

## OWNER-CONTRACTOR AGREEMENT

Proposed Renovation of CHED Office of Planning, Research and Knowledge M

KNOW ALL MEN BY THESE PRESENTS:

This Contract Agreement made and executed this \_\_\_\_ day of \_\_\_\_\_ 2020 at Quezon City, Metro Manila, Philippines, by and between:

REPUBLIC OF THE PHILIPPINES, through the **COMMISSION ON HIGHER EDUCATION (CHED)** with office and postal address at 4<sup>th</sup> Floor Higher Education Development Center (HEDC) Building, C.P. Garcia Ave., U.P. Diliman, Quezon City, represented by its Chairperson, **J. PROSPERO E. DE VERA III**, hereinafter referred to as "**CHED**";

and -

**TM ABAD CONSTRUCTION**, a private construction company duly organized under the Philippine law, with office and postal address at No. 34 Mt. Fuji, Street, Filinvest 1 Subdivision, Batasan Hills Quezon City, represented by **MS. TEODORA M. ABAD**, Proprietor of **TM ABAD CONSTRUCTION**, hereinafter referred to as the "**CONTRACTOR**".

**WITNESSETH: That -**

WHEREAS, the CHED is desirous that certain works should be constructed namely: "Proposed Renovation of CHED Office of Planning, Research and Knowledge Management (OPRKM)" situated in Quezon City;

WHEREAS, the CHED posted Invitation to Bid for Public Bidding on the "**Proposed Renovation of CHED Office of Planning, Research and Knowledge Management (OPRKM)**" at the websites of the PhilGEPS;

WHEREAS, in response to said advertisement, Eleven (11) prospective bidders browsed the opportunity as per Document Request List at the website of the PhilGEPS ([www.philgeps.net](http://www.philgeps.net)) and Seven (7) availed of the Bid Documents and only Five (5) submitted their Eligibility/Technical Bid Envelopes and Financial Bid Envelopes to the Bids and Awards Committee (BAC) namely: (a.) DYMAND-VISCOR BUILDERS AND ASSOCIATE, CO., (b.) SAFARI BUILDERS, INC., (c.) T.M. ABAD CONSTRUCTION, (d.) VASTCON ASIA CONSTRUCTION, & (e.) THAUMATURGY TRADE PHILIPPINES;

WHEREAS, after the Bidding process duly conducted by the Bids and Awards Committee and upon the recommendation of the Technical Working Group for Infrastructure projects that the CONTRACTOR passed the Eligibility/Technical, Financial Evaluation and Post Qualification Evaluation, the bid of **TM Abad Construction** was declared as the Lowest Calculated & Responsive Bid (LCRB) as contained in BAC Resolution No.2019-248.

WHEREAS, the CHED during the joint Management Committee (MANCOM)/ Commission En Banc (CEB) Meeting on November 13, 2019, approved the recommendation of the Bids and Awards Committee as contained in CEB Resolution No.R063-2019 to declare the bid of the CONTRACTOR as Lowest Calculated & Responsive Bid (LCRB) after passing the post qualification evaluation and to award the corresponding contract to the Contractor in the amount of **Five Million Eight Hundred Forty Two Thousand Five Hundred Fifty Nine Pesos and Seventy-Five Centavos [P 5,842,559.75]**;

WHEREAS, in this CHED-CONTRACTOR AGREEMENT works and expression shall have the same meanings as are respectively assigned to them in the Contract (General Conditions provision and Special Conditions Provisions) which likewise form an integral part of this Owner-Contractor Agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises and the terms and conditions hereinafter set forth, the parties hereto have agreed as follows:

