

**NPM No. 19-2009**

12 March 2009

**MR. RICHARD M. ZABAT**

*Administrator*

**LIBERTY BUILDERS**

**ARCHITECTURE CONTRACTOR PROJECT MANAGEMENT**

4<sup>th</sup> Floor, Liberty Industrial Building

Domestic Airport Road,

Pasay City, Metro Manila

**Re : Advance Payment**

Dear Mr. Zabat:

This refers to your letter dated 2 October 2008 inquiring whether Liberty Builders Architecture Contractor Project Management ("Liberty" for brevity) may be entitled to advance payment, in relation to the Calamba Shopping Center Rehabilitation Project ("Project") it entered into with the City of Calamba, Laguna ("LGU").

In brief, you represent that your firm, Liberty, won the bidding for the Project in 2004, but has only started work in June 2008, in view of numerous legal issues and court battle that ensued between the LGU and the Project's previous contractor.

While you are not disputing the fact that under the Contract, Liberty may bill and collect payment from the LGU only upon the accomplishment of at least fifty percent (50%) of the Project, it nonetheless, seeks clarification whether it may be entitled to Advance Payment equivalent to fifteen per cent (15%) of the contract price inasmuch as the Contract is silent against any prohibition therefrom.

In accordance with the Contract Implementation Guidelines for the Procurement of Infrastructure Projects (Annex "E" of *the Implementing Rules and Regulations Part - A [IRR-A] of Republic Act No. 9184 [R.A. 9184]*),

- 4.1 The procuring entity 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 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. (*Emphasis ours.*)

Hence, it may be inferred from the foregoing that Liberty may validly request for advance payment provided that an Advance Payment Schedule is included in the Instructions to Bidders and other relevant bidding documents. To reiterate, although the Contract between Liberty and the LGU does not prohibit the filing of request for advance payment, R.A. 9184 similarly, does not provide for its automatic endowment. The IRR-A of R.A. 9184 requires that bidding documents, such as the Instructions to Bidders and the General and Special Conditions for the Contract, contain stipulations providing for the schedule and manner of its payment, for the request to prosper.

Furthermore, advance payment shall be made only upon the submission to and acceptance by the procuring entity 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 the procuring entity. It shall be repaid by the contractor by deducting fifteen percent (15%) from his periodic progress payments.

We hope this clarifies matters.

Very truly yours,

  
**RUBY U. ALVAREZ**  
*Executive Director III*



**TECHNICAL SUPPORT OFFICE**

*Malam Emmie,*

*for review po. TY.*

*FN: LibertyBuilders.10.2.2008. Mycee*

Init 2506 Raffles Corporate Center,  
Ortigas Jr. Avenue, Ortigas Center,  
Pasig City, Philippines 1605

*Liberty*

*By,*

27 February 2009

*Please see FN: Liberty Builders .Advance Payment.*

*Kindly print, for signature. (CNPM)*

*P& Genie Atty. Mycee & Karl copy, for their guidance.*

**MR. RICHARD M. ZABAT**

*Administrator*

LIBERTY BUILDERS

ARCHITECTURE CONTRACTOR PROJECT MANAGEMENT

4<sup>th</sup> Floor, Liberty Industrial Building

Domestic Airport Road,

Pasay City, Metro Manila

Re : Request for Advance Payment

Dear Mr. Zabat:

This refers to your letter dated 2 October 2008 inquiring whether Liberty Builders Architecture Contractor Project Management ("Liberty" for brevity) may be entitled to advance payment, in relation to the Calamba Shopping Center Rehabilitation Project ("Project") it entered into with the City of Calamba, Laguna ("LGU").

