Republic of the Philippines
**PHILIPPINE PORTS AUTHORITY**
PPA Building, Bonifacio Drive, South Harbor,
Port Area, Manila, Philippines

# CONTRACT
## FOR THE OZAMIZ PORT IMPROVEMENT PROJECT, PORT OF OZAMIZ, OZAMIZ CITY, MISAMIS OCCIDENTAL

Witness
MARIO TAN
Liaison Officer

KNOW ALL MEN BY THESE PRESENTS:

GRACE CONSTRUCTION CORPORATION
BY:
DAVID G. CHIONG
President and General Manager

This Contract made and entered into this _____ day of _____2018, in Manila, 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, South Harbor, Port Area, Manila, represented herein by its duly authorized General Manager, **JAY DANIEL R. SANTIAGO**, and hereinafter referred to as "**PPA**";

- and -

**GRACE CONSTRUCTION CORPORATION**, (TIN No. 000-293-268-000), a corporation duly organized and existing in accordance with Philippine laws, with office and business address at Grace Compound, Bernad Subdivision, Aguada, Ozamiz City, represented in this act by its President and General Manager, **DAVID G. CHIONG**, duly authorized for this purpose, as evidenced by Secretary's Certificate dated 6 November 2017, a copy of which is hereto attached and made an integral part hereof as Annex "A", and hereinafter referred to as "**CONTRACTOR**"

Witness
ADRIAN FERDINAND S. SUGAY
Chairperson, HO-BAC-EP

**WITNESSETH:**

WHEREAS, in accordance with Republic Act No. 9184 and its 2016 Revised Implementing Rules and Regulations (IRR), PPA advertised and published in a newspaper of general nationwide circulation and posted on the PPA website and PhilGEPS as well as on its bulletin board, an Invitation to Bid for the Ozamiz Port Improvement Project, Port of Ozamiz, Ozamiz City, Misamis Occidental;

WHEREAS, the CONTRACTOR and other prospective bidders submitted their respective bids for the foregoing project;

WHEREAS, after the opening of bids on 22 November 2017, and the conduct of bid evaluation and required post-qualification, the bid submitted by the CONTRACTOR at its unit and lump sum prices set forth in its proposal was found to be the Lowest Calculated Responsive Bid in the amount of **ONE HUNDRED SEVENTY SEVEN MILLION NINE HUNDRED FIFTY FOUR THOUSAND FOUR HUNDRED NINE AND 04/100 PESOS (Php 177,954,409.04)** Philippine Currency;

PHILIPPINE PORTS AUTHORITY
BY:
JAY DANIEL R. SANTIAGO
General Manager

WHEREAS, pursuant to Head Office BAC Resolution No. 040-2017 Series of 2017, award of the contract was made to the CONTRACTOR in a Notice of Award dated 19 December 2017, in the amount of **ONE HUNDRED SEVENTY SEVEN MILLION NINE HUNDRED FIFTY FOUR THOUSAND FOUR HUNDRED NINE AND 04/100 PESOS (Php 177,954,409.04)**, after submission of the required documents within the prescribed period and compliance to the conditions stipulated in the IRR;

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, and 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

a. Contract Agreement
b. Bidding Documents
c. Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals and all other documents / statements submitted
d. Performance Security
e. Notice of Award of Contract; and
f Other contract documents that may be required by existing laws and the PPA in the Bidding Documents, such as:

(1) Construction Schedule and S-Curve
(2) Manpower Schedule
(3) Construction Methods
(4) Equipment Utilization Schedule
(5) Construction Safety and Health Program approved by the DOLE
(6) Pert / CPM
(7) Duly Approved Program of Works and Cost Estimates
(8) Certificate of Availability of Funds
(9) Abstract of Bids
(10) Resolution of award

