

**Contract for the Conversion/Construction of Temporary Isolation or
Quarantine and Medical Treatment Facilities at the National
Government Administrative Center (NGAC), New Clark City, Capas,
Tarlac to address the COVID-19 Pandemic**

THIS AGREEMENT, made this _____ 2020 between the **BASES CONVERSION AND DEVELOPMENT AUTHORITY (BCDA)**, with principal office address at the BCDA Corporate Center, 2/F Bonifacio Technology Center, 31st Street corner 2nd Avenue, Bonifacio Global City, Taguig City, Metro Manila, Philippines, (hereinafter called the "**Entity**") and **BANDAR HEBAT BUILDERS, INC.**, with principal office address at National Government Administrative Center (NGAC) Integrated Operations Center Building, Aranguren, Capas, Tarlac, Region III, 2009 Philippines, (hereinafter called the "**Contractor**").

ANTECEDENTS:

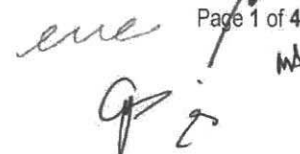
On 08 March 2020, President Rodrigo Roa Duterte issued Proclamation No. 922 declaring a State of Public Health Emergency throughout the Philippines due to the outbreak of the Corona Virus Disease 2019 (COVID-19), and enjoining under Section 2 thereof all government agencies and local government units (LGUs) to render full assistance, cooperation, and mobilization of the necessary resources to undertake critical, urgent and appropriate response and measures in a timely manner to curtail and eliminate the COVID-19 threat.

Due to the continuous outbreak of the COVID-19, the President issued Proclamation No. 929, dated 16 March 2020, declaring a State of Calamity throughout the Philippines for a period of six (6) months and imposed an Enhanced Community Quarantine (ECQ) throughout Luzon, beginning 17 March 2020 until 12 April 2020.

Subsequently, the President, upon the recommendation of the Inter-Agency Task Force for the Management of Emerging Infectious Disease (IATF), extended the ECQ over the entire Luzon until 30 April 2020, which was further extended until 15 May 2020 in certain regions, such as the National Capital Region (NCR) and Central Luzon, because of the fast emerging confirmed cases of COVID-19.

The implementation of the ECQ throughout Luzon was further extended until 15 May 2020 by the President as per the recommendation of the IATF. Thereafter, the NCR, Laguna and Cebu City, which were considered as high-risk areas by the IATF, were placed under a modified ECQ, while the rest of Luzon and certain regions in Visayas and Mindanano were placed under a General Community Quarantine (GCQ) from 16 May up to 31 May 2020. Starting 01 June 2020, the NCR and most of the country shall be placed under GCQ.

In its earlier Resolution No. 16, dated 30 March 2020, the IATF directed all LGUs and Government-Owned and-Controlled Corporations (GOCCs) to identify their respective



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government facilities that may be temporarily converted into isolation or quarantine facilities to address the COVID-19 Pandemic in the country.

The Bases Conversion and Development Authority (BCDA) has identified the National Government Administrative Center (NGAC) facilities at the New Clark City (NCC) to be converted into temporary isolation or quarantine and medical treatment facilities to accommodate the COVID-19 patients from Clark, nearby provinces, and other places in the country.

Pursuant to Republic Act (RA) 11469 or *the Bayanihan to Heal as One Act*, the procurement for the establishment, construction, and operation of temporary isolation or quarantine and medical facilities are exempt from the provisions of Republic Act (RA) No. 9184 or *the Government Procurement Reform Act (GPPRA)*.

Conformably, the Government Procurement Policy Board (GPPB), through Circular No. 01-2020, dated 06 April 2020, issued the Guidelines for Emergency Procurement to expedite the procurement of highly needed supplies, materials, equipment, utilities, telecommunications, and other critical services, to include the establishment, construction and operation of temporary isolation or quarantine and medical treatment facilities.

BCDA shall procure the conversion/construction of temporary isolation or quarantine and medical treatment facilities at the NGAC (hereinafter the "Works") through emergency procurement in accordance with the GPPB Guidelines for Emergency Procurement (GPPB Circular No. 01-2020, dated 06 April 2020).

BCDA is desirous that the Contractor execute **the Contract for the Conversion/Construction of Temporary Isolation or Quarantine and Medical Treatment Facilities at the National Government Administrative Center, New Clark City, Capas, Tarlac to address the COVID-19 Pandemic**, and it has negotiated with the Contractor in the amount of Pesos: **THIRTY-SEVEN MILLION THREE HUNDRED FORTY-SIX THOUSAND EIGHTY-SIX and 15/100, (PhP37,346,086.15)**, net of taxes, for the execution and completion of such Works and the remedying of any defects therein.

BCDA, through its delegated end-user, has posted, for information purposes, the Notice of Award (NOA) and the contract in the BCDA website or in a conspicuous place within the premises of BCDA, as well as in the GPPB online portal for Emergency Procurement under RA 11469 in compliance with GPPB Circular No. 01-2020, dated 06 April 2020.

BCDA has addressed the concerns of the Contractor regarding some provisions in the Conditions of Contract, which caused some delay in the contract signing.

ACCORDINGLY, for and in consideration of the foregoing premises and the covenants set forth herein, the Parties have agreed and stipulated as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.



2. The following documents shall be attached, deemed to form, and be read and construed as integral part of this Agreement, to wit:
 - (a) Conditions of Contract;
 - (b) Drawings/Plans;
 - (c) Specifications;
 - (d) Eligibility requirements, documents and/or statements;
 - (e) Notice of Award of Contract and the Bidder's conforme thereto;
 - (f) Other contract documents that may be required by existing laws and/or by BCDA.

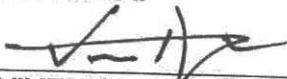
3. In consideration of the payments to be made by BCDA to the Contractor as hereinafter mentioned, the Contractor hereby covenants with BCDA to execute and complete the Works and remedy any defects therein in conformity with the provisions of this Contract in all respects.

4. BCDA hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein, the Contract Price in the amount of Pesos: **THIRTY-SEVEN MILLION THREE HUNDRED FORTY-SIX THOUSAND EIGHT-SIX and 15/100 (P37,346,086.15)**.

5. The Contractor warrants that, for the contract duration, which is thirty (30) days upon the issuance of the Notice to Proceed, the Works to be delivered or implemented shall be free from defects and conform to quality standards and technical specifications of the Project. The Contract further warrants that it shall fulfill its obligations and undertakings under this Contract and the Omnibus Sworn Statement (OSS).

SIGNED BY THE PARTIES on 6 NOVEMBER 2020 in _____, Philippines.

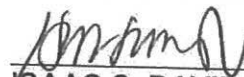
For BCDA:



VIVENCIO B. DIZON

President and Chief Executive Officer

For the Contractor:



ISAAC S. DAVID

President



Clark Green City - Engineering



ZE2020-0229

Signed in the Presence of:



PATRICK NICHOLAS P. DAVID

ACKNOWLEDGMENT

Republic of the Philippines)
_____) S.S.

