

## CONTRACT AGREEMENT

FOR THE

### REPAIR OF CAS SCHOOL BUILDING AT NORSU BAYAWAN-STA. CATALINA CAMPUS

THIS CONTRACT is made and entered into this 29 day of December, 2020 by and between:

**NEGROS ORIENTAL STATE UNIVERSITY**, a State University organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Kagawasan Ave., Main Campus, Dumaguete City, Negros Oriental, Philippines, duly represented by **DR. JOEL P. LIMSON**, hereinafter referred to as **OWNER**.

and

**MG CONSTRUCTION**, of Nagbo-alao Daro, Basay, Negros Oriental, duly represented by **MC DEL D. SINGGO (Proprietor)** hereinafter referred to as **CONTRACTOR**.

#### WITNESETH

WHEREAS, a public bidding was conducted on *June 29, 2020* at the BAC Office of Negros Oriental State University, Kagawasan Avenue, Dumaguete City for the project "**Repair of CAS School Building at NORSU Bayawan-Sta. Catalina Campus**".

WHEREAS, the NORSU Bids and Awards Committee recommended to the University President that the project shall be awarded to **MG CONSTRUCTION**, its offer being the most advantageous to the Philippine Government;

WHEREAS, time is the essence of this contract;

NOW, THEREFORE, for and in consideration of the foregoing premises and other covenants hereinafter named, the parties agree as follows:

#### ARTICLE I. CONTRACT DOCUMENTS

The following documents shall be attached, deemed to form, and be read and construed as integral part of this Agreement, to wit:

- (a) General and Special Conditions of Contract;
- (b) Drawings/Plans;
- (c) Specifications;
- (d) Invitation to Bid;
- (e) Instructions to Bidders;
- (f) Bid Data Sheet;
- (g) Addenda and/or Supplemental/Bid Bulletins, if any;
- (h) Bid form, including all the documents/statements contained in the Bidder's bidding envelopes, as annexes, and all other documents submitted (e.g., Bidder's response to request for clarifications on the bid), including corrections to the bid, if any, resulting from the Procuring Entity's bid evaluation;
- (i) Eligibility requirements, documents and/or statements;
- (j) Performance Security;
- (k) Notice of Award of Contract and the Bidder's conforme thereto;
- (l) Duly approved Program of Works, Delivery Schedule and Cost Estimates;
- (m) Abstract of Bids
- (n) Resolution of the BAC recommending the award of the project to the winning bidder;
- (o) Other contract documents that may be required by existing laws and/or the Entity.

**ARTICLE II – SCOPE OF WORK**


NORSU BAC OFFICE

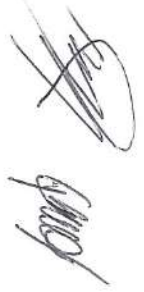
Project Name : REPAIR OF CAS SCHOOL BUILDING AT NORSU BAYAWAN-STA. CATALINA CAMPUS  
Contract Location : BAYAWAN-STA. CATALINA CAMPUS, NEGROS ORIENTAL

**BILL OF QUANTITIES**

PAY ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	AMOUNT
I	GENERAL REQUIREMENTS	1.00	lot	134,316.00	134,316.00
II	ROOF FRAME AND ROOFING	1.00	lot	1,631,180.88	1,631,180.88
III	CEILING WORKS	1.00	lot	554,803.12	554,803.12
<b>Total Amount in Figures:</b>					<b>2,320,300.00</b>

Submitted by :

MC DEL D. SINGGO, in the capacity of Manager/Proprietor  
Signed:  Date : June 29, 2020  
Duly authorized to sign the Bid for and behalf of MG CONSTRUCTION



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**PROJECT NAME :** REPAIR OF CAS SCHOOL BUILDING AT NORSU BAYAWAN- STA. CATALINA CAMPUS  
**LOCATION :** BAYAWAN-STA. CATALINA CAMPUS, NEGROS ORIENTAL