The facts of the case, as represented by Liberty, are as follows:

1. The Project was the subject of a previously rescinded BOT contract between the LGU and the Australian Professional Realty Inc. (APRI).
2. On 26 February 2004, the LGU conducted public bidding for the Project where Liberty participated and eventually won, as manifested by the contract it entered into with the LGU on 15 April 2004.
3. Despite the Notice to Proceed issued by the LGU on 20 April 2004, Liberty was prevented from performing its obligations under the Contract because of the legal issues and court battle that ensued between the LGU and APRI.
4. After the court action between the LGU and APRI was concluded, and pursuant to Resolution No. 193 passed by the new City Council of LGU, a Notice to Resume Work directed to Liberty, dated 26 June 2008, was issued by the City Mayor.
5. Liberty immediately mobilized and commenced with the construction of the required temporary facilities and demolition requirements,

including the foundation works for the Wet Market Building of the Project.

While Liberty does not dispute the fact that under the Contract, it may bill and collect payment from the LGU only upon the accomplishment of at least fifty percent (50%) of the Project, it nonetheless, seeks clarification whether it may be entitled to Advance Payment equivalent to fifteen per cent (15%) of the contract price inasmuch as the Contract is silent against any prohibition therefrom.

In accordance with the Contract Implementation Guidelines for the Procurement of Infrastructure Projects (Annex "E" of the *Implementing Rules and Regulations Part – A [IRR-A]* of *Republic Act No. 9184 [R.A. 9184]*),

- 4.1 The procuring entity 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 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.**

Hence, it may be inferred from the foregoing that Liberty may validly request for advance payment provided that an Advance Payment Schedule is included in the Instructions to Bidders and other relevant bidding documents. To reiterate, although the Contract between Liberty and the LGU does not prohibit the filing of request for advance payment, the law, similarly, does not provide for its automatic endowment. The IRR-A of R.A. 9184 requires that bidding documents, such as the Instructions to Bidders and the Special Conditions for the Contract, contain stipulations providing for the schedule and manner of its payment, for the request to prosper.

Furthermore, ~~advance payment~~ shall be made only upon the submission to and acceptance by the procuring entity of an irrevocable 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 the procuring entity. It shall be repaid by the contractor by deducting fifteen percent (15%) from his periodic progress payments. (see Annex "E")

We hope this clarifies matters.

Very truly yours,

**RUBY U. ALVAREZ**  
*Executive Director III*



# TECHNICAL SUPPORT OFFICE

Mem Enry,

Nov 25 '08

Atty. Hycar,  
Can you please re-write this  
reply?

Substantive presentation po sa  
delay.

draft po reply:

P.V.  
12/10/09

① Liberty Builders

X ② Nat'l Commission for  
Indigenous people

- KARL

**Mr. Richard M. Zabot**  
Administrator  
LIBERTY BUILDERS  
ARCHITECTURE CONTRACTOR PROJECT MANAGEMENT  
4<sup>th</sup> floor, Liberty Industrial Building  
Domestic Airport Road  
Pasay City, Metro Manila

Dear Mr. Zabot:

We respond to your letter dated 2 October 2008 seeking for an opinion on your request for advance payment in the project (*Reconstruction/Rehabilitation of Calamba Public Market*) with Calamba City represented by the City Mayor.

Under the Contract Implementation Guidelines for the procurement of Infrastructure Projects of the IRR-A of R.A. 9184, Annex E, the procuring entity may make advance payment to contractors as provided in Section 4 (1) thereof, to wit:

The procuring entity 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 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 Instruction to Bidders and other relevant Tender Documents.

However, as a form of security for the advance payment made by the procuring entity, the contractor is required to submit an irrevocable standby letter of credit of equivalent value from a financial bank, a bank guarantee or a surety bond. Annex "E" of the IRR-A of R.A. 9184, Section 4 (2) provides:

The advance payment shall be made only upon the submission to and acceptance by the procuring entity 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 the procuring entity. (Emphasis supplied)

In addition, under the Philippine Bidding Documents, the instruction to bidders which forms part of ~~the~~ your Contract provides that, THE PROCURING ENTITY will provide an Advance payment on the contract price as stipulated in the conditions of contract, subject to the maximum amount stated in Special Conditions of Contract

(SCC) clause 38.1. In the absence of such stipulation, the contractor is not prohibited to secure a written request to the procuring entity to make advance payment in an amount equal to fifteen (15%) of the total contract price to be made in lump sum.

