

Port Management Office of Ozamiz

Ozamiz City

#### **CONTRACT**

###### FOR THE **ANNUAL EQUIPMENT PROCUREMENT PLAN FOR THE SUPPLY & DELIVERY OF AIRCOOLED CONDENSING UNITS AT THE PORT MANAGEMENT OFFICE OF OZAMIZ CITY**

KNOW ALL MEN BY THESE PRESENTS:

This Contract made and entered into this \_17th\_\_\_\_ day of August 2012 in Ozamiz City, Philippines, by and between:

**PHILIPPINE PORTS AUTHORITY**, a government instrumentality created under Presidential Decree No. 857, as amended, with principal office at PPA Building, Bonifacio Drive, Port Area, Manila, represented herein by its duly authorized Port Manager of the Port Management Office of Ozamiz, ***EFREN A. QUIÑONES***, and hereinafter referred to as “**PPA**”;

- and -

**EMCOR INC.**, a company duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with business office address at Don Anselmo Bernad Ave., Ozamiz City represented in this act by its Store Supervisor, Ms. Evelyn M Suminguit*,* (if a corporation or any form of organization) duly authorized for this purpose by Letter signed by Executive Vice Pres & CFO dated July 16, 2012, a copy of which is hereto attached and made an integral part hereof as “Annex A” and hereinafter referred to as the “**CONTRACTOR**.”

**W I T N E S S E T H** :

 WHEREAS, in accordance with the Invitation to Bid of the PPA BAC posted on the PPA Website and PhilGEPS as well as in its bulletin board on July 5 – 11, 2012, the **CONTRACTOR** and other bidders, to wit; Sammy’s Airconditioning & Refrigeration Services & Repair Shop, submitted their bids for the *ANNUAL* *EQUIPMENT PROCUREMENT PLAN FOR THE*  *SUPPLY & DELIVERY OF AIRCOOLED CONDENSING UNITS & ACCESSORIES.*

 WHEREAS, after the opening of the bids on July 31, 2012, and the conduct of bid evaluation and post-qualification, the bid submitted by the **CONTRACTOR** in the amount of ONE MILLION SEVEN HUNDRED THIRTY THOUSAND ONE HUNDRED FORTY PESOS (P1,730,140.00) was found to be the lowest calculated and responsive bid;

WHEREAS, pursuant to PMO OZAMIZ BAC-PG Resolution No.02-2012, Notice of Award was issued to the **CONTRACTOR** dated August 13, 2012.

WHEREAS, the **CONTRACTOR** duly accepted the award by signing its conforme on the said Notice of Award;

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants, stipulations and agreements herein contained, the **PPA** and the **CONTRACTOR** have agreed, as they do hereby agree, on the contract as follows:

ARTICLE I

**CONTRACT DOCUMENTS**

1.01 The following documents shall constitute integral parts of this Contract, as fully as if the contents of the said documents are reproduced, incorporated and set forth herein, and shall govern and control in full force and effect the rights and obligations of the Parties, except as otherwise modified by the terms and conditions of this Contract, or by mutual agreement in writing of both parties, to wit:

* 1. General and Special Conditions of Contract;
	2. Specifications;
	3. Invitation to Bid;
	4. Instructions to Bidders;
	5. Bid Data Sheet;
	6. Addenda 0and/or Supplemental/Bid Bulletins, if any;
	7. Bid form, including all the documents/statements contained in the Bidder’s bidding envelopes, as annexes;
	8. Eligibility requirements, documents and/or statements;
	9. Performance Security;
	10. Credit line issued by a licensed bank, if any;
	11. Notice of Award of Contract and the Bidder’s conforme thereto;
	12. Other contract documents that may be required by existing laws and/or the Entity.

1.02 The following documents shall also be made integral parts of this Contract as if their contents are incorporated, reproduced and set forth herein, and shall have the same force, effect and applicability as the documents enumerated in the immediately preceding paragraph hereof, to wit:

 a. Duly Approved Program of Work and Cost Estimates

 b. Certificate of Availability of Funds/Authority to Pay

 c. Abstract of Bids

 d. Resolution of the BAC Recommending Award

 e. Approval of Award by Approving Authority

 f. Other pertinent documents as may be reasonably required by existing laws

 and/or the PPA

* 1. All Contract documents are and shall remain as property of the **PPA**.

1.04 The words and expressions in this Contract shall have the same meanings

respectively assigned to them in the Contract Documents referred to above.