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

1.03 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 Ozamiz Port Improvement Project, Port of Ozamiz, Ozamiz City, Misamis Occidental, in conformity in all respects with the provisions of this Contract, as follows:

| ITEMS | | TOTAL AMOUNT |
|---|---|---|
| 1. General Expenses | **Php** | 1,173,954.04 |
| 2. Construction of RC Pier | **Php** | 54,109,520.01 |
| 3. Construction of Back-Up Area | **Php** | 89,575,405.46 |
| 4. Paving of Existing Back-Up Area | **Php** | 30,149,834.37 |
| 5. Port Lighting System | **Php** | 1,089,003.96 |
| 6. Reimbursable Items | **Php** | 1,856,691.20 |
| **TOTAL AMOUNT:** | **Php** | **177,954,409.04** |

Witness: MARIO TAN Liaison Officer

GRACE CONSTRUCTION CORPORATION BY: DAVID C. CHUNG President and General Manager

Witness: ADRIAN FERDINAND S. SUGAY Chairperson, HO-BAC-EP

PHILIPPINE PORTS AUTHORITY BY: JAY DANIEL R. SANTIAGO General Manager

2.02 The CONTRACTOR agrees to commence, perform and complete the work called for and defined in this Contract at its sole cost and expense, and to fully and faithfully furnish all materials, tools, labor supplies, equipment, services and superintendence for the implementation of this Contract in accordance with the schedule in the Contract Documents forming integral parts of this Contract.

2.03 The CONTRACTOR guarantees, among others, that all tools, equipment, machineries, instruments, accessories and materials it will supply or deliver or install and/or use in the construction and workmanship of all his work under the Contract, shall be in accordance with the Contract Documents.

The CONTRACTOR further guarantees that all office and survey equipment, computer system, video camera and service vehicle it will provide / supply in connection with this contract shall be brand new and in accordance with the specifications prescribed thereof in the Bid Documents.

2.04 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 the execution of this Contract in the most sound, expeditious and economical manner consistent with the interest of the PPA.

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 HUNDRED SEVENTY SEVEN MILLION NINE HUNDRED FIFTY FOUR THOUSAND FOUR HUNDRED NINE AND 04/100 PESOS (Php 177,954,409.04)** Philippine Currency, inclusive of the 12% value added tax, payment to be made and computed on the basis of final quantities at the unit bid price for each item of work actually performed and finished for each pay item as determined and accepted by PPA and in the manner set forth in the Contract Documents, 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 bid prices specified in this contract shall be considered as fixed prices, and therefore not subject to price adjustment and escalation during the contract implementation, except under extraordinary circumstances and upon prior approval of the Government Procurement Policy Board (GPPB) or when a Treaty or International or Executive Agreement Expressly allows it. 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 Final and full payment of the consideration herein above-mentioned shall be upon full completion of the project and fulfillment by the CONTRACTOR of all the terms and conditions set forth in this Contract.

However, it is agreed that no payment or payments made under this Contract, except the final payment upon issuance of Certificate of Completion and Acceptance, shall be understood as performance of this Contract, either wholly or in part, and 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 may be set off against liquidated damages payable to the PPA by the CONTRACTOR under this Contract.

3.04 It is likewise understood that the CONTRACTOR shall show proof evidencing payments by the CONTRACTOR of labor, materials, supplies, insurance premiums, etc., used in the work, before any payment is made to it.

Witness: MARIO TAN, Liaison Officer

GRACE CONSTRUCTION CORPORATION
BY: DAVID G. CHIONG, President and General Manager

Witness: ADRIAN FERDINAND S. SUGAY, Chairperson, HO-BAC-EP

PHILIPPINE PORTS AUTHORITY
BY: JAY DANIEL R. SANTIAGO, General Manager

For this purpose, the CONTRACTOR shall, before payment is made on the works accomplished, submit an affidavit certifying to the fact of payments of said labor, materials, supplies, equipment, insurance premiums, etc.

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

3.06 The PPA shall, upon written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount not exceeding fifteen percent (15%) of the total contract price, to be made in lump sum or, at the most, two installments according to a schedule specified in the Bidding Documents.

