

REPUBLIC OF THE PHILIPPINES
PHILIPPINE PORTS AUTHORITY
PORT MANAGEMENT OFFICE-PALAWAN
Quezon Street, Barangay Bagong Pag-Asa, Port Area,
Puerto Princesa City, Palawan, Philippines

CONTRACT/AGREEMENT FOR THE

DOTC-LFP-PLW-02-2015 BUSUANGA PORT DEVELOPMENT PROJECT, PORT OF BUSUANGA, BUSUANGA, PALAWAN

KNOW ALL MEN BY THESE PRESENTS:

This Contract made and entered into this 14 day of OCT 2019, 2019 in City of QUEZON CITY, Philippines, by and between;

PHILIPPINE PORTS AUTHORITY, PMO-PALAWAN, a government instrumentality with corporate powers attached to the Department of Transportation (DOTr) created and existing under and by virtue of Presidential Decree No. 857, as amended, with office at Quezon Street, Barangay Bagong Pag-Asa, Port Area, Puerto Princesa City, Palawan represented herein by its **Acting Port Manager, ELIZALDE M. ULSON**, hereinafter referred to as the "PPA".

-and-

RCDG CONSTRUCTION CORPORATION/HHH DEVELOPER & CONSTRUCTION (JV), a company duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at A. Ruste, San Jose Road, Zamboanga City, represented herein by its **Authorized Managing Officer, RANDOLF IVAN A. RUSTE**, hereinafter referred to as the "CONTRACTOR".

WITNESSETH

WHEREAS, in accordance with the Invitation to Bid of the PPA, advertised and posted at the PPA and PhilGEPS websites and at the PPA bulletin board, the CONTRACTOR submitted its bid for the supply of all labor, materials, equipment, tools and services to undertake the DOTC-LFP-PLW-02-2015 BUSUANGA PORT DEVELOPMENT, PORT OF BUSUANGA, BUSUANGA, PALAWAN;

WHEREAS, in the opening of bids conducted on 27 SEPTEMBER 2019, the bid submitted by the CONTRACTOR at its unit and lump sum prices as set forth in its proposal in the total amount of **NINETEEN MILLION THREE HUNDRED EIGHTY-ONE THOUSAND NINE HUNDRED SIXTY-EIGHT PESOS & 93/100 (P 19,381,968.93)**, is lower than the Approved Budget for the Contract which is **NINETEEN MILLION FOUR HUNDRED FIFTY-FIVE THOUSAND SIX HUNDRED THREE PESOS & 38/100 (P 19,455,603.38)** and such bid was found to be the single calculated and responsive bid;

WHEREAS, on **OCTOBER 07, 2019** the Bids and Award Committee issued Resolution No. 14, Series of 2019, which was approved, awarding the contract to the CONTRACTOR in the total amount of **NINETEEN MILLION THREE HUNDRED EIGHTY-ONE THOUSAND NINE HUNDRED SIXTY-EIGHT PESOS & 93/100 (P 19,381,968.93)**, Philippine Currency;

WHEREAS, on **October 08, 2019**, the Port Manager issued the Notice of Award which was received by the CONTRACTOR on **October 09, 2019**;

PHILIPPINE PORTS AUTHORITY

RCDG CONST. CORP. / HHH DEVELOPER CONST. (JV)

ELIZALDE M. ULSON
Acting Port Manager

FRASY M. DE GUZMAN
Witness

MA. JAILYN C. GONZALES
Witness

RANDOLF IVAN A. RUSTE
Authorized Managing Officer

IAN JUDEL DURAMOS
Witness

PHILIPPINE PORTS AUTHORITY

RCDG CONST. CORP. / HHH DEVELOPER CONST. (JV)

