PHILIPPINE PORTS AUTHORITY
PMO-ZAMBOANGA
R.T. Lim Boulevard
Zamboanga City 7000
PO Box No. 360
Tel Nos. 991-2037 to 2039 Fax No. 991-2360

JENNIFER E. LOZANO
Witness

CONTRACT AGREEMENT

PROPOSED CONSTRUCTION OF RC LANDING AND RORO RAMP AT PORT OF MARGOSATUBIG, ZAMBOANGA DEL SUR

KNOW ALL MEN BY THESE PRESENTS:

This Contract, made and entered into this ___ day of DEC 05 2014, in the City of Zamboanga, Philippines, by and between:

ENGR. JULPI J. TAUNG
Contractor

PHILIPPINE PORTS AUTHORITY, a government corporation created under Presidential Decree No. 857, as amended, with principal offices at Bonifacio Drive, South Harbor, Port Area, Manila, and Port Management Office of Zamboanga at R.T. Lim Boulevard, Cawa-Cawa Road, Port Area, Zamboanga City represented herein by its duly authorized Port Manager, ***LIBERTO C. DELA ROSA,*** *and hereinafter referred to as PPA;*

- and -

ENGR. JULPI J. TAUNG, *of legal age, married, Filipino and with business and postal address at* ***MCLL Highway, Corner C. Ferrer Drive Divisoria, Zamboanga City,*** *doing business under the firm/style of* ***ZET Construction,*** *represented herein also by* ***ENGR. JULPI J. TAUNG,*** *Proprietor/Manager and hereinafter referred to as CONTRACTOR.*

WITNESSETH:

ENGR. JOHNSON D. KHO
ESD Manager
Witness

WHEREAS, in accordance with Republic Act No. 9184 and its Revised Implementing Rules and Regulations, the PPA advertised/published the Invitation to Bid for the Project: ***PROPOSED CONSTRUCTION OF RC LANDING AND RORO RAMP AT PORT OF MARGOSATUBIG, ZAMBOANGA DEL SUR*** in the PPA website, PhilG-EPS, the Philippine Star of National Publication and in the PMO-Zamboanga's Bulletin Board;

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

WHEREAS, after the opening of bids on *October 20, 2014*, and the conduct of bid evaluation and post qualification, the bid submitted by the CONTRACTOR at its unit and lump sum prices set forth in its proposal was found to be lower than the amount of the **Approved Budget for the Contract** amounting to ***Php 19,317,081.00*** and declared ***Lowest Calculated and Responsive Bid*** aggregating in the amount of ***Nineteen Million One Hundred Ninety Five Thousand Six Hundred Sixty Eight Pesos & 59/100 Cntvs (Php19,195,668.59), Philippine Currency;***

LIBERTO C. DELA ROSA
Port Manager

WHEREAS, pursuant to the PMO-Zamboanga BAC Resolution No. 07-2014 duly approved by the Port Manager, award of the contract was made to the CONTRACTOR in a Notice of Award dated December 3, 2014, in the amount of ***Nineteen Million One Hundred Ninety Five Thousand Six Hundred Sixty Eight Pesos & 59/100 Cntvs (Php19,195,668.59), Philippine Currency;*** after submission of the required documents within the prescribed period and compliance to the conditions stipulated in the IRR;

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

NOW THEREFORE, for and in consideration of the foregoing premises and the mutual covenants, stipulations and agreements herein contained, and the payment by the PPA of a 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, except as otherwise modified by the terms and conditions of this Contract, or by mutual agreement in writing of both parties, to wit:

(1) Contract Agreement;
(2) Bidding Documents;
(3) Winning bidder's bid, including the Technical and Financial Proposals and all other documents/statements submitted;
(4) Latest Income and Business Tax Returns
(5) Certificate of PhilG-EPS Registration
(6) Performance Security;
(7) Notice of Award of Contract;
(8) Construction Schedule and S-Curve;
(9) Manpower Schedule;
(10) Construction Methods;
(11) Equipment Utilization Schedule;
(12) Construction Safety and Health Program approved by DOLE;
(13) PERT CPM;

