

GENERAL CONSTRUCTION AGREEMENT
**(PROPOSED COMPLETION OF COVERED COURT UP MINDANAO, MINTAL,
TUGBOK DISTRICT, DAVAO CITY)**

KNOW ALL MEN BY THESE PRESENTS:

This Contract is executed by and between:

The **UNIVERSITY OF THE PHILIPPINES MINDANAO**, the national university of the Philippines, created by virtue of Act No. 1870, as amended and strengthened by Republic Act No. 9500, through its constituent university in Mindanao, with principal office at Administration Building, Mintal, Tugbok, Davao City, represented by its Chancellor, **DR. SYLVIA B. CONCEPCION, Ph.D.**, hereinafter referred to as the "**UNIVERSITY**";

and

MAG CORPORATION, an entity duly organized and existing under the laws of the Republic of the Philippines, with office address at Stall 10 BOR Building, #1 Ising, Carmen, Davao Del Norte represented herein by its Chairman of the Board, **ENGR. ARTHUR R. ABAD.**, hereinafter referred to as the "**CONTRACTOR**".

RECITALS:

The UNIVERSITY has a project entitled "**PROPOSED COMPLETION OF COVERED COURT UP MINDANAO, MINTAL, TUGBOK DISTRICT, DAVAO CITY**" (hereinafter, the "**PROJECT**").

A public bidding was conducted on **20 May 2015** in accordance with Republic Act No. 9184 and its Revised Implementing Rules and Regulations (IRR), where the CONTRACTOR was declared as the lowest calculated and responsive bid.

A Notice of Award dated **16 June 2015** was issued to the CONTRACTOR, who has accepted the PROJECT under a set terms and conditions, representing itself to be especially competent, skilled, and fully equipped with the necessary materials, manpower and equipment necessary for undertaking the PROJECT.

NOW THEREFORE, the parties agree as follows:

ARTICLE 1
SCOPE OF WORK

1.1 The CONTRACTOR shall:

- a. Supply and provide all labor, materials, tools and equipment, including power and water, transportation and other facilities, services, and all related work for the PROJECT, in accordance with the issued plans,

drawings, schedule, technical specifications and other related contract documents necessary to prosecute the work completion as called for in the Plans/Scope of Works.

- b. At its own expense, be responsible for the unloading, unpacking, and inspection of all materials, machinery and equipment delivered to the construction site, and shall also be responsible for the storage, control, transportation, safekeeping and any other necessary arrangements for such materials, machinery and equipment with site.
- c. Ensure adequate protection at all times of all materials, and equipment in 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 Agreement 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 Agreement.

ARTICLE II CONTRACT DOCUMENTS

2.1 The Following Contract Documents are made an integral part of this Agreement:

- a. General and Special Conditions of Contract (Annex "A");
- b. Drawings/Plans (Annex "B");
- c. Specifications (Annex "C");
- d. Invitations to Apply for Eligibility and to Bid (Annex "D");
- e. Instructions to Bidders (Annex "E");
- f. Bid Data Sheet (Annex "F");
- g. Addenda and/or Supplemental/Bid Bulletins, if any (Annex "G");
- h. Bid form, including all the documents/statements contained in the Bidder's bidding envelopes (Annex "H");
- i. Eligibility requirements, documents and/or statements (Annex "I");
- j. Performance Security (Annex "J");
- k. Credit line issued by a licensed bank, if any (Annex "K");
- l. Performance Security (Annex "L");
- m. Other contract documents that may be required by existing laws and/or the Entity (Annex "M");

2.2 The terms, conditions, stipulations and warranties under the Contract Documents are deemed part of this Agreement. 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 the UNIVERSITY for clarification and guidance. The clarification or determination made by the UNIVERSITY shall be binding and conclusive upon the parties.

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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 the UNIVERSITY.

2.4 The parties may, in writing, agree to any revision, alteration, or addition to the terms and conditions of this Agreement or the Contract Documents.

ARTICLE III CONTRACT PRICE

3.1 For and in consideration of the performance and accomplishment of the PROJECT, the UNIVERSITY shall pay the CONTRACTOR the total amount of **One Million Four Hundred Twenty Three Thousand Nine Hundred Thirty Four & 68/100 (PhP1,423,934.68)**.

3.2 The Contract Price is inclusive of all duties, taxes, license premiums, fees and charges which may accrue by virtue of the PROJECT, such as, but not limited to 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 fees shall be for the account of the CONTRACTOR. Any exemption in the payment of the foregoing shall be credited to the UNIVERSITY. The CONTRACTOR is obligated to inform the UNIVERSITY 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 Agreement including notarial fees.