**MANPOWER UTILIZATION SCHEDULE**

Category	1 <sup>st</sup> Month	2 <sup>nd</sup> Month	3 <sup>rd</sup> Month	4 <sup>th</sup> Month
PROJECT ENGINEER	26	26	26	26
CONSTRUCTION SAFETY OFFICER	13	13	13	13
FOREMAN	26	26	26	26
SKILLED LABORERS (8)	26	26	26	26
LABORERS (12)	26	26	26	26

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Submitted by:

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**MCPEL D. SINGGO**  
 Proprietor / General Manager  
 MG CONSTRUCTION

Date: June 29, 2020



**CONSTRUCTION METHODS**

OUTLINE OF  
NARRATIVE DESCRIPTION

- 1.0 INTRODUCTION  
Repair of CAS School Building at NORSU Bayawan-Sta. Catalina Campus, Negros Oriental
- 2.0 BRIEF DESCRIPTION OF CONTRACT WORKS  
Repair of CAS School Building
- 3.0 CONSTRUCTION METHODS AND PROCEDURES

3.1 Methodology or General Approach

Upon receipt of the Notice to Proceed Work, request a Pre-Construction meeting with the Procuring Entity in order to summarize the details that will be undertaken in the implementation of the project. Check the plans as furnished and make the necessary suggestion if there are any. Inform the Project-in-Charge regarding the construction working procedures for this particular project.

Demolition work is to be performed safely and with number of different steps involved before and during the execution of a demolition process. The various steps involved before the demolition process includes surveying the site of demolition, removal of hazardous materials if any, and preparation of demolition plan with techniques to be implanted, stability report and the precautionary safety measures to be taken for the workers and the surroundings.

The work mainly consists of the fabrication and installation of steel trusses and purlins according to plans and specifications. Sagrods must be placed between purlins mid-way between trusses. All steel works shall be shall be protected against rust and corrosion by applying rust converter and red oxide. Roofing consists of the installation of long span pre-painted rib type roofing sheets 0.5 mm thick. Also included in the work is the installation of fascia board 12" x 8' x 1" thick.

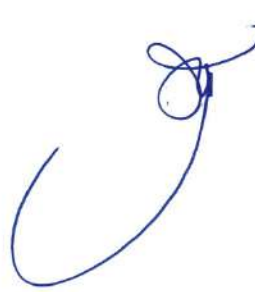
The work entails the installation of metal furring channels 0.6 mm thick spaced 0.6 meters apart as ceiling frame for fiber cement ceiling boards 4.5 mm thick. Carrying channels shall be installed to reinforce the ceiling frame so as to avoid the frame from sagging. The ceiling boards shall be cut 1.20 x 1.20 meters as main pieces with 10 mm spacing between pieces. The exterior ceiling shall be 3.8 meters above finish floor line and interior ceiling is elevated 3.2 meters above finish floor line. Eight ceiling ventilations 0.6 m by 0.6 m with screen shall be installed at the exterior portion of the ceiling as per plan.

- 3.2 Program of Work  
Progress bar chart with S-curve of activities in the contract works. (see attached index # 3: Construction Schedule and S-curve)
- 3.3 Financial Program  
Cash flow schedule, provision for working capital, schedule of receipts, etc. (see attached index #3 of the Financial Proposal: cash flow by quarter and payments schedule)

Submitted by:

  
**M. DEL B. SINGGO**  
Manager/Proprietor  
M.G. CONSTRUCTION

Date: June 29, 2020



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**PROJECT NAME** : REPAIR OF CAS SCHOOL BUILDING AT NORSU BAYAWAN-STA. CATALINA CAMPUS  
**LOCATION** : BAYAWAN-STA. CATALINA CAMPUS, NEGROS ORIENTAL

**EQUIPMENT UTILIZATION SCHEDULE**

Category	1 <sup>st</sup> Month	2 <sup>nd</sup> Month	3 <sup>rd</sup> Month	4 <sup>th</sup> Month
Welding Machine	13	26	26	-

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Submitted by:  
*[Handwritten signature]*  
**MG DEL D. SINGGO**  
Proprietor / General Manager  
MG CONSTRUCTION

