

## GENERAL CONSTRUCTION AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

APR 06 2018

This General Construction Agreement (GCA), entered into this \_\_\_\_ day of \_\_\_\_\_ 2018 in CITY OF MAKATI, Philippines, by and between:

The **UNIVERSITY OF THE PHILIPPINES**, the national university, created by virtue of Act No. 1870, as amended and strengthened by Republic Act No. 9500, with business address at the 2<sup>nd</sup> Floor, North Wing, Quezon Hall, University of the Philippines Diliman, Quezon City, represented herein by its Executive Vice President, **DR. TEODORO J. HERBOSA**, hereinafter referred to as “UP”;

-and-

**HILMARC'S CONSTRUCTION CORPORATION**, an entity duly organized and existing under the laws of the Republic of the Philippines, with business address at 1835 E. Rodriguez Sr. Avenue, Cubao, Quezon City, represented herein by its Chairman of the Board, **EFREN M. CANLAS**, hereinafter referred to as the “**CONTRACTOR**”.

WHEREAS, the UP Manila Philippine General Hospital (PGH) Special Bids and Awards Committee (SBAC) advertised the Invitation to Bid (ITB) of the **VARIOUS MAJOR INFRASTRUCTURE PROJECTS of PGH** in the Malaya Business Insight 20 October 2017 issue, and also posted the ITB in the UP Manila website, in the PhilGEPS, and on the BAC bulletin board continuously for fourteen (14) days;

WHEREAS, in response to the said advertisement, six (6) bidders, namely C.E. Padilla Construction, Embrocal Builders, Inc., Hilmarc's Construction Corporation, Philab Industries, Inc., Regenaire, and TSF Corporation, attended the scheduled pre-bid conference;

WHEREAS, the said pre-bid conference was conducted last 27 October 2017 where the six (6) prospective bidders requested clarifications on the technical specifications as well as the documents to be submitted;

WHEREAS, as a result of the said pre-bid conference, it was agreed that another pre-bid conference will be scheduled on 30 October 2017;

WHEREAS, SBAC Addendum No. 2017-01 was issued last 27 October 2017 to change the scheduled dropping and opening of bids from 9 November 2017 to 17 November 2017 relative to the conduct of 2<sup>nd</sup> pre-bid conference on 30 October 2017;

WHEREAS, the 2<sup>nd</sup> pre-bid conference was conducted last 30 October 2017 and attended by three (3) prospective bidders namely Embrocal Builders, Inc., C.E. Padilla Construction and Hilmarc's Construction Corporation;

WHEREAS, SBAC Addendum Nos. 2017-02, 2017-03 and 2017-04 were issued to amend items in the bid documents in response to the queries of prospective bidders following the 2<sup>nd</sup> pre-bid conference held last 30 October 2017;

WHEREAS, SBAC Addendum No. 2017-04 was issued last 14 November 2017 to change the scheduled dropping and opening of bids from 17 November 2017 to 23 November 2017;

WHEREAS, Embrocal Builders, Inc. and Hilmarc's Construction Corporation acquired the necessary bid documents;

WHEREAS, Embrocal Builders, Inc. and Hilmarc's Construction Corporation submitted their bid documents on the scheduled dropping and opening of bids for the Various Major Infrastructure Projects of PGH dated 23 November 2017, and only Hilmarc's Construction Corporation was rated "passed" in the eligibility requirements and thus found to be eligible;

WHEREAS, Embrocal Builders, Inc. was declared ineligible due to the following:

- Non-compliance with the requirement stated in the Invitation to Bid that, "Bidders should have completed, within ten (10) years from the date of submission and receipt of bids, a contract similar to the Project";
- The absence or insufficiency of key personnel required of the contractor as stated in Section VI. Specifications of the said bid documents.