3.07 The advance payment shall be made only upon the submission to and acceptance by the procuring entity of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the procuring entity.

3.08 The advance payment shall be repaid by the contractor by deducting fifteen percent (15%) from his periodic progress payments a percentage equal to the percentage of the total contract price used for the advance payment.

The contractor may reduce his standby letter of credit or guarantee instrument by the amounts refunded by the Monthly Certificates in the advance payment.

3.09 Progress payments are subject to retention of ten percent (10%) referred to as the "retention money". Such retention shall be based on the total amount due to the contractor prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of works, as determined by the PPA are completed. If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall be imposed.

3.10 The total "retention money" shall be due for release upon final acceptance of the works. The CONTRACTOR may, however, request for the substitution of the retention money for each progress billing with irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand, of amounts equivalent to the retention money substituted for and acceptable to PPA, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten percent (10%) retention shall be made. Said irrevocable standby letters of credit and/ bank guarantees or surety bonds to be posted in favor of PPA shall be valid for a duration to be determined by PPA and will answer for the purpose for which the ten percent (10%) retention is intended, i.e., to cover uncorrected discovered defects and third party liabilities.

ARTICLE IV

**PERFORMANCE SECURITY**

4.01 To guarantee the faithful performance of the CONTRACTOR of its obligations under this Contract in accordance with the Bidding Documents, it shall post a performance security prior to the signing of the contract, in an amount not less than the required percentage of the total contract price in accordance with the following schedule:

| | | |
|---|---|---|
| a | Cash or cashier's/manager's check issued by a Universal or Commercial Bank | - Ten Percent (10%) |
| b. | Bank draft /guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank | - Ten Percent (10%) |
| c. | Surety Bond callable upon demand issued by a surety or insurance company duly certified by the insurance commission as authorized to issue such security. | Thirty percent (30%) |

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

Witness
MARVIN TAN
Liaison Officer

GRACE CONSTRUCTION CORPORATION
BY :
DAVID G. CUONG
President and General Manager

Witness
ADRIAN FERDINAND S. SUGAY
Chairperson, HO-BAC-EP

PHILIPPINE PORTS AUTHORITY
BY :
JAY DANIEL R. SANTIAGO
General Manager

4.03 The performance security may be released by PPA after the issuance of the Certificate of Final Acceptance of the project, provided that PPA has no claims filed against the CONTRACTOR or the surety company and there are no claims for labor and materials filed against the contractor.

4.04 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.

4.05 In case of a reduction in the contract value or for partially completed works under this contract which are usable and accepted by PPA, and the use of which in the judgment of PPA shall not affect the structural integrity of the entire project, PPA may allow a proportional reduction in the original performance security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original performance security.

ARTICLE V

**COMPLETION TIME: LIQUIDATED DAMAGES**

5.01 The CONTRACTOR agrees and obligates itself to perform and complete all works provided for in this Contract within **Four Hundred Fifty (450)** calendar days (including Sundays and Holidays), reckoned from the time of receipt by the CONTRACTOR of the Notice to Proceed. Notice to Proceed shall be issued within seven (7) calendar days from the date of approval of this Contract.

5.02 Time is of the essence of this Contract. Should the CONTRACTOR refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the CONTRACTOR shall pay the PPA for liquidated damages, and not by way of penalty, an amount as provided in the conditions of contract, equal to at least one–tenth (1/10) of one (1) percent of the cost of the unperformed portion of the works for everyday of delay.

5.03 The project or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the Port Construction and Maintenance Department of PPA.