In view of the foregoing, and taking into consideration the purpose of advance payment, which is to provide financial help to contractors to expedite the completion of a particular government infrastructure project, we recommend that your office (Liberty Builders) may request the City of Calamba represented by the City Mayor to grant advance payment considering that you are already done with all the required temporary facilities and demolition requirements thereon.

Further, the contract did not mention any prohibition on Advance payment. In fact, Article 17.1 of the same contract provides that the pertinent provisions of the Implementing Rules and Regulations of Republic Act No. 9184 are incorporated therein and made integral part of the contract for compliance by the parties in the absence of applicable provisions therein.

Thus, pursuant to the underlying rationale of the provisions of Annex E of the IRR-A of R.A. 9184 on advance payment, Liberty Builders has sufficient ground to apply for a fifteen (15%) percent Advance Payment with the Local Government of Calamba, Laguna.

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

**RUBY U. ALVAREZ**  
*Executive Director III*

Karl,

Please draft reply. If the Advance Payment provision schedule is provided for in the Instructions to Bidders & other relevant Tender Documents (which form part of the Contract), then Liberty Builders may request the LGU to grant such. → kindly check Annex "E" of IRR-D.

October 2, 2008

**LIBERTY BUILDERS**  
ARCHITECTURE CONTRACTOR PROJECT MANAGEMENT  
4<sup>th</sup> Floor, Liberty Industrial Bldg.,  
Domestic Airport Road  
Pasay City, Metro Manila  
Tel: +63-2-834-1439  
519  
767  
440

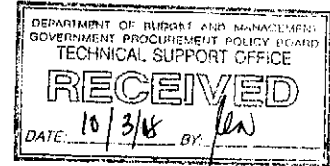
Ennina,

Pls. handle. Sign in my behalf.  
pf 10/6/08

T.H.  
10/10/08

ATTY. RUBY U. ALVAREZ  
Executive Director III  
2506 Raffles Corporate Center  
F. Ortigas Jr. Road, Ortigas Center,  
Pasig City

SUBJECT: Request for Advance Payment



Dear Madam:

We are writing your good office to seek an opinion on our request for advance payment in our project named Reconstruction/Rehabilitation of Calamba Public Market (PROJECT) with Calamba City (LGU) represented by the City Mayor.

The background of our Project is as follows:

On February 26, 2004, LGU conducted a public bidding for the Reconstruction/Rehabilitation of their Public Market which was then already the subject of a BOT contract with Australian Professional Realty Inc. (ARRI) that was eventually rescinded by LGU.

Our company participated in the said bidding and won. We consequently executed a construction contract (CONTRACT) with LGU dated April 15, 2004, a photocopy of which is hereto attached as Annex A.

On April 20, 2004, we received the Notice to Proceed from LGU but due to legal problems or court cases between the said APRI and LGU, we were prevented from proceeding with our works on the PROJECT. The problem existed for several years and was finally resolved in April 2007 by way of a compromise agreement between the said parties.

On August 13, 2007, the new City Council of LGU passed Resolution No. 193, authorizing the City Mayor to issue a notice to resume to our company for the immediate Rehabilitation of the Calamba Shopping Center. Attached is a photocopy of said resolution as Annex B.

On June 27, 2008, we received finally a Notice to Resume Work dated June 26, 2008. Upon receipt thereof, we again immediately mobilized. So far we have already done with all the required temporary facilities and demolition requirements thereon and now working on the foundation works particularly of the Wet Market Building, one of the specific portions of the PROJECT.

Our Construction Contract provides that we can bill and collect from the LGU only upon fifty (50%) percent accomplishment of the project. The Contract however did not mention any prohibition on Advance Payment, and on Article 17.1 of the same contract, it is stated and we quote:

"The pertinent provision of the implementing rules and regulations of R.A. No. 9184 are herein incorporated and made integral part of this Contract for compliance by the parties in the absence of applicable provisions herein"

Now, we intend to cite the provisions of the said law to request for a fifteen (15%) percent Advance Payments from the LGU.