TAGUIG CITY

NOV 11 2020

BEFORE ME, a Notary Public, for and in TAGUIG CITY, this _____ day of _____ 2020, personally appeared the following:

Name	Identification Document	Date and Place of Issue
VIVENCIO B. DIZON	PASSPORT NO. P4232808A	31 AUGUST 2017 DFA MANILA
ISAAC S. DAVID	PASSPORT NO. P7623967A	21 JUNE 2018 DFA NCR EAST

who are known to me to be the same persons who executed the foregoing instrument and that they acknowledged to me that the signature they affixed confirm their own free acts and the entity/ies they represent.

SIGNED AND SEALED on NOV 11 2020 in _____, Philippines.
TAGUIG CITY

NOTARY PUBLIC

ATTY. EDUARDO P. BAROT
Notary Public for Taguig, Roll No. 36248
Commission No. 43 Until 31 Dec. 2020
PTR. No. 4325791/01.02.20/ Mandaluyong City
IBP Lifetime Member No. 013005/06.02.15/ RSM
MCLE Compliance No. VI-0007875 /04.14.22/
3/F Benifacio Technology Center 31st Street
Corner 2nd Avenue Crescent Park West
Global City Taguig City, Philippines

Doc No. 104;
Page No. 22;
Book No. 17;
Series of 2020.

[Handwritten signatures and initials]

SECRETARY'S CERTIFICATE

Republic of the Philippines)
Taguig City) SS.

I, **ELVIRA V. ESTANISLAO**, of legal age, being the Corporate Secretary of the Bases Conversion and Development Authority (BCDA), with office address at the 2/F Bonifacio Technology Center, 31st Street corner 2nd Avenue, Bonifacio Global City, Taguig City, do hereby certify that on the occasion of the 563rd Regular BCDA Board Meeting held on 27 May 2020 with a quorum being present, the Board of Directors, upon motion duly seconded, unanimously approved the following resolution:

Resolution No. 2020-05-053

"Resolve, as it is hereby resolved, that the supplemental budget amounting to Php38,000,000.00 for the conversion, fit-out and dismantling of NGAC Building into a temporary COVID-19 quarantine facility be, as it is hereby APPROVED.

Resolve further, as it is hereby resolved, that the authority of BCDA to enter into direct negotiation with Bandar Hebat Builders, Inc. (BHBI) consistent with the Guidelines for Emergency Procurement under Republic Act No. 11469 or the Bayanihan to Heal as One Act be, as it is hereby APPROVED.

Resolve further, as it is hereby further resolved, that the authority of the BCDA Project Management Department (End-User) to directly negotiate or conduct procurement activities as provided for under the Bayanihan Act be, as it is hereby APPROVED.

Resolve finally, as it is hereby finally resolved, that the inclusion of the project in the CY 2020 Annual Procurement Plan (APP) be, as it is hereby APPROVED."

IN WITNESS WHEREOF, I have hereunto affixed my signature this 24th day of June 2020.


ELVIRA V. ESTANISLAO
Corporate Secretary

TAGUIG CITY SUBSCRIBED AND SWORN to before me this JUN 30 2020 at _____, Philippines, by Atty. ELVIRA V. ESTANISLAO who exhibited to me her Passport No. P6212014A, issued at the City of Manila on 28 February 2018 and valid until 27 February 2028.

Doc. No. 288
Page No. 13
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Series of 2020.

Purpose: For reference of BDOG-NCC-PMO

SC2020-076
YB2020-0196

ATTY. EDUARDO P. BAROT
Notary Public for Taguig, Roll No. 36248
Commission No. 43 Until 31 Dec. 2020
PTR. No. 4325791/01.02.20/ Mandaluyong City
IBP Lifetime Member No. 013895/06.02.15/ RSM
MCLE Compliance No. VI-0007875 /04.14.22/
3/F Bonifacio Technology Center 31st Street
Corner 2nd Avenue Crescent Park West
Global City Taguig City, Philippines

Republic of the Philippines)
Makati City) S.S.

CORPORATE SECRETARY'S CERTIFICATE

I, **ELEANOR R. ABRENICA**, of legal age, Filipino, with office address at Unit 907 Trade and Financial Tower, 7th Avenue cor. 32nd Street, Bonifacio Global City, Taguig City, Metro Manila, being the duly elected and incumbent Corporate Secretary of **BANDAR HEBAT BUILDERS, INC.**, a corporation duly organized and existing under Philippine laws, with principal office address at the National Government Administrative Center (NGAC) Building 1A (Integrated Operation Center Bldg.), Aranguren, Capas, Tarlac, (Clark Special Economic Zone) Region III, Philippines, ("the Corporation"), under oath, do hereby certify that:


- 1) At the special meeting of the Board of Directors of the Corporation held on 30 March 2020, the following resolution was unanimously approved and adopted:

"RESOLVED, that the Board of Directors (the 'Board') of **BANDAR HEBAT BUILDERS, INC.** (the 'Corporation') , authorizes, as it so hereby authorizes, the Corporation to submit bids, negotiate, transact, enter into agreements, and perform all relevant and necessary acts for and in connection with Emergency Procurement under Republic Act No. 11469 otherwise known as the "Bayanihan to Heal as One Act";

RESOLVED FURTHER, that the Board designates, as it is so hereby designates, the President, **ISAAC S. DAVID** to represent the Corporation and , to act for and in behalf of the corporation and to sign, execute and deliver for and in the name of the Corporation, and any and all documents necessary and appropriate in connection therewith, and with full power and authority to assign, designate, appoint by Special Power of Attorney or by any written authorization, the Corporation's authorized representative for specific acts and transactions deemed necessary or expedient in pursuance of herein authority;

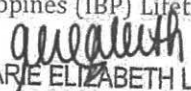
- 2) I further CERTIFY that the foregoing resolution above quoted is a true and correct excerpt of the proceedings at which the same was passed, and has not been revoked, cancelled, amended, or modified in any way, and is in full force and effect as of the date hereof, and is in accord with the Articles and By-Laws of the corporation;

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of JUN 05 2020
Makati City.


ELEANOR R. ABRENICA
Corporate Secretary

SUBSCRIBED AND SWORN TO before me this _____ day of JUN 05 2020 at
Makati City, affiant exhibiting to me her Integrated Bar of the Philippines (IBP) Lifetime Membership ID No. 07358 as competent evidence of her identity.

DOC. NO. 480
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BOOK NO. 11
SERIES OF 2020


ATTY. MARIE ELIZABETH L. LOTILLA
Notary Public for Makati City
Appointment No. M-34
Until December 31, 2021
Roll No. 73452
IBP No. 109100; 1/10/2020
PTR No. MKT-8126158/ 1/8/2020
MCLE Exempt - Admitted to the Bar on 6/19/2019
7727 E. Jacinto St., Pio del Pilar, Makati

CONDITIONS OF CONTRACT

1. Definitions

For purposes of this Clause, boldface type is used to identify defined terms.