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

(14) Duly Approved Program of Work and Cost Estimates
(15) Certificate of Availability of Funds
(16) Approved Budget for the Contract
(17) Abstract of Bids
(18) Resolution of the BAC Recommending Award
(19) Notice to Proceed
(20) Concurrence of Lending Institutions in case of Foreign-Assisted Projects
(21) Other pertinent documents as may be reasonably required by existing laws.

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

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

ARTICLE II
CONTRACTOR'S UNDERTAKING
SCOPE OF WORK

2.01 The CONTRACTOR in consideration of the payment to be made by the PPA to the CONTRACTOR as stated in the Contract Documents and this Contract, the latter hereby covenants to execute and complete the **PROPOSED CONSTRUCTION OF RC LANDING AND RORO RAMP AT PORT OF MARGOSATUBIG, ZAMBOANGA DEL SUR.**

JENIFER E. LOZANO
Witness

ENGR. JULPI J. TAUNG
Contractor

ENGR. JOHNSON D. KHO
ESD Manager
Witness

LIBERTO C. DELA ROSA
Port Manager

2.02 in conformity in all respects with the provisions of this contract, as follows:

Item No.	Description	Unit	Quantity	Unit Cost	Amount
I.	Supply of labor, materials, and equipment for the Mobilization and Demobilization – 1 Lot. *at Pesos: One Hundred Seventy Four Thousand One Hundred Eighty Eight Pesos & 19/100 Cntvs per lot*	lot	1	174,188.19	174,188.19
II	Supply of labor, materials, and equipment for the Chipping of Existing RC Curb - 15.00 In.m. *at Pesos: Eight Hundred Five pesos & 46/100 Cntvs per ln.m*	Ln.m	15.00	805.46	12,081.90
III	Supply of labor, materials, and equipment for the Supply and Deliver Two Units Of 0.45m X 0.45m R.C. Piles (4,500 Psi) Test Piles - 80.00 In.m. *at Pesos: Six Thousand Seven Hundred Twenty & 08/100 Cntvs per ln.m*	Ln.m	80.00	6,720.08	537,606.40
IV	Supply of labor, materials, and equipment for the Driving of Two Units of 0.45m X 0.45m R.C. Piles (4,500 Psi) Test Piles - 80.00 In.m *at Pesos: Two Thousand Seven Hundred Fifty Eight Pesos & 06/100 Cntvs per ln.m*	Ln.m	80.00	2,758.06	220,644.80
V	Supply of labor, materials, and equipment for the Splicing of Two Units Of 0.45m X 0.45m R.C. Piles (4,500 Psi) Test Piles - 2.00 Pc. *at Pesos: Sixteen Thousand Six Hundred Sixty Eight Pesos & 29/100 Cntvs per pc*	pc	2.00	16,668.29	33,336.58
VI	Supply of labor, materials, and equipment for Supply and Deliver 0.45m X 0.45m R.C. Piles (4,500 Psi) - 1,351.00 In.m. *at Pesos: Six Thousand Eighty Six & 59/100 Cntvs*	Ln.m	1,351.00	6,086.59	8,222,983.09
VII	Supply of labor, materials, and equipment for the Driving of 0.45m X 0.45m R.C. Piles -1,351.00 In.m. *at Pesos: Two Thousand Eight Hundred Sixty Eight & 62/100 Cntvs per ln.m*	Ln.m	1,351.00	2,868.62	3,875,505.62

