONTRACTOR
 - c. Labor problems, including strikes, slowdowns, pickers, or lock-outs, involving the CONTRACTOR employees, workers or personnel or those of its subcontractors, agent, forwarder, or supplier;
 - d. Disputes of the CONTRACTORS with its materials men and suppliers.
- 5.6 The OWNER shall have the exclusive option of granting a request for extension and determining the extension period to be allowed in favor of the CONTRACTOR to compensate for the lost time, which option shall not be unreasonably withheld or delayed.
- 5.7 The foregoing provisions notwithstanding, no extension of the Contract Period, even if granted or allowed by the OWNER, shall be valid unless and until the CONTRACTOR causes or secures the corresponding extensions of the bonds and insurances required under this Contract in favor of the OWNER. For this purpose, the CONTRACTOR shall be obliged to notify its bondsmen and insurers of all extensions of the Contract Period and show proof that the bondsmen and insurers agreed to remain bound to the OWNER during the extension period(s) under the same terms and conditions as in the original period. The OWNER shall not be obliged to grant an extension, even if the circumstance/s fall/s under any of the justifiable causes allowed in this Contract, if the extension should result in the invalidation or impairment of any of the existing bonds and insurances required under this Contract, unless the CONTRACTOR could provide an equally acceptable substitute guaranty for the OWNER.
- 5.8 If at any time during the Contract Period, the CONTRACTOR incurs a slippage of FIFTEEN PERCENT (15%) in the Construction Schedule, the OWNER may require the CONTRACTOR to submit within three (3) calendar days from demand a confirmed catch-up schedule including the list of resources required therefore to remedy the delay/slippage incurred over a period of thirty (30) calendar days. The purpose of this Section is merely to enable the CONTRACTOR to complete the Works within the original Contract Period and not to grant an extension therefore. Should the CONTRACTOR, despite the catch-up schedule, fail to remedy/overcome the slippage within the catch-up period, the OWNER may take any or all the following course of action:
- a. Immediately upon notice to the CONTRACTOR, take-over and complete the Works either by itself or through Contractor. In such case, the temporary facilities, materials, equipment, tools and resources of the CONTRACTOR on site shall be at the disposition of the OWNER until the Works unfinished by the CONTRACTOR are completed. The difference between the cost reasonably incurred and substantiated by OWNER to complete the Works and the Contract Price balance shall be for the account of the CONTRACTOR and shall be charged against whatever billings are still due to the CONTRACTOR, the

Performance Bond, such other amounts due or owned by the CONTRACTOR and in the possession of the OWNER.

- b. Terminate this Contract pursuant to Article 10 hereof.
- c. The exercise by the OWNER of either of the above options is without prejudice to other legal remedies allowed under this Contract and existing laws, including the right to demand for liquidated damages.

Article 6. CHANGE ORDERS, ADDITIVE AND DEDUCTIVE WORKS

- 6.1 The OWNER may, at any time, by a written order, make deviations and/or alternations on the plans and specifications or require addition or deductions to the Works required under this Contract. The CONTRACTOR agrees to follow all such deviations and/or alterations with the same force and effect as if they were embodied in the original plans and specifications.
- 6.2 If any such changes cause an increase or decrease in the work and/or time required for the performance of this contract, an equivalent adjustment shall be made using as basis the Approved CPM schedule and the Approved Additive/Deductive Unit Costing; and where such is not applicable, the cost (inclusive of VAT) PLUS 15% scheme shall be applied.
- 6.3 In the event, however, that the CONTRACTOR incurs delay in the completion of the Project, the same fixed rates and unit prices as specified in the Approved Additive/Deductive Unit Costing shall be used as basis for the addition or deduction in the Contract Price arising from the change order, even if the change order is given and/or work thereon is commenced beyond the original completion date of this Contract.

Article 7. CONTRACT ADJUSTMENT

- 7.1 The labor cost component of the Contract Price is based on the minimum wage set for region/province where the project is located as of _____, 20__. In the event of compulsory increase on the minimum wage or imposition of a mandatory allowance at any time thereafter and during the original Contract Period or extensions thereof granted pursuant to this Contract, the Contract Price shall be adjusted as follows:

$$\text{Adjustment} = \frac{\text{Percentage of X (Contract Price in PHP / 1,000) X Peso Increase}}{\text{Remaining Work of Minimum Wage}}$$

- 7.2 The foregoing provision notwithstanding, no labor cost adjustment shall be allowed beyond the original Contract Period if the delay in the completion of the Work was by reason of fault or negligence attributable to the CONTRACTOR.

