

NOTICE TO PROCEED**MIESCOR BUILDERS, INC.**

No. 2 Anonas Ext., Sikatuna Village, Quezon City
Telefax: 920-9825; 434-6278

Ms. Maxima B. Agbalog
Head, Marketing

Dear Madam,

The attached Contract Agreement having been approved, notice is hereby given to **Miescor Builders, Inc.** that work may proceed on the project for **"Supply of Labor and Materials for the Development of Elevated Test Track and Construction of Test Frame for the Automated Guide-way Transit (AGT) System for Taguig City"**, effective upon receipt hereof.

Upon receipt of this notice, you are responsible for performing the services under the terms and conditions of the Agreement and in accordance with the Implementation Schedule.

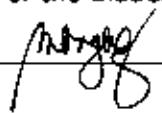
Please acknowledge receipt and acceptance of this notice by signing both copies in the space provided below. Keep one copy and return the other to Metals Industry Research and Development Center.

Very truly yours,


ARTHUR LUCAS D. CRUZ, CESO IV
Executive Director

I acknowledge receipt of this Notice on OCTOBER 09, 2012 (date of receipt)

Name of the Representative of the Bidder: MAXIMA B. AGBALOG

Authorized Signature: 

The Head of the Procuring Entity or his duly authorized representative shall issue the Notice to Proceed within seven (7) calendar days from the date of the approval of the contract.

GENERAL CONSTRUCTION CONTRACT

For the "Supply of Labor and Materials for the Development of Elevated Test Track for the Automated Guide-Way Transit (AGT) System Prototype for Taguig City" and "Supply of Labor and Equipment for the Construction of AGT Elevated Track Test Frame"

KNOW ALL MEN BY THESE PRESENTS:

This AGREEMENT made and executed by and between:

The **METALS INDUSTRY RESEARCH AND DEVELOPMENT CENTER**, an attached agency under the **DEPARTMENT OF SCIENCE AND TECHNOLOGY**, with office address at Gen. Santos Avenue, Bicutan, Taguig, represented herein by its Deputy Executive Director for Technical Services, **AGUSTIN M. FUDOLIG**, hereinafter referred to as "**MIRDC**";

--- and ---


The **MIESCOR BUILDERS INC.**, a corporation duly existing and organized under and by virtue of the Republic of the Philippines, with office address at No. 2 Anonas Ext., Sikatuna Village, Quezon City, represented herein by its President, **JESUS P. FRANCISCO**, hereinafter referred to as the "**CONTRACTOR**,"

WITNESSETH:

WHEREAS, MIRDC is undertaking the "Development of Elevated Test Track for the Automated Guide-way Transit (AGT) System Prototype for Taguig City and Construction of AGT Elevated Track Test Frame" hereinafter referred to as the **PROJECT**;

WHEREAS, MIRDC conducted a public bidding on July 4, 2012 in accordance with the Government Procurement Reform Act (R.A. 9184) and its Implementing Rules and Regulations and, after evaluating all the bids submitted by the bidders, awarded the project to **CONTRACTOR**.

WHEREAS, a Notice of Award was issued to the **CONTRACTOR** who has accepted the **PROJECT** under set terms and conditions and warrants itself to be competent and fully equipped with the necessary materials, manpower and equipment necessary for undertaking the **PROJECT**;



WHEREAS, Deputy Executive Director for Technical Services AGUSTIN M. FUDOLIG was authorized to execute and sign this General Construction Contract through Referendum No. 26 dated September 28, 2012 by the MIRDC Governing Council;

NOW, THEREFORE, for and in consideration of the foregoing premises the PARTIES have agreed as follows:

ARTICLE I
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 to completion.

b. At its own expenses, be responsible for the unloading, unpacking, and inspection of all contract-furnished materials, machinery, and equipment delivered to the construction site, and shall also be responsible for the 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 in the construction site against damage, robbery, and pilferage, and shall be responsible for any damage or loss.

d. Construct/perform and erect the elevated test track for the Automated Guideway Transit System for Taguig City and AGT elevated track test frame, which shall be monitored using their respective Work Plan/Schedule.

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 documents are incorporated hereto and made an integral part of this Agreement, to wit:

(a) General and Special Conditions of Contract;

- (b) Drawings/Plans;
- (c) Specifications or Terms of Reference;
- (d) Invitation to Apply for Eligibility and 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;
- (i) Eligibility requirements, documents and/or statements;
- (j) Performance Security;
- (k) Credit line issued by a licensed bank, if any;
- (l) Notice of Award of Contract and the Bidder's *conforme* thereto;
- (m) Other contract documents that may be required by existing laws and/or by MIRDC.

2.2 In case of doubt or conflict between and among any items or provisions of the Contract Documents, and/or between and among any of the Contract Documents and this Agreement, CONTRACTOR shall refer the same in writing to MIRDC for clarification and guidance. The clarification or determination made by MIRDC shall be binding and conclusive upon the Parties.

