

CONSTRUCTION CONTRACT

KNOW ALL MEN BY THESE PRESENTS:

This contract is made and entered in the City of Pasig, Metro Manila, by and between:

THE CITY OF PASIG, a Local Government Unit duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at City Hall, Caruncho Avenue, Pasig City, herein represented by **HON. VICTOR MA. REGIS N. SOTTO**, in his capacity as City Mayor;

- and -

FMSTARCONST. AND BUILDERS INCORPORATED, a domestic company duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at **TAYTAY RIZAL**, herein represented by **FERNANDO SAN GABRIEL DE LEON**, Authorized Representative, hereinafter referred to as the **CONTRACTOR**.

WHEREAS, the Bids and Awards Committee (BAC) of the CITY OF PASIG conducted **NEGOTIATED PROCUREMENT – Small Value Procurement (Sec. 53.9)** via submission of sealed quotations for the **CONSTRUCTION OF CHB LINED CANAL ALONG KAWILIHAN ST., BRGY. CANIOGAN, PASIG CITY**.

WHEREAS, during the opening of sealed quotations on **11 DECEMBER 2023**, the **CONTRACTOR** was found to have submitted the single/lowest calculated responsive quotation in the amount of **FOUR HUNDRED EIGHTY-SEVEN THOUSAND FIVE HUNDRED THIRTY-FOUR AND 72/100 PESOS (PHP 487,534.72)**.

WHEREAS, the CITY OF PASIG has awarded the project to the **CONTRACTOR** in accordance with the Implementing Rules and Regulations of Republic Act No. 9184.

NOW, THEREFORE, in view of the foregoing, and in consideration of their mutual covenants and undertakings, the parties hereto have agreed as follows:

ARTICLE I **DOCUMENTS COMPRISING THE CONTRACT**

The following documents shall be deemed as an integral part of this contract and by the terms and conditions embodied therein are deemed reproduced by way of reference and/or incorporation:

1. Approved Plans and Specifications
2. Certification of Availability of Fund
3. Bids Abstract Notice-Request for Quotation (RFQ)
4. Contractor's Proposal
5. Addenda and / or Supplemental / Bid Bulletins, if any
6. Abstract of Quotation
7. Resolution of Award
8. Notice of Award and Conformity of the Contractor
9. Approved Budget for the Contract / Program of Work
10. Bar Chart PERT / CPM Network Diagram and Cash Flow
11. Performance Bond
12. Certification of Service Contract of Registered Licensed Engineer who will be in – charge and responsible for the project
13. Certification of List of Equipment which should be used for the project and specified whether owned or leased

Recommending Approval:

ENGR. ARTAXERXES V. GERONIMO
Officer in Charge Engineering Office

Fernando San Gabriel de Leon
FERNANDO SAN GABRIEL DE LEON
Authorized Representative

ARTICLE II
SCOPE OF WORK

The CONTRACTOR shall fully and faithfully furnish all necessary labor, materials and equipment, tools and appliance/s for the various items of work described in the Bill of Quantities.

ARTICLE III
CONTRACT PRICE

In consideration for the work to be undertaken by the CONTRACTOR specified in Article II hereof, the LOCAL GOVERNMENT shall pay the CONTRACTOR the fixed amount of **FOUR HUNDRED EIGHTY-SEVEN THOUSAND FIVE HUNDRED THIRTY-FOUR AND 72/100 PESOS (PHP 487,534.72)**.

ARTICLE IV
PERFORMANCE SECURITY

Before the signing of this Contract, the CONTRACTOR shall have submitted a Performance Security in favor of the CITY OF PASIG in any of the following forms:

1. Cash or cashier's/manager's check issued by a Universal or Commercial Bank. The cashier/manager's check may be issued by other banks certified by the Bangko Sentral ng Pilipinas (BSP) as authorized to issue such financial instrument. - in the amount of ten percent (10%) of the Total Contract Price or **FORTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY-THREE AND 47/100 PESOS (PHP 48,753.47)**; or
2. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank. The same shall be confirmed or authenticated by a Universal or Commercial Bank if issued by a foreign bank. The bank draft/guarantee, or irrevocable letter of credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument. - in the amount of ten percent (10%) of the Total Contract Price or **FORTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY-THREE AND 47/100 PESOS (PHP 48,753.47)**; or
3. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security. - in the amount of thirty percent (30%) of the Total Contract Price or Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security. - in the amount of thirty percent (30%) of the Total Contract Price or Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security. - in the amount of thirty percent (30%) of the Total Contract Price or Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security. - in the amount of thirty percent (30%) of the Total Contract Price or **ONE HUNDRED FORTY-SIX THOUSAND TWO HUNDRED SIXTY AND 42/100 PESOS (PHP 146,260.42)**.