3.3 No changes shall be made on the Contract Price by reason of escalation in the currency, the price of materials, tools, equipment or labor supervening during the course of the PROJECT, except under conditions specified by law. Any adjustments in the Contract Price shall be subject to provisions of the applicable law.

3.4 The payment of escalation costs shall be subject to the unilateral and written approval of the UNIVERSITY and to the availability of funds.

3.5 Should the UNIVERSITY require the CONTRACTOR to perform any variation order in the form of a change order, or extra work order, the additional costs 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%). In exceptional cases, where it is urgently necessary to complete the original scope of work, the UNIVERSITY 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 the Campus Architect before execution or implementation.

3.7 Any amount payable to the CONTRACTOR may be compensated against liquidated damages payable to the UNIVERSITY under this Agreement.

**ARTICLE IV
TIME OF COMPLETION**

4.1 The CONTRACTOR shall perform and complete the PROJECT to the satisfaction of the UNIVERSITY within SIXTY (60) CALENDAR DAYS which shall be reckoned in accordance with the Notice to Proceed.

4.2 Time being of the essence of 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 the UNIVERSITY, or for any other circumstance as may be determined by the UNIVERSITY.

4.3 Force Majeure is defined as any circumstances beyond control of the parties, which directly prevent 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 orders of competent authority, civil disorder, war or other hostilities.

4.4 Should there arise any circumstance provided in 4.2 above which affects the performance of its obligations, the party concerned shall notify the other in writing setting forth such facts and circumstances within five (5) days of its occurrence. Should there be need to extend the period of compliance with its obligations, both parties shall agree on a reasonable period within which to comply with the undertaking. Any other request for extension by the CONTRACTOR may be granted or denied by the UNIVERSITY at its sole discretion.

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 the UNIVERSITY 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 any such steps unless authorized in writing by the UNIVERSITY.

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-contractor's 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 Should delay or default be due to any cause attributable to the CONTRACTOR, the CONTRACTOR shall be liable to pay liquidated damages in accordance with Annex "E" paragraph 8, in relation to Section 68, of the Implementing Rules and Regulations of R.A. No. 9184. The UNIVERSITY shall have the sole option to demand payment of, or deduct such damages from any amounts due to CONTRACTOR. The UNIVERSITY shall notify the CONTRACTOR in writing of its choice of action under this section.

4.8 The provisions on liquidated damages notwithstanding, the UNIVERSITY has the right to take all necessary and appropriate steps to effect an immediate takeover of the construction work either by itself or by another contractor, to forfeit the Performance Bond, and to 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 the UNIVERSITY under any of the following circumstances:

- a. If the progress of the work is delayed at least twenty percent (20%) of the contract period plus any extension duly granted, or does not conform with the work schedule such that from all indications the CONTRACTOR may not be able to complete the PROJECT within the stipulated time; or
- b. If CONTRACTOR violates any of the conditions, warranties, or covenants under this Agreement.

4.9 In the event of takeover, whatever contracts entered into by the CONTRACTOR in the pursuit of its obligations under this Agreement which the UNIVERSITY may want to assume are hereby deemed assigned to the UNIVERSITY, provided that the UNIVERSITY shall not be liable for unpaid obligations previously incurred by the CONTRACTOR prior to the takeover. The right of the UNIVERSITY to take over the PROJECT shall be without prejudice to its rights under paragraph 4.8 and other rights and legal remedies it may be entitled to.

4.10 The lawful occupation by the UNIVERSITY 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 BOND

5.1 The Performance Bond submitted by the CONTRACTOR in the amount of **FOUR HUNDRED TWENTY SEVEN THOUSAND ONE HUNDRE EIGHTY & 40/100 pesos only (Php427,180.40)**, shall be coterminous with the date of final acceptance of the PROJECT by the UNIVERSITY.

5.2 If the PROJECT cannot be completed within the period prescribed under Section 4.1 to the satisfaction of the University 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 until final acceptance of the PROJECT is made.

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

5.4 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.

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5.5 Until and unless the CONTRACTOR shall have complied with Sections 5.3 and 5.4, the UNIVERSITY shall withhold all payments due to the CONTRACTOR.

**ARTICLE VI
PAYMENTS**

6.1 The University shall, upon a written request of the CONTRACTOR which shall be submitted as a contract document, make an advance payment to the CONTRACTOR in an amount not to exceed twelve percent (12%) of the total contract price, to be made in lump sum, or at the most, two (2) installments according to a schedule specified in the instructions to Bidders and other relevant Tender Documents.

6.2 The advance payment shall be repaid by the CONTRACTOR by deducting a percentage equal to that used for the advance payment from the periodic progress payments to be made to the Contractor.