**ARTICLE I  
CONTRACT DOCUMENTS**

1.01 The following contract documents shall be attached and made as integral part of this Agreement, viz.:

1. Contract Agreement
2. Bidding Documents
3. Scope of Works
4. Drawings and Plans
5. Technical Specifications
6. Invitation to Apply for Eligibility and to Bid
7. Instruction to Bidders
8. Addenda/ Bid Bulletins
9. Eligibility/Technical Requirements
10. Project Cost Proposals (Scope of Works, Summary of Bids, Bill of Quantities & Detailed Breakdown of Estimates)
11. Performance Security
12. Notice of Award and Contractor's "Conforme" thereto
13. Notice to Proceed (NTP)
14. Contractor's All Risk Insurance
15. Cash Flow and Payment Schedule
16. Performance Bond
17. Technical Information and Documents:
  - a. Construction Schedule and S-Curve
  - b. Manpower Schedule
  - c. Construction Methods
  - d. Contractor's Organizational Chart for the Contract
  - e. List of Contractor's personnel to be assigned to the project (*key personnel form of bio-data/summary of key personnel for the project; key personnel's certificate of employment; statement of availability of key personnel; photocopies of PRC license for all professional personnel*).
  - f. Equipment Utilization Schedule
  - g. Affidavit/Certificate of Site Inspection
  - h. Construction Safety and Health Program approved by the Department of Labor and Employment
  - i. Omnibus Sworn Statement
18. Certified true copies of BAC Resolution No.2019-248, declaring TM Abad Construction as the Lowest Calculated Responsive Bid (LCRB);
19. CEB Resolution approving the recommendation of the BAC in engaging the services of TM Abad Construction.
20. Other contract documents that may be required by existing laws and/ or the procuring entity.

1.02 All stipulations, documentary requirements, warranties, and other terms and conditions which are, and can be, agreed upon by the CHED and the CONTRACTOR during and after the completion of the Project "Proposed Renovation of CHED Office of Planning, Research and Knowledge Management (OPRKM)" but are not explicitly provided herein, shall still form part of this Agreement.

1.03 Any and all deficiencies that can be found in this Agreement which are intended to be covered by it, but are not expressly stated herein, shall be supplied by any of the aforesaid Contract Documents.

1.04 In case of doubt or conflict between and among the provisions of this Agreement, and/or between and among the above Contract Documents and this Agreement, the CONTRACTOR shall refer the same in writing to the CHED for clarification and guidance. The clarification or determination made by the CHED shall be binding

and conclusive upon the parties. The CONTRACTOR shall not make any change or alteration in the plans, conditions, and specifications of the Project without prior written approval by the CHED.

- 1.05 The parties herein may, in writing, agree to any revision, alteration, or addition to the terms and conditions of this Agreement, provided the same shall not be in violation of any law, rule or regulation governing contracts of infrastructure of government.

## **ARTICLE II SCOPE OF WORKS AND RESPONSIBILITIES OF THE CONTRACTOR**

- 2.01 The CONTRACTOR shall furnish and provide for its account all the necessary materials, labor, tools, supplies, equipment, plant and other facilities as required for the satisfactory performance and accomplishment of the PROJECT in accordance with and as directed by the Contract Documents.
- 2.02 The CONTRACTOR hereby warrants and guarantees that all materials to be supplied by it under this Agreement are new, first class, free from defects and shall fully comply in every respect with the specifications, approved samples and other requirements of the contract plan and other related Contract Documents. The CONTRACTOR shall make no substitution for materials required to be furnished by it under the Agreement unless written approval is first obtained from the CHED. The CONTRACTOR warrants that the materials to be supplied by it are free and clear of all liens and encumbrances.
- 2.03 The CONTRACTOR shall employ sufficient number of men to carry out the various phases of work diligently and efficiently in order to complete the PROJECT in accordance with the agreed Work program.
- 2.04 For the effective and efficient accomplishment of the PROJECT, overall coordination shall be done by the CHED's Construction Supervision Group/Technical Working Group/Owner's Representative.
- 2.05 The CONTRACTOR recognizes the position of trust and confidence vested on it by this Agreement and agrees to furnish its best skills and judgment and to cooperate with the CHED's representative/s in furthering efficient administration and supervision in accomplishing this PROJECT, to have adequate supply of workmen and materials, to secure the execution of this Agreement in the soundest way and in the most expeditious and economical manner.
- 2.06 The CONTRACTOR shall be responsible for the storage and safekeeping of its materials. Any damages, losses and pilferages to these materials shall be for its sole account.
- 2.07 It is hereby mutually understood and agreed that the CONTRACTOR is an independent Contractor not an employee of the CHED. Neither shall the personnel, workmen or sub-Contractors of the CONTRACTOR be deemed employees of the CHED. Hence, the CHED 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 its subcontractors during the lawful performance of their duties. The CONTRACTOR shall at all times be directly responsible and liable for the enforcement of and compliance with all existing laws, rules and regulations particularly in respect of any and all claims brought by its personnel for the enforcement of the provisions of the Labor Code of the Philippines and other related laws. The CONTRACTOR hereby holds the CHED free and harmless from all such claims and liabilities.