ARTICLE V
CONTRACT TIME

The CONTRACTOR shall commence work upon receipt of the Notice to Proceed and shall complete the project within **SIXTY (60)** from receipt of the Notice to Proceed, inclusive of Saturdays, Sundays and legal Holidays.

Recommending Approval:


ENGR. ARTAXENES V. GERONIMO
Officer in Charge Engineering Office


FERNANDO SAN GABRIEL DE LEON
Authorized Representative

ARTICLE VI
NEGATIVE SLIPPAGE

To ensure the timely implementation of the project and the effective management of the performance of the CONTRACTOR, the following calibrated actions in response to delays in the implementation of the project are hereby adopted:

1. Negative slippage of five percent (5%) –

The CONTRACTOR shall be given a warning and be required to:

- a. Submit a detailed "catch-up" program every two weeks in order to eliminate the slippage and to restore the project to its original schedule;
- b. Accelerate work and identify specific physical targets to be accomplished over a definite period of time; and
- c. Provide additional input resources such as the following: money, manpower, materials, equipment, and management, which shall be mobilized for this action.

The CITY OF PASIG through the City Engineering Office shall exercise closer supervision and meet the contractor every other week to evaluate the progress of work and resolve any problems and bottlenecks.

2. Negative slippage of ten percent (10%)–

The CONTRACTOR shall be issued a final warning and be required to come-up with a revised detailed "catch-up" program with weekly physical targets together with the required additional input resources.

The CITY OF PASIG through the City Engineering Office shall intensify on-site supervision and evaluation of the project performance to at least once a week and prepare contingency plans for a possible termination of the contract or take-over of the work by administration or contract.

3. Negative slippage of fifteen percent (15%) –

The CITY OF PASIG through the City Engineering Office and the recommendation of the relevant Contract Termination and Review Committee shall initiate termination of the contract or take-over of the work by administration or contract in accordance with Section 53.3 of the IRR of RA No. 9184 and the Revised Guidelines for the Implementation of Infrastructure Projects by Administration.

The CITY OF PASIG shall likewise take proper transitory measures to minimize work disruptions, e.g., take-over by administration while negotiation or rebidding is on-going.

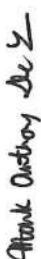
ARTICLE VII
LIQUIDATED DAMAGES

The CONTRACTOR shall complete the construction of the project as stipulated in Article V hereof. If the CONTRACTOR fails to complete the same within the stipulated time, the CONTRACTOR shall pay the CITY OF PASIG Liquidated Damages (LD) in an amount equal to at least one tenth (1/10) of one percent (1%) of the unperformed portion of the works for every day of delay.

In case the delay in the completion of the work exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the CONTRACTOR, the city may rescind the contract, forfeit the contractor's Performance Security and takeover the project or award the same to a qualified contractor through negotiated contract.

Recommending Approval:

ENGR. ARTAXERXES V. GERONIMO
Officer in Charge Engineering Office


FERRANDO SAN GABRIEL DE LEON
Authorized Representative

In case the total sum of liquidated damages reaches ten percent (10%) of the total Contract Price, the CITY OF PASIG has the following options:

(i) Terminate the contract pursuant to the Guidelines on Termination of Contracts and forfeit the erring contractor's performance security. After termination, the CITY OF PASIG may either (i) take over the contract; or (ii) resort to any of other alternative methods of procurement provided under R.A. No. 9184 and its implementing rules and regulations; or

(ii) Allow the contractor to continue the works without prejudice to the continued imposition of liquidated damages until the works have been completed. This does not, however, preclude the CITY OF PASIG from resorting to termination of the contract under R.A. No. 9184 and its implementing rules and regulations.