FRASY M. DE GUZMAN
Witness

MA. JAILYN CHAVEZ T. GONZALES
Witness

RANDOLF IVAN A. RUSTE
Authorized Managing Officer

IAN JUDEL DURAMOS
Witness

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants, stipulations and agreements herein contained, and the payment by the PPA of the sum of money in the manner hereinafter specified, 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, unless otherwise modified by the terms and conditions of this Contract, or by mutual agreement in writing of both parties, to wit:

- Annex "A" Notice of Award
- "B" Performance Security
- "C" Certificate of Approved Budget/Certificate of Availability of Funds
- "D" Abstract of Bids
- "E" BAC Resolution Declaring Single Calculated Responsive Bid and Recommending Approval Thereof, and Recommending Award of Contract duly approved by the Approving Authority
- "F" Invitation to Bid
- "G" Other Documents that may be required by existing laws and/or the PPA
 - "G.1" Project Procurement Management Plan
 - "G.2" Notice of BAC Meetings, Minutes of Meetings and Attendance Sheets
 - "G.3" Bid Evaluation Report
 - "G.4" Post-Qualification Report
 - "G.5" Post-Qualification Documents
 - "G.6" BAC Letters to Bidders
 - "G.7" Other documents not listed above or in the annexes
- "H" Approved Program of Work, Cost Estimates and Plans and Drawings
- "I" Technical Bid Proposal
- "J" Financial Bid Proposal
- "K" Bid Documents

1.02 All contract documents are and shall remain as the properties of the PPA.

1.03 The words and expressions in the Contract shall have the same meanings respectively assigned to them in the Contract Documents referred to above.

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

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 Bid Documents and this Contract, hereby covenants to execute and complete the DOTC-LFP-PLW-02-2015 BUSUANGA PORT DEVELOPMENT, PORT OF BUSUANGA, BUSUANGA, PALAWAN in conformity in all respects with the provisions of this Contract, as follows:

ELZALDE M. ULSON
Acting Port Manager

RCDG CONST CORP. / HHH DEVELOPER CONST. (JV)

PHILIPPINE PORTS AUTHORITY


IAN JUDAL DURAMOS
Witness


RANDOLPH IVAN A. RUSTE
Authorized Managing Officer


MA. JAILYN CHARETTE T. GONZALES
Witness


FRAY M. DE GUZMAN
Witness


ELIZALDE M. ULSON
Acting Port Manager

DESCRIPTION		TOTAL AMOUNT
I	GENERAL EXPENSES	P 1,214,634.52
II	ROCK CAUSEWAY	16,428,026.30
III	BOX CULVERT	1,739,308.11
TOTAL ESTIMATED AMOUNT		P 19,381,968.93

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, deliver, 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 herein enumerated in the most efficient and competent manner, use its skill and good judgment always, observe good faith and carry on the execution of this Contract in the most sound, expeditious and economical manner consistent with the interest of the PPA.

2.05 The CONTRACTOR agrees to pay taxes in full and on time and that failure to do so will entitle the PPA to suspend payment for any services delivered/rendered by the CONTRACTOR. Further, CONTRACTOR agrees to regularly present to the PPA, within the duration of the contract, a tax clearance from Bureau of Internal Revenue as well as a copy of its income and business tax returns stamped and received by the Bureau of Internal Revenue and duly validated with the tax payments made thereon.

ARTICLE III CONSIDERATION

3.01 For and in consideration of the full, satisfactory and faithful performance of the CONTRACTOR of all its undertakings defined in and provided for under this Contract, including contract documents incorporated therein, the PPA agrees to pay the CONTRACTOR the total amount not exceeding **NINETEEN MILLION THREE HUNDRED EIGHTY-ONE THOUSAND NINE HUNDRED SIXTY-EIGHT PESOS & 93/100 (P 19,381,968.93)**, Philippine Currency, inclusive of the twelve (12%) percent value added tax including any increase thereof, 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 bid 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 incurred by the CONTRACTOR arising out of the aforesaid work, from the action of the elements, or from any obstruction or difficulty encountered in the prosecution of this Contract, for all expenses incurred by or in consequence of the suspension or discontinuance of the contract herein specified and for faithfully completing the contract and the whole thereof, at the time and in the manner provided in the Contract Documents.

