

Republic of the Philippines
PHILIPPINE PORTS AUTHORITY
PORT MANAGEMENT OFFICE-NCR NORTH
Administration Building, Marcos Road
North Harbor, Manila
Philippines

CONTRACT

FOR THE:

REPLACEMENT OF DILAPIDATED WINDOWS, VINYL TILES, PVC DOOR AND CONCRETING OF DEPRESSED/ERODED FILL AT THE VTSD CONTROL CENTER, MICT, TONDO, MANILA

KNOW ALL MEN BY THESE PRESENTS:

This Contract made and entered into this _____ day of DEC 26 2019 in MANILA, Philippines, by and between:

PHILIPPINE PORTS AUTHORITY – PORT MANAGEMENT OFFICE-NATIONAL CAPITAL REGION (PMO-NCR NORTH), a Port Management Office of Philippine Ports Authority, a government instrumentality created under Presidential Decree No. 857, as amended, with office at PMO-NCR North Administration Building, Radial Road 10,, North Harbor, Tondo, Manila, represented herein by its duly authorized Port Manager, **ANNIE LEE F. MANESE** and hereinafter referred to as **“PPA”**;

- And -

JAY-DEL CONSTRUCTION, a corporation duly organized and existing in accordance with Philippine laws, with office and business address at No.7 National Road, Brgy. Luz, Limay, Bataan represented in this act by **ENRIQUE V. DE LUNA** duly authorized for this purpose, as evidenced by Secretary’s Certificate, a copy of which is hereto attached and made an integral part hereof as Annex “A”, and hereinafter referred to as **“CONTRACTOR”**.

WITNESSETH:

WHEREAS, in accordance with Republic Act No. 9184 and its Revised Implementing Rules and Regulations, **PPA** posted on the PPA website and G-EPS as well as in its Bulletin Board, an Invitation to Apply for Eligibility and to Bid for the Replacement of Dilapidated Windows, Vinyl Tiles, PVC Door and Concreting of Depressed/Eroded Fill at the VTSD Control Center, MICT, Tondo, Manila

WHEREAS, the **CONTRACTOR** submitted its respective bid for the foregoing project;

WHEREAS, upon opening of the Technical Proposals including the Eligibility Requirements of the prospective bidders on December 3, 2019, the **CONTRACTOR** was found and determined to be eligible bidder for the said project.

WHEREAS, after the opening of the **CONTRACTOR’S** Financial Proposal 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 Single Calculated Responsive Bid in the amount of **One Million Seven Hundred Ninety-Six Thousand Sixty-Two Pesos and 79/100 (Php1,796,062.79)**, Philippine Currency;

WHEREAS, pursuant to PMO-NCR North BAC Resolution No.12, Series of 2019, award of the contract was made to the **CONTRACTOR** in a Notice of Award dated December 17, 2019 in the amount of **One Million Seven Hundred Ninety-Six Thousand Sixty-Two Pesos and 79/100 (Php1,796,062.79)**, Philippine Currency, after submission of the required documents within the prescribed period and compliance to the conditions stipulated in the Revised 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. **CONTRACTOR's** Bid, including the Eligibility Requirements Technical and Financial Proposals and all other documents/statements submitted
- d. Performance Security
- e. Credit Line
- f. Notice of Award of Contract; and
- g. Other contract documents, viz:
 - (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

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**, as stated in this Contract, hereby covenants to execute and complete the **REPLACEMENT OF DILAPIDATED WINDOWS, VINYL TILES, PVC DOOR AND CONCRETING OF DEPRESSED/ERODED FILL AT THE VTSD CONTROL CENTER, MICT, TONDO, MANILA** in conformity in all respects with the provisions of this Contract, as follows:

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ITEM#	SCOPE OF WORK	TOTAL AMOUNT (P)
I.	General Expenses	90,529.75
II.	Replacement of Dilapidated Windows	985,913.59
III.	Restoration Works	78,649,74
IV.	Concreting of Depressed/Eroded Fill	196,542.87
V.	Replacement of Dilapidated Vinyl Tiles	418,411.14
VI.	Relocation of Wood Partition	19,705.06
VII.	Replacement of Dilapidated PVC Door	6,310.64
	TOTAL AMOUNT OF BID (Including VAT)	Php1,796,062.79

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 its work under the Contract, shall be in accordance with the Contract 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 of **ONE MILLION SEVEN HUNDRED NINETY-SIX THOUSAND SIXTY-TWO PESOS and 79/100 (Php1,796,062.79)** 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 unit 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). 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.

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 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.

3.07 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 issued by any reputable surety or insurance company duly accredited by the Office of the Insurance Commission 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, bank guarantees and/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, it shall post prior to the signing of the Contract a performance security in the form of cash, manager's check, cashier's check, bank draft/guarantee confirmed by a Universal or Commercial Bank, irrevocable letter of credit issued by a Universal or Commercial Bank, surety bond, callable on demand, issued by surety or insurance company duly certified by the Office of the Insurance Commission as authorized to issue such security and acceptable to **PPA** or a

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combination thereof as may be required by **PPA**, in accordance with the following schedule:

- a. cash, cashier's / manager's check issued by a Universal or Commercial Bank - ten percent (10%) of the total contract price
- b. bank / draft guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank - ten percent (10%) of the total contract price
- 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%) of the total contract price
- d. any combination of the foregoing – proportionate to share of form with respect to total amount of security

4.02 This performance security shall be denominated in Philippine Pesos and 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 as prescribed in the Section 4.01
- 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** with labor and materials 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 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.