WHEREAS, the SBAC found all the eligibility, technical and financial requirements submitted by Hilmarc's Construction Corporation, including its bid, to be the single calculated and responsive bid, and having submitted the proposal that is the most advantageous to the PGH;

Name of Bidder	Approved Budget of the Contract (PhP)	Total Amount of Bid as Read (PhP)	% Variance from ABC
<b>Hilmarc's Construction Corporation</b>			
<i>Component 1 - DOH Funded Projects</i>	<b>98,007,150.99</b>	<b>97,656,277.98</b>	<b>0.36%</b>
P09-Central Laboratory (Drug Testing Facility)	7,206,400.96	9,240,596.40	
P10-Renovation of Central ICU (Adult & Pediatric)	82,099,477.51	79,190,880.16	
P04-Exterior Repair and Repainting of Walls, Replacement of Steel Casement Windows,	8,701,272.52	9,224,801.42	

Repair of Roofing of Atrium Quadrant Buildings and Storm Drainage (Renovation of Courtyard Canopy)			
<i>Component 2 - 2017 GAA Funded Projects</i>	<b>86,924,000.00</b>	<b>84,411,894.83</b>	<b>2.89%</b>
P08-Renovation of LCB OR / PACU	8,800,315.66	2,311,175.72	
P13-Rehabilitation of Cistern Tank	15,241,563.60	14,501,332.09	
P12D-Central Block Painting (Repair and repainting of exterior walls, replacement of steel casement windows, ceiling at hallways, and stairs	24,000,000.00	23,727,453.75	
Rehabilitation of Centralized and Medical Gas Piping System	38,882,120.74	43,871,933.27	
<i>Component 3 - 2016 DOH Funded Project and Re-Programmed Fund</i>	<b>305,000,000.00</b>	<b>281,795,248.42</b>	<b>7.61%</b>
P01-ERC OBAS Complex			
<b>T O T A L . . .</b>	<b>489,931,150.99</b>	<b>463,863,421.23</b>	<b>5.32%</b>

WHEREAS, upon careful examination and verification of all the submitted eligibility, technical and financial requirements by the Technical Working Group (TWG) through its post qualification evaluation report dated 06 December 2017, the SBAC found Hilmarc's bid to be the single calculated and responsive bid;

WHEREAS, the UP Manila PGH SBAC, through its Resolution No. 17-001, dated 06 December 2017, recommended the award of the contract for the project "**VARIOUS MAJOR INFRASTRUCTURE PROJECTS of PGH**" to **Hilmarc's Construction Corporation** for the contract price of **Four Hundred Sixty Three Million Eight Hundred Sixty Three Thousand Four Hundred Twenty One Pesos and Twenty Three Centavos (PhP 463,863,421.23)**, copy of which is hereto attached as Annex "A".

**NOW, THEREFORE**, for and in consideration of the foregoing premises, the parties hereto agree as follows:

## ARTICLE I SCOPE OF WORK

1.1 The CONTRACTOR shall:

- a. Supply all labor, materials, tools, and equipment, including power and water, if necessary, transportation and other facilities, services, and all related work for the PROJECT, in accordance with the drawings, schedule and specifications necessary to complete the works, ready for use by the PGH;
  - b. At its own expense, be responsible for unloading, unpacking, and inspection of all contract-furnished materials, machinery, and equipment delivered to the construction site, and shall also be responsible for storage, control, transportation, safekeeping, and any other necessary arrangement for such materials, machinery, and equipment within the site;
  - c. Ensure adequate protection at all times of all materials, machinery, and equipment at the construction site against damage, robbery, and pilferage, and shall be responsible for any damage or loss;
  - d. Render warranty services on all work performed in accordance with the provisions of this GCA and the contract documents incorporated hereto.
- 1.2 The detailed tasks involved for each individual item of work set forth in the immediately preceding paragraph are enumerated in the scope of work and technical specifications attached with related papers which form part of this GCA.

## ARTICLE II CONTRACT DOCUMENTS

- 2.1 The following contract documents are incorporated hereto and made an integral part of this GCA:
- a. UP Manila/PGH SBAC Resolution No. 17-001, dated 06 December 2017 (Annex "A")
  - b. Bidding Documents (Annex "B")
    - "B-1" Instructions to Bidders
    - "B-2" Scope of Work
    - "B-3" General Conditions of Contract
    - "B-4" Special Conditions of Contract
    - "B-5" Bid Bulletins
    - "B-6" Budget Clearance
    - "B-7" Invitation to Apply for Eligibility and to Bid (PhilGEPS)
    - "B-8" Invitation to Apply for Eligibility and to Bid (newspaper)
    - "B-9" Addenda and/or Supplemental Bid Bulletins
    - "B-10" Abstract of Bids
    - "B-11" Financial Proposal
    - "B-12" Eligibility and Technical Documents
    - "B-13" Bid Security
  - c. Notice of Award, dated 6 December 2017, with contractor's acceptance dated 11 January 2018 (Annex "C")
  - d. Contractor's Performance Bond or Performance Security (Annex "D")
  - e. Working Drawings (Annex "E")
  - f. Bill of Materials and Cost Estimates (Annex "F")