And, with this intention, we are requesting your opinion on the matter.

We will appreciate greatly your response to this request.

Sincerely yours,

  
**RICHARD M. ZABAT**  
Administrator





CONTRACT

KNOW ALL MEN BY THESE PRESENTS:

This Contract made and executed at the City of Calamba, Province of Laguna, Philippines, by and between:

The CITY GOVERNMENT OF CALAMBA, Province of Laguna, a government corporation created and existing under the laws of the Republic of the Philippines, represented herein by Hon. SEVERINO J. LAJARA, in his official capacity as City Mayor and hereinafter referred to as the "OWNER,"

- and -

LIBERTY BUILDERS & DEVELOPMENT CORPORATION, a construction company duly organized and existing under the laws of the Republic of the Philippines, with businesses address at 4<sup>th</sup> Floor Liberty Industrial Building, Domestic Airport Road, Pasay City, represented herein by Engr. WILLIAM O. MOLINA, in his capacity as Vice-President for Operations, and hereinafter referred to as the "CONTRACTOR."

WITNESSETH:

WHEREAS, the OWNER is desirous to implement the CALAMBA SHOPPING CENTER RECONSTRUCTION/REHABILITATION PROJECT, herein referred to as the "PROJECT;"

WHEREAS, the OWNER, through the Bids and Awards Committee (BAC) conducted the bidding for the PROJECT on February 26, 2004, wherein the proposal submitted by the CONTRACTOR was found to be the Lowest Calculated Responsive Bid and recommended the Award of the Contract through Resolution No. 04-04, dated March 03, 2004, at the Calculated Bid of Two Hundred Eighty-One Million One Hundred Six Thousand Five Hundred Thirty-One Pesos & 61/100 (PhP281,106,531.61);

WHEREAS, the proposal of the CONTRACTOR was accepted by the OWNER and the OWNER awarded the Contract to the CONTRACTOR at the Lowest Calculated Responsive Bid (LCRB) of Two Hundred Eighty -One Million One Hundred Six Thousand Five Hundred Thirty - One and 61/100 (PhP 281,106,531.61);

NOW THEREFORE, above premises considered, the parties hereto have agreed on the following terms and conditions:

Article 1. General Conditions. - In this Contract, words and expressions shall have the same meaning as are respectively assigned to them in the General Conditions of Contract herein referred to.



Article 2. Contract Documents. -- The following documents are hereby incorporated into and made an integral part of this Contract:

- 2.1 Conditions of Contract
- 2.2 Drawings/Plans and Technical Specifications
- 2.3 Invitation to Apply for Eligibility and to Bid
- 2.4 Instructions to Bidders
- 2.5 Addenda
- 2.6 Contractor's Bid Form including the following Annexes in two (2) Envelopes:

Envelope 1

- a. Bid Security as to form, amount and validity period
- b. Authority of the Signing Official
- c. Construction Schedule and S-Curve
- d. Manpower Schedule
- e. Construction Methods
- f. Organizational Chart for the Contract
- g. List of Contractor's Personnel to be assigned to the contract, with their complete qualification and experience data.
- h. List of Contractor's Equipment units, which are owned, leased, and/or under purchase agreements, supported by certification of availability of equipment from the equipment lessor/vendor for the duration of the project
- i. Equipment Utilization Schedule
- j. Affidavit of Site Inspection
- k. Commitment from a licensed bank to extend to the bidder a credit line if awarded the contract to be bid, or a cash deposit certificate, in an amount not lower than that set by the procuring entity in the Bidding documents, which shall be at least equal to ten percent (10%) of the approved budget for the contract to be bid
- l. Construction Safety and Health Program, Health Standards
- m. Certificate from the bidder under oath of its compliance with existing labor laws and standards
- n. A sworn affidavit of compliance with the Disclosure Provision under Section 47 of the Act in relation to other provisions of R.A. 3019; and
- o. Documents/materials to comply with other non-discretionary criteria and requirements as stated in the Instructions to Bidders.