Date: June 29, 2020



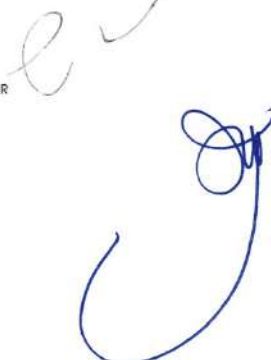
Project Name: Repair of CAS School Building at NORSU Bayawan-Sta. Catalina Campus  
 Location : Bayawan-Sta. Catalina Campus, Negros Oriental



### CONSTRUCTION SCHEDULE AND S CURVE

NO.	SCOPE OF WORK	MONTH 1				MONTH 2				MONTH 3				MONTH 4			
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
I	GENERAL REQUIREMENTS																
II	ROOF FRAME AND ROOFING																
III	CEILING WORKS																

Prepared By:

  
 MC DEL D. SINGGO  
 PROPRIETOR/MANAGER  
 MG CONSTRUCTION



79  


Project Name: Repair of CAS School Building at NORSU Bayawan-Sta. Catalina Campus  
 Location: Bayawan-Sta. Catalina Campus, Negros Oriental

I		120	(-114)	II		84	(-12)	III		42
GENERAL REQUIREMENTS				ROOF FRAME AND ROOFING				CEILING WORKS		
	0	120			6	90			78	120
	0	120			6	90			78	120

Prepared By:

*M.D.S.*  
 M.C. DEL D. SINGGO  
 PROPRIETOR/MANAGER  
 MG CONSTRUCTION

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### ARTICLE III – TIME OF COMPLETION

The work to be performed by the CONTRACTOR under this contract shall commence after seven (7) calendar days upon receipt and acceptance of the Notice to Proceed from NORSU by the CONTRACTOR. The construction of **Repair of CAS School Building at NORSU Bayawan-Sta. Catalina Campus** shall be completed within **One Hundred Twenty (120) calendar days** including Saturdays, Sundays, and holidays. Should the CONTRACTOR refuse or otherwise fail to complete the work stipulated herein, the CONTRACTOR agrees to pay the NEGROS ORIENTAL STATE UNIVERSITY a liquidated damages an amount equal to One-Tenth of One Percent (0.1%) of the total contract sum for each calendar day of delay until the work is completed and accepted by the NORSU or when the NORSU takes over the project by administration or relets it to other contractor until such time as the NORSU may reasonably secure the completion of the works. 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 performance Bond of the contractor or Contactor's Surety whichever is convenient to the OWNER, NORSU.

### ARTICLE IV – THE CONTRACT SUM

The OWNER for and in consideration of the faithful and satisfactory fulfillment of the contract by the CONTRACTOR in accordance with the terms and conditions of all contract documents and subject to the deduction herein provided, shall pay to the CONTRACTOR in Philippine Currency the sum of **Two Million Three Hundred Twenty Thousand Three Hundred Pesos Only (PHP 2,320,300.00)**.

Payment shall be in accordance with the following conditions:

- a. 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 the work as determined by the OWNER are completed. If after fifty percent (50%) completed of the work as determined by the OWNER is satisfactorily done and on schedule no additional retention shall be made on the succeeding progress payment, otherwise, the ten percent (10%) retention shall be imposed. The total retention money shall be due for release upon final acceptance of the works.

The progress payments prior to final billing shall be based on the following:

- First Progress Payment = 40% of work completion as determined by the OWNER
- Second Progress Payment = 60% of work completion
- Third Progress Payment = 80% of work completion
- Fourth Progress Payment = 90% of work completion

However, after cumulative progress payment to the Contractor amounting to at least fifty percent (40%) of the total contract price, the OWNER may at the written request of the CONTRACTOR release a portion of the retention money commensurate to the percentage of the work completed as determined by the OWNER. Provided, that the CONTRACTOR post an irrevocable standby letter of credit in favor of the OWNER to answer and substitute for the purpose of which the Ten percent (10%) retention is intended. Any release of any amount of the retention money by the OWNER is not to be construed as waiver of the OWNER's right to be indemnified for damage caused by the CONTRACTOR in accordance with the provision of Art.20 of the New Civil Code.