JENIFER E. LOZANO
Witness

ENGR. JULIO J. TAUNG
Contractor

ENGR. JOHNSON D. KHO
ESD Manager
Witness

LIBERTO C. DELA ROSA
Port Manager

VIII	Supply of labor, materials, and equipment for the Splicing of 0.45m X 0.45m R.C. Piles - 44.00 Pc. *at Pesos: Twelve Thousand Six Hundred Sixty Three Pesos & 23/100 Cntvs per pc*	Pc	44.00	12,663.23	557,182.12
IX	Supply of labor, materials, and equipment for the Supply and Installation Of Reinforcing Steel Bars - 29,175.025 Kgs. *at Pesos: Sixty Six Pesos & 09/100 Cntvs per kg*	Kg	29,175.025	66.09	1,928,177.40
X	Supply of labor, materials, and equipment for the Concreting of Superstructure – 185.077 Cu.m. *at Pesos: Nine Thousand Seven Hundred Twenty & 40/100 Cntvs per cu.m*	Cu.m	185.077	9,720.40	1,799,022.47
XI	Supply of labor, materials, and equipment for the Supply and Installation Of Rdf System (Rubber Dock Fender (V-500H X 1.500L) – 6.00 Sets. *at Pesos:Two Hundred Forty Four Thousand One Hundred Nine Pesos & 22/100 Cntvs per Set*	Set	6	244,345.92	1,466,075.52
XII	Supply of labor, materials, and equipment for the Supply and Install Mooring System (35T T-Head Bollard) – 2.00 Sets. *at Pesos: Ninety Two Thousand Four Hundred Forty Two Pesos & 17/100 Cntvs per set*	Set	2.00	92,442.17	184,884.34
XIII	Supply of labor, materials, and equipment for the Construction Safety and Health Program - 1 lot. *at Pesos: One Hundred Eighty Three Thousand Nine Hundred Eighty Pesos & 16/100 Cntvs per lot*	Lot	1	183,980.16	183,980.16
				GRAND TOTAL COST OF BID (in Pesos)	**19,195,668.59**

TOTAL AMOUNT OF BID (INCLUSIVE OF VAT) IN WORDS:
NINETEEN MILLION ONE HUNDRED NINETY FIVE THOUSAND SIX HUNDRED SIXTY EIGHT PESOS & 59/100 CNTVS.

2.02 The CONTRATOR 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.

JENNIFER B. LOZANO
Witness

ENGR. JULPI J. TAUNG
Contractor

ENGR. JOHNSON D. KHO
ESD Manager
Witness

LIBERTO C. DELA ROSA
Port Manager

JEMFER ELOZANO
Witness

2.03 The CONTRACTOR guarantees, among others, that all tools, equipment, machinery, instruments, accessories and materials it will supply or deliver or install and/or use in the construction and workmanship of all his work under the contract, shall be in accordance with the Contract Documents, and shall make good, and guarantee the same for a period of twelve (12) months from the time of the issuance of Certificate of Acceptance. Any defect or defects which may later be discovered in the work shall be charged to the account of the CONTRACTOR.

The CONTRACTOR further guarantees that the office facilities and equipment it will provide if any in connection with this Contract shall be brand new and in addition thereto, the computer system shall be International Standard Organization compliant.

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

ENGR. NOEL J. TAUNG
Contractor

2.05 The CONTRACTOR shall, prior to the signing/approval of this Contract, submit to PPA a credit line issued by a bank duly authorized/licensed by the Central Bank of the Philippines in the amount equal to the average operating expenses of the project for two (2) months or ten percent (10%) of the total project cost, whichever is less.

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 ***Nineteen Million One Hundred Ninety Five Thousand Six Hundred Sixty Eight Pesos & 59/100 Cntvs (Php19,195,668.59), Philippine Currency,*** inclusive of the 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.

ENGR. JOHNSON D. KHO
ESD Manager
Witness

Except as herein provided in the Contract Documents or under existing law, it is hereby expressly agreed upon and understood that the stipulated contract price shall not be subject to upward adjustment for any cause or reason whatsoever.

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, 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 supplies/materials.