It is agreed and understood that all unit prices specified in this contract shall be considered as fixed prices, and therefore not subject to price escalation during the contract implementation, except under extraordinary circumstances and upon prior approval of the Government Procurement Policy Board (GPPB). Any request for price escalation under extraordinary circumstances shall be submitted by PPA to the

PHILIPPINE PORTS AUTHORITY RCDG CONST. CORP. / HHH DEVELOPER CONST. (JV)

IAN JUDE L. DURAMOS

Witness

RANDOLF IVAN A. RUSTE

Authorized Managing Officer

MA. JAILYN CHINDETTE T. GONZALES

Witness

FRASY M. DE GUZMAN

Witness

ELIZALDE M. ULSON

Acting Port Manager

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 hereinabove 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, 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 or improper work or supplies/materials.

3.03 Any payment due and payable to the CONTRACTOR may be set off against liquidated damages which the CONTRACTOR, under this Contract is liable to pay the PPA.

3.04 It is likewise understood that the CONTRACTOR shall show proofs 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 for 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 and issued by any reputable surety or insurance company duly accredited by the Office of the Insurance Commissioner 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 under the Contract, it shall post upon the signing thereof a performance security in the form of cash, manager's check, cashier's check, irrevocable letter of credit issued by a reputable bank or surety bond callable on demand and issued by the Government Service Insurance System (GSIS) or any surety company duly accredited by the Office of the Insurance Commissioner in accordance with the following schedule:

PHILIPPINE PORTS AUTHORITY / RCDG CONST. CORP. / HHH DEVELOPER CONST. (JV)

Witness
IAN JODEL DURAMOS

Authorized Managing Officer
RANDOLF IVAN A. RUSTE

Witness
MA. JAILYN CHIN P. GONZALES

Witness
FRASY M. DE GUZMAN

Acting Port Manager
ELIZALDE M. ULSON

Form of Performance Security	Amount of Performance Security ((Not less than the Percentage of the Total Contract Price))
a. Cash or cashier's / manager's check issued by a Universal or Commercial Bank <i>For biddings conducted by the LGUs, the Cashier's/Manager's Check may be issued by other banks certified by the BSP as authorized to issue such financial instrument.</i>	Ten Percent (10%)
b. Bank draft/guarantee of irrevocable letter of credit issued by a Universal or Commercial Bank; Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. <i>For biddings conducted by the LGUs, Bank Draft/Guarantee, or Irrevocable Letter of Credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument.</i>	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 This performance security shall be denominated in Philippine Pesos and posted in favor of PPA, which 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 The performance security shall remain valid until issuance by the procuring entity of the final Certificate of Acceptance.

4.04 The performance security may be released by the procuring entity after the issuance of the Certificate of Acceptance, subject to the following conditions:

- Procuring entity has no claims filed against the contract awardee or the surety company;
- It has no claims for labor and materials filed against the contractor; and
- Other terms of the contract.

4.05 For the procurement of infrastructure projects, the winning bidder 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 work agreements, as the case may be. The winning bidder shall cause the extension of the validity of the Performance Security to cover approved contract time extensions.

4.06 In case of 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 **TWO HUNDRED TEN (210) calendar days** (including Sundays and Holidays), beginning on the date specified in the Notice to Proceed issued by the PPA. Notice to Proceed shall be issued after the signing of this Contract by the Port Manager.

PHILIPPINE PORTS AUTHORITY RCDG CONST. CORP. HHH DEVELOPER CONST. (JV)

ELIZALDE M. ULSON
Acting Port Manager

FRASY M. DE GUZMAN
Witness

MA. JAILYN GONZALEZ
Witness

RANDOLF IVAN A. RUSTE
Authorized Managing Officer

IAN JUDE C. DURAMOS
Witness

5.02 Time is of the essence of this Contract. Where 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 every day of delay.