- 1.1. The **Arbiter** is the person appointed jointly by the Procuring Entity and the Contractor to resolve disputes in the first instance, as provided for in Clause 19.
- 1.2. **Bill of Quantities** refers to a list of the specific items of the Work and their corresponding unit prices, lump sums, and/or provisional sums.
- 1.3. The **Completion Date** is the date of completion of the Works as certified by the Procuring Entity's Representative.
- 1.4. The **Contract** is the contract between the Procuring Entity and the Contractor to execute, complete, and maintain the Works.
- 1.5. The **Contract Effectivity Date** is the date of signing of the Contract. However, the contractor shall commence execution of the Works on the Start Date as defined in Clause 1.28.
- 1.6. The **Contract Price** is the price stated in the Notice of Award and the Contract and thereafter to be paid by the Procuring Entity to the Contractor for the execution of the Works in accordance with this Contract.
- 1.7. **Contract Time Extension** is the allowable period for the Contractor to complete the Works in addition to the original Completion Date stated in this Contract.
- 1.8. The **Contractor** is the juridical entity whose proposal has been accepted by the Procuring Entity and to whom the Contract to execute the Work was awarded.
- 1.9. The **Contractor's Bid** is the signed offer or proposal submitted by the Contractor to the Procuring Entity in response to the Invitation made by the Procuring Entity.
- 1.10. **Days** are calendar days; months are calendar months.
- 1.11. **Day works** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials.
- 1.12. A **Defect** is any part of the Works not completed in accordance with the Contract.
- 1.13. **Drawings** are graphical presentations of the Works. They include all supplementary details, shop drawings, calculations, and other information provided or approved for the execution of this Contract.
- 1.14. **Equipment** refers to all facilities, supplies, appliances, materials or things required for the execution and completion of the Work provided by the Contractor and which shall not form or are not intended to form part of the Permanent Works.
- 1.15. The **Intended Completion Date** refers to the date when the Contractor is expected to have completed the Works, which is thirty (30) days upon issuance of the Notice to Proceed. The Intended Completion Date may be revised only by the

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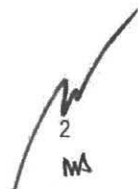

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Procuring Entity's Representative by issuing an extension of time or an acceleration order.

- 1.16 **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- 1.17 The **Notice to Proceed** is a written notice issued by the Procuring Entity or the Procuring Entity's Representative to the Contractor requiring the latter to begin the commencement of the work not later than a specified or determinable date.
- 1.18 The **Procuring Entity** is the **Bases Conversion and Development Authority (BCDA)**, with principal office address at the BCDA Corporate Center, 31st Street corner 2nd Avenue, Bonifacio Global City, Taguig City, Metro Manila.
- 1.19 The **Procuring Entity's Representative** is **VIVENCIO B. DIZON**, President and Chief Executive Officer of BCDA, who shall be responsible for supervising the execution of the Works and administering this Contract.
- 1.20 The **Site** is located at the **National Government Administrative Center, New Clark City, Capas, Tarlac.**
- 1.21 **Slippage** is a delay in work execution occurring when actual accomplishment falls below the target as measured by the difference between the scheduled and actual accomplishment of the Work by the Contractor as established from the work schedule. This is actually described as a percentage of the whole Works.
- 1.22 **Specifications** means the description of Works to be done and the qualities of materials to be used, the equipment to be installed and the mode of construction.
- 1.23 The **Start Date** is the date of receipt by the Contractor of the Notice to Proceed. It refers to the date when the Contractor is obliged to commence execution of the Works.
- 1.24 A **Subcontractor** is any person or organization to whom a part of the Works has been subcontracted by the Contractor, as allowed by the Procuring Entity, but not any assignee of such person.
- 1.25 **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Permanent Works.
- 1.26 **Work(s)** consist of the Conversion/Construction of a Temporary Isolation or Quarantine and Medical Treatment Facilities at the National Government Administrative Center, New Clark City, Capas, Tarlac.

2. Interpretation

- 2.1 The documents forming this Contract shall be interpreted in the following order of priority:
 - a) Contract Agreement;
 - b) Conditions of Contract;
 - c) Specifications;
 - d) Bill of Quantities; and



e) Drawings.

3. Governing Language and Law

- 3.1 This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract. All correspondence and other documents pertaining to this Contract which are exchanged by the parties shall be written in English.
- 3.2 This Contract shall be interpreted in accordance with the laws of the Republic of the Philippines.

4. Communications

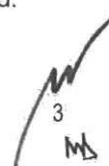

Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is received by the concerned party.

5. Possession of Site

- 5.1 Upon receipt by the Contractor of the Notice to Proceed, the Procuring Entity shall grant the Contractor possession of all parts of the Site. If the Contractor suffers delay or incurs cost from failure on the part of the Procuring Entity to give possession in accordance with the terms of this Clause, the Procuring Entity's Representative shall give the Contractor a Contract Time Extension and certify such sum as fair to cover the cost incurred, which sum shall be paid by Procuring Entity.
- 5.2 If possession of a portion is not given upon receipt by the Contractor of the Notice to Proceed, the Procuring Entity will be deemed to have delayed the start of the relevant activities. The resulting adjustments in contract time to address such delay shall be in accordance with Clause 41.
- 5.3 The Contractor shall allow the Procuring Entity's Representative and any person authorized by the Procuring Entity's Representative access to the Site and to any place where work in connection with this Contract is being carried out or is intended to be carried out.

6. The Contractor's Obligations

- 6.1 The Contractor shall carry out the Works properly and in accordance with this Contract. The Contractor shall provide all supervision, labor, materials, and Contractor's Equipment, which may be required. All materials on Site shall be deemed to be the property of the Procuring Entity.
- 6.2 The Contractor shall commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program of Work submitted by the Contractor, as updated with the approval of the Procuring Entity's Representative, and complete them by the Intended Completion Date.
- 6.3 The Contractor shall be responsible for the safety of all activities on the Site.
- 6.4 The Contractor shall carry out all instructions of the Procuring Entity's Representative that comply with the applicable laws where the Site is located.



6.5 The Contractor shall employ the following key personnel, namely:

- a. Project Manager'
- b. Site Engineer; and
- c. Architect

to carry out the supervision of the Works. The Procuring Entity will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are equal to or better than those of the personnel listed herein.

- 6.6. If the Procuring Entity's Representative asks the Contractor to remove a member of the Contractor's staff or work force, for justifiable cause, the Contractor shall ensure that the person leaves the Site within seven (7) days and has no further connection with the Work in this Contract.
- 6.7 During Contract implementation, the Contractor and his subcontractors shall abide at all times by all labor laws, including child labor related enactments, and other relevant rules.
- 6.8 The Contractor shall submit to the Procuring Entity for consent the name and particulars of the person authorized to receive instructions on behalf of the Contractor.
- 6.9 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Procuring Entity between the dates given in the schedule of other contractors particularly when they shall require access to the Site. The Contractor shall also provide facilities and services for them during this period. The Procuring Entity may modify the schedule of other contractors, and shall notify the Contractor of any such modification thereto.

7. Performance Security

Pursuant to GPPB NPM No. 004-2020, dated 16 April 2020, the Procuring Entity shall dispense with the requirement of a performance security due to the urgent need for the procurement at hand, which is covered by Republic Act (RA) No. 11469 or the Bayanihan to Heal as One Act. Instead, the Contractor shall make additional commitments in the Omnibus Sworn Statement (OSS), which shall be submitted by the Contractor prior to Notice of Award, that: (i) it shall submit all the mandatory documentary requirements at any time before award of contract or after award but prior to payment of contract; and (ii) it shall perform and deliver all of the obligations and undertakings, including the warranty provisions in the contract.

Failure of the Contractor to comply with the foregoing is sufficient ground for the Procuring Entity to initiate Blacklisting under the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants.