- 2.08 In accordance with the Contract Documents as well as the provisions of this Agreement, the CONTRACTOR shall assign on full-time duty for the PROJECT the following personnel.
- a) A competent Civil Engineer experienced in and qualified for the particular work herein specified who will be designated as the CONTRACTOR's Project Manager/Engineer and who shall be present at all times at the construction site during all hours of work to personally superintend and direct the work under this Agreement.
  - b) A competent Safety and Health Officer, Materials Engineer, General Construction Foremen and CAD Operator/Draftsman.
- 2.09 The CONTRACTOR agrees and binds itself to indemnify the CHED for whatever injuries or damages suffered by reason of failure, negligence, delay or conduct on the part of the CONTRACTOR and/or its employees in the performance of its obligations.
- 2.10 The CONTRACTOR shall be responsible for maintaining the general cleanliness and sanitation of the site and shall undertake clearing of the site and removal of the construction debris during the entire contract period.
- 2.11 After the completion but before the acceptance of the work and final settlement is made between the parties, the CONTRACTOR shall forthwith remove all the surplus materials, scaffoldings, apparatus, machinery, tools and equipment not part of the project, furnished or supplied by it and shall remove all debris and leave the work free and clean of all obstruction and hindrances.
- 2.12 All provisions with respect to warranties contained in this Agreement are cumulative and all alternatives are in addition to such warranties as may be provided by law or contained in the other provisions of this Agreement.

The Contractor shall not, except for purposes of performing the obligations in this Agreement, without the CHED's prior written consent, disclose this Agreement, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of CHED.

Any such disclosure shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.

Any document, other than this Agreement itself, shall remain the property of CHED and shall be returned (all copies) to CHED on completion of the Contractor's performance under this Contractor if so required by CHED.

### **ARTICLE III RIGHTS AND OBLIGATIONS OF THE CHED**

- 3.01 The CHED and/or its representatives may, without invalidating this Agreement or the Contract Documents, at any time during the progress of the work by its written instructions to the CONTRACTOR, cause alterations in the original plans and specifications by way of addition, deletion or otherwise deviations therefrom in accordance the Implementing Rules and Regulations Annex E of RA 9184, and the work shall be executed by the CONTRACTOR under the direction of the CHED'S Construction Supervision Group [TWG for HEDC bldg. projects], in the same manner as if such have been included in the original plans and specifications. In which case, any additional costs/expenses that can be incurred by reason of such alterations, over and above the original contract price, shall be borne by the CHED provided it does not exceed ten percent (10%) of the original contract price..


**ARTICLE IV  
CONTRACT PRICE**

- 4.01 The CHED shall pay the CONTRACTOR, in consideration for the satisfactory performance and accomplishment of all obligations herein specified which the CONTRACTOR agrees to undertake, perform and accomplish, the total amount of **FIVE MILLION EIGHT HUNDRED FORTY TWO THOUSAND FIVE HUNDRED FIFTY NINE PESOS AND 75/100 (P 5,842,559.75)** for this Project for the **Proposed Renovation of CHED Office of Planning, Research and Knowledge Management (OPRKM)**, inclusive of all applicable government fees and taxes.
- 4.02 Should the CHED require the CONTRACTOR to perform work over and above the required specification of this agreement the additional cost shall be added to the Contract amount. Likewise, should the CONTRACTOR be ordered to omit work as required by this Agreement the corresponding cost shall be deducted from the contract amount. In either case, the cost of additions or reductions shall previously be mutually agreed upon in writing by both CHED and CONTRACTOR before execution. The pertinent provisions of Republic Act No. 9184 and its Implementing Rules and Regulations as specified in Annex E shall be adopted in case there shall be Variation Orders-Change Orders/Extra Work to be made.

**ARTICLE V  
COMPLETION PERIOD**

- 5.01 The CONTRACTOR shall use such methods and materials for the performance of the works in connection with this Project under this Agreement that will produce a satisfactory quality of work and rate of progress which will ensure the completion thereof within the contract period of **ONE HUNDRED FIFTY (150) CALENDAR DAYS** from the date of issuance of Notice to Proceed (NTP).