5.03 A project or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the targeted end-users and the concerned procuring entity.

5.04 To be entitled to such liquidated damages, the 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 to 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 the procuring entity.

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, the PPA concerned may rescind the contract, forfeit the contractor's performance security and takeover 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 exceed ten percent (10%) of the total contract price, in which event the contract shall automatically be taken over by the PPA or award the same to a qualified contractor through negotiation and the ering 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 the PPA under the provisions of this clause 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 period of such extension; provided that the PPA is not bound to take into account any claim for 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 finding of facts justify an extension.

6.02 No extension of contract time shall be granted the CONTRACTOR due to (a) ordinary unfavorable weather conditions, (b) inexcusable failure or negligence of CONTRACTOR to provide the required equipment, supplies or materials, or (c) other causes of which PPA is not directly responsible.

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

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IAN JUDER DURAMOS
Witness

days considered unfavorable for the prosecution of the works at the site, based on the actual conditions obtained at the site, for such period in excess of the number of rainy/unworkable days predetermined by the PPA 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 paralyzation 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, 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. Provided, further, that 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 Agreement. 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 from the time project construction commenced up to final acceptance by the PPA and shall be held solely responsible for any damage or destruction of works except those occasioned by force majeure.

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 RANDOLF IVAN A. RUSTE arising out of or in the course of this contract shall be understood and binding as an act of RCDG CONSTRUCTION CORPORATION / HHH DEVELOPER & CONSTRUCTION (JV) and vice-versa.

PHILIPPINE PORTS AUTHORITY / RCDG CONST. CORP. / HHH DEVELOPER CONST. (JV)

PHILIPPINE PORTS AUTHORITY

IAN JUDE L. DURAMOS
Witness

RANDOLF IVAN A. RUSTE
Authorized Managing Officer

MA. JAILYN CHIN BETTE T. GONZALES
Witness

FRASY M. DE GUZMAN
Witness

ELIZALDE M. ULSON
Acting Port Manager

ARTICLE X INSPECTION AND CONSTRUCTION OF CONTRACT WORK

10.01 Inspection of the contract work shall be conducted by the PPA while such contract work is in progress to ascertain that the completed works comply in all respect with the standard 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 replace all materials and correct all works determined by the PPA as failing to meet the standard and requirements agreed upon at CONTRACTOR'S own expense.

ARTICLE XI NON-ASSIGNMENT AND NO SUBCONTRACT

11.01 The CONTRACTOR shall not, without the prior 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 paragraph 19.04 hereof. Should the PPA give its written approval, such consent shall not relieve the CONTRACTOR of its responsibilities under the Contract. The CONTRACTOR shall ensure that the terms and conditions of any such sub-contract shall comply and conform with the terms and conditions of the Contract. The CONTRACTOR shall be responsible for the observance by any 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 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 (CAR) Insurance from the GSIS or any insurance company duly accredited/authorized by the Insurance Commission 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 his own expense, of any damage to the said project within NINETY (90) DAYS from the time the Port 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.

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Witness

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Witness

FRASY M. DE GUZMAN

Witness

ELIZALDE M. ULSON

Acting Port Manager

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

Form of Warranty Security	Amount of Warranty Security (Equal to Percentage of the Total Contract Price)
a. Cash or letter of credit issued by a Universal or Commercial Bank	Five Percent (5%)
b. Bank guarantee confirmed by a Universal or Commercial Bank	Ten Percent (10%)
c. Surety bond callable upon demand issued by GSIS or a surety/insurance company duly certified by the Insurance Commission as authorized to issue such security	Thirty Percent (30%)

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 and fees which may be due the local and/or national government 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.

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 written amendment or waiver signed and approved by the appropriate approving authorities.