- 2.2 The terms, conditions, stipulations, and warranties under the foregoing contract documents are deemed part of this GCA. In case of doubt or conflict between and among any items or provisions and the contract documents, the CONTRACTOR shall refer the same in writing to UP for clarification and guidance. The clarification or determination made by UP shall be binding and conclusive upon the parties.
- 2.3 The CONTRACTOR shall not make any change or alteration in the plans, conditions, and specifications of the PROJECT without prior written approval by UP.
- 2.4 The parties may, in writing, agree to any revision, alteration, or addition to the terms and conditions of this GCA or the contract documents.

### ARTICLE III CONTRACT PRICE

- 3.1 For and in consideration of the performance and accomplishment of the PROJECT **“VARIOUS MAJOR INFRASTRUCTURE PROJECTS of PGH”**, UP shall pay the CONTRACTOR the total amount of **Four Hundred Sixty Three Million Eight Hundred Sixty Three Thousand Four Hundred Twenty One Pesos and Twenty Three Centavos (PhP 463,863,421.23)** subject to pertinent laws on government contracts and auditing procedures.
- 3.2 The contract price is inclusive of all duties, taxes, licenses, premiums, fees and charges which may accrue by virtue of the PROJECT, such as but not limited to income taxes, value added taxes, permit and registration fees, municipal and personal property taxes, fees for storage or consumption, employment taxes, payments and contributions imposed by law, and insurance. All such duties, taxes, licenses, premiums, fees and charges shall be for the account of the CONTRACTOR. Any exemption in the payment of the foregoing shall be credited to UP. The CONTRACTOR is obligated to inform UP in writing of any exemptions obtained by or granted to it with respect to taxes, licenses, and other fees. The CONTRACTOR shall pay all costs incurred in the preparation of this GCA.
- 3.3 No changes shall be made in the contract price by reason of escalation in fuel prices, currency, the price of materials (including tools and equipment), or labor wages supervening during the course of the PROJECT, except under conditions specified by law. Any adjustment in the contract price shall be done in accordance with guidelines provided by law.
- 3.4 The payment of escalation costs shall be subject to the unilateral and written approval of UP and to the availability of funds.

- 3.5 Should UP require the CONTRACTOR to perform any variation order in the form of a change order or extra work order, the additional cost of such work shall be added to the contract price, provided that the cumulative amount of the variation order does not exceed ten percent (10%) of **Four Hundred Sixty Three Million Eight Hundred Sixty Three Thousand Four Hundred Twenty One Pesos and Twenty Three Centavos (PhP 463,863,421.23)**. In exceptional cases where it is urgently necessary to complete the original scope of work, UP may require the CONTRACTOR to perform a variation order beyond ten percent (10%) but not more than twenty percent (20%).
- 3.6 The cost of variation orders shall be subject to prior written agreement by both parties, upon recommendation of the Office of Engineering and Technical Services before execution or implementation.
- 3.7 Any amount payable to the CONTRACTOR may be compensated against liquidated damages payable to UP under this GCA.

#### **ARTICLE IV**

#### **TIME OF COMPLETION AND LIQUIDATED DAMAGES FOR DELAY**

- 4.1 The CONTRACTOR shall complete the PROJECT to the satisfaction of UP within FOURTEEN (14) MONTHS reckoned from the date of receipt of the Notice to Proceed (NTP) which should be, at most, within fifteen (15) days from the execution of this GCA.
- 4.2 Time being of the essence regarding the PROJECT, delay in the completion of the PROJECT may be excusable only if the same is due to force majeure, additional work approved by UP, or for any other special circumstance as may be exclusively determined by UP.
- 4.3 Force majeure is defined as any special circumstance beyond the control of the parties which directly prevents the parties from performing their obligations such as, but not limited to, extraordinary weather conditions, fires, earthquakes or other natural calamities, valid work stoppage or suspension, orders of competent authority, civil disorder, war, and other hostilities.
- 4.4 Should there arise any circumstance provided in 4.2 above which affects the performance of its obligations, the CONTRACTOR shall notify UP in writing setting forth such facts and circumstances within five (5) days of its occurrence. UP shall examine the facts and extent of delay and shall extend the contract time should it find that the facts justify an extension.
- 4.5 Upon the occurrence of any circumstance of force majeure, the CONTRACTOR shall endeavor to continue in the performance of its obligations so far as reasonably practicable. In such cases, the CONTRACTOR shall give UP written notice of the steps it proposes to take, including any reasonable alternative means for the performance of its obligations. The CONTRACTOR shall not take such steps unless previously authorized in writing by UP.