- b. The CONTRACTOR shall, under his name and at his own expense, obtain and maintain for the duration of this Contract the following insurance coverage: (1) Contractor's All Risk Insurance; (2) Transportation to the project Site of Equipment, Machinery, and Supplies owned by the Contractor (3) Personal injury or death of Contractor's employees; and (4) Comprehensive insurance for third party liability to Contractor's direct or indirect act or omission causing damage to third persons.
- c. That the insurance premium shall be the account of the CONTRACTOR.
- d. Progress payment may be revised to conform with the implementation of the Philippine Government's Cash Based Budgeting for FY 2019. To conform with this, a periodic payment may be implemented by the OWNER. Details of the implementation will be agreed upon by the CONTRACTOR and the OWNER within 60 days from the payment of the mobilization/demobilization.

**ARTICLE V- PERFORMANCE SECURITY**

In accordance with the Instruction to Bidders and General Conditions of the contract, the SUPPLIER shall furnish and file per acceptance to the OWNER a Performance Security in accordance with Section 39 of the Revised Implementing Rules and Regulations of RA 9184 to guaranty the full and faithful performance of this Agreement to answer for any liability that maybe suffered by the OWNER resulting from the violation of the SUPPLIER of labor laws and other laws. PROVIDED, that in the event of the recession or termination of this contract for breach thereof, the Performance Security, at the option of the OWNER shall be automatically forfeited in favor of the OWNER and becomes immediately payable and collectible by the OWNER, otherwise, the Performance Security shall remain and continue in full force until the aforementioned obligations as to the completion and faithful compliance of the contract, liquidated damages and cost of labor and materials shall have been duly satisfied, discharged, settled and paid by the SUPPLIER.

The Performance Security shall be denominated on Philippine Pesos and posted in favor of the OWNER in an amount equal to the following schedule:

Form of Performance Security	Amount of Performance Security (Not less than the required percentage of the Total Contract Price)
a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank. For biddings conducted by LGUs, the cashier's/manager's check may be issued by other banks certified by the BSP as authorized to issue such financial instrument	Ten percent (10%)
b) Bank draft/guarantee or 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. For biddings conducted by LGUs, bank draft/guarantee, or irrevocable letter of credit may be issued by other banks certified by theBSP as authorized to issue such financial instrument.	
c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Thirty percent (30%)

**ARTICLE VI – WARRANTY**

**1. Warranty Security**

The CONTRACTOR shall perform his responsibilities as prescribed in Section 62.2.3.1(a) of the 2016 Revised IRR of RA 9184 and it shall be required to post a warranty security in accordance with the following schedule:

Form of Warranty Security	Amount of Warranty Security (Not less than the required percentage of the Total Contract Price)
<p>a) Cash or Letter of Credit issued by a 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.</p> <p>For biddings conducted by LGUs, the Letter of Credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument.(a)</p>	Five percent (5%)
<p>b) Bank guarantee confirmed by a Universal or Commercial Bank.</p> <p>For biddings conducted by LGUs, the bank draft/guarantee may be issued by other banks certified by the BSP as authorized to issue such financial instrument. (a)</p>	Ten percent (10%)
<p>c) Surety bond callable upon demand issued by GSIS or a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.</p>	Thirty percent (30%)

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

**2. Warranty Period**

2.1 From the time project construction commenced up to final acceptance, the contractor shall assume full responsibility for the following:

- a) any damage or destruction of the works except those occasioned by force majeure; and
- b) safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by his construction work.

2.2 The **defects liability period** shall be one (1) year from project completion up to final acceptance.

2.2.1. The CONTRACTOR shall undertake the repair works, at his own expense, of any damage to the infrastructure on account of the use of materials of inferior quality, within ninety (90) days from the time the OWNER has issued an order to undertake repair. In case of failure or refusal to comply with this mandate, the OWNER Entity shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand.