8. Subcontracting

- 8.1 The Contractor may subcontract a maximum of fifty percent (50%) of the Works, subject to prior written approval of the Procuring Entity.
- 8.2 Subcontracting of any portion of the Works does not relieve the Contractor of any liability or obligation under this Contract. The Contractor will be responsible for the

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acts, defaults, and negligence of any subcontractor, its agents, servants or workmen as fully as if these were the Contractor's own acts, defaults, or negligence, or those of its agents, servants or workmen.

8.3 Subcontractor/s shall comply with the following documentary requirements as specified in the GPPB Guidelines for Emergency Procurement under Republic Act No. 11469 or the Bayanihan to Heal as One Act, to wit:

- a. Mayor's or Business Permit;
- b. Income Tax Returns (Annual Income Tax Return of the preceding tax year) or Business Tax Returns (Value Added Tax or Percentage Tax Return covering the previous six months);
- c. Omnibus Sworn Statement (original copy);
- d. Philippine Contractors Accreditation Board (PCAB) License; and
- e. Net Financial Contracting Capacity (NFCC) Computation.

9. Liquidated Damages

9.1 The Contractor shall pay liquidated damages to the Procuring Entity for each day that the Completion Date is later than the Intended Completion Date. The applicable liquidated damages is at least one-tenth (1/10) of a percent of the cost of the unperformed portion for every day of delay. The total amount of liquidated damages shall not exceed ten percent (10%) of the amount of the contract. The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of this Contract, the Procuring Entity may rescind or terminate this Contract, without prejudice to other courses of action and remedies available under the circumstances.

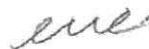
9.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer of the Procuring Entity shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate.

10. The Procuring Entity, Licenses and Permits

The Procuring Entity shall, if requested by the Contractor, assist him in applying for permits, licenses or approvals, which are required for the Works.

11. Contractor's Risk and Warranty Security

11.1 The Contractor shall assume full responsibility for the Works from the time project construction commenced up to final acceptance by the Procuring Entity and shall be held responsible for any damage or destruction of the Works except those occasioned by *force majeure*. The Contractor shall be fully responsible for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the Works, Equipment, installation, and the like to be affected by his construction work.



11.2 Pursuant to GPPB NPM 004-2020, dated 16 April 2020, the Procuring Entity shall not require the Contractor to post a warranty security, provided that, the Contractor shall make additional commitment in the OSS that it shall warrant that Works shall be free from defects and conform to quality standards and technical specifications of the said contract for the contract duration or for the period stipulated in the contract.

Failure of the Contractor to comply with any of the foregoing is sufficient ground for the Procuring Entity to initiate Blacklisting under the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants.

12. Liability of the Contractor

The Contractor's liability under this Contract shall be as provided by the laws of the Republic of the Philippines.

6. Procuring Entity's Risk

13.1 From the Start Date until the Certificate of Final Acceptance has been issued, the following are risks of the Procuring Entity:

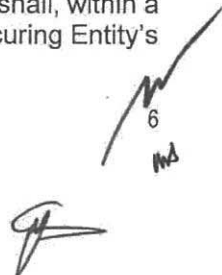
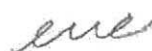
- a. The risk of personal injury, death, or loss of or damage to property (excluding the Works, Materials, and Equipment), which are due to:
 - i. any type of use or occupation of the Site authorized by the Procuring Entity after the official acceptance of the works; or
 - ii. negligence, breach of statutory duty, or interference with any legal right by the Procuring Entity or by any person employed by or contracted to him except the Contractor.
- b. The risk of damage to the Works, Materials, and Equipment to the extent that it is due to a fault of the Procuring Entity or in the Procuring Entity's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

7. Insurance

14.1 The Contractor shall, under his name and at his own expense, obtain and maintain, for the duration of this Contract, the following insurance coverage:

- a. Contractor's All Risk Insurance;
 - i. Transportation to the project Site of Equipment, Machinery, and Supplies owned by the Contractor;
 - ii. Personal injury or death of Contractor's employees; and
 - iii. Comprehensive insurance for third party liability to Contractor's direct or indirect act or omission causing damage to third persons.

14.2 The Contractor shall provide evidence to the Procuring Entity's Representative that the insurances required under this Contract have been effected and shall, within a reasonable time, provide copies of the insurance policies to the Procuring Entity's



Representative. Such evidence and such policies shall be provided to the Procuring Entity's through the Procuring Entity's Representative.

- 14.3 The Contractor shall notify the insurers of changes in the nature, extent, or program for the execution of the Works and ensure the adequacy of the insurances at all times in accordance with the terms of this Contract and shall produce to the Procuring Entity's Representative the insurance policies in force including the receipts for payment of the current premiums.

The above insurance policies shall be obtained from any reputable insurance company approved by the Procuring Entity's Representative.

- 14.4 If the Contractor fails to obtain and keep in force the insurances referred to herein or any other insurance which he may be required to obtain under the terms of this Contract, the Procuring Entity may obtain and keep in force any such insurances and pay such premiums as may be necessary for the purpose. From time to time, the Procuring Entity may deduct the amount it shall pay for said premiums including twenty-five percent (25%) therein from any monies due, or which may become due, to the Contractor, without prejudice to the Procuring Entity exercising its right to impose other sanctions against the Contractor pursuant to the provisions of this Contract.

- 14.5 In the event the Contractor fails to observe the above safeguards, the Procuring Entity may, at the Contractor's expense, take whatever measure is deemed necessary for its protection and that of the Contractor's personnel and third parties, and/or order the interruption of dangerous Works. In addition, the Procuring Entity may refuse to make the payments under **GCC Clause Error! Reference source not found.** until the Contractor complies with this Clause.

- 14.6 The Contractor shall immediately replace the insurance policy obtained as required in this Contract, without need of the Procuring Entity's demand, with a new policy issued by a new insurance company acceptable to the Procuring Entity for any of the following grounds:

- a. The issuer of the insurance policy to be replaced has:
- i. become bankrupt;
 - ii. been placed under receivership or under a management committee;
 - iii. been sued for suspension of payment; or
 - iv. been suspended by the Insurance Commission and its license to engage in business or its authority to issue insurance policies cancelled; or
 - v. Where reasonable grounds exist that the insurer may not be able, fully and promptly, to fulfill its obligation under the insurance policy.

15. Termination for Default of Contractor

- 15.1 The Procuring Entity shall terminate this Contract for default when any of the following conditions attend its implementation:

- a. Due to the Contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with



Presidential Decree 1870, regardless of whether or not previous warnings and notices have been issued for the Contractor to improve his performance;

- b. Due to its own fault and after this Contract time has expired, the Contractor incurs delay in the completion of the Work after this Contract has expired; or
- c. The Contractor:
 - i. abandons the contract Works, refuses or fails to comply with a valid instruction of the Procuring Entity or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity;
 - ii. does not actually have on the project Site the minimum essential equipment listed on the bid necessary to prosecute the Works in accordance with the approved Program of Work and equipment deployment schedule as required for the project;
 - iii. does not execute the Works in accordance with this Contract or persistently or flagrantly neglects to carry out its obligations under this Contract;
 - iv. neglects or refuses to remove materials or to perform a new Work that has been rejected as defective or unsuitable; or
 - v. sub-lets any part of this Contract without approval by the Procuring Entity.