15.02 A variation order (change order/extra work order) may be issued by the 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 Contract. The CONTRACTOR shall be paid for additional work items whose unit prices shall be derived based on the following:

- 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.
- 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

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MA. JAILYN CHENETTE T. GONZALES
Witness

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Witness

ELIZALDE M. ULSON
Acting Port Manager

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 the general public or to carry out valid orders given by the Government or to perform any provisions of the contract, or due to the 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 order to suspend 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 this Contract that all the documents, annexes and addenda forming part therewith shall be read together and that each and every provision or stipulation thereof be given full force, effect and applicability. However, in the event that one or more provisions or stipulations therein 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 controversy in connection with this Contract or difference between the Parties arising from the interpretation of this Contract, the Parties hereto shall, as far as practicable, settle the same amicably. In the event that such dispute or disagreement be not resolved to their mutual satisfaction, the matter shall be submitted for arbitration to the Construction Industry Arbitration Commission (CIAC) created under Executive Order No. 1008, implementing Presidential Decree No. 1746 and R.A. 876, as amended. Provided, however, that the arbitration proceeding shall be without prejudice to the right of the PPA to rescind or terminate this contract in accordance with Article XIX, paragraph 19.04 hereof.

18.02 Should the PPA be constrained to resort to court actions to enforce or safeguard its rights and interests under this contract, the CONTRACTOR shall be liable to the PPA for attorney's fees in the amount equivalent to Twenty Percent (20%) of the total sum claimed in the complaint, exclusive of other damages and the expenses of litigation. Venue of such court actions 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

PHILIPPINE PORTS AUTHORITY RCDG CONST. CORP. / HHH DEVELOPER CONST. (JV)

ELIZALDE M. UELSON
Acting Port Manager

FRASY M. DE GUZMAN
Witness

MA. JALYN CHIMETTE T. GONZALES
Witness

RANDOLF VAN A. RUSTE
Authorized Managing Officer

IAN JODEL DURAMOS
Witness

between the PPA and the CONTRACTOR regarding the manner by which the latter is performing its 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 clearly be 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 variation orders, change order or extra work order, undertaken without the prior written approval of the PPA Port Manager to perform said work.

19.04 Notwithstanding any provision to the contrary, the PPA has a 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 a 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 at the current valuation price pursuant to the provisions of P.D. 1870.

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 ten (10) days from the 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 a 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 exigency of the service so require. Should the CONTRACTOR fail, refuse or neglect to comply with the same, the 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 in accordance with P.O. 1870. Any increase in cost which the PPA may incur as a result of its take

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MA. JAILYN CHRISTETTE T. GONZALES
Witness

FRASY M. DE GUZMAN
Witness

ELIZALDE M. ULSON
Acting Port Manager

over of the project pursuant to paragraphs 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 specification, 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 guarantees and warrants availability, quality and genuineness of all machineries, equipments, accessories, tools, materials and supplies it will supply, deliver and use in the construction and workmanship of all its work under this Contract, and shall, at its own account and expense, make good any defect or defects which may be discovered in accordance with the provisions of Section 62 of the Implementing Rules and Regulations of R.A. No. 9184.

19.09 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 and private property which are excavated or in any manner used by the CONTRACTOR in connection with the performance of its obligations under this Contract.

19.10 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.

19.11 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/Municipal Engineer of the City/Municipality concerned of the local works to be restored as mentioned in paragraph 19.09 hereof, otherwise the cost of restoration shall be made available out of any amount collectible / receivable by the CONTRACTOR from the PPA.

19.12 Notwithstanding any variation order, change order or extra work order, made, if any, by the PPA, it is agreed that the same shall be completed within the period herein fixed and provided.

19.13 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 or by reason of this Contract, due to the fault, negligence, act, omission, delay, conduct, breach of trust, or non-observance or violation of this Contract or any stipulation and warranty by the CONTRACTOR and/or any of its employees, agents, representatives or sub-contractors.