Envelope 2

- a. Bid Prices in the Bill of Quantities in the prescribed Bid Form



- b. Detailed Estimate including a summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals used in coming up with the bid
  - c. Cash Flow by Quarter and Payment Schedule
  - d. Bid in E-File Form
- 2.7 Eligibility Requirements
  - 2.8 Performance Security
  - 2.9 Credit line issued by a licensed bank in an amount equal to the average operating expenses of the project for two (2) months or ten percent (10%) of the total project cost, whichever is less
  - 2.10 Notice of Award of Contract and the Contactor's "CONFORME" thereto
  - 2.11 Duly Approved Program of Work and Cost Estimates
  - 2.12 Certificate of Availability of Funds
  - 2.13 Abstract of Bids
  - 2.14 Resolution of the BAC Recommending the Award of the Contract
  - 2.15 Other documents that may be required by the OWNER

Article 3. Scope of Work

- 3.1 For and in consideration of the payment to be made by the OWNER, the CONTRACTOR hereby covenants with the OWNER to willfully and faithfully execute, complete and maintain the aforesaid works in conformity and in all respect with the drawings/plans, specification, work program and the provisions of this Contract.
- 3.2 The works to be done shall include among others, the furnishing by the CONTRACTOR of all labor, materials, equipment and supplies, and the performance by the CONTRACTOR of all operation necessary for the complete construction of the PROJECT.

Article 4. Contract Price

- 4.1 The OWNER, for and in consideration for the full and faithful performance, execution, completion and maintenance of the works required in this Contract, shall pay the CONTRACTOR the total Contract Price of PESOS: TWO HUNDRED EIGHTY-ONE MILLION ONE HUNDRED SIX THOUSAND FIVE HUNDRED THIRTY-ONE & 61/100 (PhP 281,106,531.61).



Article 5. Terms and Manner of Payment

5.1 Progress Billing. - the OWNER, upon submission of a request by the CONTRACTOR, shall make the 1<sup>st</sup> Progress Payment upon Fifty Percent (50%) completion, 2<sup>nd</sup> Progress Payment upon Ninety Percent (90%) completion and 3<sup>rd</sup> and Final Progress Payment upon One Hundred Percent (100%) completion of work accomplished by the CONTRACTOR, provided that the OWNER's representatives shall first certify the same.

The OWNER shall have the right to deduct:

- a. Ten percent (10%) retention money as herein provided;
- b. Money (ies) paid by the OWNER to settle unpaid valid third party claims against the CONTRACTOR arising from this Contract, if any;
- c. Such other deductions as prescribed by existing laws, rules and regulations in the manner set forth under such relevant existing laws.

5.2 Final Payment. - The OWNER shall make final payment to the CONTRACTOR upon inspection of the OWNER's authorized representatives and with the issuance of a CERTIFICATE OF PROJECT COMPLETION and ACCEPTANCE OF THE PROJECT. The OWNER shall effect the final payment to the CONTRACTOR upon proper compliance with all requirements.

The CONTRACTOR shall submit a sworn statement attesting that all obligations of the CONTRACTOR for all labor and materials under the Contract have been fully paid. Nothing herein contained shall be construed as a waiver of the right of the OWNER, which is hereby reserved, to reject the whole or any portion of the work should the same be found to have been constructed in violation of the plans or covenants of this Contract.

5.3 Retention Money. - The OWNER shall retain the amount equivalent to the Ten Percent (10%) of each progress payment to be made to the CONTRACTOR, until Fifty Percent (50%) of the value of the works have been completed, after which no additional retention shall be made, provided that the work is on schedule and satisfactorily done. Otherwise, the ten percent (10%) retention shall be imposed.

However, after cumulative progress payments to the CONTRACTOR has amounted to at least fifty percent (50%) of the Contract Price, the OWNER shall, at the request of the CONTRACTOR, release the "retention money" provided that the CONTRACTOR submit a substitute surety bond, callable on demand, in the amount equivalent to the retention money



substituted for and acceptable to the government. Provided, further, that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten percent (10%) retention shall be made. The aforesaid surety bond shall be posted in favor of the OWNER and shall be valid until the ACCEPTANCE of the PROJECT by the OWNER.