15.2 All materials on the Site, Works, including Equipment purchased and funded under the Contract shall be deemed to be the property of the Procuring Entity if this Contract is rescinded because of the Contractor's default.

16. Termination for Default of Procuring Entity

The Contractor may terminate this Contract with the Procuring Entity if the Works are completely stopped for a continuous period of at least thirty (30) calendar days through no fault of its own, due to any of the following reasons:

- a. Failure of the Procuring Entity to deliver the Site within a reasonable time; or
- b. The prosecution of the Works is disrupted by the adverse peace and order situation, as certified by the Armed Forces of the Philippines Provincial Commander and approved by the Secretary of National Defense.

17. Termination for Other Causes

17.1 The Procuring Entity may terminate this Contract, in whole or in part, at any time for its convenience. The HoPE may terminate this Contract for the convenience of the Procuring Entity if it has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and National Government policies.

17.2 The Procuring Entity or the Contractor may terminate this Contract if the other party causes a fundamental breach of this Contract.

17.3 Fundamental breaches of Contract shall include, but shall not be limited to, the following:



- a. The Contractor stops work for fifteen (15) days when no stoppage of work is shown on the current Program of Work and the stoppage has not been authorized by the Procuring Entity's Representative;
 - b. The Procuring Entity's Representative instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within fifteen (15) days;
 - c. The Procuring Entity shall terminate this Contract if the Contractor is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the Contractor. In the case of the Contractor's insolvency, any Contractor's Equipment which the Procuring Entity instructs in the notice is to be used until the completion of the Works;
 - d. A payment certified by the Procuring Entity's Representative is not paid by the Procuring Entity to the Contractor within thirty (30) days from the date of the Procuring Entity's Representative's certificate;
 - e. The Procuring Entity's Representative gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Procuring Entity's Representative;
 - f. The Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the Clause 9; and
 - g. In case it is determined prima facie by the Procuring Entity that the Contractor has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation, such as, but not limited to, the following:
 - i. corrupt, fraudulent, collusive, coercive, and obstructive practices as defined in the **GPPB Guidelines on Termination of Contracts**;
 - ii. drawing up or using forged documents;
 - iii. using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
 - iv. any other act analogous to the foregoing.
- 17.4 The Procuring Entity will seek to impose the maximum civil, administrative and/or criminal penalties available under the applicable law on individuals and organizations deemed to be involved with corrupt, fraudulent, or coercive practices.
- 17.5 When persons from either party to this Contract gives notice of a fundamental breach to the Procuring Entity's Representative in order to terminate the existing contract for a cause other than those listed under Clause 17.3, the Procuring Entity's Representative shall decide whether the breach is fundamental or not.

John S. Mar

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[Signature]

[Signature]
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17.6 If this Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

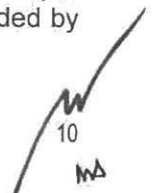
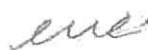
18. Procedures for Termination of Contracts

18.1 The following provisions shall govern the procedures for the termination of this Contract:

- a. Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Procuring Entity shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;
- b. Upon recommendation by the Procuring Entity, the HoPE shall terminate this Contract only by a written notice to the Contractor conveying the termination of this Contract. The notice shall state:
 - i. that this Contract is being terminated for any of the ground(s) aforementioned, and a statement of the acts that constitute the ground(s) constituting the same;
 - ii. the extent of termination, whether in whole or in part;
 - iii. an instruction to the Contractor to show cause as to why this Contract should not be terminated; and
 - iv. special instructions of the Procuring Entity, if any.

The Notice to Terminate shall be accompanied by a copy of the Verified Report;

- c. Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Contractor shall submit to the HoPE a verified position paper stating why the contract should not be terminated. If the Contractor fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the HoPE shall issue an order terminating the contract;
- d. The Procuring Entity may, at any time before receipt of the Contractor's verified position paper described in item (c) above withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Contractor's receipt of the notice;
- e. Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the HoPE shall decide whether or not to terminate this Contract. It shall serve a written notice to the Contractor of its decision and, unless otherwise provided in the said notice, this Contract is deemed terminated from receipt of the Contractor of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate; and
- f. The HoPE may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the HoPE.



18.2 Pursuant to Section 69(f) of RA 9184 and without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution as provided by applicable laws, the procuring entity shall impose on contractors after the termination of the contract the penalty of suspension for one (1) year for the first offense, suspension for two (2) years for the second offense from participating in the public bidding process, for violations committed during the contract implementation stage, which include but not limited to the following:

- a. Failure of the contractor, due solely to his fault or negligence, to mobilize and start work or performance within the specified period in the Notice to Proceed ("NTP");
- b. Failure by the contractor to fully and faithfully comply with its contractual obligations without valid cause, or failure by the contractor to comply with any written lawful instruction of the procuring entity or its representative(s) pursuant to the implementation of the contract. Lawful instructions include but are not limited to the following:
 - i. Employment of competent technical personnel, competent engineers and/or work supervisors;
 - ii. Provision of warning signs and barricades in accordance with approved plans and specifications and contract provisions;
 - iii. Stockpiling in proper places of all materials and removal from the project site of waste and excess materials, including broken pavement and excavated debris in accordance with approved plans and specifications and contract provisions;
 - iv. Deployment of committed equipment, facilities, support staff and manpower; and
 - v. Renewal of the effectivity dates of the performance security after its expiration during the course of contract implementation.
- c. Assignment and subcontracting of the contract or any part thereof or substitution of key personnel named in the proposal without prior written approval by the procuring entity.
- d. Poor performance by the contractor or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the Constructor's Performance Evaluation System ("CPES") rating sheet. In the absence of the CPES rating sheet, the existing performance monitoring system of the procuring entity shall be applied. Any of the following acts by the Contractor shall be construed as poor performance:
 - i. Negative slippage of 15% and above within the critical path of the project due entirely to the fault or negligence of the contractor; and
 - ii. Quality of materials and workmanship not complying with the approved specifications arising from the contractor's fault or negligence.



- e. Willful or deliberate abandonment or non-performance of the project or contract by the contractor resulting to substantial breach thereof without lawful and/or just cause.

In addition to the penalty of suspension, the performance security posted by the contractor shall also be forfeited.

19. Force Majeure, Release from Performance

- 19.1 For purposes of this Contract the terms "*force majeure*" and "fortuitous event" may be used interchangeably. In this regard, a fortuitous event or *force majeure* shall be interpreted to mean an event which the Contractor could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Contractor.
- 19.2 If this Contract is discontinued by an outbreak of war or by any other event entirely outside the control of either the Procuring Entity or the Contractor, the Procuring Entity's Representative shall certify that this Contract has been discontinued. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all works carried out before receiving it and for any Work carried out afterwards to which a commitment was made.
- 19.3 If the event continues for a period of thirty (30) days, either party may then give notice of termination, which shall take effect fifteen (15) days after the giving of the notice.
- 19.4 After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the materials reasonably delivered to the Site, adjusted by the following:
 - a. any sum to which the Contractor is entitled under Clause 25;
 - b. the cost of his suspension and demobilization;
 - c. any sum to which the Procuring Entity is entitled.
- 19.5 The net balance due shall be paid or repaid within a reasonable time period from the time of the notice of termination.