4.05 Should any surety bond upon 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.

4.07 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 **FORTY-FIVE (45) CALENDAR DAYS** (including Sundays and

Holidays), reckoned not later than seven (7) calendar days from issuance of the Notice to Proceed. 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 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 percent (1%) of the cost of the unperformed portion of the works for every day 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 OPM- Engineering Unit, **PPA-PMO-NCR NORTH**.

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 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 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

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

9.03 Any actionable act or acts of **ENRIQUE V. DE LUNA**. Arising out of or in the course of this Contract, shall be understood and binding as an act of **CONTRACTOR** and vice versa.

ARTICLE X

**INSPECTION AND CONSTRUCTION OF
CONTRACT WORK**

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

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 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 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) , 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 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.

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 his 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 held 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 the form of cash, bank guarantee, letter of credit or surety bond, callable on demand issued by the Government Service Insurance System (GSIS) or a surety or insurance company duly certified by the Office of the Insurance Commission as authorized to issue such security and acceptable to **PPA** in accordance with the following schedule:

- | | | |
|---|---|--|
| a. Cash or letter of credit issued by a | - | Five percent (5%) of the total contract Price |
| Universal or Commercial Bank | | |
| b. Bank guarantee confirmed by a | - | Ten percent (10%) of the total contract price |
| Universal or Commercial Bank | | |
| c. Surety bond callable upon demand | - | 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 to 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 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 tax payments made thereon.

ARTICLE XV

AGREEMENT MODIFICATION

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 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.

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

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.

ARTICLE XVIII

ARBITRATION / REMEDY AND RELIEF

18.01 Should there be any dispute or difference of any kind whatsoever which shall arise between the parties in connection with the implementation of this contract; the parties hereto shall make every effort to resolve amicably such dispute or difference by mutual consultation. In the event that such dispute or disagreement be not resolved to their mutual satisfaction, the matter shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Laws" and Republic Act No. 9285; otherwise known as

the "Alternative Dispute Resolution Act of 2004". Provided, however, that disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be submitted thereto. Provided, further, that, by mutual agreement, the parties hereto may agree in writing to resort to other alternative modes of dispute resolution. Provided, finally, that the arbitration proceeding shall be without prejudice to the right of **PPA** to rescind or terminate this contract in accordance with Article XIX, Section 19.04 hereof.

18.02 Should the **PPA** be constrained to resort to court action to enforce or safeguard its rights and interests under this Contract, the **CONTRACTOR** shall be liable to the **PPA** for attorney's fees in 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.

ARTICLE XIX

OTHER COVENANTS

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

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

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

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

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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 PPA-PMO NCR NORTH 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 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 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.

[Handwritten signatures and initials in the left margin]

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 the Letter Circular, dated 07 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 herein above written.

**PHILIPPINE PORTS AUTHORITY
PMO- NCR NORTH**

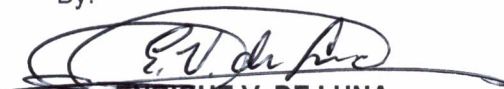
JAY-DEL CONSTRUCTION

By:



**ANNIE LEE F. MANESE
Port Manager**

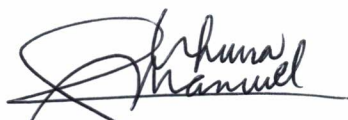
By:



**ENRIQUE V. DE LUNA
General Manager**

WITNESSES:


**EVELYN I. REGLA
RMD Manager**


DE LUNA, Manuel Genan M.



ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)

CITY OF MANILA) S.S.

DEC 26 2019

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

<u>NAME</u>	<u>TIN</u>
ANNIE LEE F. MANESE	_____
ENRIQUE V. DE LUNA	<u>937-042-037-000</u>

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

<i>Position</i>	<i>Company</i>	<i>Government Issued I.D.</i>
<i>Port Manager</i>	<i>Philippine Ports Authority Port Management Office National Capital Region (NCR North)</i>	_____
<i>General Manager</i>	<i>JAY-DEL Construction</i>	_____

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 judicial entity they represent.

This foregoing instrument is the Contract for the and **Replacement of Dilapidated Windows, Vinyl Tiles, PVC Door and Concreting of Depressed/Eroded Fill at the VTSD Control Center, MICT, Tondo, Manila** consisting of fourteen pages (14) pages, including this page on which this acknowledgement 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. 498;
 Page No. 100;
 Book No. XXXIX;
 Series of 2019

NOTARY PUBLIC
ATTY. JOHN EDWARD TRINIDAD ANG
 Notary Public for Manila- UNTIL 12/31/2019
 Notarial Commission No. 2018-117
 470 SAN FERNANDO ST., BINONDO, MANILA
 ISP NO. 068006 / 12-28-18 - PASIG CITY
 PTR. NO. 8020772/12-27-18 - MANILA
 P.D. COMPLIANCE NO. VI-0017180/12-24-2018

[Handwritten signatures and initials in the left margin]