Article 8. BONDS AND INSURANCE

- 8.1 The CONTRACTOR shall, not later than fifteen (15) calendar days from the execution of this Contract and as a condition for the release of the Down-Payment and subsequent payments for progress billings, submit to the OWNER the following bonds and insurance which the CONTRACTOR shall, at its own expense, procure from a reputable bonding or insurance company acceptable to the OWNER.

- a. Down-Payment Bond in an amount equivalent to fifteen (15%) of the Contract Price to guaranty the down-payment released by the OWNER for the execution of the Works;
 - b. Performance Bond in the amount equivalent to twenty (20%) percent of the Contract Price to guarantee the full and faithful compliance of the CONTRACTOR to the terms and conditions, provisions, and stipulations of this Contract, including the payment of liquidated damages authorized under this Contract;
 - c. Contractor's All Risk Insurance, in an amount equivalent to the full Contract Price, to relieve the OWNER from any and all liabilities and responsibility for loss, damage or injury to the Works, the person(s) or property of third party and/or the OWNER which may arise in the course of the CONTRACTOR's performance of this contact.
- 8.2 The foregoing bonds and insurance shall remain in full force and effect during the entire Contract Period and all extensions thereof until the completion of the Project and the issuance of the Certificate of Completion and Final Acceptance by the OWNER.
- 8.3 In case the OWNER grants the CONTRACTOR an extension of the contract period, the coverage of the Payment and Performance Bonds as well as Contractor's All Risk Insurance shall likewise be extended and the premium and other charges that may be due in connection with the extension of the bonds and insurance shall also be for the account of the CONTRACTOR. In this regard, the OWNER may withhold from any payment due to the CONTRACTOR the amount equivalent to the value of the additional bonds and insurance required until the same shall have been posted.
- 8.4 In case of delay in the completion of the Works, the OWNER shall require the CONTRACTOR to secure the extension of the Payment and Performance Bonds as well as the Contractor's All Risk Insurance by such period the OWNER deems adequate to complete the Project and the issuance of the Certificate of Completion and Final Acceptance. OWNER may withhold from any payment due to the CONTRACTOR the amount equivalent to the value of the additional bonds and insurance required until the same have been posted.
- 8.5 The aforementioned bonds shall extend to include contract changes that may be made during the progress of the construction work and the Performance Bond shall be increased by supplementary bonds equivalent to Twenty percent (20%) of the cost any additional or extra work authorized by the OWNER.
- 8.6 In the event of the rescission or termination of this Contract for breach thereof due to the fault of the CONTRACTOR, the OWNER may immediately proceed against the Payment and/or Performance Bonds to answer for any and all claims against the CONTRACTOR.

Article 9. WARRANTIES AND REPRESENTATIONS OF THE CONTRACTOR

- 9.1 The CONTRACTOR represents that it has and shall maintain throughout the period of this Contract, adequate capitalization, financial capability, technical know-how and manpower to undertake and complete the Works.
- 9.2 The CONTRACTOR warrants that it shall obtain all permits, clearances, and approvals from the proper authorities in accordance with its undertaking or as required by the OWNER.