ARTICLE II

**CONTRACTOR’S UNDERTAKING**

**SCOPE OF WORK**

2.01 The **CONTRACTOR**, in consideration of the payment to be made by the **PPA** to the **CONTRACTOR**, as stated in the Contract Documents and this Contract, the latter hereby covenants to execute and complete the ANNUAL *EQUIPMENT PROCUREMENT PLAN FOR THE*  *SUPPLY & DELIVERY OF AIRCOOLED CONDENSING UNITS & ACCESSORIES.*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ***ITEM NO*** | ***ITEM & DESCRIPTION*** | ***QTY.*** | ***UNIT*** | ***ABC*** |
| 123 | *1 HP,split type, wall mounted**6 HP/5 Tonner Split Type, Ceiling Mounted**7.5 Tonner Split Type, Floor Mounted* | 576 | SetsSetsSets | P118,500.00613,480.00998,160.00 |
|  | Total Amount of Bid (including VAT) |  |  | **P1,730,140.00** |

**ONE MILLION SEVEN HUNDRED THIRTY THOUSAND ONE HUNDRED FORTY PESOS ONLY**

2.02 The **CONTRACTOR** agrees to commence, perform and complete the work called for and defined in this Contract within FORTY FIVE (45) calendar days from receipt of notice to proceed at its sole cost and expense, and to fully and faithfully supply and deliver of aircooled condensing units for and defined in this contract.

2.03 Subject to the provision of the preceding paragraph, where the contractor has acknowledged the receipt of the Notice to Proceed but fails to deliver the required good(s), he shall be extended a maximum of fifteen (15) calendar days under liquidated damages to make good his delivery. Thereafter, if the Contractor has not completed the delivery required within the extended period, the subject contract will be cancelled or rescinded.

2.04 The **CONTRACTOR** guarantees, among others, that all tools, equipment, machineries, instruments, accessories and materials it will supply or deliver.

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2.05 The **CONTRACTOR** recognizes the position of trust and confidence reposed in it under this Contract, and agrees to perform its obligations hereunder in the most efficient and competent manner, use its skill and good judgment, always set in good faith, and carry out on the execution of this Contract in the most sound, expeditious and economical manner consistent with the interest of the **PPA**.

2.06 The **CONTRACTOR** shall, prior to the signing/approval of this Contract, submit to **PPA** a credit line or cash deposit certificate as retention money issued by a bank duly authorized/licensed by the Bangko Sentral ng Pilipinas in an amount equal to ten percent (10%) of the approved budget for the contract.

ARTICLE III

**CONSIDERATION**

3.01 For and in consideration of the full, satisfactory and faithful performance by the **CONTRACTOR** of all its undertakings defined in and provided for under this Contract and Contract Documents, the **PPA** agrees to pay the **CONTRACTOR** the total amount not exceeding ONE MILLION SEVEN HUNDRED THIRTY THOUSAND ONE HUNDRED FORTY PESOS (P 1,730,140.00) Philippine Currency; inclusive of the 12% value added tax as full compensation for everything furnished and done by the **CONTRACTOR** under this Contract, including all works required but not specifically mentioned, and also for all losses and damages to the **CONTRACTOR** arising out of the work aforesaid, from the action of the elements, or from any obstruction or difficulty encountered in the prosecution of this Contract, for all expenses incurred by or in consequence of the suspension or discontinuance of the contract herein specified and for faithfully completing the contract and the whole thereof, at the time and in the manner provided in the Contract Documents.

It is agreed and understood that all unit prices specified in this contract shall be considered as fixed prices, and therefore not subject to price escalation during the contract implementation, except under extraordinary circumstances and upon prior approval of the Government Procurement Policy Board (GPPB). Any request for price escalation under extraordinary circumstances shall be submitted by **PPA** to the National Economic and Development Authority (NEDA). Extraordinary circumstances shall refer to events that may be determined by the NEDA in accordance with the Civil Code of the Philippines and upon recommendation of the **PPA**.

3.02 Payment of the consideration herein above-mentioned shall be upon full completion and delivery of the goods and fulfillment by the CONTRACTOR of all the terms and conditions set forth in this contract. No payment shall be construed to be an acceptance of defective work or improper implementation thereof.

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

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

ARTICLE IV

**PERFORMANCE SECURITY**

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

a. cash, manager’s check, cashier’s check, irrevocable letter of credit or bank draft- five percent (5%) of the total contract price

 b. bank guarantee - five percent (5%) of the total contract price

1. surety bond - thirty percent (30%) of the total contract price
2. any combination of the foregoing –proportionate to share of form with respect to total amount of security

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

4.03 In the execution of the performance security, the following conditions shall be complied with:

a. It shall be executed in accordance with the form prescribed in the Section 4.01 hereof

 b. It shall be at least co-terminus with the final completion of the project.

c. The following provisions shall form part of the performance security: “The right to institute action on the penal bond pursuant to Act No. 3688 of any individual firm, partnership, corporation and association supplying the **CONTRACTOR** for the prosecution of the work is hereby acknowledged and confirmed.”