LIBERTO C. DELA ROSA
Port Manager

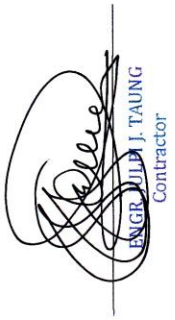
3.03 Any payment due and payable to the CONTRACTOR maybe set off against liquidated damages and payable to the PPA by the CONTRACTOR under this Contract.

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 work. The CONTRACTOR may, however, request for the substitution of the retention money for each progress billing with surety bond callable on demand of amounts equivalent to the retention money substituted for and acceptable to PPA, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten percent (10%) retention shall be made. Said surety bonds, to be
posted in favor of PPA shall be valid for a duration to be determined by the 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.

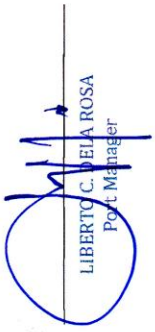
ARTICLE IV

PERFORMANCE SECURITY

4.01 To guarantee the faithful performance of the CONTRACTOR under the Contract, it shall post upon the signing of the Contract a performance security shall be in the following form and amount (in pesos):

1. 10% of Total Contract Price, if performance security is in bank draft/guarantee issued by a Universal or Commercial Bank; OR
2. 30% of Total Contract Price, if performance security is in Surety Bond issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security;

4.02 This performance security shall be posted in favor of PPA, and shall guarantee the payment of the amount of the security as penalty in the event it is established that the CONTRACTOR is in default in his obligation thereunder.



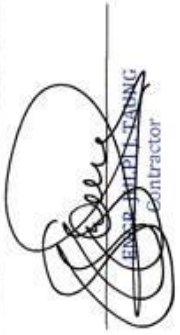
4.03 In the execution of performance security, the following conditions shall be complied with:

a. It shall be executed in accordance with the form prescribed thereof.
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 material for the prosecution of the work is hereby acknowledged and confirmed."

4.04 Subject to the conditions of the Contract, the performance security may be released by PPA after the issuance of the certificate of completion of the project, provided that there are no claims for labor and materials filed against the contractor or the surety company.

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

4.06 The CONTRACTOR shall post an additional performance security to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of adjustments in unit prices, and/or change orders, extra work orders and supplemental agreements. 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 and for partial utile work completed by the CONTRACTOR and accepted by the PPA and 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 reduction 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 TWENTY FIVE (225) CALENDAR DAYS*** (including Sundays and Holidays), and shall reckoned not later than seven (7) calendar days from the issuance of the Notice to Proceed issued by PPA. Notice to Proceed shall be issued after the signing of this Contract by the parties.

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 to be determined in accordance with the following formula for each calendar day of delay (Sunday and Holiday included), until the work is completed and accepted or taken over.

$$TLD = VUUP \times [(1 + OCC)^n - 1] \times K$$

$$VUUP = TCP - VCUP$$

WHERE:

TLD = Total liquidated damages, in pesos

VUPP = Value of the uncompleted and unusable portions of the contract work, as of the expiry date of the contract, in pesos:

TCP = Total Contract Price, in Pesos

VCUP = Value of the completed and usable portion of the contract work, as of the expiry date of the contract, in pesos

OCC = Prevailing opportunity cost of capital for government projects set by NEDA, which is currently pegged at 15%.

n = Total number of years that the contract work is delayed after the expiry date of the contract.

K = Adjust factor to cover additional losses

K = 1 + C + (i x n)

WHERE:

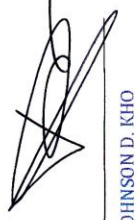
C = Cost of construction supervision as a percentage, not exceeding 10%, of construction cost.

i = Annual inflation rate

5.03 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.

5.04 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 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.

5.05 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 aside from the amount of the liquidated damages that the CONTRACTOR shall pay PPA under the provisions of this clause.