2.2.2. The defects liability period shall be covered by the Performance Security of the CONTRACTOR. If the CONTRACTOR fails to comply with its obligations, the OWNER shall forfeit its performance security, subject its property(ies) to attachment or garnishment proceedings, and perpetually disqualify it from participating in any competitive bidding.

2.3 From the final acceptance of the project to the following prescribed period (specified in Section 62.2.3.2 of the 2016 Revised IRR of RA 9184), the warranty against Structural Defects and Failures shall cover the following periods from final acceptance, except those occasioned by force majeure:

a) Permanent Structures: Fifteen (15) years

Buildings of types 4 and 5 as classified under the National Building Code of the Philippines and other structures made of steel, iron, or concrete which comply with relevant structural codes (e.g., DPWH Standard Specifications), such as, but not limited to, steel/concrete bridges, flyovers, aircraft movement areas, ports, dams, tunnels, filtration and treatment plants, sewerage systems, power plants, transmission and communication towers, railway system, and other similar permanent structures;

b) Semi-Permanent Structures: Five (5) years

Buildings of types 1, 2, and 3 as classified under the National Building Code of the Philippines, concrete/asphalt roads, concrete river control, drainage, irrigation lined canals, river landing, deep wells, rock causeway, pedestrian overpass, and other similar semi-permanent structures; and

c) Other Structures: Two (2) years

Bailey and wooden bridges, shallow wells, spring developments, and other similar structures.

2.4 In case of Structural Defects/Failure occurring during the applicable warranty period, the OWNER shall undertake the necessary restoration or reconstruction works and shall be entitled to **full reimbursement** by the CONTRACTOR found to be liable for expenses incurred therein upon demand, without prejudice to the filing of appropriate administrative, civil, and/or criminal charges against the responsible persons as well as the forfeiture of warranty securities posted in favor of the OWNER.

#### ARTICLE VII – GUARANTEE

The CONTRACTOR hereby guarantee the works stipulated in this contract and all the materials it will apply and use in the construction as well as workmanship of all its work under this contract and shall make good of its own account and/or its own expenses.

After final acceptance of the project by the OWNER, the CONTRACTOR shall assume full responsibility for any damage or destruction of the works except those occasioned by force

1. become bankrupt;
2. been placed under receivership or under a management committee;
3. been sued for suspension of payment; or
  
4. been suspended by the Insurance Commission and its license to engage in business or its authority to issue insurance policies cancelled; or
  
5. Where reasonable grounds exist that the insurer may not be able, fully and promptly, to fulfill its obligation under the insurance policy.

## **ARTICLE XII – TERMINATION OF CONTRACT**

### **1. Termination for Default of Contractor**

The OWNER shall terminate this Contract for default when any of the following conditions attend its implementation:

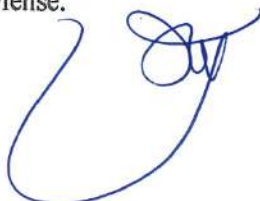
- 1.1 Due to the Contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with Presidential Decree 1870, regardless of whether or not previous warnings and notices have been issued for the Contractor to improve his performance;
  
- 1.2 Due to its own fault and after this Contract time has expired, the Contractor incurs delay in the completion of the Work after this Contract has expired; or
  
- 1.3 The Contractor:
  - abandons the contract Works, refuses or fails to comply with a valid instruction of the OWNER or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity;
  
  - does not actually have on the project Site the minimum essential equipment listed on the bid necessary to prosecute the Works in accordance with the approved Program of Work and equipment deployment schedule as required for the project;
  
  - does not execute the Works in accordance with this Contract or persistently or flagrantly neglects to carry out its obligations under this Contract;
  
  - neglects or refuses to remove materials or to perform a new Work that has been rejected as defective or unsuitable; or
  
  - sub-lets any part of this Contract without approval by the Procuring Entity.