- 4.6 In no case shall extension of time for completion be granted in any of the following circumstances:
- a. Ordinary unfavorable weather conditions;
  - b. Labor problems or disputes involving the CONTRACTOR'S employees, workers, or personnel, or those of its sub-contractors, agents, or suppliers;
  - c. When the reason given for the request for extension has already been considered in the determination of the original completion time.
- 4.7 Where the CONTRACTOR refuses or fails to satisfactorily complete the PROJECT within the contract time plus any extension duly granted, the CONTRACTOR shall pay UP for liquidated damages and, not by way of penalty, an amount to be determined in accordance with the provisions of Annex "E" (8) of the 2016 Implementing Rules and Regulations of Republic Act No. 9184 (2016 IRR of RA 9184). Such amount shall be deducted from any money due or which may become due to the CONTRACTOR under the contract; or collected as liquidated damages from the retention money or other securities posted by the CONTRACTOR, whichever is convenient to UP.
- 4.8 Should the delay exceed ten percent (10%) of the contract time plus any extension duly granted, UP may rescind the contract, forfeit the performance security posted by the CONTRACTOR, takeover the completion of the PROJECT, or award the same to a qualified contractor through negotiated contract.
- 4.9 The provisions on liquidated damages notwithstanding, UP has the right to take all necessary steps to effect an immediate takeover of the construction work either by itself or via another contractor, and to forfeit the performance bond and charge against the CONTRACTOR and its sureties any excess cost occasioned thereby in finishing the PROJECT, together with any liquidated damages that may be due to UP under any of the following circumstances:
- a. When delay in the completion of the PROJECT exceeds a time duration equivalent to ten percent (10%) of the contract period plus any extension duly granted; or,
  - b. If the construction is not in accordance with the approved plans and specifications; or,
  - c. If at any time during the progress of the work the CONTRACTOR should fail, refuse, or neglect to supply the required tools, materials, supplies, equipment, facilities, or labor in accordance with the schedules; or,
  - d. If the CONTRACTOR should abandon, or fail to continue with the construction; or,
  - e. If this GCA or any part hereof is being subcontracted or assigned to third parties without the previous written consent of UP; or,
  - f. If the CONTRACTOR violates any of the conditions, warranties, or covenants under this GCA.

- 4.10 In the event of takeover, whatever contracts entered into by the CONTRACTOR in the pursuit of its obligations under this GCA which UP/UP Manila PGH may want to assume are hereby deemed assigned to UP. Provided, that UP/UP Manila PGH shall not be liable for unpaid obligations previously incurred by the CONTRACTOR prior to the takeover. The right of UP to take over the PROJECT shall be without prejudice to other rights and legal remedies it may be entitled to.
- 4.11 The lawful occupation by UP of any portion of the PROJECT shall not be deemed a waiver of any of its rights nor shall it diminish any liability of the CONTRACTOR for liquidated damages for delays in other portions of the PROJECT.

## ARTICLE V PERFORMANCE SECURITY

- 5.1 Upon signing of this GCA, the CONTRACTOR shall furnish UP with a performance security which may be any of the following:
- a. Cash, cashier's or manager's check, bank draft or bank guarantee, or an irrevocable letter of credit, issued by a universal or commercial bank, in the minimum amount of ten percent (10%) of the total contract price; and provided that if the bank draft or bank guarantee, or the irrevocable letter of credit is issued by a foreign bank, it shall be confirmed or authenticated by a local universal or commercial bank; or,
  - b. Surety bond, callable upon demand, issued by a surety or insurance company, in the minimum amount of thirty percent (30%) of the total contract price.

The following provision shall form part of the performance security deemed instituted therein:

*The right to institute action on the penal bond pursuant to Act No. 3688 of any individual firm, partnership, corporation and association supplying the contractor with labor and materials for the prosecution of the work is hereby acknowledged and confirmed.*

- 5.2 The performance security submitted by the CONTRACTOR shall be denominated in Philippine Pesos and shall remain valid until the issuance of the CERTIFICATE OF FINAL ACCEPTANCE of the PROJECT by UP.
- 5.3 The CONTRACTOR shall post an additional 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.