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

5.05 In case that the delay in the completion of the work exceeds 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.

Witness: MARIO TAN Legal Officer

GRACE CONSTRUCTION CORPORATION
BY: DAVID G. CHONG
President and General Manager

Witness: ADRIAN FERDINAND S. SUGAY
Chairperson, HO-BAC-EP

PHILIPPINE PORTS AUTHORITY
BY: JAY DANIEL R. SANTIAGO
General Manager

ARTICLE VI

**EXTENSION OF CONTRACT TIME**

6.01 Should the amount of additional work of any kind or other special circumstances of any kind whatsoever occur such as to fairly entitle the CONTRACTOR to an extension of contract time, PPA shall determine the amount of such extension; provided that PPA is not bound to take into account any claim for an extension of time unless the contractor has prior to the expiration of 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 Extension of contract time may be granted only when the affected activities fall within the critical path of the PERT/CPM network.

6.04 No extension of contract time shall be granted when the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection.

6.05 Extension of contract time shall be granted for rainy/unworkable days considered unfavorable for the prosecution of the works at the site, based on the actual conditions obtained at the site, in excess of the number of rainy/unworkable days predetermined by the PPA in relation to the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection and/or for the equivalent period of delay due to major calamities such as exceptionally destructive typhoons, floods and earthquakes, and epidemics, and for causes such as non-delivery on time of materials, working drawings, or written information to be furnished by the PPA, non-acquisition of permit to enter private properties within the right-of-way resulting in complete paralization of construction activities, and other meritorious causes as determined by the PPA's authorized Engineer and approved by the PPA. Shortage of construction 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 PPA for consideration and that the validity of the performance security shall be correspondingly extended.

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

Witness: MARIO TAN, Liaison Officer

GRACE CONSTRUCTION CORPORATION
BY: DAVID G. CHIONG, President and General Manager

Witness: ADRIAN FERDINAND S. SUGAY, Chairperson, HO-BAC-EP

PHILIPPINE PORTS AUTHORITY
BY: JAY DANIEL R. SANTIAGO, General Manager

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.

Witness
MARIO LAN
Liaison Officer

ARTICLE IX

**RESPONSIBILITY OF THE CONTRACTOR**

GRACE CONSTRUCTION CORPORATION
BY :
DAVID G. CHIONG
President and General Manager

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 works, equipment, installation and the like to be affected by the construction work.

9.03 Any actionable act or acts of **DAVID G. CHIONG** arising out of or in the course of this Contract, shall be understood and binding as an act of **GRACE CONSTRUCTION CORPORATION** and vice-versa.

ARTICLE X

**INSPECTION AND CONSTRUCTION OF CONTRACT WORK**

Witness :
ADRIAN FERDINAND S. SUGAY
Chairperson, HO-BAC-EP

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

ARTICLE XI

**NON-ASSIGNMENT AND NO SUBCONTRACT**

PHILIPPINE PORTS AUTHORITY
BY :
JAY DANIEL R. SANTIAGO
General Manager

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

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 submittal of its or his approval.

ARTICLE XII

**INSURANCE**

12.01 The CONTRACTOR shall, prior to the commencement of work, secure the standard CONTRACTOR's all risk insurance (CARI) from the Government Service Insurance System (GSIS) or any insurance company duly certified by the Insurance Commission as authorized to issue such insurance, to insure the works against all losses or damages arising from whatever cause for which the CONTRACTOR is responsible under the Contract.

ARTICLE XIII

**WARRANTY**

13.01 The CONTRACTOR shall assume full responsibility for the contract work from the time project construction commenced up to final acceptance thereof 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 its personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by the construction work.

13.02 The defect liability period for the project covered by this Contract shall be one (1) year from project completion up to final acceptance thereof by the PPA. During this period, the CONTRACTOR shall undertake and complete the repair works, at its own expense, of any damage to the said project within NINETY (90) DAYS from the time the PPA General Manager 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.