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 time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claims 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 (b) inexcusable failure or negligence of CONTRACTOR to provide the required equipment, supplied or materials, or (c) other causes for which the Government 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 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 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 problem that disrupt construction operation through no fault of the CONTRACTOR maybe 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.

JENIFER E. LOZANO
Witness

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 the 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.

ENGR. JALIPLI TAUNG
Contractor

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 person 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 bind 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 occasion of the performance of this Agreement. The CONTRACTOR shall, at all times, stand solely liable and/or responsible for the enforcement 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 there from and/or by reason of this Contract and its implementation.

ENGR. JOHNSON D. KHO
ESD Manager
Witness

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 work 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.

LIBERTO C. DELA ROSA
Port Manager

9.03 Any actionable act or acts of ***Engr. Julpi J. Taung*** arising out of or in the course of this Contract shall be understood and binding as an act of ***ZET Construction*** or vice-versa.

ARTICLE X

INSPECTION & 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 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 replace all materials and 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 make any other disposition, shall be sufficient ground for the PPA to terminate or cancel this Contract motu **propio** without need of judicial action pursuant to paragraph **18.04** hereof. Should the PPA give its written approval, such consent shall not relieve the CONTRACTOR of its responsibilities under the Contract. The CONTRACTOR shall insure 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 this 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 Government Service Insurance System (GSIS)** or **any insurance company duly certified by the Insurance Commission** as authorized to issue such insurance, to insure the works against all losses or damages arising from whatever cause for which the CONTRACTOR is responsible under the Contract.

ARTICLE XIII

TAXES, LICENSES, PERMITS AND FEES

13.01 The CONTRACTOR's tax, licenses, permits and fees which may be due to 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

JENNIFER B. LOZANO
Witness

ENGR. JULPI J. TAUNG
Contractor

ENGR. JOHNSON D. KHO
ESD Manager
Witness

LIBERTO C. DELA ROSA
Port Manager

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 XIV

AGREEMENT MODIFICATION

14.01 No modification, alteration or waiver of any provision herein contained shall be binding on the parties hereto unless evidenced by a written amendment signed and approved by the appropriate approving authorities.

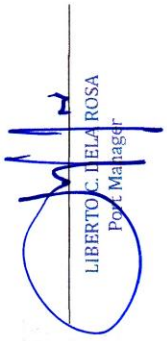
14.02 A variation order (change order/extra work order) may be issued by PPA under the conditions set forth in the Implementing Rules and Regulations of R.A. 9184.

14.03 The PPA may, at any time by written order and without notice to Sureties, direct the CONTRACTOR to perform extra work necessary to and within the General Scope of the Contract. The CONTRACTOR shall promptly proceed with the extra work involving an increase of less than ten percent (10%) of the original price or adjusted original contract price, the CONTRACTOR shall be paid on the basis of the unit prices indicated in the original contract price or adjusted original contract price for work items similar to those in the original contract. If the contract does not contain any rate applicable to the additional or extra work, then suitable prices shall be agreed upon by PPA and the CONTRACTOR. Any cumulative Variation Order beyond ten percent (10%) shall be subject of another contract to be bid out if the works are separable from the original contract. In exceptional cases where it is urgently necessary to complete the original scope of work, the head of the procuring entity may authorize the Variation Order beyond ten percent (10%) but not more than twenty percent (20%) subject to the guidelines to be determined by the GPPB. The price shall be agreed upon by the parties covering the entire extra work, under any of the following methods:

a. If the Project Engineer believes that a Change Order or Extra Work Order should be issued, he shall prepare the proposed Order accompanied with the notices submitted by the contractor, the plans therefore, his computations as to the quantities of the additional works involved per item indicating the specific stations where such works are needed, the date of his inspection and investigations thereon, and the log book thereof, and a detailed estimate of the unit cost of such items of work, together with his justifications for the need of such Change Order or Extra Work Order, and shall submit the same to the Port Manager or equivalent official of office/agency/corporation/LGU concerned.

b. The Port Manager or equivalent official concerned, upon receipt of the proposed Change Order or Extra Work Order shall immediately instruct the technical staff of the Port Management Office to conduct an on-the-spot investigation to verify the need for the work to be prosecuted. A report of such verification shall be submitted directly to the Port Manager or equivalent official concerned.