5.4 Price Escalation. - Adjustment of Contract Price due to escalation shall be granted in accordance with the provisions of Implementing Rules and Regulations - A of Republic Act No. 9184.

Article 6. Commencement and Completion of Works.

6.1 The CONTRACTOR shall commence execution of the PROJECT within ten (10) calendar days from receipt of the written Notice to Proceed from the OWNER and shall finish and complete the whole of the contract works within Three Hundred Sixty-Five (365) calendar days from the date of receipt by the CONTRACTOR of the Notice to Proceed, unless extended in accordance with this Contract.

6.2 The OWNER's inspectorate team shall make preliminary inspection once the project reaches an accomplishment of 95% of the total contract amount and submit a punch-list to the contractor in preparation for the final turnover of the PROJECT. The punch-list will contain, among others, the remaining works, work deficiencies for necessary corrections, and the specific duration/time to fully complete the project considering the approved remaining contract time as of the date of contract suspension, if any. This, however, shall not preclude the OWNER's claim for liquidated damages, nor the contractor's claim for incentive bonus, as the case may be.

Article 7. Liquidated Damages.

7.1 In the event that the CONTRACTOR refuses or fails to complete the work within the specified contract time, plus any time extension that may be granted by the OWNER, and is hereby in default under this Contract, the CONTRACTOR shall pay the OWNER for liquidated damages in accordance with the following formula for each calendar day of delay, until the work is completed and accepted or taken over by the OWNER.

$$TLD = VUUP \times \{(1 + OCC)^n - 1\} \times K$$
$$VUUP = TCP - VCUP$$



## WHERE:

- TLD = Total Liquidated Damages, In Pesos
- VUUP = Value of the Uncompleted and Unusable Portion of the Contract Work, as of the expiry date of the Contract, in Pesos
- TCP = Total Contract Price, in Pesos
- VCUP = Value of the Completed and Usable Portion of the Contract Work as of the expiry date of the Contract, in Pesos
- OCC = Prevailing Opportunity Cost of Capital for Government Projects set by the NEDA which is currently pegged at 15%
- N = Total number of Years that the Contract Work is delayed after the Contract
- K = Adjustment Factor to Cover Additional Losses
- $$= 1 + C + (i \times n)$$

## WHERE:-

C - Cost of Construction Supervision as a Percentage, not exceeding 10% of Construction Cost

i - Annual Inflation Rate

7.2 To be entitled to such liquidated damages, the OWNER does not have to prove that it has incurred actual damages. The OWNER shall deduct such amount of liquidated damages from any money due or which may become due to the CONTRACTOR, or to collect or charge such liquidated damages from both the money due to the CONTRACTOR and the Retention Money or other Securities posted by the CONTRACTOR, whichever is convenient and expeditious to the OWNER.

7.3 If, at any time during the progress of the work, the CONTRACTOR should fail, refuse or neglect to supply and provide the required tools, supplies, materials, equipments, facilities and labor-workmen in accordance with the work schedule or should abandon or fail to continue with the construction of the PROJECT or to complete the same; or when



in the judgment of the OWNER the CONTRACTOR has been unreasonably delayed or is no longer capable of continuing or completing the work on time; or if this Contract or any part thereof is being sublet or assigned without the previous consent of the OWNER; or if the CONTRACTOR is willfully violating any of the conditions, covenants, agreements or technical requirements of the PROJECT, the OWNER shall have the option to take over the PROJECT and complete the same. In the event, the OWNER may take over and continues the PROJECT, contracts entered into by the CONTRACTOR in the pursuit of their obligations under the CONTRACT, which the OWNER may want to assume, are hereby considered or deemed assigned to the OWNER. For the purpose, the CONTRACTOR agrees and obligates to incorporate with and relative to the performance of their obligations a provision of its assumption upon the option of the OWNER. The OWNER may also engage the services of a TAKE-OVER CONTRACTOR and all expenses incurred by the OWNER shall be charged to the CONTRACTOR, and any additional cost incurred in finishing the PROJECT in excess of the contract price shall be at the expense and account of the CONTRACTOR. The right of the OWNER to take over the project shall be without prejudice to its rights provided elsewhere in this CONTRACT to proceed against the CONTRACTOR or to which it may be entitled in law or equity.