**ARTICLE VI  
TERMS OF PAYMENT**

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- 6.01 The CHED in its interest to have the PROJECT started and completed on time stipulates to give the CONTRACTOR an advance payment of **FIFTEEN PERCENT (15%) of FIVE MILLION EIGHT HUNDRED FORTY-TWO THOUSAND FIVE HUNDRED FIFTY-NINE PESOS AND 75/100 (P 5,842,559.75)** which is equivalent to **EIGHT HUNDRED SEVENTY-SIX THOUSAND THREE HUNDRED EIGHTY-THREE PESOS AND 96/100 (P 876,383.96)**, Philippine Currency.
- 6.02 The advanced payment shall be made only upon submission to and acceptance by the CHED of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or a duly licensed insurance company not otherwise blacklisted by the Insurance Commission, and confirmed by the CHED.
- 6.03 The CONTRACTOR may reduce his standby letter of credit or guarantee instrument by the amounts refunded by the Monthly Certificates in the advanced payment.
- 6.04 The balance shall be paid in progress payments once every thirty (30) days based on actual work completed. Progress payments on account of this Agreement shall be made at the CONTRACTOR's request to be based on the computed progress of work, provided however, that the following amounts on each progress payment shall be deducted by the OWNER.

6.04.1 Ten Percent (10%) retention

6.04.2 Expanded Withholding Tax

6.04.3 Pro-rated Advanced payment of (15%) of the value of its progress

6.04.4 Payment until advanced payment is fully liquidated or paid for by the CONTRACTOR

6.05 The first progress billing shall be processed only after the CONTRACTOR has accomplished and an amount equivalent to, or more than the amount of the Advanced Payment.

6.06 The CONTRACTOR shall submit its billing based on actual accomplishment to the CHED through the Technical Working Group (TWG). The TWG shall process, certify to the correctness of, and make appropriate recommendation as to said billings within five (5) working days from receipt thereof, and the CHED shall pay the CONTRACTOR within five (5) working days upon receipt of said billings from the TWG together with the latter's appropriate recommendation. In no case shall any payment to the CONTRACTOR be more than the latter's accomplishment except in the form of advanced payment.

Payments shall be made only upon a certification by the TWG to the effect that the Works have been rendered or accomplished in accordance with the terms of this Agreement and have been duly inspected and accepted.

6.07 It is hereby agreed that, whenever by reason of the causes mentioned in Paragraph 12.02 of Article XII of this Agreement it becomes legally and/or physically impossible for either of the parties to perform their respective obligations, any of the parties may legally demand to rescind this Agreement, and return to the CHED the amount that has already been paid for in connection to this PROJECT, and indemnify the actual damages due to the concerned party .

6.08 The contract price is considered fixed price, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB in accordance with Section 61 of R.A. 9184 and its IRR.

6.09 Any payment due to the CONTRACTOR may be offset against any liquidated damages due to the CHED under this Agreement.

6.10 Upon completion of the project, the CHED'S duly authorized representative shall certify to its completion and recommend to the CHED the final acceptance of the same, the CHED shall pay the CONTRACTOR any balance amount still due, excepting therefrom such sum or sums as may be lawfully retained under the existing laws or any of the provisions of this Agreement. However, final pay of the contract cost shall not be made until the CONTRACTOR has submitted a sworn statement, showing that all obligations for materials used and labor employed, in connection with this Agreement have been fully paid, provided that nothing herein contained shall be construed as a waiver of the right of the OWNER, which is hereby reserved, to reject the whole or any portion of the Project should the same be found to have been constructed in violation of the plans and specifications or any conditions or covenants covered by this agreement.

**ARTICLE VII**  
**PERFORMANCE BOND**

7.01 The Performance Bond submitted by the CONTRACTOR shall be coterminous with the date of final acceptance of the PROJECT by the CHED. The Performance Bond may be in any of the following forms:

7.01.1 Cash, certified check, cashier's/manager's check, bank draft/guarantee confirmed by a reputable local bank or in the case of a foreign winning bidder, bonded by a foreign bank.

7.01.2 Irrevocable letter of credit issued by a reputable commercial bank or in the case of an irrevocable letter of credit issued by a foreign bank the same shall be confirmed or authenticated by a reputable local bank.

7.01.3 Surety bond callable upon demand issued by any reputable surety or insurance company.

7.01.4 Any combination of the foregoing.

The required amount of the above forms of security shall be in accordance with the following schedule:

FORM OF PERFORMANCE SECURITY	AMOUNT OF PERFORMANCE SECURITY (Equal to percentage of the Total Contract Price)
1. Cash, cashier's check, /manager's check, bank draft, guarantee confirmed by a Universal or Commercial Bank.	Ten Percent (10%)
2. 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.	Ten Percent (10%)
3. 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. Any combination of the foregoing.	Proportionate to share of form with respect to total amount of security.