- 5.4 The CONTRACTOR shall cause the extension of the validity of the performance security to cover approved contract time extensions.
- 5.5 Until the CONTRACTOR shall have complied with Sections 5.3 and 5.4 hereof UP shall withhold all payments due the CONTRACTOR.

## ARTICLE VI PAYMENTS

- 6.1 UP shall, upon written request of the CONTRACTOR, which shall be submitted as a contract document, make an advance payment to the CONTRACTOR in an amount equal to fifteen percent (15%) of the total contract price, to be made in lump sum or at the most two installments according to a schedule specified in the Instructions to Bidders and other relevant tender documents.
- 6.2 The advance payment shall issue and be made only upon the submission to and acceptance by UP of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee, or a surety bond, callable on demand, issued by a surety or insurance company duly licensed by the Office of the Insurance Commissioner and confirmed by UP.
- 6.3 The advance payment shall be repaid by the CONTRACTOR by deducting fifteen percent (15%) from its periodic progress payments until the amount of advance payment is fully liquidated.
- 6.4 The CONTRACTOR may submit a request for payment of work accomplished, which shall be verified and certified by the UP project engineer. Except as otherwise stipulated in the Instruction to Bidders, materials and equipment delivered on the site but not completely put in place shall not be included for payment.

Progress payments shall be subject to a retention fee of ten percent (10%). Such retention shall be based on the total amount due to the CONTRACTOR prior to deductions and shall be retained from every progress payment until fifty percent (50%) of the value of the works, as determined by UP, are completed. If, after 50% completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the 10% retention shall be imposed.

The total retention shall be released upon final acceptance of the PROJECT. 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, or in the form of bank guarantees, or surety bond callable on demand, of amounts equivalent to the retention money substituted for and acceptable to UP, provided that the PROJECT is on schedule and is satisfactorily undertaken. Otherwise, the ten percent (10%) retention shall be made. Said irrevocable standby letters of credit, bank guarantees, and/or surety bonds shall be valid for one (1) year from the date of final acceptance

of the PROJECT and will answer for the uncorrected discovered defects and third party liabilities.

- 6.5 UP shall have the right to deduct from the progress billing of the CONTRACTOR such amounts as may be necessary to cover third party liabilities, as well as uncorrected discovered defects in the PROJECT.
- 6.6 UP shall issue a certificate of final acceptance to the CONTRACTOR upon satisfactory completion of the PROJECT. Before such certificate is issued, the CONTRACTOR shall submit a sworn statement certifying that all taxes due from it, and all obligations for materials used and labor employed in connection with the PROJECT have been duly paid. Final payment shall be made within a reasonable period upon final acceptance by UP.
- 6.7 No payments made by UP shall be construed as a waiver of any claim for defects in the work, materials, or breach of obligations under this GCA. Acceptance by the CONTRACTOR of final payment shall be deemed a waiver of all its claims except those previously made in writing which remain unsettled at the time of final acceptance.

## **ARTICLE VII**

### **WARRANTIES AND RESPONSIBILITIES OF THE CONTRACTOR**

- 7.1 The CONTRACTOR shall secure all pertinent permits required by any government office or agency in connection with the PROJECT. All expenses incurred in preparing documents, drawings, or other requirements to conform to national and local regulations and in securing approval therefore shall be for the sole account of the CONTRACTOR.
- 7.2 The CONTRACTOR shall comply with all laws, rules, and regulations promulgated by the government of the Republic of the Philippines, including those on labor, environment, safety and sanitation, those regulating the construction industry, and other pertinent laws. The CONTRACTOR shall be solely liable for any violation of the same.
- 7.3. Should the CONTRACTOR find that any portion of this GCA or part of the contract documents are contrary to any law, rule, and regulation, the CONTRACTOR shall immediately notify UP in writing and comply with the instructions to be given by UP.
- 7.4 The CONTRACTOR shall take all precautionary measures to ensure the safety and convenience of the workers and the general public, and to take all appropriate steps to prevent damage or injury to persons or property in, or about, or adjacent to the premises where the work is being performed.
- 7.5 The CONTRACTOR warrants that all materials to be used for the PROJECT are new, first class, free from hidden defects, and fully comply in every respect with the specifications, approved samples, and other requirements of the contract documents. The CONTRACTOR shall make no substitution of

materials required to be furnished by it unless prior written approval is obtained from UP. The CONTRACTOR hereby holds UP free and harmless from any liability arising out of claims or liens on materials supplied. In case of any substitution with inferior materials without the prior written consent of UP and the same cannot be removed or replaced, the CONTRACTOR shall credit UP an amount equivalent to the difference in cost plus one hundred percent (100%) of the credit amount as liquidated damages.