- 7.4 In case the delay incurred in the completion of the work exceed a time duration equivalent to twenty percent (20%) of the specified contract time plus any time extension duly granted to the CONTRACTOR, the OWNER, by reason thereof, shall forfeit the CONTRACTOR's Performance Security and take over the prosecution of the PROJECT or award the same to a qualified contractor through negotiated contract.
- 7.5 In no case, however, shall the total sum of liquidated damages exceed fifteen percent (15%) of the total contract price, in which event the PROJECT shall automatically be taken over by the OWNER and award the same to a qualified contractor through negotiation. In such case, the OWNER shall forfeit the CONTRACTOR's Performance Security. The amount of the forfeited Performance Security shall be aside from the amount of liquidated damages that the CONTRACTOR shall pay the OWNER under the provisions of this Article.

Article 8. Suspension of Work.

- 8.1 The OWNER or its duly authorized representative shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed unnecessary, due to force majeure or any fortuitous events or for failure on the part of the CONTRACTOR to correct bad conditions which are unsafe for workers or for the general public to carry out valid orders given by the OWNER or to perform any provisions of this Contract,



or due to adjustment of plans to suit field conditions and found necessary during construction. The CONTRACTOR shall immediately comply with such order to suspend the work wholly or partly.

- 8.2 The CONTRACTOR or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days from date of receipt of written notice from the CONTRACTOR to the OWNER due to the following:
- a. There exist right-of-way problems, which prohibit the CONTRACTOR from performing work in accordance with the approved construction schedule.
  - b. Requisite construction plans, which must be furnished by the OWNER, were not issued to the CONTRACTOR precluding any work called for by such plans.
  - c. Peace and order conditions make it extremely dangerous, if not impossible, to work. However, this condition must be certified in writing by the Chief of Police by the Calamba PNP Station and confirmed by the Department of the Interior and Local Government (DILG) regional director.
  - d. Delay in the payment of claim by the CONTRACTOR for progress billing and/or price escalation beyond forty-five (45) calendar days from the time the claim has been certified by the OWNER's authorized representative that the documents are complete, unless there are justifiable reasons thereof which shall be communicated in writing to the CONTRACTOR.
  - e. Any circumstance, event or condition beyond the control of and not attributable to the CONTRACTOR which prevents the commencement or completion of any phase or portion of the PROJECT.
- 8.3 In case of total suspension, or suspension of activities along the critical path, which is not due to any fault of the CONTRACTOR the elapsed time between the effective order suspending operation and the order to resume work, shall allow the CONTRACTOR to adjust the contract time accordingly.

Article 9. Extension of Contract Time.

- 9.1 Should the amount of additional work of any kind or other special circumstances of any kind whatsoever occur such as to fairly entitle the CONTRACTOR to an extension of contract time, the OWNER's authorized representative shall determine the amount of such extension; provided, that the OWNER is not





bound to take into account any claim for an extension of time, unless the CONTRACTOR, prior to the expiration of the contract time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claim have arisen, has delivered to the OWNER the notice(s) in order to investigate them at that time. Failure of the CONTRACTOR to provide the OWNER such notice shall constitute a waiver by the CONTRACTOR of any claim. However, OWNER shall examine the facts and extend of the delay and shall only extend the contract time for completing the contract work when, in the OWNER's opinion, the findings of facts justify an extension.

9.2 No extension of contract time shall be granted the CONTRACTOR due to the following circumstances:

- a. Ordinary unfavorable weather conditions;
- b. Inexcusable failure or negligence of CONTRACTOR to provide the required equipment, supplies or materials;
- c. Other causes for which the OWNER is not directly responsible;
- d. The reason(s) given for the request for extension was already considered in the determination of the original contract time as agreed upon by the parties.