All materials on the Site, Plant, Works, including Equipment purchased and funded under the Contract shall be deemed to be the property of the OWNER if this Contract is rescinded because of the Contractor's default.

### **2. Termination for Default of Procuring Entity**

The Contractor may terminate this Contract with the OWNER if the works are completely stopped for a continuous period of at least sixty (60) calendar days through no fault of its own, due to any of the following reasons:

- (a) Failure of the OWNER to deliver, within a reasonable time, supplies, materials, right-of-way, or other items it is obligated to furnish under the terms of this Contract; or
  
- (b) The prosecution of the Work is disrupted by the adverse peace and order situation, as certified by the Armed Forces of the Philippines Provincial Commander and approved by the Secretary of National Defense.



From the Start Date until the Certificate of Final Acceptance has been issued, the following are risks of the OWNER:

1. The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to:
  - Any type of use or occupation of the Site authorized by the OWNER after the official acceptance of the works; or
  - Negligence, breach of statutory duty, or interference with any legal right by the OWNER or by any person employed by or contracted to him except the Contractor.
2. The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the OWNER or in the Procuring Entity's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

#### **ARTICLE XI – LIABILITY OF THE CONTRACTOR**

The CONTRACTOR shall, under his name and at his own expense, obtain and maintain, for the duration of this Contract, the following insurance coverage:

1. CONTRACTOR's All Risk Insurance;
2. Transportation to the project Site of Equipment, Machinery, and Supplies owned by the CONTRACTOR;
3. Personal injury or death of CONTRACTOR's employees; and
4. Comprehensive insurance for third party liability to CONTRACTOR's direct or indirect act or omission causing damage to third persons.

The CONTRACTOR shall provide evidence to the OWNER that the insurances required under this Contract have been effected and shall, within a reasonable time, provide copies of the insurance policies to the OWNER.

The CONTRACTOR shall notify the insurers of changes in the nature, extent, or program for the execution of the Works and ensure the adequacy of the insurances at all times in accordance with the terms of this Contract and shall produce to the OWNER the insurance policies in force including the receipts for payment of the current premiums. The insurance policies shall be obtained from any reputable insurance company approved by the OWNER.

If the CONTRACTOR fails to obtain and keep in force the insurances referred to herein or any other insurance which he may be required to obtain under the terms of this Contract, the OWNER may obtain and keep in force any such insurances and pay such premiums as may be necessary for the purpose. From time to time, the OWNER may deduct the amount it shall pay for said premiums including twenty five percent (25%) therein from any monies due, or which may become due, to the CONTRACTOR, without prejudice to the OWNER exercising its right to impose other sanctions against the CONTRACTOR pursuant to the provisions of this Contract.

In the event the CONTRACTOR fails to observe the above safeguards, the OWNER may, at the CONTRACTOR's expense, take whatever measure is deemed necessary for its protection and that of the CONTRACTOR's personnel and third parties, and/or order the interruption of dangerous Works. In addition, the OWNER may refuse to make the payments until the Contractor complies with this Clause.

The CONTRACTOR shall immediately replace the insurance policy obtained as required in this Contract, without need of the OWNER's demand, with a new policy issued by a new insurance company acceptable to the OWNER if the issuer of the insurance policy to be replaced has:



### 3. Termination for Other Causes

The OWNER may terminate this Contract, in whole or in part, at any time for its convenience. The OWNER may terminate this Contract for the convenience of the OWNER if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and National Government policies.

The OWNER or the Contractor may terminate this Contract if the other party causes a fundamental breach of this Contract.