7.02 If the PROJECT cannot be completed within the period prescribed under Article 5.01 to the satisfaction of the CHED for final acceptance, the CONTRACTOR shall post a substitute Performance Bond or effect an extension of the original Performance Bond to cover the period of extension of the original Performance Bond until final acceptance of the PROJECT is made.

7.03 The CONTRACTOR shall post the substitute Performance Bond immediately upon determination by the CHED of the inability of the CONTRACTOR to complete the PROJECT for final acceptance. This determination shall be made by the CHED within ten (10) working days immediately preceding the expiration date of the Performance Bond.

7.04 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 amendments to order or change orders, extra work orders and supplemental agreements.

- 7.05 Until and unless the CONTRACTOR shall have complied with Article 6.02 and Article 6.04 hereof the CHED shall withhold all payment due to the CONTRACTOR.

**ARTICLE VIII  
RETENTION MONEY**

- 8.01 Progress payments are subject to retention of ten percent (10%) to be 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 CHED, are completed. If after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall continuously be made; otherwise, the ten percent (10%) retention shall be imposed.
- 8.02 The total retention money shall be due for release upon final acceptance of the works. The contractor may, however, request the substitution of the retention money for each progress billing with irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand, of amounts equivalent to the retention money substituted for and acceptable to the Government, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten (10%) retention shall be made. Said irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be posted in favor of the Government shall be valid for a duration to be determined by the CHED and will answer for the purpose for which the ten percent (10%) Retention Money is intended, i.e. to cover uncorrected discovered defects and third-party liabilities.

**ARTICLE IX  
WARRANTY**

- 9.01 The CONTRACTOR further agrees to guarantee its work against qualitative defects, poor workmanship and the like for a period of one (1) year reckoned from the date of final acceptance of the PROJECT, during which time, in cases of defects, failure and poor workmanship of any parts of the PROJECT due to normal use, the CONTRACTOR shall make good such defects and/or failures at no additional expense to the CHED.

**ARTICLE X  
GUARANTEE BOND**

- 10.01 The CONTRACTOR shall furnish the CHED with a Guarantee Bond in an amount equal to ten percent (10%) of the Contract Price for this PROJECT, effective for a period of One (1) year reckoned from the date of Final Acceptance.
- Said Guarantee Bond is to answer for any loss, damage, injury, or expense which the CHED may occur to make good defects in workmanship or materials that may become evident within one (1) year from the date of Final Acceptance.

**ARTICLE XI  
OPTION TO COMPLETE WORK OR TAKE OVER**

- 11.01 If at any time the progress of the work, the CONTRACTOR should fail, refuse or neglect to supply and provide the required tools, materials, supplies, equipment,



facilities and labor-workmen or should abandon or fail to continue with the Project, the CHED may at her/his option, take over the work and complete the same or engage the service of another contractor to do the same all at the expense and for the account of the CONTRACTOR. In any case, the CONTRACTOR shall also be liable to the CHED for all damages incurred by the latter.

**ARTICLE XII**  
**CHED'S RIGHT TO TERMINATE CONTRACT/ SUSPEND CONTRACT**

12.01 **TERMINATION WITH CAUSE.** The CHED may immediately terminate this Agreement, without prior notice to the CONTRACTOR, upon the occurrence of any of the following cases:

- a) If the CONTRACTOR is adjudged bankrupt or insolvent;
- b) If the CONTRACTOR makes a general assignment of his assets for the benefit of his creditors;
- c) If a trustee or receiver is appointed for the CONTRACTOR or for any of the Contractor's property; or
- d) If the CONTRACTOR files a petition for suspension of payments, or to reorganize under the bankruptcy or similar laws.

12.02 **OTHER GROUNDS FOR TERMINATION WITH CAUSE.** The CHED may terminate this Agreement upon the occurrence of any of the following:


- a) The CONTRACTOR repeatedly fails to supply, based on the construction schedule, the sufficient number of skilled workmen or suitable materials or equipment;
- b) The CONTRACTOR repeatedly fails to make without just cause prompt payments to subcontractor for labor, materials or equipment, and completion of the Work is being delayed;
- c) The CONTRACTOR disregards the Laws or lawful order of any public body with the proper jurisdiction thereof;
- d) The CONTRACTOR violates any provision of this Agreement; or
- e) Slippage of the CONTRACTOR in excess of 25% in the execution of work as per agreed construction schedule and/ or Program Evaluation & Review Technique/Critical Path Method (PERT/CPM).