- 7.6 The CONTRACTOR warrants that the works done under this GCA, including those performed by sub-contractors, if any, shall be free from any defect, shrinkage, or other fault due to defective or improper materials, planning, or workmanship. If any such defect, shrinkage, or fault, whether pertaining to that portion of the work performed by the CONTRACTOR or to a portion performed by any sub-contractor arises, the CONTRACTOR shall, at its own expense, promptly repair, correct, or make good such defect, shrinkage, or fault to the satisfaction of UP. In case deviations, defects, shrinkage, faults, or deficiencies in the work are not remedied to the satisfaction of UP within a reasonable time, UP shall, without prejudice to any other right or remedy, cause the repair or correction to be made for the account of the CONTRACTOR. The CONTRACTOR shall be responsible for any loss, injury, or damage arising or resulting from any such deviation or defect, shrinkage or fault. Violation of the warranties under this section shall entitle UP to pre-terminate this GCA by mere written notice to the CONTRACTOR effective upon receipt thereof.
- 7.7 In the event of pre-termination, the CONTRACTOR, its representatives, personnel, or sub-contractors shall voluntarily turn over the PROJECT to UP and shall cease occupying the premises and its surroundings. The CONTRACTOR hereby constitutes UP as its attorney-in-fact to take possession of the PROJECT to protect the interest of UP. Expenses arising from the pre-termination shall be charged against the CONTRACTOR until the PROJECT is properly turned over to UP.
- 7.8 The CONTRACTOR shall leave the work in good order upon completion.
- 7.9 The CONTRACTOR shall be responsible for the storage and safekeeping of all UP supplied materials in its custody, if any, until these are fully turned over to UP.
- 7.10 The CONTRACTOR assumes full responsibility for the acts, omissions, or negligence of its employees, workers, agents, and those of its sub-contractors and their employees, as well as for all other persons doing work under this GCA.
- 7.11 Any damage caused by the CONTRACTOR, whether directly or indirectly, to the communication lines of UP or the UP Manila PGH (e. g., telephone, Internet) shall be restored by the CONTRACTOR to their working and functioning conditions immediately, at no additional cost to UP, or, in no case, beyond ten (10) working days from receipt by the CONTRACTOR of a notice or letter demanding repair or restoration. Failure by the CONTRACTOR to

make repair or restoration shall result in temporary cessation of project activities until repair or restoration has been made. Any loss, damage or injury to life or property as a result of the incident shall be borne solely by the CONTRACTOR. This provision also applies to damage to water, drainage or sewage pipes of UP.

- 7.12 The CONTRACTOR shall hold UP free and harmless from, and hereby binds and obligates itself to indemnify UP for liabilities, losses, damages, injuries including death, claims, demands, suits, proceedings, judgments, awards, fines, penalties and all expenses of whatever kind and nature arising from and by reason of this GCA, due to its negligence, act, omission, delay, conduct, breach of trust of, or non-observance or violation of this GCA, or those of its employees, agents, representatives, or sub-contractors.
- 7.12 The warranties required under the contract documents are incorporated hereto and the CONTRACTOR agrees to comply with all such provisions. The CONTRACTOR warrants that it shall undertake repair works on any defect or failure that may occur in any section of the PROJECT within one (1) year from the date of final acceptance by UP.

#### **ARTICLE VIII INSURANCE**

- 8.1 If UP so requires, the CONTRACTOR shall submit an insurance contract to protect UP against all claims of damages for personal injury or death, and claims for damages of UP's property, and adjoining property, which may arise from operations pursuant to this GCA. The adequacy of protection and reliability of the insurance company shall be subject to the approval of UP. The cost of such insurance shall be borne by the CONTRACTOR and the policy therefore shall be delivered to UP as beneficiary.