- 9.3 The CONTRACTOR shall provide everything necessary or appropriate towards the proper accomplishment and completion of the Project according to the true intent and meaning of the drawings, plans and specifications and other Contract Documents taken together, whether the same may or may not be particularly shown on the drawings or described in the specifications; provided that, the same is reasonably inferred therefrom. If the CONTRACTOR finds any discrepancy in the drawings and specifications, the CONTRACTOR shall immediately refer the same to the OWNER who shall finally decide the matter. It is understood that the CONTRACTOR anticipated such discrepancies in the plans, specifications and the actual conditions during the bidding and before the awarding of the services contemplated herein.
- 9.4 The CONTRACTOR hereby recognizes the trust and confidence reposed on it by the OWNER under this Contract and agrees to fully cooperate with the OWNER and its authorized representatives in administration and supervision of the Project and to carry out the WORKS in the soundest way, in the most expeditious and economical manner, with the interest of the OWNER in mind at all times.
- 9.5 The CONTRACTOR hereby warrants and guarantees that all the materials and machineries it will supply and install this Contract are new, first class, free from defects, in good working order and shall fully comply in every respect with the specifications, approved samples and other requirements of the Contract Documents. All materials and workmanship shall be of the respective kinds described in the specifications, and the CONTRACTOR shall, upon the request of the OWNER, provide brochures and supporting documents to prove that the quality of the materials are such as specified. The CONTRACTOR shall not substitute any material that is required to be furnished under this Contract unless written approval is first obtained from the OWNER.
- 9.6 In case of any defect(s) on workmanship or materials which becomes apparent in the course of the construction and which in the OWNER's reasonable opinion are unsound or unacceptable, the CONTRACTOR shall, at its own expense, tear down and replace such portion of the work done and/or materials installed or correct such defect(s).
- 9.7 The CONTRACTOR shall be responsible for the repair and restoration all damages it caused on building, streets, sidewalks, curbs, and pavements, developments by other entities and other properties, whether public or private occasioned by their use or opening in connection with or as a consequence of the Works, and hold the OWNER free and harmless from any liability.
- 9.8 The CONTRACTOR shall put up and maintain adequate protection for all its works from damages and shall protect the property and equipment which may be found in the site of the Works, whether owned by, rented or turned over to the OWNER.
- 9.9 The CONTRACTOR shall comply with all the national and local laws, ordinances, and regulations relating to the execution of the Works and shall render the OWNER free and harmless from all prosecution, suits, liabilities or claims for violation thereof.
- 9.10 The CONTRACTOR shall keep the Project Site in a sanitary condition and comply with the environmental requirements and mitigation measures specified in the Environmental Clearance Certificate issued for the Project. The CONTRACTOR shall assume full responsibility and hereby holds the OWNER free and harmless for any costs and liabilities arising from any adverse environmental damage or health impacts caused by its construction operations.

Article 10. RIGHTS AND RESPONSIBILITIES OF THE OWNER

- 10.1 The OWNER shall have the right to supply the CONTRACTOR with additional drawings, instructions and documents as it may deemed necessary for proper and adequate prosecution of the Works.
- 10.2 The OWNER may terminate this Contract without incurring any liability whatsoever to the CONTRACTOR except for the payment of billings properly due to the CONTRACTOR in accordance with Section 10.3, by giving fifteen (15) days notice in writing to the CONTRACTOR upon any of the following grounds:
- a. The CONTRACTOR, without justifiable reason(s), violated or is violating any of the conditions of this Contract or any Contract Documents, or any of its warranties under this Contract and, despite written demand from the OWNER, refused or failed to cure such violation within a period prescribed by the OWNER.
 - b. The CONTRACTOR abandons the Project without justifiable reason(s), or assigns the execution of the Works or any portion thereof to other parties without the prior written consent of the OWNER;
 - c. The CONTRACTOR fails or refuses, without just cause, to continue works on the Project by reason of any disagreement with the OWNER;
 - d. The CONTRACTOR fails to execute the Project in good faith, or in accordance with the plans and specifications;
 - e. The CONTRACTOR fails to recover from its fifteen percent (15%) slippage in the Construction Schedule despite a thirty-day catch-up schedule and it becomes apparent that it will not be able to complete the Project within the period stipulated;
 - f. The CONTRACTOR files a petition for suspension of payment or for insolvency, or is placed under receivership, or goes to involuntary dissolution/liquidation, or enters an arrangement transferring its assets or control therein or assigns its assets or this Contract in favor of its creditor or third party;
 - g. The CONTRACTOR fails, despite demand of the OWNER or its representative, to replace and/or provide qualified engineers, project managers, supervisors, competent workmen, or appropriate material acceptable to the OWNER.
- 10.3 In the event of termination of this CONTRACT by reason of default on the part of the CONTRACTOR pursuant to the above Section 10.2, the OWNER may takeover and complete the WORKS by itself or through other contractors. If required by the OWNER, The CONTRACTOR shall then remove its equipment and temporary works from the PROJECT site. After a notice of termination has taken effect, The OWNER may withhold any amount owing to the CONTRACTOR at the time of termination for services already rendered and/or materials delivered and taken over by the OWNER until the extra costs of completion of the unfinished works of CONTRACTOR and/or remedying of any defects in such works as reasonably incurred and substantiated, and any liquidated damages for delay which have accrued prior to termination have been established. After recovering any such ascertained cost and damages, the OWNER shall release and pay the CONTRACTOR whatever balance from the amount withheld by the OWNER which was then due the CONTRACTOR at the time of termination.