12.03 The CHED may, after giving the CONTRACTOR fifteen (15) days written notice, terminate the services of the CONTRACTOR, exclude the CONTRACTOR from the site and take possession of the Work and all of the CONTRACTOR's tools, appliances, construction equipment and machinery at the site, including those stored elsewhere for which the CHED has paid the CONTRACTOR, and finish the work as the CHED may deem expedient. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the work is finished and assessed by the CHED as the just compensation for work done by the CONTRACTOR.

12.04 The CHED 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 CHED 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 partially.

- 12.05 The CONTRACTOR or its duly authorized representatives shall have the right to suspend work operation on any or all projects or activities along the critical path of activities after fifteen (15) days from date of receipt of written notice from the contractor to the CHED'S Construction Supervision Group/ Consultant due to the following:
- 12.05.1 There exists right-of-way problems which prohibit the contractor from performing work in accordance with the approved construction schedule.
  - 12.05.2 Requisite construction plans which must be CHED-furnished are not issued to the CONTRACTOR precluding any work called for by such plans.
  - 12.05.3 Peace and order conditions make it extremely dangerous, if not impossible to work. However, this condition must be certified in writing by the Philippine National Police (PNP) station which has responsibility over the affected area and confirmed by the Department of Interior and Local Government (DILG) Regional Director.
  - 12.05.4 There is a failure on the part of the CHED to deliver government furnished materials and equipment as stipulated in the contract.
  - 12.05.5 Delay in the payment of CONTRACTOR'S claim for progress billing beyond fifteen (45) calendar days from the time the CONTRACTOR'S claim has been certified by the CHED'S authorized representatives and the documents are completely submitted unless there are justifiable reasons before which the same shall be communicated in writing to the CONTRACTOR.
- 12.06 In case of total suspension of activities along the critical path, which is not due to any fault of the CONTRACTOR, the time elapsed between the effective order of suspending operations and the order to resume work shall be allowed to the CONTRACTOR by adjusting the contract time accordingly.

**ARTICLE XIII**  
**CONTRACT TIME, COMPLETION DATE, & LIQUIDATED DAMAGES**

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- 13.01 The work to be performed by the CONTRACTOR under this Agreement shall commence within seven (7) calendar days from signing of this Agreement by the parties or from issuance of the Notice to Proceed (NTP) whichever is earlier and shall be completed and delivered as defined in the Contract in one hundred fifty (150) calendar days;
- 13.02 Any and all extensions of time in the completion of the Project shall be authorized or granted by the CHED upon written request of the CONTRACTOR, for any of the following causes or reasons:
- a) Force Majeure or unforeseeable events and circumstances;
  - b) Causes or events, which are beyond the control and without the fault or negligence of the CONTRACTOR.
- In this regard, provisions in Republic Act 9184 and its Implementing Rules and Regulations regarding extension of contract time shall be adopted.
- 13.03 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 the same may be considered, provided that, the CHED is not bound to take into account any claim for extension of the 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 the CHED 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.

13.04 Extension of contract time may be granted only when the affected activities fall within the critical path of the PERT/ CPM network.

13.05 In case the CONTRACTOR encounters any justifiable cause or reason for delay, the CONTRACTOR shall within ten (10) days from occurrence thereof submit to the CHED, a written request for time extension. Failure by the CONTRACTOR to comply with this requirement shall result in outright denial by the OWNER of such request.

13.06 Time is of the essence of this Agreement. Should the CONTRACTOR fail to complete the Project within the completion period herein stipulated or within the period of extension granted by the CHED, the CONTRACTOR agrees that:

a) 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 this Agreement, the CONTRACTOR shall pay CHED for liquidated damages, and not by way of penalty in the amount to be determined in accordance with the following formula until the work is completed and accepted or taken over by the OWNER:

$$\begin{aligned} \text{TLD} &= \text{VUUP} \times [(1 + \text{OCC})^n - 1] \times \text{K} \\ \text{VUUP} &= \text{TCP} - \text{VCUP} \end{aligned}$$

Where:

TLD = Total Liquidated Damages, In Pesos  
VUUP = 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 portions 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 = adjustment factor to cover additional losses  
=  $1 + C + (I \times n)$

Where:

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

I = annual inflation rate as defined by NEDA

b) The occupation by the CHED of any completed portion of the Project after the period herein stipulated has lapsed shall not negate nor diminish any liability of the CONTRACTOR for the liquidated damages provided herein with respect to the delays in the construction of the portions of the project.