### 4. Breaches of Contract

The Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- (a) The Contractor stops work for twenty eight (28) days when no stoppage of work is shown on the current Program of Work and the stoppage has not been authorized by the OWNER ;
- (b) The OWNER instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within twenty eight (28) days;
- (c) The OWNER shall terminate this Contract if the CONTRACTOR is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the CONTRACTOR, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the OWNER and/or the CONTRACTOR. In the case of the CONTRACTOR 's insolvency, any CONTRACTOR 's Equipment which the OWNER instructs in the notice is to be used until the completion of the Works;
- (d) A payment certified by the OWNER is not paid by the OWNER to the CONTRACTOR within eighty four (84) days from the date of the OWNER 's certificate;
- (e) The OWNER gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the CONTRACTOR fails to correct it within a reasonable period of time determined by the OWNER;
- (f) The CONTRACTOR does not maintain a Security, which is required;
- (g) The CONTRACTOR has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid; and
- (h) In case it is determined prima facie by the OWNER that the CONTRACTOR has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation, such as, but not limited to, the following:
  - corrupt, fraudulent, collusive, coercive, and obstructive practices;
  - drawing up or using forged documents;
  - using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and

- any other act analogous to the foregoing.

The OWNER, as appropriate, will seek to impose the maximum civil, administrative and/or criminal penalties available under the applicable law on individuals and organizations deemed to be involved with corrupt, fraudulent, or coercive practices.

When persons from either party to this Contract gives notice of a fundamental breach to the OWNER in order to terminate the existing contract for a cause, the OWNER shall decide whether the breach is fundamental or not.

If this Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

## 5. Procedures for Termination of Contracts

The following provisions shall govern the procedures for the termination of this Contract:

- (a) Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the OWNER shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;
- (b) Upon recommendation by the Procuring Entity, the OWNER shall terminate this Contract only by a written notice to the Contractor conveying the termination of this Contract. The notice shall state:
- that this Contract is being terminated for any of the ground(s) afore-mentioned, and a statement of the acts that constitute the ground(s) constituting the same;
  - the extent of termination, whether in whole or in part;
  - an instruction to the Contractor to show cause as to why this Contract should not be terminated; and
  - special instructions of the Procuring Entity, if any.

The Notice to Terminate shall be accompanied by a copy of the Verified Report;

- (a) Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Contractor shall submit to the OWNER a verified position paper stating why the contract should not be terminated. If the Contractor fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the OWNER shall issue an order terminating the contract;
- (b) The OWNER may, at anytime before receipt of the Contractor's verified position paper described in item (c) above withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Contractor's receipt of the notice;
- (c) Within a non-extendable period of ten (10) calendar days from receipt of the verified position paper, the OWNER shall decide whether or not to terminate this Contract. It shall serve a written notice to the Contractor of its decision and, unless otherwise provided in the said notice, this Contract is deemed terminated from receipt of the Contractor of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate; and

- (d) The OWNER may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the OWNER .

Pursuant to Section 69(f) of RA 9184 and without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution as provided by applicable laws, the OWNER shall impose on contractors after the termination of the contract the penalty of suspension for one (1) year for the first offense, suspension for two (2) years for the second offense from participating in the public bidding process, for violations committed during the contract implementation stage, which include but not limited to the following:

1. Failure of the contractor, due solely to his fault or negligence, to mobilize and start work or performance within the specified period in the Notice to Proceed (“NTP”);
2. Failure by the contractor to fully and faithfully comply with its contractual obligations without valid cause, or failure by the contractor to comply with any written lawful instruction of the OWNER or its representative(s) pursuant to the implementation of the contract. For the procurement of infrastructure projects or consultancy contracts, lawful instructions include but are not limited to the following:

Employment of competent technical personnel, competent engineers and/or work supervisors;

- Provision of warning signs and barricades in accordance with approved plans and specifications and contract provisions;
- Stockpiling in proper places of all materials and removal from the project site of waste and excess materials, including broken pavement and excavated debris in accordance with approved plans and specifications and contract provisions;
- Deployment of committed equipment, facilities, support staff and manpower; and
- Renewal of the effectivity dates of the performance security after its expiration during the course of contract implementation.

3. Assignment and subcontracting of the contract or any part thereof or substitution of key personnel named in the proposal without prior written approval by the procuring entity.
4. Poor performance by the contractor or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the Constructor's Performance Evaluation System (“CPES”) rating sheet. In the absence of the CPES rating sheet, the existing performance monitoring system of the OWNER shall be applied. Any of the following acts by the Contractor shall be construed as poor performance:
  - Negative slippage of 15% and above within the critical path of the project due entirely to the fault or negligence of the contractor; and
  - Quality of materials and workmanship not complying with the approved specifications arising from the contractor's fault or negligence.
5. In addition to the penalty of suspension, the performance security posted by the contractor shall also be forfeited.