20. Resolution of Disputes

- 20.1 If any dispute or difference of any kind whatsoever shall arise between the parties in connection with the implementation of the contract covered by the Act and this IRR, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 20.2 If the Contractor believes that a decision taken by the Procuring Entity's Representative was either outside the authority given to the Procuring Entity's Representative by this Contract or that the decision was wrongly taken, the decision shall be referred to Arbitration within fourteen (14) days of the notification of the Procuring Entity's Representative's decision.
- 20.3 Any and all disputes arising from the implementation of this Contract covered by the R.A. 11469 or the *Bayanihan to Heal as One Act* shall be submitted to



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arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law" and Republic Act 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 referred thereto. The process of arbitration shall be incorporated as a provision in this Contract that will be executed pursuant to the provisions of the Act and its IRR: *Provided, further,* That, by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.

21. Procuring Entity's Representative's Decisions

21.1 Except where otherwise specifically stated, the Procuring Entity's Representative will decide contractual matters between the Procuring Entity and the Contractor in the role representing the Procuring Entity.

21.2 The Procuring Entity's Representative may delegate any of his duties and responsibilities to other people, except to the Arbitrator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

22. Approval of Drawings and Temporary Works by the Procuring Entity's Representative

22.1 All Drawings prepared by the Contractor for the execution of the Temporary Works, are subject to prior approval by the Procuring Entity's Representative before its use.

22.2 The Contractor shall be responsible for design of Temporary Works.

22.3 The Procuring Entity's Representative's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

22.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, when required by the Procuring Entity.

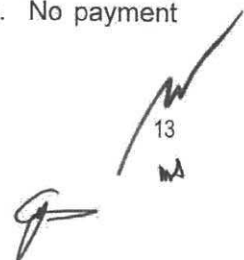
23. Acceleration and Delays Ordered by the Procuring Entity's Representative

23.1 When the Procuring Entity wants the Contractor to finish before the Intended Completion Date, the Procuring Entity's Representative will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Procuring Entity accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Procuring Entity and the Contractor.

23.2 If the Contractor's Financial Proposals for an acceleration are accepted by the Procuring Entity, they are incorporated in the Contract Price and treated as a Variation.

24. Extension of the Intended Completion Date

24.1 The Procuring Entity's Representative shall extend the Intended Completion Date if a Variation is issued which makes it impossible for the Intended Completion Date to be achieved by the Contractor without taking steps to accelerate the remaining work, which would cause the Contractor to incur additional costs. No payment



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shall be made for any event which may warrant the extension of the Intended Completion Date.

24.2 The Procuring Entity's Representative shall decide whether and by how much to extend the Intended Completion Date within fifteen (15) days of the Contractor asking the Procuring Entity's Representative for a decision thereto after fully submitting all supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

25. Right to Vary

25.1 The Procuring Entity's Representative with the prior approval of the Procuring Entity may instruct Variations, up to a maximum cumulative amount of ten percent (10%) of the original contract cost.

25.2 Variations shall be valued as follows:

- a. At a lump sum price agreed between the parties;
- b. where appropriate, at rates in this Contract;
- c. in the absence of appropriate rates, the rates in this Contract shall be used as the basis for valuation; or failing which
- d. at appropriate new rates, equal to or lower than current industry rates and to be agreed upon by both parties and approved by the HoPE.

26. Contractor's Right to Claim

If the Contractor incurs cost as a result of any of the events under Clause the Contractor shall be entitled to the amount of such cost. If as a result of any of the said events, it is necessary to change the Works, this shall be dealt with as a Variation

27. Day works

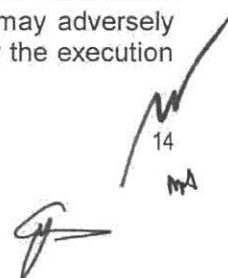
26.1 Subject to Clause 35 on Variation Order, the Day works rates in the Contractor's bid shall be used for small additional amounts of work only when the Procuring Entity's Representative has given written instructions in advance for additional work to be paid for in that way.

26.2 All work to be paid for as Day works shall be recorded by the Contractor on forms approved by the Procuring Entity's Representative. Each completed form shall be verified and signed by the Procuring Entity's Representative within two days of the work being done.

26.3 The Contractor shall be paid for Day works subject to obtaining signed Day works forms.

28. Early Warning

28.1 The Contractor shall warn the Procuring Entity's Representative at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution



of the Works. The Procuring Entity's Representative may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

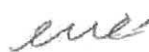
- 28.2 The Contractor shall cooperate with the Procuring Entity's Representative in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Procuring Entity's Representative.

29. Program of Work

- 29.1 Within the time stated in the ten (10) calendar days from receipt of the Notice of Award, the Contractor shall submit to the Procuring Entity's Representative for approval a Program of Work showing the general methods, arrangements, order, and timing for all the activities in the Works.
- 29.2 An update of the Program of Work shall show the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 29.3 The Contractor shall submit to the Procuring Entity's Representative for approval an updated Program of Work on the first working day of the week following a Weekly Accomplishment Report indicating a negative slippage, together with the request for Variation Orders, either in the form of a change order or extra work order, that shall cover any increase or decrease in the original quantities of materials/work. If the Contractor does not submit an updated Program of Work within this period, the Procuring Entity's Representative may withhold the amount stated in the Contract until submission the Program of Work has been submitted.
- 29.4 The Procuring Entity's Representative's approval of the Program of Work shall not alter the Contractor's obligations. The Contractor may revise the Program of Work and submit it to the Procuring Entity's Representative again at any time. A revised Program of Work shall show the effect of any approved Variations.
- 29.5 When the Program of Work is updated, the Contractor shall provide the Procuring Entity's Representative with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.
- 29.6 All Variations shall be included in updated Program of Work produced by the Contractor.

30. Bill of Quantities

- 30.1 The Bill of Quantities shall contain items of work for the construction, installation, testing, and commissioning of work to be done by the Contractor.
- 30.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.
- 30.3 If the final quantity of any work done differs from the quantity in the Bill of Quantities for the particular item and is not more than twenty five percent (25%) of the original quantity, provided the aggregate changes for all items do not exceed ten percent



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(10%) of the Contract price, the Procuring Entity's Representative shall make the necessary adjustments to allow for the changes subject to applicable laws, rules, and regulations.

30.4 If requested by the Procuring Entity's Representative, the Contractor shall provide the Procuring Entity's Representative with a detailed cost breakdown of any rate in the Bill of Quantities.

31. Instructions, Inspections and Audits

31.1 The Procuring Entity's personnel shall at all reasonable times during construction of the Work be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of the construction.

31.2 If the Procuring Entity's Representative instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no defect, the test shall be a Compensation Event.

31.3 The Contractor shall permit BCDA to inspect the Contractor's accounts and records relating to the performance of the Contractor and

32. Identifying Defects

The Procuring Entity's Representative shall check the Contractor's work and notify the Contractor of any defects that are found. Such checking shall not affect the Contractor's responsibilities. The Procuring Entity's Representative may instruct the Contractor to search uncover defects and test any work that the Procuring Entity's Representative considers below standards and defective.