13.07 To be entitled to such liquidated damages, the CHED 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 Agreement, and/ or collect such liquidated damages from the retention money or other securities posted by the CONTRACTOR whichever is convenient to the CHED.

13.08 In no case however, shall the total sum of liquidated damages exceed ten percent (10%) of the total price, in which event the contract shall automatically be taken over by the CHED or award the same to a qualified CONTRACTOR through negotiation and the erring CONTRACTOR'S performance security shall be forfeited, aside from the amount of the liquidated damages that the

CONTRACTOR shall pay the government under the provisions of this clause and impose other appropriate sanctions.

- 13.09 For terminated contracts where negotiation shall be undertaken, the procedures prescribed in Republic Act No. 9184 and its implementing rules and regulations shall be followed.

#### **ARTICLE XIV INSURANCE**

- 14.01 Immediately after execution of this Agreement, a COMPREHENSIVE, THIRD PARTY LIABILITY and/or ALL RISK INSURANCE shall be secured by the CONTRACTOR covering the entire project more particularly the work under this Agreement or any property transferred to the CONTRACTOR by the CHED against any damage, loss or injury which may be caused thereto by the CONTRACTOR or its personnel or any third party or any personal injury or death of Contractor's employees. The insurance coverage shall be through an insurance company acceptable to the CHED. The CONTRACTOR shall pay the premium of said insurance.

The Contractor shall provide evidence to CHED's Representative that the insurance required under this Agreement has been effected and shall, within a reasonable time, provide a copy of the insurance policy to the CHED's Representative.

#### **ARTICLE XV PROJECT COMPLETION**

- 15.01 When the Project reaches an accomplishment of ninety-five percent (95%) of the total contract amount, the CHED may create an inspectorate team to conduct preliminary inspection and submit a punch-list to the CONTRACTOR in preparation for the final turnover of the project. Said punch-list shall contain, among others, the remaining works, work deficiencies for necessary correction, and the specific duration/time to fully complete the project considering the approved remaining contract time. This, however, shall not preclude the CHED'S claim for liquidated damages.

#### **ARTICLE XVI FINAL CERTIFICATE OF COMPLETION**

- 16.01 Upon receipt of written notice of the CONTRACTOR that the completed project subject matter of this Agreement is ready for final inspection and acceptance, the CONTRACTOR shall notify the CHED who shall send their respective representative/s to promptly make such inspection. When both the CHED'S and CONTRACTOR'S representatives determine that the said project or works are acceptable under the terms of this Agreement and that the same has been duly performed, they shall promptly issue a Final Certificate of Completion and Acceptance duly signed, stating that the project provided in this Agreement has been completed and is acceptable by them subject to the guarantee under Article 7 hereof and that the entire balance found to be due the CONTRACTOR and noted in said Final Certificate of Completion is due and payable.

- 16.02 Before the issuance of the Final Certificate of Completion and Acceptance, the CONTRACTOR shall submit to the CHED through the CONSTRUCTION SUPERVISION GROUP the following:

- a) Five (5) sets of "As-Built Plans" (one original copy in tracing paper, three blue print and one electronic file copy in AutoCAD file);

- b) A sworn affidavit stating that all wages and salaries of its staff and employees and all indebtedness connected with the project have been fully settled;
  - c) Certificates of final inspection; and
  - d) Other documents that may be required and relevant to the occupancy of the office/building.
- 16.03 Any claim submitted to the CHED at any time by any party arising from this Agreement shall be sufficient reason for the CHED to withhold any payment due to the CONTRACTOR.
- 16.04 It is hereby agreed that minor defects discovered in the final inspection must be corrected by the CONTRACTOR within sixty (60) days from the date of Certificate of Final Acceptance. Otherwise, the Guarantee Bond shall be forfeited.
- 16.05 The issuance of a Certificate of Final Acceptance by the CHED shall not relieve the CONTRACTOR of any liability for any defect in the work, in accordance with Article 1723 of the New Civil Code and other related laws.

#### **ARTICLE XVII**

#### **PERMANENT WATER, ELECTRICAL, AND TELECOMMUNICATIONS CONNECTIONS**

- 17.01 The CONTRACTOR shall assist the CHED in facilitating the release of required applications, permits, and all other necessary documents for the above cited utilities.