#### **ARTICLE IX ACCEPTANCE**

- 9.1 UP shall issue to the CONTRACTOR a certificate of final acceptance upon satisfactory completion of the PROJECT. Acceptance shall not be implied from any other act of UP.
- 9.2 Minor defects discovered in the final inspection must be corrected by the CONTRACTOR within sixty (60) days from the date of the certificate of final acceptance. Otherwise, the performance bond or performance security shall be forfeited in favor of UP.
- 9.3 Before issuance of the certificate of final acceptance, the CONTRACTOR must submit a sworn statement that all payments due for materials, bills, and other indebtedness and obligations for the PROJECT have been fully and duly paid. Any claim submitted to UP at any time by any party arising from this

GCA shall be sufficient reason for UP to withhold any payment due the CONTRACTOR.

- 9.4 The issuance of a certificate of final acceptance by UP shall not relieve the CONTRACTOR of any liability for any defect in the work or from Article 1723 of the New Civil Code.

#### **ARTICLE X ASSIGNMENT AND SUB-CONTRACTING**

- 10.1 The CONTRACTOR cannot assign, transfer, pledge, sub-contract or otherwise dispose of this GCA or any part or interest herein without the prior written approval of UP. Any such approval shall not relieve the CONTRACTOR from any liability or obligation under the law or this GCA; nor shall it create any contractual relation between the sub-contractor, pledgee, transferee, or assignee, and UP.
- 10.2 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.
- 10.3 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 a provision of its assignability to and assumption by UP, at the option of UP.

#### **ARTICLE XI NO EMPLOYER-EMPLOYEE RELATIONSHIP**

- 11.1 The relationship of UP to the CONTRACTOR is that of an independent contractor. Nothing in this GCA shall be construed as creating an employer-employee relationship between UP and the CONTRACTOR, or the latter's sub-contractors, employees, agents, or workers.

#### **ARTICLE XII INDEMNIFICATION**

- 12.1 The CONTRACTOR shall indemnify, hold free and harmless, and defend at its own expense UP and its officials, agents, employees or workers, from and against all suits, claims, demands, and liabilities of any nature or kind, including costs and expenses associated therewith, arising out of acts or omissions of the CONTRACTOR, its employees, workers, or subcontractors in the performance of any activity in connection with the PROJECT, including those that may be initiated by its employees, workers, agents, subcontractors, or by any other entity or person against the UP by reason of or in connection with the PROJECT.

### **ARTICLE XIII TERMINATION**

- 13.1 Any provision to the contrary notwithstanding, UP has the right to terminate, cancel, or rescind this GCA without need of judicial intervention by giving at least thirty (30) days prior written notice to the CONTRACTOR. This Section shall not diminish or affect the immediate takeover provided in Section 4.8 above. Such notice shall be final and binding upon the parties.
- 13.2 Upon notice of termination, UP may take over and continue the PROJECT, and any contract or agreement of the CONTRACTOR with sub-contractors or third parties which UP, in its discretion, may want to assume. In such eventuality such sub-contracts or agreements are hereby assigned to UP.
- 13.3 Within thirty (30) days after termination, cancellation, or rescission of this GCA, the parties shall settle their respective obligations as of the date of termination, cancellation, or rescission, including the refund of any and all advances made plus legal interest, from the date of receipt of the amount so advanced.

### **ARTICLE XIV MISCELLANEOUS PROVISIONS**

- 14.1 The Construction Management Team of UP shall have the following functions and responsibilities:
  - a. Supervise all phases of the construction works covered under this GCA. This provision shall not relieve the CONTRACTOR of its duties and responsibilities under Article I hereof;
  - b. Conduct regular inspection of the ongoing construction works, its premises, including the inspection of the materials and supplies being used for construction;
  - c. Recommend to UP or its proper authorities, any work changes, suspension, or stoppage of the works; and,
  - d. Certify as to the percentage of completion of the construction works.
- 14.2 Failure of UP to require performance by the CONTRACTOR of any provision hereof shall not affect the right of UP to enforce the same.
- 14.3 All rights or remedies available to UP under this GCA or by law are separate and cumulative. No right or remedy whether or not exercised, shall exclude any other right or remedy. No failure or delay by UP in exercising any such right or remedy shall be construed as a waiver of any breach or default by the CONTRACTOR. Any waiver, permit, consent, or approval of any kind or character by UP in connection with this GCA shall be specified in writing and shall be effective only to the extent that such writing sets forth.
- 14.4 Should it be rendered necessary for UP to institute any proceeding to enforce any provision of this GCA, the CONTRACTOR shall be liable to pay ten

percent (10%) of the contract price as liquidated damages therefore. The damages provided under this section are in addition to those that may be adjudged, plus twenty five percent (25%) of the total amount of damages sought as attorney's fees.