**6. Force Majeure, Release from Performance**

For purposes of this Contract the terms "force majeure" and "fortuitous event" may be used interchangeably. In this regard, a fortuitous event or force majeure shall be interpreted to mean an event which the Contractor could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Contractor.

If this Contract is discontinued by an outbreak of war or by any other event entirely outside the control of either the OWNER or the Contractor, the OWNER shall certify that this Contract has been discontinued. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all works carried out before receiving it and for any Work carried out afterwards to which a commitment was made.

If the event continues for a period of eighty four (84) days, either party may then give notice of termination, which shall take effect twenty eight (28) days after the giving of the notice.

After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the materials and Plant reasonably delivered to the Site, adjusted by the following:

- (a) any sum to which the Contractor is entitled
- (b) the cost of his suspension and demobilization;
- (c) any sum to which the OWNER is entitled.

The net balance due shall be paid or repaid within a reasonable time period from the time of the notice of termination.

**ARTICLE XIII – VENUE OF COURT ACTION**

Should any court action be instituted by the NORSU or CONTRACTOR arising from this contract, the parties hereby agree that the venue thereof shall be the proper court in the province of Negros Oriental.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 29 day of December 2020 at NORSU Main Campus I, Kagawasan Avenue, Dumaguete City, Philippines.

**NEGROS ORIENTAL STATE UNIVERSITY**  
Kagawasan Avenue, Dumaguete City

**MG CONSTRUCTION**  
Nagbo-alaoDaro, Basay, Negros Oriental

  
**JOEL P. LIMSON, Ph.D.**  
University President  
OWNER

  
**JONARI DOON**  
Authorized Representative  
CONTRACTOR

Signed in the Presence of:

**ENGR. MICHEAL SAGA**  
End User

\_\_\_\_\_

**ACKNOWLEDGMENT**

Republic of the Philippines ]  
 Province of Negros Oriental } S.S  
 City of Dumaguete ]

BEFORE ME, a Notary Public, for and in the City of Dumaguete, Philippines, this \_\_\_ day of \_\_\_\_\_ 2020, personally appeared the parties with their competent evidence of identity which bears their pictures and signatures, to wit:



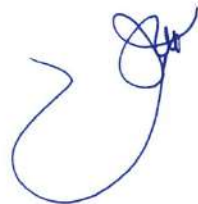
Name	Identification Card/No.	Valid Until
JOMARI DOON		
JOEL P. LIMSON, Ph. D.		



That they are the same persons who executed the foregoing instrument and acknowledged that the same is their free and voluntary act and deed consisting of Nineteen (19) pages including this page whereon this acknowledgement is written, is signed by the parties and their instrumental witnesses on each and every page thereof and sealed with my Notarial Seal.

WITNESS MY HAND AND SEAL, on the date and place above written.

Doc. No. 33 ;  
 Page No. 4 ;  
 Book No. 2 ;  
 Series of 2020.



*Deogracias U. Eltanal, Jr.*  
**DEOGRACIAS U. ELTANAL, JR.**  
 NOTARY PUBLIC UNTIL DECEMBER 31, 2021  
 SERIAL NO. 2020-030 DUMAGUETE CITY, SIBULAN, BACOD  
 VALENCIA, DAUIN, ZAMBO, SIATON, NEG. OR.  
 PTR NO. 24182573A-2/6/2020 DUMAGUETE CITY  
 IBP LIFETIME NO. 010145 - 6/24/2010  
 ROLL NO. 48003  
 MCLE COMPLIANCE NO. VI-0000194, 4/14/2020  
 ROOM M-4 DOÑA MILAGROS PLAZA  
 (COR. PERDICES & STA. ROSA STS., DUMAGUETE CI)