4.04 Subject to the conditions of the Contract, the performance security may be released by **PPA** after the issuance of the Certificate of Completion and Acceptance of the project.

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

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

ARTICLE V

**COMPLETION TIME: LIQUIDATED DAMAGES**

5.01 The **CONTRACTOR** agrees and obligates itself to supply and deliver the aircooled condensing units for and defined in this Contract within FORTY FIVE (45) CALENDAR DAYS (including Sundays and Holidays), reckoned after fifteen (15) calendar days from the date of receipt of the Notice to Proceed issued by **PPA**. Notice to Proceed shall be issued after this Contract has been signed by the parties hereof.

5.02 Time is of the essence of this Contract. Should the **CONTRACTOR** refuse or fail to satisfactorily supply and deliver aircooled condensing units within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the **CONTRACTOR** shall pay the **PPA** for liquidated damages, and not by way of penalty, an amount equivalent to one-tenth of one percent (0.1%) of the cost of the unperformed portion for every day of delay (Sundays and Holidays included), until the work is completed and accepted or taken over by the **PPA**:

5.03 The project or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the designated Technical Inspector.

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

5.05 In case that the delay in the supply and delivery of the aircooled condensing units for and defined in this Contract exceed a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the **CONTRACTOR**, **PPA** may rescind the contract, forfeit the **CONTRACTOR**’s performance security and take over the prosecution of the project or award the same to a qualified contractor through negotiated contract.

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

ARTICLE VI

**EXTENSION OF CONTRACT TIME**

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

6.02 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.

6.03 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.

ARTICLE VII

**ENTIRE CONTRACT**

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

ARTICLE VIII

**CONTRACTOR’S LIABILITY**

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

 ARTICLE IX

**RESPONSIBILITY OF THE CONTRACTOR**

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

9.02 The **CONTRACTOR** shall be fully responsible for the safety, protection, security and convenience of its personnel, third parties and the public at large, as well as the supply and delivery of equipment.

9.03 Any actionable act or acts of EVELYN M. SUMINGUIT arising out of or in the course of this Contract shall be understood and binding as an act of EMCOR INC. and vice-versa.

ARTICLE X

**INSPECTION OF THE NEW AIRCOOLED CONDENSING UNITS**

10.01 If upon inspection made by the Designated Technical Inspector, the delivered new aircooled condensing units are found to have not met the specifications and standards set by PPA as provided in the Invitation to Bid and Bid Data Sheet, it shall be considered as non-delivery of the new aircooled condensing units.

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

ARTICLE XI

**NON-ASSIGNMENT AND NO SUBCONTRACT**

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

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

ARTICLE XII

**WARRANTY**

12.01 The supply and delivery of good(s) by the CONTRACTOR shall be subject to inspection and acceptance by PPA. The **CONTRACTOR** shall assume full responsibility for the contract work for supply & delivery commenced up to final acceptance by the **PPA** and shall be held responsible for any damage or destruction of the works, except those occasioned by force majeure. The **CONTRACTOR** shall be responsible for the safety, protection, security, and convenience of the personnel, third parties, and the public at large.

12.02 Rejected deliveries of good(s) from the CONTRACTOR shall be construed as non-delivery of good(s) so delivered and shall be subject to the terms and conditions of Article II, Par 2.03 hereof, without prejudice to the imposition of other sanctions as prescribed under RA 9184 and its’ IRR.

12.03 The CONTRACTOR shall guarantee his good(s) delivered free from defects. The defect liability period for the project covered by this Contract shall be one (1) year after final acceptance of the delivered good(s) for good(s) and from the project completion up to final acceptance by the **PPA**. During this period, the **CONTRACTOR** shall undertake the repair works, at his own expense, of any damage to the said project within NINETY (90) days from the time the **PPA** or his duly authorized representative has issued an order to undertake repair. In case of failure or refusal to comply with this order, **PPA** shall undertake such repair works and the **CONTRACTOR** shall fully reimburse the former for all the expenses incurred therein upon demand.