- 10.4 The OWNER shall exercise the right to approve the materials and workmanship of the CONTRACTOR and require the latter that only materials conforming to the specifications and equipment complying with the required standards of quality as detailed in the specifications be used in the Project and reject those which do not conform thereof or which are defective. Toward this end, the CONTRACTOR is obliged to furnish for approval by the OWNER, samples of materials and/or equipment for examination and testing.
- 10.5 The OWNER shall have the right to inspect the work being done by the CONTRACTOR to ensure that the same is being done properly in accordance with the prescribed plans and specifications. Work that will be covered before it is done should first be presented to the OWNER for inspection and work covered without such presentation and inspection may be ordered uncovered at the CONTRACTOR'S expense. Work found not to have been done correctly shall be condemned and ordered re-done. Even if work had passed such prior inspection, The OWNER at any time before final acceptance, may still order that the same be uncovered, removed or torn down if it reasonably suspects that the work was not done in accordance with the plans and specifications and the CONTRACTOR shall be obliged to comply with this order. If the inspection would later show that the works was not correctly done, the CONTRACTOR shall shoulder the cost of removal and reconstruction. If, on the other hand, the inspection show that the work was properly done, the CONTRACTOR shall be paid the actual direct cost incurred for such inspection, removal, reconstruction and the costs of extension of bonds and insurances, if required, plus 30% mark-up. In addition, CONTRACTOR shall be granted an extension of the Contract Period equivalent for the time lost for the removal, inspection and restoration of the affected portion of the works.
- 10.6 The OWNER is entitled to be indemnified by the CONTRACTOR for any and all losses, claims, demands, suits, actions, recoveries, and judgment brought or recovered against it by reason of or resulting from the execution of the Works by CONTRACTOR and by reason of any breach of this Contract, negligence by the CONTRACTOR, its agents, subcontractors, suppliers or employees. This indemnification entitlement of OWNER shall be limited to claims and losses that are attributable to bodily injury, sickness, disease or death, or to damage to or loss of property (other than the Works).
- 10.7 The OWNER may suspend or discontinue the execution of the Project by reason of problems encountered whatever may be its cause. In case the Project is suspended, the OWNER shall pay the CONTRACTOR all the costs incurred by the CONTRACTOR during and as a result of suspension. The CONTRACTOR shall also extend the Contract Period equivalent to the time lost by virtue of the suspension. Should the suspension subsist for a continuous period of thirty (30) days, the CONTRACTOR may terminate this Contract and the OWNER shall pay CONTRACTOR within thirty (30) days from the effective date of termination the following:
- a. amount due the CONTRACTOR for work accomplished up to the time this contract is terminated.
 - b. cost of plant/equipment and materials ordered for the Works which have been delivered to the CONTRACTOR, or of which CONTRACTOR is contractually liable to accept delivery and this plants and materials shall become property of the OWNER when paid for by OWNER;

- c. any other cost or liability which in the circumstances was reasonably incurred by the CONTRACTOR in the expectation of completing the Works;
- d. demobilization costs.

Article 11. RIGHTS OF THE CONTRACTOR

- 11.1 CONTRACTOR shall have the right to suspend work on the Project or terminate this Contract either outright or at any time after it has suspended the work on the Project for any of the following justifiable reasons:
- a. Work on the Project has to be stopped in compliance with the lawful order of appropriate authority, except on instances where the CONTRACTOR failed to comply with any national or local law, ordinance, rule or regulation in relation to its execution of the Works or which under this Contract or law is its obligation to comply with;
 - b. The OWNER fails to perform its obligations under this CONTRACT through no fault of the CONTRACTOR, including but not limited to non-payment of progress billing for a period exceeding thirty (30) days from the end of the period allowed the OWNER for payment of duly validated billings;
 - c. OWNER assigns this Contract or any of its obligation herein without the prior written consent of the CONTRACTOR;
 - d. OWNER becomes bankrupt or insolvent, goes into liquidation, has a receivership or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which under the law has a similar effect to any of these acts or events.
- 11.2 Upon the resumption of the work after a valid suspension pursuant to the above Section 11.1, the CONTRACTOR shall be entitled to an extension of the Contract Period and reimbursement of costs it incurred in the adjustment of the period of coverage of the Bonds and Insurances required under this Contract without prejudice to the rights of CONTRACTOR under Section 10.7 resulting from the suspension.
- 11.3 In the event of termination pursuant to above Section 11.1, the OWNER shall pay the CONTRACTOR in accordance with Section 10.7 and the OWNER shall return to the CONTRACTOR all the latter's bonds and insurance.