ARTICLE VIII PROGRESS PAYMENT AND RETENTION MONEY

Once a month, the contractor may submit a statement of work accomplished (SWA) or progress billing and corresponding request for progress payment for work accomplished. The SWA should show the amounts which the contractor considers itself to be entitled to up to the end of the month, to cover (a) the cumulative value of the works it executed to date, based on the items in the Bill of Quantities, and (b) adjustments made for approved variation orders executed.

The CITY OF PASIG shall check the CONTRACTOR's SWA and certify the amount to be paid to the contractor as progress payment. 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.

The procuring entity shall deduct the following from the certified gross amounts to be paid to the contractor as progress payment:

- a) Cumulative value of the work previously certified and paid for.
- b) Portion of the advance payment to be recouped.
- c) Retention money in accordance with the condition of contract.
- d) Amount to cover third party liabilities.
- e) Amount to cover uncorrected discovered defects in the works.

No payments shall be made to the CONTRACTOR unless a certificate of accomplishment is issued by the CITY OF PASIG, fully supported with an affidavit by the CONTRACTOR that all costs for labor and materials within the relevant period are fully paid by the CONTRACTOR.

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

The Total Retention Money shall be due for release upon Final Acceptance of the works. However, the CONTRACTOR may request the substitution of the Retention Money for each progress billing with irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand of amounts equivalent to the retention money substituted for and Acceptable to Government 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 or surety bonds to be posted in favor of the CITY OF PASIG shall be valid for a duration to be determined by the CITY OF PASIG and will answer for the purpose for which the ten percent (10%) retention is intended, i.e. to cover uncorrected defects and third party liabilities.

Recommending Approval:
ENGR. ARTAXELYES V. GERONIMO
Officer in Charge Engineering Office

Mark Anthony De Leon
FERNANDO SAN GABRIEL DE LEON
Authorized Representative

ARTICLE IX WARRANTY

The CONTRACTOR shall assume full responsibility for the contract work from the time project construction commenced up to final acceptance by the CITY OF PASIG. During such period, the CONTRACTOR shall be held responsible for any damage or destruction of the works, except those occasioned by *force majeure*. The CONTRACTOR shall be required to put up a warranty security in any of the following forms:

1. 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. The Letter of Credit may be issued by other banks certified by the Bangko Sentral ng Pilipinas (BSP) as authorized to issue such financial instrument. - in the amount of five percent (5%) of the Total Contract Price or **TWENTY-FOUR THOUSAND THREE HUNDRED SEVENTY-SIX AND 74/100 PESOS (PHP 24,376.74)**; or
2. Bank guarantee confirmed by a Universal or Commercial Bank. The bank draft/guarantee may be issued by other banks certified by the BSP as authorized to issue such financial instrument. - in the amount of ten percent (10%) of the Total Contract Price or **FORTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY-THREE AND 47/100 PESOS (PHP 48,753.47)**; or
3. Surety bond callable upon demand issued by the Government Service Insurance System or a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security. - in the amount of thirty percent (30%) of the Total Contract Price or **ONE HUNDRED FORTY-SIX THOUSAND TWO HUNDRED SIXTY AND 42/100 PESOS (PHP 146,260.42)**.

The Warranty Security shall be denominated in Philippine Pesos, shall remain effective for one (1) year from the date of issuance of the Certificate of Final Acceptance by the CITY OF PASIG, and shall be returned only after the lapse of the said one (1) year period.

ARTICLE XI ADDITIONAL PROVISIONS

1. The CITY OF PASIG shall not be liable for any violation of labor laws in connection with the employer-employee relationship between the CONTRACTOR and his/her/its workers and/or employees.
2. Republic Act No. 9184, its Implementing Rules and Regulations and such other laws, decrees, letters of instructions, codes, and memorandum circulars affecting infrastructure projects in local government units shall form part of this Contract.
3. The CONTRACTOR shall comply with City Ordinance No. 026, series of 2004 and/or any other law or City Ordinance providing preferential rights to bona fide residents of **BRGY. CANIOGAN** and/or Pasig City for employment in the project. Such preferential right shall cover at least eighty percent (80%) of the total personnel needs for the project.
4. The CONTRACTOR shall be solely liable for any injury, hospitalization, death, or damage to properties as a consequence of the implementation of the project. The CONTRACTOR shall settle all his/her/its financial obligations to other suppliers/dealers within thirty (30) days from due date; otherwise the amount shall be deducted from all his/her/its receivables/collectibles from the CITY OF PASIG in relation to the project.