12.04 After final acceptance of the project by the **PPA**, the **CONTRACTOR** shall be held responsible within the period of ONE (1) year from the date of final acceptance thereof by the **PPA**. For this purpose, the **CONTRACTOR** shall put warranty security in the form of retention money or special bank guarantee confirmed by a universal or commercial bank acceptable to **PPA** in accordance with the following schedule:

a. Retention Money - Ten percent (10%) of the total contract price

 b. Special Bank guarantee - Ten percent (10%) of the total contract price

The warranty security shall be stated in Philippine Pesos, shall remain effective during the one (1) year warranty period and shall be returned only after the lapse of the said warranty period.

ARTICLE XIII

**TAXES, LICENSES, PERMITS AND FEES**

13.01 The **CONTRACTOR’s** tax, licenses, permits, fees and all other taxes, fees or charges of

whatever form, kind or nature or which may be due the national and/or local government units and/or its instrumentalities/agencies on account of the performance and completion of the work stipulated herein, fees for the testing of materials and samples and fees for the testing and inspection by all agencies having jurisdiction and all necessary and incidental expenses relative thereto including preparation of documents and notarial fees shall be paid for and obtained by the **CONTRACTOR** on its own account. Should the **PPA** be compelled to advance the same, **PPA** is hereby authorized to deduct the amount advanced from whatever amount due the **CONTRACTOR** from **PPA**.

13.02 The **CONTRACTOR** shall pay taxes in full and on time and that failure to do so shall entitle **PPA** to suspend payment to the **CONTRACTOR**. Further, the **CONTRACTOR** shall during the term of this Contract regularly present to **PPA** a tax clearance from the Bureau of Internal Revenue (BIR) as well as a copy of its income and business tax returns duly stamped and received by the BIR and duly validated with the tax payments made thereon.

13.03All transactions are subject to withholding of creditable Value Added Tax (VAT) per Revenue Regulation No. 10-93.

ARTICLE XIV

**AGREEMENT MODIFICATION**

14.01 No modification, alteration or waiver of any provision herein contained shall be binding on the Parties hereto unless evidenced by a written amendment signed by the parties hereof.

14.02 A variation order (change order/extra work order) may be issued by **PPA** under the conditions set forth in the applicable provisions of Republic Act No.9184 and its Implementing Rules and Regulations.

ARTICLE XV

**INDIVISIBILITY OF OBLIGATION**

15.01 It is the intent of the Contract that all the documents, annexes and addenda forming part hereof, shall be read together and that each and every provision or stipulation hereof be given full force, effect and applicability. However, in the event that one or more provisions or stipulations herein be declared null and void by the courts, or otherwise rendered ineffective, the remaining provisions and stipulations shall not be affected thereby.

ARTICLE XVI

**REMEDY AND RELIEF**

16.01 Should there be any dispute or controversy in connection with this Contract or difference between the Parties arising from the interpretation of this Contract, the Parties hereto shall, as far as practicable, settle the same amicably. In the event that such dispute or disagreement be not resolved to their mutual satisfaction, the matter shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 9285, otherwise known as the “Alternative Dispute Resolution Act of 2004”. Provided, however, that disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be submitted thereto. Provided, further, that, by mutual agreement, the parties hereto may agree in writing to resort to other alternative modes of dispute resolution. Provided, finally, that the arbitration proceeding shall be without prejudice to the right of **PPA** to rescind or terminate this contract in accordance with Article XIX, Section 19.04 hereof.

16.02 Should the **PPA** be constrained to resort to court action to enforce or safeguard its rights and interests under this Contract, the **CONTRACTOR** shall be liable to the **PPA** for attorney’s fees in an amount equivalent to Twenty Percent (20%) of the total sum claimed

in the complaint, exclusive of other damages and the expenses of litigation. Venue of such court action shall be laid exclusively in the proper court of the City of Manila.

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

ARTICLE XVII

**OTHER COVENANTS**

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

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

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

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

17.04 It is expressly agreed that whenever the **CONTRACTOR** is behind schedule in its contract work and incurs ten (10%) percent or more negative slippage based on its approved PERT/CPM, the **PPA** may undertake the whole or portion of the unfinished work by administration or by negotiation through another qualified **CONTRACTOR**. Whenever a work activity in the project is not being done on schedule per approved PERT/CPM, the **PPA** shall notify and direct the **CONTRACTOR** to immediately undertake such work activity. If within fifteen (15) days from receipt of such notice, the **CONTRACTOR** fails to start work and to show a satisfactory performance, **PPA** may take over the whole or portion of such work and have such work done by administration or award the same to another qualified contractor through negotiated contract at the current valuation price.