6.3 The advance payment shall be made only upon the submission to and acceptance by the UNIVERSITY of an irrevocable standby letter of credit of equivalent value from a commercial bank or a guarantee payment bond, callable on demand, issued by a surety or insurance company duly licensed by the Office of the Insurance Commissioner and confirmed by the implementing agency.

6.4 The UNIVERSITY shall pay the CONTRACTOR progress payments based on billings for actual works accomplished as certified by the Physical Plan Office of the University. In no case shall progress billings be made more than once every thirty (30) calendar days. Material or equipment delivered on the site but not completely put in place or used in the PROJECT shall not be included for payment.

6.5 All progress payments shall be subject to a retention fee of ten percent (10%). Such retention shall be based on the amount due to the CONTRACTOR prior to deductions and works, as determined by the UNIVERSITY, is completed. If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made, otherwise, the 10% retention shall be imposed. The CONTRACTOR may, however, request for its release/substitution prior to Final Acceptance subject to the guidelines set forth in R.A. No. 9184 and its implementing Rules and Regulations.

6.6 In addition to the 10% retention mentioned above, the UNIVERSITY reserves the right to deduct from the progress billing of the CONTRACTOR such amount as may be necessary to cover third party liabilities, as well as uncorrected discovered defects in the project in the event that the costs of such liabilities as well as uncorrected discovered defects in the project exceed the 10% already retained by the UNIVERSITY.

6.7 The UNIVERSITY 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 material used and labor employed in connection with the PROJECT have been duly paid. Final payment shall be made within the reasonable period upon the Final Acceptance by the UNIVERSITY.

6.8 No payment made by the UNIVERSITY shall be construed as a waiver of any claim of defects in the work materials, or breach of obligations under the Agreement. Acceptance by the CONTRACTOR of final payment shall be deemed a waiver of all its claims, except those that might have been 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.

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 Agreement or part of the Contract Documents are contrary to any law, rule or regulation, the CONTRACTOR shall immediately notify the UNIVERSITY in writing and comply with the instructions to be given by the UNIVERSITY.

7.4. The CONTRACTOR shall take all precautionary measures to ensure that 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 and guarantees that all materials to be used for the PROJECT are new, free from hidden defects, fully complies in every respect with the specifications, approved samples, 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 the UNIVERSITY. The CONTRACTOR hereby holds the UNIVERSITY 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 the UNIVERSITY and the same cannot be removed and replaced, the CONTRACTOR shall credit the UNIVERSITY 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 and guarantees that the works done under this Agreement, including those performed by sub-contractors, if any, shall be free from any defect, shrinkage, or other default 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, or shrinkage, or fault to the satisfaction of the UNIVERSITY. In case of deviations, defects, shrinkages, faults or deficiencies in the work are not remedied to the satisfaction of the UNIVERSITY within a reasonable time, the UNIVERSITY shall, without prejudice to any other right or remedy, cause the repair or correction to be made for the sole 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. Violations of the warranties under this section shall entitle the UNIVERSITY to pre-terminate this Agreement by mere written notice to the CONTRACTOR effective upon receipt thereof.

7.7. The CONTRACTOR shall leave the work in good order upon completion.

7.8. The CONTRACTOR shall be responsible for the storage and safekeeping of all UNIVERSITY-supplied materials, if any, fully turned over to its custody by the UNIVERSITY.

7.9. 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 Agreement.

7.10. The CONTRACTOR shall hold the UNIVERSITY free and harmless from and binds and obligates itself to indemnify the UNIVERSITY for liabilities, losses, damages, injuries, including deaths, claims, demands, suits, proceedings, judgments, awards, fines, penalties, and all expenses of whatever kind and nature arising from and by reason of this Agreement, due to its negligence, act, omission, delay, conduct, breach of trust or non-observance or violation of this Agreement, or those of its employees, agents, representatives, or sub-contractors.

**ARTICLE VIII
GUARANTEE BOND**

8.1 The CONTRACTOR shall furnish the UNIVERSITY with a Guarantee Bond in an amount equal to ten percent (10%) of the Contract Price, 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 UNIVERSITY may incur to make good defects in workmanship or materials that may become evident within one (1) year from the date of Final Acceptance.

**ARTICLE IX
INSURANCE**

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

**ARTICLE X
CERTIFICATE OF FINAL ACCEPTANCE**

10.1. The UNIVERSITY 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 the UNIVERSITY.

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10.2. 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.

10.3. Before issuance of the Certificate of Final Acceptance, the CONTRACTOR must submit a sworn statement that all payrolls, materials, bills and other indebtedness and obligations for the PROJECT have been fully and duly paid. Any claim submitted to the UNIVERSITY at any time by any party arising from this Agreement shall be sufficient reason for the UNIVERSITY to withhold any payment due to the CONTRACTOR.