Article 12. COMPLETION AND FINAL ACCEPTANCE

- 12.1 When the Works required and called for under this Contract are substantially completed (substantial completion means 97% complete), the CONTRACTOR shall notify the OWNER in writing through its Construction Manager and request for a final inspection.
- 12.2 The OWNER, Construction Manager, and the CONTRACTOR shall conduct the joint inspection of the Project within five (5) days of the request for final inspection, unless the parties hereto mutually agree on a later date. The parties shall conclude the joint inspection within thirty (30) calendar days from its commencement unless the parties should mutually decide to extend the same.

- 12.3 If the Works are found defective, however, the OWNER shall notify the CONTRACTOR of such defects by issuing an Official Punch List. Upon the correction of the items contained in the Official Punch List, the CONTRACTOR shall again inform the OWNER of its completion and request for another joint inspection within five (5) calendar days from receipt of the said notice,
- 12.4 If the Works are eventually found to be satisfactorily done, the OWNER shall, within fifteen (15) calendar days from the conclusion of the inspection or re-inspection, issue the Certificate of Completion and Final Acceptance and release the payment for the last billing of the Contract Price as well as the balance of the retention, if any, upon the submission of the following:
- a. The CONTRACTOR'S Sworn Affidavit and Undertaking, duly executed by a senior corporate officer of the CONTRACTOR that all obligations on materials used and installed, and wages/salaries of all labor employed in connection with this Contract have been fully paid and that the CONTRACTOR shall render the OWNER, its stockholders, officers, employees, assigns and successors, free and harmless from claims relating to these;
 - b. Warranty Bond from a reputable bonding company acceptable to the OWNER, equivalent to TEN PERCENT (10%) of the total Contract Price including the cost of additional or extra works, to guaranty the Works for defects in workmanship and contractor-supplied materials for a period of one (1) year from the date of completion and acceptance;
 - c. Original and three (3) copies Certificate of Electrical Inspection, Fire Safety Inspection Certificate, Permit to Operate and such other relevant government permits, clearances and licenses;
 - d. Original, Electronic file in CD and three (3) sets of blue print of the "As Built" Plans and Drawing of the Project;
- 12.5 For a period of one (1) year reckoned from the date of final acceptance by the OWNER, the CONTRACTOR warrants the Works to be free from all defects in workmanship and in conformity with specifications of contractor-supplied materials. All defects made known to the CONTRACTOR during this one-year period shall be immediately repaired or replaced by the CONTRACTOR within fifteen (15) calendar days from notice or demand. In the event that the CONTRACTOR fails to complete the repair or replacement work within this fifteen (15) calendar days period from notice or demand, the OWNER may, at its exclusive option, undertake the remedial/corrective work and the reasonable costs therefore incurred and substantiated by the OWNER shall be charged against the account of the CONTRACTOR and/or the Warranty Bond.
- 12.6 Notwithstanding the expiration of the one-year warranty period mentioned above, nothing herein contained shall be deemed a waiver of any cause of action to proceed against the CONTRACTOR for purposes of enforcing its obligations and liabilities under Article 1732 of the New Civil Code.

Article 13. DISPUTE SETTLEMENT/ARBITRATION

- 13.1 Should disputes, controversies or differences between the parties arise in connection with this Contract, the parties shall, as far as practicable, settle the same amicably. Within five (5) days from written notice ("initial written notice") from one party that a dispute or controversy needs to be settled, the parties shall arrange for their

respective representatives to meet not later than ten (10) calendar days from the initial written notice. During said meeting or meetings which the parties may call, the parties shall, in good faith, endeavor to reach a settlement mutually acceptable to both the OWNER and the CONTRACTOR. Should the parties fail to settle their dispute/s under this mode within thirty (30) days or such period as may be agreed by the parties from date of receipt of initial written notice, the parties may refer to the following section.