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

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

17.07 No final payment of the contract shall be made to the **CONTRACTOR** without the Certificate of Completion and/or Acceptance from PPA.

17.08 Notwithstanding any extra work, change of work or orders made, if any, by the **PPA**, it is agreed that the same shall be completed within the period herein fixed and provided.

17.09 The **CONTRACTOR** shall hold the **PPA** free and harmless from whatever suit and hereby binds and obligates itself to indemnify the **PPA** for any and all liabilities, losses, damages, judgment, awards, fines, penalties and all expenses, legal or otherwise, of whatever kind and nature, arising from and by reason of this Contract, due to the fault, negligence, act, omission, delay, conduct, breach of trust, or non-observance or violation of this Contract or any stipulation and warranty by the **CONTRACTOR** and/or any of its employees, agents, representatives or sub-contractors.

ARTICLE XVIII

**SPECIAL REPRESENTATION**

18.01 The **CONTRACTOR** hereby represents that all documents it submitted which form integral parts hereof are authentic and duly executed with all the required formalities for the same, and that the facts and/or data contained therein are true and correct. A breach of this representation including all misrepresentation in the documents or suppression of materials facts therein, which if known, could have disqualified the **CONTRACTOR** such that this Contract would not have been made and entered into, gives the **PPA** the immediate right or recourse to **motu propio** rescind, abrogate or otherwise terminate the Contract without need of judicial action, in accordance with Section 19.04 hereof.

18.02 **CONTRACTOR** hereby warrants that it has not given nor promised to give any money, gift or any material favor/consideration to any official or employee of the **PPA** to secure this Contract; that any violation of this warranty shall be sufficient ground for the **PPA** to revoke or cancel this Contract extrajudicially or without need of judicial intervention.

ARTICLE XIX

**BUDGETARY REQUIREMENT**

19.01 The parties hereto hereby adopt and incorporate herein by reference, Letter of Instruction No. 767 dated 16 November 1978, issued by the Office of the President, as implemented by the Letter Circular, dated 7 December 1978, of the Department of Budget and Management.

ARTICLE XX

**EFFECTIVITY**

20.01 This Contract shall become effective after the same shall have been signed by the Parties hereof.

IN WITNESS WHEREOF, the Parties have hereunto signed this Contract on \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2012 in Ozamiz City, Philippines.

**PHILIPPINE PORTS AUTHORITY** **EMCOR, INC**.

By: By:

 (Signed) (Signed)

**EFREN A. QUIÑONES EVELYN M. SUMINGUIT**

Port Manager Store Supervisor

W I T N E S S E S :

#  (Signed) (Signed\_\_\_\_\_\_

###

FUNDS CERTIFIED AVAILABLE:

 (Signed)

**LORNA D. BOLLOZOS**

RMD Manager

 **A C K N O W L E D G M E N T**

REPUBLIC OF THE PHILIPPINES)

CITY OF OZAMIZ CITY ) S. S.

 BEFORE ME, a Notary Public for and in the City of Cagayan de Oro, Philippines, this 30th day of August 2012 personally appeared:

 NAME ID Presented Date/Place of Issue TIN

1. EFREN A. QUIÑONES PPA 0338-1977 PPA – HO, MANILA 108-584-947

2. EVELYN M. SUMINGIT Emcor 0808 Emcor-HO Davao City 171-439-941

known to me and to me known to be the same persons who executed the foregoing instrument as:

 POSITION COMPANY CTC NO. DATE OF ISSUE PLACE OF ISSUE

1. Port Manager PPA-PMO OZAMIZ 27893128 JAN. 12, 2012 OZAMIZ CITY

2. Store Supervisor EMCOR, INC. 02918279 Apr. 17,2012 Lala, LDN

and they acknowledged to me that the same is their own free act and deed as well as the free and voluntary act of the juridical person they represent.

 This instrument is a Contract for the Supply & Delivery of Aircooled Condensing Units at the Port Management Office of Ozamiz consisting of fourteen (14) pages, including this page where the Acknowledgment is written. Pages 1 to 13 are signed on the left margin thereof and page 14 is signed at the corresponding spaces provided therefor by the Parties and their instrumental witnesses and sealed with my notarial seal.

 WITNESS MY HAND AND SEAL this 30th day of August, 2012 at Ozamiz City, Philippines.

 (Signed)

 NOTARY PUBLIC

 (Sealed)

Doc. No. \_\_\_\_\_\_\_\_\_;

Page No. \_\_\_\_\_\_\_\_\_;

Book No.\_\_\_\_\_\_\_\_\_;

Series of 2012.