13.03 After final acceptance of the project by the PPA, the CONTRACTOR shall be responsible for structural defects and/or failure of the said project within the period of FIFTEEN (15) YEARS from the date of final acceptance thereof by the PPA. For this purpose, the CONTRACTOR shall put up a warranty security in accordance with the following schedule:

| | |
|---|---|
| a) Cash or Letter of Credit issued by a Universal or Commercial Bank | - Five percent (5%) of the total contract price |
| b) Bank Guarantee confirmed by a Universal or Commercial Bank | - Ten percent (10%) of the total contract price |
| c) Surety bond callable upon demand issued by GSIS or a surety or insurance company duly Certified by the insurance commission as authorized to issue such security | - Thirty percent (30%) of the total contract price |

The warranty security shall be denominated in Philippine Pesos, remain effective for one (1) year from the date of issuance of the Certificate of Final Acceptance by PPA and be returned only after the lapse of the said one (1) year period.

ARTICLE XIV

**TAXES, LICENSES, PERMITS AND FEES**

14.01 The CONTRACTOR's tax, licenses, permits, fees and all other taxes, fees or charges of whatever form, kind or nature due or which may be due to 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 of the installation 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

Witness: MARIO TAN Liaison Officer

GRACE CONSTRUCTION CORPORATION BY: DAVID G. CHONG President and General Manager

Witness: ADRIAN FERDINAND S. SUGAY Chairperson, HO-BAC-EP

PHILIPPINE PORTS AUTHORITY BY: JAY DANIEL R. SANTIAGO General Manager

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.

14.02 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.

Witness : MARIO JAN Liaison Officer

ARTICLE XV

**AGREEMENT MODIFICATION**

GRACE CONSTRUCTION CORPORATION BY : DAVID G. CHIONG President and General Manager

15.01 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.

15.02 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 Revised Implementing Rules and Regulations.

15.03 The PPA may, at any time by written order and without notice to the Sureties, direct the CONTRACTOR to perform additional/extra work necessary to and within the General Scope of the project as bid and awarded. The CONTRACTOR shall be paid for additional/extra work items whose unit prices shall be derived based on the following:

a. For additional/extra works duly covered by change orders involving work items which are exactly the same or similar to those in the original contract, the applicable unit prices of work items in the original contract shall be used.

b. For additional/extra works duly covered by Extra Work Orders involving new work items that are not in the original contract, the unit prices of the new work items shall be based on the direct unit costs used in the original contract (e.g. unit cost of cement, rebars, form lumber, labor rate, equipment rental, etc.). All new components of the new work item shall be fixed prices, provided the same is acceptable to both PPA and the CONTRACTOR, and provided further that the direct unit costs of new components shall be based on the CONTRACTOR's estimate as validated by PPA via documented canvass in accordance with existing rules and regulations. The direct cost of the new work item shall then be combined with the mark-up factor (i.e., taxes and profit) used by the contractor in his bid to determine the unit price of the new work item.

Witness : ADRIAN FERDINAND S. SUGAY Chairperson, HO-BAC-EP

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

ARTICLE XVI

**SUSPENSION OF WORK**

PHILIPPINE PORTS AUTHORITY BY : JAY DANIEL R. SANTIAGO General Manager

16.01 The PPA or its duly authorized representative shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, 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 PPA or to perform any provisions of the Contract, or due to adjustment of plans to suit field conditions as found necessary during construction. The CONTRACTOR shall immediately comply with such order to suspend the work wholly or partly.

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

ARTICLE XVII

**INDIVISIBILITY OF OBLIGATION**

17.01 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.

Witness
MARIO TAN
Legal Officer

ARTICLE XVIII

**ARBITRATION/REMEDY AND RELIEF**

GRACE CONSTRUCTION CORPORATION
BY
DAVID G. CHIONG
President and General Manager

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

18.02 Should the PPA be constrained to resort to court action to enforce or safeguard its rights and interests under this Contract, the CONTRACTOR shall be liable to the PPA for attorney's fees in 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 all court actions in connection with or arising out of this contract shall be laid exclusively in the proper court of the City of Manila.

18.03 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.