14.04 If the parties are unable to agree on any of the modes of payment specified in Section 14.03 (a), the extra work shall be done on a cost-plus percentage basis described in Section 14.03 (b) above.



14.05 The cost of extra work done shall be submitted at the intervals to be determined by the Project Engineer in a satisfactory form which shall be approved or adjusted at once by PPA. 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.

JENNIFER E. LOZANO
Witness

ENGR. JULPI J. TAUNO
Contractor

ENGR. JOHNSON D. KHO
ESD Manager
Witness

LIBERTO C. DELA ROSA
Port Manager

ARTICLE XV

SUSPENSION OF WORK

15.01 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 the Government 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 XVI

INDIVISIBILITY OF OBLIGATION

16.01 It is the intent of the Contract that all the documents, annexes and addenda forming part thereof, 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 XVII

REMEDY AND RELIEF

17.01 Should there be any dispute or controversy in connection with this Contract or difference between the Parties arising from the interpretation of this Contract, the Parties hereto shall, as far as practicable, settle the same amicably. In the event that such dispute or disagreement be not resolved to their mutual satisfaction, the matter shall be submitted to the Construction Industry Arbitration Commission (CIAC) created by 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 XVIII, paragraph 18.04

17.02 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 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 action shall be laid exclusively in the proper court of the City of Zamboanga.

17.03 It is clearly understood that in the case a dispute or disagreement arises between the PPA and the CONTRATOR 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.

JENIFER B. LOZANO
Witness

ENGR. JULIET T. TALING
Contractor

ENGR. JOHNSON D. KHO
ESD Manager
Witness

LIBERTO C. DELA ROSA
Port Manager

ARTICLE XVIII

OTHER COVENANT

18.01 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.

18.02 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.

18.03 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.

18.04 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 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, machinery, 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.

18.05 It is expressly agreed that whenever the CONTRACTOR's delay in the completion of 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 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 pursuant to Section 53 – Negotiated Procurement of the IRR-A of R.A. 9184.

Whenever, the contractor's total sum of liquidated damages exceeded 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 aside from the amount of the liquidated damages that the contractor shall pay the government under the provisions of IRR-A of R.A. 9184 and impose other appropriate sanctions.

18.06 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 in accordance with P.D.1870

JENNIFER B. LOZANO
Witness

Any increase in cost which the PPA may incur as a result of its take-over of the project pursuant to paragraphs 18.04, 18.05 and 18.06 shall be borne by and charge to the CONTRACTOR.

18.07 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.

18.08 The CONTRACTOR shall undertake the repair works at his own expense during the defects liability period from project completion up to final acceptance by PPA of any damage to the project on account of the use of materials of inferior quality within ninety (90) days from the time the PPA has issued an order to undertake the repair. In case of failure or refusal to comply, the PPA shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand.

ENGR. NILDO J. TAUNG
Contractor

The CONTRACTOR who fails to undertake the repair works shall suffer perpetual disqualification from participating in any public bidding and his properties or properties shall be subject to attachment or garnishment proceeding to recover the costs. All payables in his favor shall be offset to recover the costs pursuant to IRR-A of R.A. 9184.

18.09 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 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.

18.10 CONTRACTOR agrees and binds itself to hold and save PPA free and harmless from any damage, claims and rights of action 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 obligation.

ENGR. JOHNSON D. KHO
ESD Manager
Witness

18.11 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 Engineer of the City concerned of the local works to be restored mentioned in paragraph 18.09 hereof, otherwise the cost of restoration shall be made available out of any collectable/receivable by the CONTRACTOR from the PPA.

18.12 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.