2.3 The CONTRACTOR shall not make any changes or alteration in the plans, conditions, and specifications of the PROJECT without prior written approval by MIRDC.

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, MIRDC shall pay the CONTRACTOR the total amount of **PESOS THIRTY SEVEN MILLION SIX HUNDRED EIGHTY THOUSAND and 00/100 only (Php 37,680,000.00)** subject to pertinent laws on government contracts and auditing procedures.

3.2 The Contract Price is inclusive of all duties, taxes and levies, licenses and permits payable by CONTRACTOR under the Contract, or for any other cause.

3.3 No changes shall be made on the Contract Price by reason of escalation in currency, the price of materials, tools, equipment, or labor arising during the course of the

PROJECT, except under conditions specified by law. Any adjustments in Contract Price shall be done in accordance with the guidelines provided by law.

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

ARTICLE IV
TIME OF COMPLETION AND
LIQUIDATED DAMAGES FOR DELAY

4.1 The CONTRACTOR shall perform and complete the PROJECT to the satisfaction of MIRDC within **TWO HUNDRED FIFTY (250) CALENDAR DAYS** in accordance with the Work Plan/Schedule.

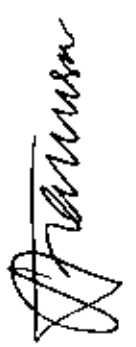
4.2 Time being of the essence of the PROJECT, delay in the completion of the PROJECT may be excusable only if the same is due to *force majeure*, additional work approved by MIRDC, or for any other special circumstances as may be determined by MIRDC.

4.3 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 MIRDC 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 MIRDC written notice of the steps it proposes to take, including any reasonable alternative means for the performance of its obligations. The CONTRACTOR shall not make any such steps unless authorized in writing by MIRDC.

4.6 Where the CONTRACTOR refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is in default under the contract, the CONTRACTOR shall pay MIRDC liquidated damages at the rate of one-tenth of one percent of the cost of unperformed portion of the works for every day of delay. MIRDC may deduct liquidated damages from payments due to the CONTRACTOR.

4.7 In case the delay in the completion of the works exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension granted to the CONTRACTOR, or the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of this Agreement, MIRDC shall rescind this Agreement and forfeit the performance security, without prejudice to other courses of action and remedies open to it.



ARTICLE V
PERFORMANCE and WARRANTY SECURITY

5.1 The Performance Bond submitted by CONTRACTOR shall remain valid until the issuance of the final Certificate of Acceptance. It may be released after the issuance of the Certificate of Final Acceptance subject to conditions mandated by law. It shall be in the form and amount prescribed under the Contract Documents or applicable laws, rules and regulations.

5.2 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, as the case may be.

5.3 If the CONTRACTOR cannot complete the PROJECT within the period prescribed under Section 4.1, the CONTRACTOR shall cause the extension of the validity of the Performance Security to cover contract time extensions until final acceptance of the PROJECT.

5.4 Until and unless the CONTRACTOR shall have complied with Section 5.2 and/or 5.3 hereof, as the case may be, MIRDC shall withhold all payments due the CONTRACTOR.

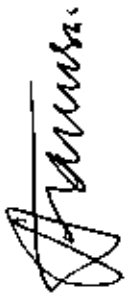
5.5 The Performance Security posted in favor of MIRDC shall be forfeited in the event it is established that CONTRACTOR is in default in any of its obligations under this Agreement.

5.6 The CONTRACTOR shall likewise put a Warranty Security in the form and amount prescribed by law effective for one year reckoned from the date of issuance of the Certificate of Final Acceptance and shall be returned after the lapse of said one-year period.

ARTICLE VI
PAYMENTS

6.1 MIRDC shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in the amount of **PESOS FIVE MILLION SIX HUNDRED FIFTY-TWO and 00/100 only (Php 5,652,000.00)**, representing fifteen percent (15%) of the total contract price, to be made in lump sum.

6.2 The advance payment shall be made only upon the submission to and acceptance by MIRDC of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a



surety or insurance company duly licensed by the Insurance Commission and confirmed by MIRDC.

6.3 The advance payment shall be amortized by the Contractor by deducting fifteen percent (15%) from his periodic progress payments until the amount of advance payment is fully applied.

6.4 MIRDC shall pay the Contractor progress payments based on billings for actual works accomplished as verified and certified by the Executive Director of MIRDC or his representative.

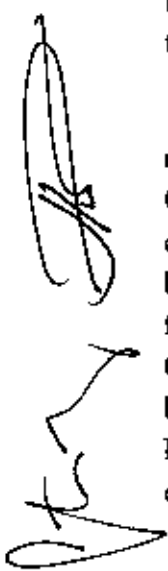
6.5 In no case shall progress billings be made more than once every thirty (30) calendar days. Materials or equipment delivered on the site but not completely put in place or used in the PROJECT shall not be included for payment.