33. Cost of Repairs

Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Liability Periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

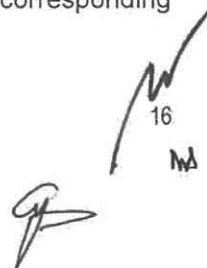
34. Correction of Defects

34.1 The Procuring Entity's Representative shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which is One (1) year from project completion up to final acceptance by the Procuring Entity's Representative.

34.2 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified in the Procuring Entity's Representative's notice.

34.3 The Contractor shall correct the defects which he notices himself before the end of the Defects Liability Period.

34.4 The Procuring Entity shall certify that all defects have been corrected. If the Procuring Entity considers that correction of a defect is not essential, he can request the Contractor to submit a quotation for the corresponding reduction in the Contract Price. If the Procuring Entity accepts the quotation, the corresponding change in the SCC is a Variation.



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35. Uncorrected Defects

- 35.1 The Procuring Entity shall give the Contractor at seven (7) days' notice of its intention to use a third party to correct a Defect. If the Contractor does not correct the Defect himself within the period, the Procuring Entity may have the Defect corrected by the third party. The cost of the correction will be deducted from the Contract Price.
- 35.2 The use of a third party to correct defects that are uncorrected by the Contractor will in no way relieve the Contractor of its liabilities and warranties under the Contract.

36. Variation Orders

- 36.1 Variation Orders may be issued by the Procuring Entity to cover any increase/decrease in quantities, including the introduction of new work items that are not included in the original contract or reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the preconstruction plans used for purposes of bidding and the "as staked plans" or construction drawings prepared after a joint survey by the Contractor and the Procuring Entity after award of the contract, provided that the cumulative amount of the Variation Order does not exceed ten percent (10%) of the original project cost. The addition/deletion of Works should be within the general scope of the project as bid and awarded. The scope of works shall not be reduced so as to accommodate a positive Variation Order. A Variation Order may either be in the form of a Change Order or Extra Work Order.
- 36.2 A Change Order may be issued by the Procuring Entity to cover any increase/decrease in quantities of original Work items in the contract.
- 36.3 An Extra Work Order may be issued by the Procuring Entity to cover the introduction of new work necessary for the completion, improvement or protection of the project which were not included as items of Work in the original contract, such as, where there are subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or where there are duly unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the Work or character provided for in the contract.
- 36.4 Any cumulative Variation Order beyond ten percent (10%) shall be subject of another contract to be bid out if the works are separable from the original contract. In exceptional cases where it is urgently necessary to complete the original scope of work, the HoPE may authorize a positive Variation Order go beyond ten percent (10%) but not more than twenty percent (20%) of the original contract price, subject to the guidelines to be determined by the GPPB: *Provided, however,* That appropriate sanctions shall be imposed on the designer, consultant or official responsible for the original detailed engineering design which failed to consider the Variation Order beyond ten percent (10%).
- 36.5 In claiming for any Variation Order, the Contractor shall, within seven (7) calendar days after such work has been commenced or after the circumstances leading to such condition(s) leading to the extra cost, and within fifteen (15) calendar days deliver a written communication giving full and detailed particulars of any extra cost



in order that it may be investigated at that time. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the contractor for any claim. The preparation and submission of Variation Orders are as follows:

- a. If the Procuring Entity's representative/Project Engineer believes that a Change Order or Extra Work Order should be issued, he shall prepare the proposed Order accompanied with the notices submitted by the Contractor, the plans therefore, his computations as to the quantities of the additional works involved per item indicating the specific stations where such works are needed, the date of his inspections and investigations thereon, and the log book thereof, and a detailed estimate of the unit cost of such items of work, together with his justifications for the need of such Change Order or Extra Work Order, and shall submit the same to the HoPE for approval.
- b. The HoPE or his duly authorized representative, upon receipt of the proposed Change Order or Extra Work Order shall immediately instruct the appropriate technical staff or office of the Procuring Entity to conduct an on-the-spot investigation to verify the need for the Work to be prosecuted and to review the proposed plan, and prices of the work involved.
- c. The technical staff or appropriate office of the Procuring Entity shall submit a report of their findings and recommendations, together with the supporting documents, to the Head of Procuring Entity or his duly authorized representative for consideration.
- d. The HoPE or his duly authorized representative, acting upon the recommendation of the technical staff or appropriate office, shall approve the Change Order or Extra Work Order after being satisfied that the same is justified, necessary, and in order.
- e. The timeframe for the processing of Variation Orders from the preparation up to the approval by the Procuring Entity concerned shall not exceed thirty (30) calendar days.

37. Contract Completion

Once the project reaches an accomplishment of ninety five (95%) of the total contract amount, the Procuring Entity may create an inspectorate team to make preliminary inspection and submit a punch-list to the Contractor in preparation for the final turnover of the project. Said punch-list will contain, among others, the remaining Works, Work deficiencies for necessary corrections, and the specific duration/time to fully complete the project considering the approved remaining contract time. This, however, shall not preclude the claim of the Procuring Entity for liquidated damages.

38. Suspension of Work

- 38.1 The Procuring Entity shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, due to *force majeure* or any fortuitous events or for failure on the part of the Contractor to correct bad conditions which are unsafe for workers or for the general public, to carry out valid orders given by the Procuring Entity 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.



38.2 The Contractor or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days from date of receipt of written notice from the Contractor to the district engineer/regional director/consultant or equivalent official, as the case may be, due to the following:

- i. There exist right-of-way problems which prohibit the Contractor from performing work in accordance with the approved construction schedule.
- ii. Requisite construction plans which must be owner-furnished are not issued to the contractor precluding any work called for by such plans.
- iii. Peace and order conditions make it extremely dangerous, if not possible, to work. However, this condition must be certified in writing by the Philippine National Police (PNP) station which has responsibility over the affected area and confirmed by the Department of Interior and Local Government (DILG) Regional Director.
- iv. There is failure on the part of the Procuring Entity to deliver government-furnished materials and equipment as stipulated in the contract.
 - a. Delay in the payment of Contractor's claim for progress billing beyond forty-five (45) calendar days from the time the Contractor's claim has been certified to by the procuring entity's authorized representative that the documents are complete unless there are justifiable reasons thereof which shall be communicated in writing to the Contractor.

38.3 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 effectivity of the order suspending operation and the order to resume work shall be allowed the Contractor by adjusting the contract time accordingly.

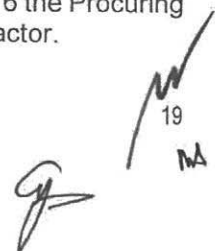

39. Payment on Termination

39.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Procuring Entity's Representative shall issue a certificate for the value of the work done and Materials ordered less the percentage to apply to the value of the work not completed, as indicated in the SCC. Additional Liquidated Damages shall not apply. If the total amount due to the Procuring Entity exceeds any payment due to the Contractor, the difference shall be a debt payable to the Procuring Entity.

39.2 If the Contract is terminated for the Procuring Entity's convenience or because of a fundamental breach of Contract by the Procuring Entity, the Procuring Entity's Representative shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

39.3 The net balance due shall be paid or repaid within thirty (30) calendar days from the notice of termination.

39.4 If the Contractor has terminated the Contract under Clauses 15 or 16 the Procuring Entity shall promptly return the Performance Security to the Contractor.