Witness
ADRIAN FERDINAND S. SUGAY
Chairperson, HO-BAC-EP

ARTICLE XIX

**OTHER COVENANTS**

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

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

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

PHILIPPINE PORTS AUTHORITY
BY
JAY DANIEL R. SANTIAGO
General Manager

19.04 Notwithstanding any provision to the contrary, the PPA has the right to terminate, cancel and/or rescind this Contract **motu proprio**, in case of breach thereof by the CONTRACTOR, without need of judicial action by giving at least TEN (10) Days written Notice to that effect to the CONTRACTOR, which Notice shall be final and binding on all the parties. In such event, the PPA may take over and continue the project, and the contracts and agreements entered into by the CONTRACTOR with third parties, which the PPA in its discretion, may want to assume are hereby conclusively deemed assigned to 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.

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

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.

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

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

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

19.09 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.

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

19.11 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.

19.12 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,

Witness: MARIO TAN Liaison Officer

GRACE CONSTRUCTION CORPORATION BY: DAVID G. CHONG President and General Manager

Witness: ADRIAN FERDINAND S. SUGAY Chairperson, HO-BAC-EP

PHILIPPINE PORTS AUTHORITY BY: JAY DANIEL R. SANTIAGO General Manager

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 XX

**SPECIAL REPRESENTATION**

20.01 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 date contained therein are true and correct. A breach of this representation including all misrepresentation in the documents or suppression of material 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 proprio** rescind, abrogate or otherwise terminate the contract without need of judicial action, in accordance with Section 19.04 hereof.

20.02 The 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 XXI

**BUDGETARY REQUIREMENT**

21.01 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 Letter Circular, dated 7 December 1978, of the Department of Budget and Management.

ARTICLE XXII

**EFFECTIVITY**

22.01 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 the date and place first hereinabove written.

**PHILIPPINE PORTS AUTHORITY**
TIN No. 000-352-232-000
By:

**JAY DANIEL R. SANTIAGO**
General Manager

**GRACE CONSTRUCTION CORPORATION**
TIN No. 000-293-268-000
By:

**DAVID G. CHIONG**
President and General Manager

WITNESSES:

**ADRIAN FERDINAND S. SUGAY**
Chairperson, HO-BAC-EP

**MARIO TAN**
Liaison Officer

# ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
City of Manila ) S.S.

BEFORE ME, a Notary Public for and in the City of Manila, this ____ day of _____, 2018, personally appeared the following :

| NAME | PROOF OF IDENTITY | DATE | PLACE |
|---|---|---|---|
| Jay Daniel R. Santiago | Passport No. EB8969214 | | |
| David G. Chiong | SSS No. 08-0203758-5 | | |

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

| POSITION | COMPANY | CTC No. | DATE | PLACE |
|---|---|---|---|---|
| General Manager | Phil. Ports Authority | 00143578 | 1-15-18 | Manila |
| President and General Manager | Grace Const., Corp. | 00267257 | 1-09-18 | Ozamiz City |

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 corporation they represent.

This foregoing instrument is a Contract for the Ozamiz Port Improvement Project, Port of Ozamiz, Ozamiz City, Misamis Occidental, consisting of thirteen (13) pages, including this page on which this Acknowledgment is written, signed by the parties and their instrumental witnesses on each and every page thereof.

IN WITNESS WHEREOF, I have hereunto affixed my hand and notarial seal on these presents at the place and on the date first above written

Doc. No. 154;
Page No. IX;
Book No. III;
Series of 2018;

ATTY. ZOILO P. CARVAJAL
NOTARY PUBLIC
UNTIL DECEMBER 31, 2018
PTR NO. 3902440 1-4-18
IBP NO. 08899 ROLL NO. 4955
MCLE COMPLIANCE NO. 4-007-29

Witness :
MARIOTAN
Liaison Officer

GRACE CONSTRUCTION CORPORATION
BY :
DAVID G. CHIONG
President and General Manager

Witness :
ADRIAN FERDINAND S. SUGAY
Chairperson, HO-BAC-EP

PHILIPPINE PORTS AUTHORITY
BY :
JAY DANIEL R. SANTIAGO
General Manager