6.6 All 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 any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of Works, as determined by MIRDC, 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 again be imposed using the rate specified therefor.

6.7 The total "retention money" shall be due for release upon final acceptance of the Works. The Contractor may, however, request the substitution of the retention money subject to the guidelines set forth under the Contract Documents and applicable law, rules and regulations.

6.8 In addition to the ten percent (10%) retention mentioned above, MIRDC 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 defects in the PROJECT exceed the 10% already retained by MIRDC.

6.9 MIRDC 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 fully and duly paid. Any claim submitted to MIRDC at any time by any party arising from this Agreement shall be sufficient reason for MIRDC to withhold any payment due the CONTRACTOR. In any event, however, before any deduction from CONTRACTOR's billing or withholding of payment is made under this or the immediately preceding section, MIRDC shall promptly notify CONTRACTOR, in writing, of any such liability, defect or claim and the parties shall immediately meet in good faith to settle such issue.



6.10 No payments made by MIRDC shall be construed as a waiver of any claim for defects in the work, materials, or breach of obligations under this Agreement. Acceptance by the CONTRACTOR of final payment shall be deemed a waiver of all its claims except those previously made in writing that remain unsettled at the time of Final Acceptance.

ARTICLE VII
ASSIGNMENTS AND SUB-CONTRACTING

7.1 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 MIRDC. 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, pledgee, transferee, or assignee, and MIRDC.

7.2 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.

ARTICLE VIII
WARRANTY AND OBLIGATIONS/RESPONSIBILITIES
OF THE CONTRACTOR

8.1 The CONTRACTOR shall secure all pertinent permits required by any government office or agency in connection with the PROJECT. MIRDC shall render assistance to the CONTRACTOR, if requested.

8.2 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 and other pertinent laws. The CONTRACTOR shall be solely liable for any violation of the same.

8.3 In case of pre-termination, the CONTRACTOR, its representatives, personnel, or sub-contractors shall voluntarily turn over the PROJECT to MIRDC and in no case shall continue occupying the premises and its surroundings. The CONTRACTOR hereby constitutes MIRDC as Attorney-in-Fact to take possession of the PROJECT to protect the interest of MIRDC. Expenses arising from the pre-termination shall be charged against the CONTRACTOR until the PROJECT is properly turned over to MIRDC.

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



8.5 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.

8.6 The CONTRACTOR shall hold MIRDC free and harmless from, and hereby binds and obligates itself to indemnify MIRDC 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 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 IX
LIABILITY OF THE CONTRACTOR**

9.1 Subject to additional provisions, if any, set forth in the Contract Documents, the Contractor's liability under this Agreement shall be provided by the laws of the Republic of the Philippines.

**ARTICLE X
CONTRACT EFFECTIVITY**

10.1 This Contract shall take effect on the date provided in the Notice to Proceed.

IN WITNESS whereof the parties thereto have caused this Agreement to be executed this _____ at Bicutan, Taguig City.


**METALS INDUSTRY RESEARCH
AND DEVELOPMENT CENTER**

By:


AGUSTIN M. FUDOLIG
Deputy Executive Director
for Technical Services

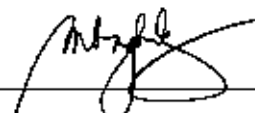
MIESCOR BUILDERS INC.

By:


JESUS P. FRANCISCO
President

SIGNED IN THE PRESENCE OF:





CERTIFIED FUNDS AVAILABLE:

BLESILDA P. CABANA
Accountant IV

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
CITY OF LAGUNA CITY) S.S.

Before me a Notary Public for and in the LAGUNA CITY this
Oct 9 2012, personally appeared:

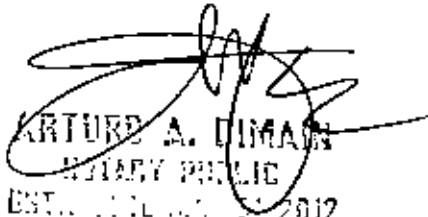
NAME	I.D. NO.	DATE/PLACE ISSUED
AGUSTIN M. FUDOLIG	MIRDC No. 118	August 25, 1989/ MIRDC, Bicutan, Taguig City
JESUS P. FRANCISCO	SSS No.03- 0772968-6	

all known to me to be the same persons who executed the foregoing instrument and they acknowledged to me that the same is their free act and deed as well as of the principal they represent.

This instrument refers to the General Construction Agreement consisting of nine (9) pages, including this page in which the Acknowledgment is written, signed by the parties and their witnesses on each and every page and sealed with my notarial seal.

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

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Series of 2012.


ARTURO A. DIMAIN
 NOTARY PUBLIC
 EST. 1911, REG. 11/2012
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