#### **ARTICLE XVIII**

#### **ASSIGNMENT AND SUB-CONTRACTING**

- 18.01 The CONTRACTOR cannot assign, transfer, pledge, sub-contract, or otherwise dispose of this Agreement or any part or interest herein without the prior written approval of the CHED. Any such approval shall not relieve the CONTRACTOR from any liability or obligation under the law or this Agreement, nor shall it create any contractual relation between the assignee, transferee, sub-contractor, pledge, and the CHED.
- 18.02 In case of Sub-Contracting, the CONTRACTOR shall submit, before Final Acceptance, a sworn statement executed by the sub-contractor attesting to the fact that the latter has been fully paid by the CONTRACTOR for the materials furnished and the labor performed under the sub-contract.
- 18.03 In case of sub-contracting, the CONTRACTOR shall incorporate or cause to be incorporated in any contract or agreement with the sub-contractor or third parties or provision of its assign-ability to and assumption by the CHED, at the option of the CHED.

#### **ARTICLE XIX**

#### **SETTLEMENT OF DISPUTES**

- 19.01 If any dispute or difference of any kind whatsoever shall arise between the parties in connection with the implementation of the contract covered by the Act and this IRR, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation;

19.02 If the dispute is still not resolved, the same shall be submitted to the Construction Industry Arbitration Commission for Arbitration.

**ARTICLE XX  
MISCELLANEOUS**

20.01 The "Guidelines on Termination of Contracts" as provided for in the Revised Implementing Rules (Annex I) of R.A. No. 9184, particularly the Grounds for Termination of Contracts and Procedures for Termination of Contracts, be incorporated into and shall form part of this Agreement.

20.02 Any failure of the CHED to enforce its rights and privileges under this Agreement shall not be construed as a waiver or renunciation of such rights and privileges.

20.03 This Agreement shall be binding upon the respective assigns and successors-in-interest of the parties hereto.

AUG 10 2020

IN WITNESS WHEREOF, the parties aforesaid have hereunto placed their hands this \_\_\_\_ day of \_\_\_\_\_, Quezon City, Metro Manila, Philippines

**COMMISSION ON HIGHER EDUCATION  
(CHED)**

**TM ABAD CONSTRUCTION  
(Contractor)**

By:



**J. PROSPERO E. DE VERA III, DPA**  
Chairman/CHED

By:



**TEODORA M. ABAD**  
Proprietor

*Signed in the presence of:*

**ATTY. CINDERELLA FELIPINA S. BENITEZ-JARO**  
Executive Director IV

CERTIFIED FUNDS AVAILABLE

  
**MIRIAM V. MIRANDA**  
Chief Accountant, AFMS

ORS # 20-20-06-01322 75,842,339.75

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES )  
QUEZON CITY ) S.S

BEFORE ME, a Notary Public for and in the City of QUEZON CITY Philippines,  
personally appeared this day of AUG 10 2020, 2020.

NAME Gov't Valid I.D. Place/Date Issuance

J. PROSPERO E. DE VERA III, DPA \_\_\_\_\_ Issued on: \_\_\_\_\_  
Issued at: \_\_\_\_\_

TEODORA M. ABAD SENIOR CITIZEN'S ID Issued on: JUNE 20, 2008  
No.: 80289 Issued at: QUEZON CITY

Known to me and to me known to be the same persons who executed the foregoing instrument and acknowledged to me that the same is their free and voluntarily act and deed and that of the institutions they respectively represent.

This document refers to an CHED-CONTRACTOR AGREEMENT consisting of Fifteen (15) pages including this page whereon this Acknowledgement is written, duly signed on each and every page thereof at the left-hand margin by the parties and their instrumental witnesses

WITNESS MY HAND AND NOTARIAL SEAL.

Doc. No. 416 ;  
Page No. 64 ;  
Book No. 4 ;  
Series of 70N .

M. Joseph C. Capinpin  
ATTY. MICHAEL JOSEPH C. CAPINPIN  
Notary Public for Quezon City  
Until December 31, 2020  
PTR No. 7446398 / 1-10-20/ Q.C.  
IBP Lifetime No. 0 8 3 3 0  
ROLL No. 5 6 4 9 9  
MCLE Compliance No. VI-0008995  
Adm Matter No. NP-131 (2020-2021)  
101 Malakas Lane Brgy Central Q.C.