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

LIBERTO C. DELA ROSA
Port Manager

18.14 The CONTRACTOR shall assume full responsibility for the contract work from the time project construction commenced up to final acceptance by PPA and shall be held responsible for any damage or destruction of the works except those occasioned by force *majeure* and by other parties.

The CONTRACTOR shall be fully responsible for the safety, protection and 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 this construction work and shall be required to put up a warranty security in the form of cash, bank guarantee, letter of credit, GSIS or surety bond callable on demand, in accordance with the following schedule:

Form of Warranty	Minimum Amount in Total Contract Price
1. Cash or letter of credit issued by Universal or Commercial bank: provided, however, that the letter of credit shall be confirmed or authenticated by a Universal or Commercial bank, if issued by a foreign bank	Five percent (5%)
2. Bank guarantee confirmed by Universal or Commercial bank: provided, however, that the letter of credit shall be confirmed or authenticated by a Universal or Commercial bank, if issued by a foreign bank.	Ten percent (10%)
3. Surety bond callable upon demand issued by GSIS or any surety or insurance company duly certified by the Insurance Commission.	Thirty percent (30%)

The warranty security shall be stated in Philippine Pesos and shall remain effective for one year from the date of issuance of the Certificate of Final Acceptance by the Procuring Entity, and returned only after the lapse of said one year period.

ARTICLE XIX

SPECIAL REPRESENTATION

19.01 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 materials facts herein, 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 18.04 hereof.

19.02 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 XX

BUDGETARY REQUIREMENT

20.01 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.

20.02 The Contractor shall bear the cost of notarization of this Contract.

JENNER B. LOZANO
Witness

ENGR. JULPI J. TAUNG
Contractor

ENGR. JOHNSON D. KHO
ESD Manager
Witness

LIBERTO C. DELA ROSA
Port Manager

ARTICLE XXI

EFFECTIVITY

21.01 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

By:

LIBERTO C. DELA ROSA
Port Manager

ZET CONSTRUCTION

By:

Engr. JULPI J. TAUNG
Proprietor / Manager

W I T N E S S E S:

ENGR. JOHNSON D. KHO
Division Manager, ESD

JENIFER E. LOZANO
Contractor's Witness

JENITOR E. LOZANO
Witness

ACKNOWLEDGEMENT

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

BEFORE ME. A Notary Public for and in the City of Zamboanga, Philippines, personally appeared the following persons with their respective Tax Identification Numbers, to wit:

NAME	TIN NO.
LIBERTO C. DELA ROSA	**108-602-670**
ENGR. JULPI J. TAUNG	**106-164-831-000**

ENGR. JULPI J. TAUNG
Contractor

who are known to me to be the same persons who executed and signed the foregoing instrument and who acknowledged to me that the same is their true and voluntary acts and deeds, and that of the entity which they respectively represent.

This instrument is a Contract/Agreement for the ***PROPOSED CONSTRUCTION OF RC LANDING AND RORO RAMP AT PORT OF MARGOSATUBIG, ZAMBOANGA DEL SUR*** consisting of Seventeen (17) pages, including this page where the Acknowledgment is written. Page 1 to 15 is signed on the left margin thereof and page 16 is signed at the corresponding spaces provided therefor by the Parties and their instrumental witnesses and sealed with my notarial seal on page 17.

WITNESS MY HAND AND SEAL this DEC 05 2014 day of _____, 2014 at Zamboanga, Philippines.

ENGR. JOHNSON D. KHO
ESD Manager
Witness

CELESTINO R. MORADOS
NOTARY PUBLIC
Until December 31, 2014
PTR No. 0775576 - 01/02/14
IBP No. 896561 - 01/02/14
ROLL No. 49913

Doc. No. 114;
Page No. 13;
Book No. 92;
Series of 2014;

Contract No. ZAM 06-2014
LCDR/JDK/tham2014

LIBERTO C. DELA ROSA
Port Manager