- 13.2 Matters concerning disputes, controversies or differences between the parties arising out of this Contract which are not be resolved by them to their mutual satisfaction pursuant to the foregoing section, shall be submitted to a Board of Arbitrators as provided by the arbitration rules of the Construction Industry Authority of the Philippines. Expenses and other fees for arbitration shall be shouldered by the party held liable therefore by the Board or, in the absence of such determination, equally among the parties. Any pending issue submitted for arbitration (save any of the grounds provided under Section 11.1 and 11.2 herein by virtue of which the CONTRACTOR shall be entitled to suspend work on the Project and an extension of the Contract Period) shall not be considered as basis for the CONTRACTOR to suspend work nor shall it be made as basis for extension of time to complete the Works.

Article 14. MISCELLANEOUS PROVISIONS

- 14.1 The CONTRACTOR shall strictly comply with all the laws, ordinances, policies, guidelines, rules and regulations now existing or hereafter enacted or promulgated by the Government, including all its agencies and instrumentalities, whether National or Local arising from its execution of the Works. All such applicable laws, ordinances, policies, guidelines, rules and regulations shall be read into and made integral parts of this Contract.
- 14.2 The failure of any party to this Contract to insist upon a strict performance or compliance of any of the terms, conditions and covenants hereof shall not be deemed a relinquishment or waiver of any right or remedy that either party may have, or shall it be construed as a waiver of any subsequent breach or default of the terms, conditions or covenants herein contained. Unless otherwise provided herein, no waiver of any right by either party shall be deemed to have been made unless expressed in writing and signed by both parties.
- 14.3 The pertinent laws of the Republic of the Philippines shall be applied in interpreting and applying the terms and conditions of this Contract and those of the Contract Documents.
- 14.4 The invalidation of any of the terms, conditions, stipulations, covenants, or restrictions, or any part hereof by a final judgment of a court of competent jurisdiction shall not affect the other provisions hereof. If necessary for the full implementation of this Contract and the Contract Documents, the parties shall promptly negotiate in good faith for alternate provisions to replace any provision which has been declared invalid by a court of competent jurisdiction.
- 14.5 This Contract shall become effective upon execution hereof and the same shall be binding upon the assigns and/or successors-in-interest of both contracting parties.
- 14.6 Information, documents and other papers relative to this Project obtained or may be obtained by the Parties shall be kept confidential and shall not be disclosed to any

person or entity without the prior written approval of both the OWNER and the CONTRACTOR.

- 14.7 The CONTRACTOR shall not assign, sublet or sub-contract any portion of the works for the Project covered by this Contract except upon prior written approval by the OWNER. Any such assignment, sub-lease or subcontracting shall be subject to the pertinent provisions of this Contract. Violation of this provision shall constitute a material breach of this Contract. The written approval of the OWNER to the sub-letting or subcontracting, however, shall not relieve the CONTRACTOR from any of its responsibilities and obligations under this Contract and the Contract Documents. Consent to any subcontracting shall not be credited until after the CONTRACTOR has submitted proof satisfactory to the OWNER that the sub-contractor has appropriate capabilities and ample insurance to cover the works. The CONTRACTOR shall hold the OWNER free and harmless from any and all damages and expenses arising from the sub-contracting and/or assignment contemplated hereunder.
- 14.8 The CONTRACTOR hereby warrants and undertakes that it has complied and will comply with any and all the relevant labor laws, policies, guidelines, rules and regulations including the mandatory employee benefits coverage and the safety provision required under relevant occupation hazard laws.
- 14.9 The CONTRACTOR hereby warrants that no amount/s, favor/s or gift/s whatsoever was/were given to any official of the government or any officer or employee or agent of the OWNER which could be considered as bribe.
- 14.10 Workmen employed and/or contracted by the CONTRACTOR to undertake the Works contemplated herein shall be the employees and exclusive responsibility of the CONTRACTOR. The CONTRACTOR hereby holds the OWNER free and harmless from any and all liability which may be incurred as result of the employer-employee relationship of the CONTRACTOR and its workmen. The CONTRACTOR shall be liable for any claim or damage resulting from accidents, injuries, sickness, or death that its employees may suffer while performing their duties.

IN WITNESS WHEREOF The parties have hereunto caused their respective authorized representatives to affix their signatures.

Owner

By:

Authorized Representatives

Authorized Representative

Contract

By:

Authorized Representative

Authorized Representative

SIGN IN THE PRESENCE OF :