- 14.5 The damages provided under the immediately preceding section are without prejudice to such other damages provided herein and under applicable laws.
- 14.6 The parties warrant that their respective representatives signing this GCA are authorized to do so on their behalf in accordance with pertinent law. A separate instrument expressly stating the signing authority of their respective representatives shall not be necessary.

## ARTICLE XV SETTLEMENT OF DISPUTES


- 15.1 This GCA shall be governed by and construed in accordance with the laws of the Republic of the Philippines and the parties submit to the exclusive venue of the competent courts of Quezon City; provided, that prior to any resort to the filing of an action in court or any quasi-judicial body, the parties shall endeavor to amicably settle any dispute according to the provisions of Republic Act No. 9285, otherwise known as the *Alternative Dispute Resolution Act of 2004*; provided further, that disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto in accordance with Executive Order No. 1008, otherwise known as the *Construction Industry Arbitration Law*.

**IN WITNESS WHEREOF**, the parties to this GCA have hereunto set their hands on this page and on the left hand margin of each and every page thereof on the date and at the place first above written.

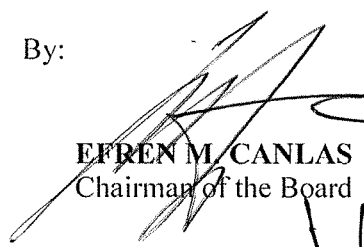
**UNIVERSITY OF THE PHILIPPINES**

**HILMARC'S CONSTRUCTION  
CORPORATION**

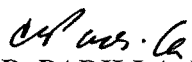

By:

  
**DR. TEODORO J. HERBOSA**  
Executive Vice President  
BY AUTHORITY OF THE PRESIDENT

By:


  
**EFREN M. CANLAS**  
Chairman of the Board

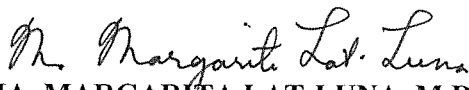
*Signed in the presence of:*


  
**CARMENCITA D. PADILLA, M.D., MAHPS**  
Chancellor, UP Manila 

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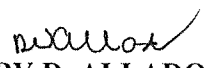
  
**GERARDO D. LEGASPI, M.D.**  
Director, Philippine General Hospital

  
**MA. TERESA JULIETA U. BENEDICTO, M.D.**  
Deputy Director for Administration, PGH

  
**MA. MARGARITA LAT-LUNA, M.D.**  
Deputy Director for Fiscal Services, PGH

  
**ENGR. GENESIS H. JIMENEZ**  
Chief, Office of Engineering & Technical Services, PGH

*CERTIFIED FUNDS AVAILABLE:*

  
**RUBY D. ALLADO**  
Chief, Budget Services Division, PGH



REPUBLIC OF THE PHILIPPINES)  
CITY OF MANILA ) S.S.  
CITY OF MAKATI

### ACKNOWLEDGMENT

BEFORE ME, a notary public for CITY OF MAKATI personally  
appeared on APR 06 2018, the following persons, presenting to me their  
respective competent evidence of identity, as indicated below:


Name	Government Issued ID No. (Passport, Driver's License, GSIS ID Card, COMELEC Voter's ID or PRC License)	Date / Place Issued
DR. TEODORO J. HERBOSA	_____	_____
EFREN M. CANLAS	<u>EC 6734085</u>	<u>15 Feb. 2016 / DFA NCR Northeast</u>

known to me and to me known to be the same persons who executed the foregoing instrument  
consisting of seventeen (17) pages including this page wherein this Acknowledgment is  
written, and acknowledged to me that the same is their free and voluntary act and deed, and  
of the institutions they respectively represent.

WITNESS MY HAND AND NOTARIAL SEAL on the date and place first  
mentioned.

### NOTARY PUBLIC

Doc. No. 337 ;  
Page No. 69 ;  
Book No. 717 ;  
Series of 2018.

  
**RUBEN T.M. RAMIREZ**  
NOTARY PUBLIC  
UNTIL DEC. 31, 2018/2019  
2086 E. PASCUA ST., MAKATI CITY  
IBP OR No. 017527 / NOV. 22, 2017 / CY 2018  
MCLE NO. V - 0025580 / SEPT. 8, 2017  
ROLL NO. 23047  
PTR NO. 6607723 / JAN. 3, 2018  
APPOINTMENT NO. M-127