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40. Extension of Contract Time

- 40.1 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, the Procuring Entity shall determine the amount of such extension; provided that the Procuring Entity is not bound to take into account any claim for an extension of time unless the Contractor has, prior to the expiration of the contract time and within fifteen (15) calendar days after such work has been commenced or after the circumstances leading to such claim have arisen, delivered to the Procuring Entity 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, the Procuring Entity shall examine the facts and extent of the delay and shall extend the contract time completing the contract work when, in the Procuring Entity's opinion, the findings of facts justify an extension.
- 40.2 No extension of contract time shall be granted the Contractor due to (a) ordinary unfavorable weather conditions and (b) inexcusable failure or negligence of Contractor to provide the required equipment, supplies or materials.
- 40.3 Extension of contract time may be granted only when the affected activities fall within the critical path of the PERT/CPM network.
- 40.4 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.
- 40.5 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 pre-determined by the Procuring Entity 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 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 Procuring Entity, non-acquisition of permit to enter private properties or non-execution of deed of sale or donation within the right-of-way resulting in complete paralyzation of construction activities, and other meritorious causes as determined by the Procuring Entity's Representative and approved by the HoPE. Shortage of construction materials, general labor strikes, and peace and order problems that disrupt construction operations through no fault of the Contractor may be 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 Procuring Entity for consideration and the validity of the Performance Security shall be correspondingly extended.

41. Price Adjustment

Except for extraordinary circumstances as determined by NEDA and approved by the GPPB, no price escalation shall be allowed. Nevertheless, in cases where the cost of



the awarded contract is affected by any applicable new laws, ordinances, regulations, or other acts of the GoP, promulgated after the date of bid opening, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis.

42. Completion

The Contractor shall request the Procuring Entity's Representative to issue a certificate of Completion of the Works, and the Procuring Entity's Representative will do so upon deciding that the work is completed.

43. Taking Over

The Procuring Entity shall take over the Site and the Works within seven (7) days from the date the Procuring Entity's Representative issues a certificate of Completion.

44. Operating and Maintenance Manuals

44.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them before the issuance of a Certificate of Completion.

44.2 If the Contractor does not supply the Drawings and/or manuals before the issuance of a Certificate of Completion, or they do not receive the Procuring Entity's Representative's approval, the Procuring Entity's Representative shall withhold the payment due to the Contractor until submission of the complete set of "as built" drawings.



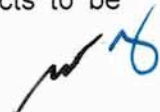
Omnibus Sworn Statement
For Emergency Procurement under Republic Act No. 11469 otherwise known as the
“Bayanihan to Heal as One Act”

REPUBLIC OF THE PHILIPPINES)
CITY OF MAKATI CITY) S.S.

A F F I D A V I T

I, PATRICK NICHOLAS P. DAVID, of legal age, married, Filipino, and residing at 301 Yanoi Bldg. Royal Palm Ususan, Taguig, Philippines, 1630, after having been duly sworn in accordance with law, do hereby depose and state that:

1. I am the duly authorized and designated representative of BANDAR HEBAT BUILDERS, INC. with office address at Integrated Operation Center Bldg., National Government Administrative Center;
2. I am granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the BANDAR HEBAT BUILDERS, INC. in the bidding as shown in the attached Secretary's Certificate issued by the joint venture;
3. BANDAR HEBAT BUILDERS, INC. is not “blacklisted” or barred from bidding by the Government of the Philippines or any of its agencies, offices, corporations, or Local Government Units, foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the Government Procurement Policy Board;
4. BANDAR HEBAT BUILDERS, INC. commits to submit all the mandatory documentary requirements in Item 4.1 of the Guidelines for the Procurement Activities under RA No. 11469 or the Bayanihan to Heal as One Act at any time before award of contract or after award but prior to payment of contract but before payment;
5. BANDAR HEBAT BUILDERS, INC. confirms that the posting of a performance security has been dispensed with due to the urgent need for the procurement covered by Republic Act (RA) No. 11469 or the Bayanihan to Heal as One Act. In lieu thereof, BANDAR HEBAT BUILDERS, INC. hereby commits to perform and deliver all of the obligations and undertakings, including the warranty provisions under the contract covering the procurement at hand. BANDAR HEBAT BUILDERS, INC. further agrees and accepts that failure to perform or deliver any of such obligations and undertakings shall result in Blacklisting of BANDAR HEBAT BUILDERS, INC. for two (2) years in all government procurement activities following the procedure under the Guidelines for the Procurement Activities under RA No. 11469 or the Bayanihan to Heal as One Act. Moreover, in case advance payment was made or given, failure to perform or deliver any of said obligations and undertakings shall be sufficient grounds to constitute criminal liability for Swindling (Estafa) or the commission of fraud with unfaithfulness or abuse of confidence through misappropriating or converting any payment received by a person or entity under an obligation involving the duty to deliver certain goods or services, to the prejudice of the public and the government of the Philippines pursuant to Article 315 of Act No. 3815 s. 1930, as amended, or the Revised Penal Code;
6. BANDAR HEBAT BUILDERS, INC. warrants for a period stipulated in the contract covering the procurement at hand that the Goods or Infrastructure projects to be



delivered shall be free from defects and conform with quality standards and technical specifications of the said contract;

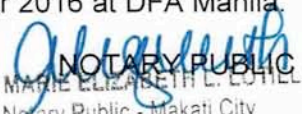
7. Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
8. BANDAR HEBAT BUILDERS, INC. is authorizing the Head of the Procuring Entity or its duly authorized representative(s) to verify all the documents submitted;
9. None of the officers, directors, and controlling stockholders of BANDAR HEBAT BUILDERS, INC. is related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;
10. BANDAR HEBAT BUILDERS, INC. complies with existing labor laws and standards;
11. BANDAR HEBAT BUILDERS, INC. is aware of and has undertaken the following responsibilities as a Bidder:
 - a) Carefully examine all of the Procurement/Bidding Documents;
 - b) Acknowledge all conditions, local or otherwise, affecting the implementation of the Contract;
 - c) Made an estimate of the facilities available and needed for the contract to be bid, if any; and
 - d) Inquire or secure Supplemental/Bid Bulletin(s) issued for the Conversion/Construction of Temporary Isolation or Quarantine and Medical Facilities at NGAC; and
12. BANDAR HEBAT BUILDERS, INC. did not give or pay directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity.

IN WITNESS WHEREOF, I have hereunto set my hand this 11 day of FEB 11 2021, 2020 at MAKATI CITY, Philippines.


PATRICK NICHOLAS P. DAVID
Affiant

SUBSCRIBED AND SWORN TO before me this 11 day of FEB 11 2021, 2021 at MAKATI CITY, Philippines, affiant exhibiting to me his competent evidence of identity as ff: Philippine Passport No. P0541681A, issued on 6 October 2016 at DFA Manila.

DOC NO. 138 ;
PAGE NO. 29 ;
BOOK NO. VI ;
SERIES OF 2021.


NOTARY PUBLIC
ATTY. MARIE ELIZABETH L. ESTRELLA
Notary Public - Makati City
Appt. No M-34 until December 31, 2021
Roll of Attorneys No. 73452
IBP No. 136226; December 21, 2020
PTR No. MKT-8531256; January 5, 2021
MCLE Exempt - Admitted to Bar on June 19, 2019
7727 E. Jacinto cor. Medina St.,
Brgy Pio Del Pilar, Makati City