Recommending Approval:

ENGR. ARTAJERKES V. GERONIMO
Officer in Charge Engineering Office

Approved: *Fernando San Gabriel de Leon*
FERNANDO SAN GABRIEL DE LEON
Authorized Representative

5. In case of disallowance of claim for payment or its equivalent by the Commission on Audit or any other competent body/tribunal, the CONTRACTOR shall reimburse the CITY OF PASIG for such disallowed amount and/or the CITY OF PASIG may deduct any such amount from the CONTRACTOR's receivables/collectibles from the CITY OF PASIG in relation to the project or any other project with the CITY OF PASIG.
6. Any dispute, controversy or claim arising out of or relating to this Contract, or the breach, termination or invalidity thereof shall be settled by arbitration before the Construction Industry Arbitration Commission (CIAC) in accordance with the CIAC Rules of Procedure Governing Construction Arbitration then in force.
7. The CONTRACTOR shall pay taxes in full and on time, and failure to do so will entitle the CITY OF PASIG to suspend payment for any good or service delivered. The CONTRACTOR shall regularly present upon demand by the CITY OF PASIG any tax clearance, income and other tax returns duly stamped and received by the BIR, and duly validated with the tax payments made thereon. (Executive Order No. 398 series of 2005).
8. In case of Variation or Change Order relating to the materials or scope of work implemented by the CONTRACTOR without the approval of the CITY OF PASIG, the entire project cost will not be paid by the CITY OF PASIG. Any monies and/or materials used shall be forfeited in favor of the CITY OF PASIG.
9. Any increase in the cost of construction materials and/or labor are not the responsibility of the CITY OF PASIG. The same are hereby excluded as an obligation of the CITY OF PASIG in this contract.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed in accordance with the laws of the Republic of the Philippines

CITY OF PASIG

**FMSTARCONST. AND
BUILDERS INCORPORATED**
Contractor

By:


HON. VICTOR MA REGIS N. SOTTO
City Mayor

By:


FERNANDO SAN GABRIEL DE LEON
Authorized Representative

Signed in the presence of:

Funds Obligated:


MS. JUVY A. CUENCO

City Accountant
100-2023-03-0091-1999

Signature Over Printed Name

Recommending Approval:


ENGR. ARTAXERXES V. GERONIMO

Officer in Charge City Engineering Office

Signature Over Printed Name

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
City of Manila) S.S.

BEFORE ME, a Notary Public for and in the City of Pasig, on this day of 01 FEB 2024, personally appeared:

Name	Government ID	Issue and Expiry Date
FERNANDO SAN GABRIEL DE LEON	NATIONAL I.D.	

3819-4063-708-2392

Known to me to be the same person who executed the foregoing Construction Contract consisting of Seven (7) pages, and who acknowledged to me that the same is their own free and voluntary act and deed as well as the free and voluntary act and deed of the entity they duly authorized to represent.

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

Doc. No. 87
Page No. 18
Book No. 11
Series of 2024.

Lolita W. McDonough-Lim
ATTY. LOLITA W. MCDONOUGH-LIM

Notary Public until Dec. 31, 2024
Pasig City and Pateros Metro Manila
Appointment No. 49 (2023-2024)
PTR No. 1504029/Jan. 02, 2024
IBP No. 329439/12-16-2023 for the Year 2024/RSM
MCLE Exemption No. VIII-IPD000051
Roll of Attorney No. 34423

ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in the City of Pasig on this day of 26 FEB 2024, Personally appeared Victor Ma. Regis N. Sotto, known to me and to be is known to be the same person who executed the foregoing instrument and who acknowledged to me that the same is his free and voluntary act and deed as well as that of the entity he represents.

This Instrument consists of seven page/s, including this page in which this Acknowledgment is written and duly signed by the Parties.

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

Doc. No. 172
Page No. 36
Book No. 16
Series of 2024.

Lolita W. McDonough-Lim
ATTY. LOLITA W. MCDONOUGH-LIM

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