10.4. The issuance of a Certificate of Final Acceptance by the UNIVERSITY shall not relieve the CONTRACTOR of any liability for any defect in the work or from Article 1723 of the New Civil Code.

ARTICLE XI ASSIGNMENT AND SUB-CONTRACTING

11.1. 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 UNIVERSITY. 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 sub-contractor, pledge, transferee, or assignee and the UNIVERSITY.

11.2. 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 by the UNIVERSITY, at the option of the UNIVERSITY.

ARTICLE XII NO EMPLOYER-EMPLOYEE RELATIONSHIP

12.1 The relationship of the UNIVERSITY to the CONTRACTOR is that of an independent contractor. Nothing in this Agreement shall be construed as creating an employer-employee relationship between the UNIVERSITY and the CONTRACTOR, its sub-contractors, employees, agents or workers.

ARTICLE XIII INDEMNIFICATION

13.1 The CONTRACTOR shall indemnify, hold free and harmless and defend its own expense the UNIVERSITY 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 sub-contractors in the performance of any activity in connection with the PROJECT, including those that may be initiated by its employees, workers, agents, sub-contractors or by any other entity against the UNIVERSITY by reason of or in connection with the PROJECT.

damages plus twenty five percent (25%) of the total amount of damages sought as attorney's fees.

15.5. The damages provided under the immediately preceding section are without prejudice to such other damages provided herein and under applicable laws.

**ARTICLE XVI
SETTLEMENT OF DISPUTES**

1. All disputes, controversies or claims arising out of or relating to this contract, or about its breach, termination or invalidity shall be settled through negotiation and/or mediation within sixty (60) days from the receipt of a notice by the other party from the party injured.
2. All such conflicts which cannot be decided by the negotiation and/or mediation shall be decided by the arbitration in accordance with the rules of arbitration contained in the UNICITRAL Model Law as adopted in Republic Act No. 9285 or the ADR Law of 2004.
3. For this purpose, there shall be three (3) arbitrators with each party appointing one each, and those appointed selecting the third arbitrator who shall be the chair of the arbitral panel. The appointing authority mentioned in Article 6 of the UNICITRAL Model Law and Article 26 of Republic Act No. 9285 shall be the Commissioner on Higher Education.
4. The place of arbitration shall be in UP Diliman, Quezon City without prejudice to holding hearings in another place for the convenience of the witnesses that may be presented by the parties. The language of the arbitration shall be in English or Filipino.
5. Each party shall deposit half of the costs for arbitration that will be determined by the arbitration panel without prejudice to recovering such costs that may be awarded in the Arbitration Award.

IN WITNESS WHEREOF, the parties have affixed their signatures this 10 day of JUL 10 2015 2015 at Davao City, Philippines.

in spirit

UNIVERSITY OF THE PHILIPPINES
MINDANAO

By:

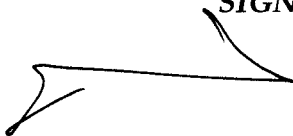

DR. SYLVIA B. CONCEPCION, Ph.D
Chancellor

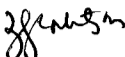
MAG CORPORATION

By:


ENGR. ARTHUR R. ABAD.
Contractor

SIGNED IN THE PRESENCE OF


ANTONIO R. OBSIOMA
Vice Chancellor for Administration
U.P. Mindanao


ZENAIDA G. CALATRAVA, CPA
Chief, Accounting Office
U.P. Mindanao

ACKNOWLEDGMENT

Republic of the Philippines)
Davao City)S.S.

BEFORE ME, a Notary Public for and in the City of Davao, this _____ personally appeared with their government issued identification:

SYLVIA B. CONCEPCION
ENGR. ARTHUR R. ABAD.

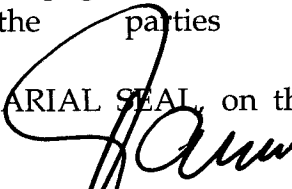
TIN 110-837-312-000

known to me to be the same persons who executed the foregoing instruments and acknowledged to me that the same are their free and voluntarily act and deed and that of the entities they respectively represent in this instance.

The foregoing contract, including the page on which this acknowledgment is written, has been signed by the parties and their witnesses.

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

Doc. No. 146
Page No. 20 ;
Book No. V ;
Series of 2015


ATTY. MARK EVARRA M. GARCIA
NOTARY PUBLIC
UNTIL DECEMBER 31, 2015
PTR OR NO. 5312249-01-05-2015
IBP O.P. NO. 364557-01-05-2015
ROLL OF ATTORNEYS NO 56172