ARTICLE XX SPECIAL REPRESENTATION

20.01 The CONTRACTOR hereby represents that all documents it submitted which form as integral parts hereof are authentic and duly executed with all the required formalities for the same, and that the facts and/or data contained therein are true and correct. A breach of this representation including all misrepresentation in the documents or suppression of 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 paragraph 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 extra-judicially or without need of judicial intervention.

ARTICLE XXI BUDGETARY REQUIREMENTS

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 7 December 1978 of the Minister of Budget.

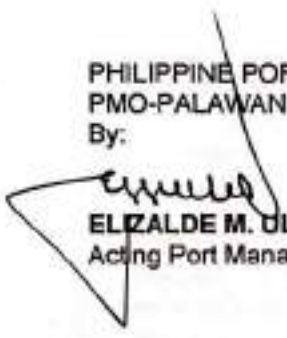
ARTICLE XXII EFFECTIVITY

22.01 This Contract shall become effective after the same has been signed by the Parties.

IN WITNESS WHEREOF, the Parties have hereunto signed this Contract on the date and place first hereinabove written.

PHILIPPINE PORTS AUTHORITY –
PMO-PALAWAN

By:



ELZALDE M. OLSON
Acting Port Manager

RCDG CONSTRUCTION CORPORATION/
HHH DEVELOPER & CONSTRUCTION (JV)


By:


RANDOLF IVAN A. RUSTE
Authorized Managing Officer

WITNESSES:


FRASY M. DE GUZMAN
Manager, Admin. Division
PMO – Palawan


MA. JAILYN CHYNETTE T. GONZALES
Manager, Finance Division
PMO – Palawan


IAN JUDE L. DURAMOS
RCDG Construction Corp. /
HHH Developer Const. (JV)

PHILIPPINE PORTS AUTHORITY / RCDG CONST. CORP. / HHH DEVELOPER CONST. (JV)

PHILIPPINE PORTS AUTHORITY

PHILIPPINE PORTS AUTHORITY

[Signature]
IAN J. DURAMOS
Witness

[Signature]
RANDOLF IVAN A. RUSTE
Authorized Managing Officer

[Signature]
MA. JAILYN GONNETTE T. GONZALES
Witness

[Signature]
FRANCY M. DE GUZMAN
Witness

[Signature]
ELIZALDE M. ULSON
Acting Port Manager

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
City of QUEZON CITY) S.S.

BEFORE ME, a Notary Public for and in the City of QUEZON CITY, Philippines personally appeared the following persons with their proof of identification, to wit:

NAME	Proof of Identification	Number
1. ELIZALDE M. ULSON	Tax Identification No.	123-173-059
2. RANDOLF IVAN A. RUSTE	PRC License No.	0051926

Who are known to me and to me known to be the same persons who executed and signed the foregoing instrument and who acknowledged to me that the same are their own true and voluntary act and deed, and the corporation/entity which they respectively represent.

This instrument is a Contract/Agreement for the **DOTC-LFP-PLW-02-2015 BUSUANGA PORT DEVELOPMENT, PORT OF BUSUANGA, BUSUANGA, PALAWAN**, consisting of fourteen (14) pages, including this page on which this Acknowledgment is written. Pages 1 to 12 and 14 are signed on the left margin thereof and page 13 is signed at the corresponding spaces provided for the Parties and their instrumental witnesses and sealed with my notarial seal.

14 OCT 2019

WITNESS MY HAND AND SEAL this _____ day of _____, 2019 at QUEZON CITY, Philippines.

NOTARY PUBLIC

[Signature]
ATTY. JOSE PEDRO P. CRISOLOGO
NOTARY PUBLIC

Commission No. NP-089 (Expires Dec. 31, 2019)
PTR No. 7574918-C / Jan. 28, 2019 / Q.C.
MCLE Compliance No. VI-0017262 / April 14, 2022
IBP Lifetime No. LRN 03688 / Q.C.
Attorney Roll No. 49462
Tin No. 111-979-403
Add: No. 31 Commonwealth Ave. Q.C.

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