9.3 Extension of contract time may be granted only when the affected activities fall within the critical path of the PERT/CPM network.

9.4 Extension of contract time shall be granted for rainy/unworkable days considered unfavorable for the prosecution of the works at the site, base on the actual conditions obtained at the site, for such period in excess of the pre-determined number of unworkable days and/or for equivalent period of delay due to major calamities, such as exceptionally destructive typhoons, flood and earthquakes, similar unforeseen catastrophic weather conditions and other meritorious causes as determined by the OWNER's authorized representatives.

9.5 In the event that an extension of contract time is requested, the written consent of bondsman must be attached to any request of the CONTRACTOR for extension of time and submitted to the OWNER for consideration and that the validity of the Performance Security shall be correspondingly extended.

Article 10. Variation Orders.

10.1 The OWNER, at any time and in writing, may issue variation orders to cover any increase/decrease in quantities including the introduction of new work items that are not included in this contract, or reclassification of work items due to change of plans,



design or alignment to suit actual field conditions resulting in disparity between the pre-construction plans used for purposes of bidding and the "staked plans" or construction drawings prepared after a joint survey by the CONTRACTOR and the OWNER. The addition/deletion of works should be within the general scope of the PROJECT as bid and awarded.

- 10.2 A Change Order should cover any increase/decrease in quantities of the original work items in this Contract and should have been found to strictly comply with Article 10.1 hereof and subject to the conditions as provided for in the Implementing Rules and Regulations --A of R.A. No. 9184.
- 10.3 For unit price contract, quantity overruns or underruns of not more than fifteen percent (15%) of the estimates per major pay item and twenty five percent (25%) per minor pay item in the Bill of Quantities need not to be covered by Change Order.
- 10.4 An Extra Work Order should cover the introduction of new work items not included in this Contract and should have been found to strictly comply with Article 10.1 hereof and subject to the conditions as for provided for in the Implementing Rules and Regulations -- A of R.A. No. 9184.
- 10.5 A Supplemental Agreement should be entered into for all Change Orders and Extra Work Orders if the aggregate amount exceeds twenty five percent (25%) of the escalated original contract price. All Change Orders/Extra Work Orders beyond 100% of the escalated original contract cost shall be subject to public bidding except when the works involved are inseparable from the original scope of the PROJECT, in which case negotiation with the incumbent contractor shall be made.
- 10.6 Any Variation Order (Change Order, Extra Work Order or Supplemental Agreement) shall be subject to the escalation to adjust the original contract price less the cost of mobilization. In claiming for any Variation Order, the CONTRACTOR should deliver a written communication giving full and detailed particulars of any extra cost, within seven (7) calendar days after such work has been commenced or after the circumstances leading to such condition(s) and to the extra cost. Failure to provide such notice in the herein stipulated time shall constitute a waiver by the CONTRACTOR for any claim. Preparation and submission of Variation Orders shall be subject to the conditions as provided for in the Implementing Rules and Regulations --A of R.A. No. 9184.
- 10.7 Additional/Extra Work costing and the conditions under which the CONTRACTOR is to start work under Variation Orders shall be covered by the provisions of the IRR --A of R.A. No. 9184.
- 10.8 Under no circumstances shall the CONTRACTOR be entitled to payment of any variation order without the prior written order of the OWNER or its duly authorized representatives to perform



such work. Any Variation Order without such written order shall be for the sole account of the CONTRACTOR.

- 10.9 Any payment due and payable and or may be due to the CONTRACTOR may be offset against liquidated damages payable to the OWNER under this Contract.

Article 11. Contractor's Liabilities.

11.1 It is hereby agreed and understood that no employer-employee relationship exists between the OWNER and the CONTRACTOR, and all laborers, workers, employees and staff of the CONTRACTOR are not in any way connected with the OWNER; and there exists no employer-employee relationship between the OWNER and the said laborers, employees and staff of the CONTRACTOR.

11.2 The CONTRACTOR binds itself to protect and immune the OWNER from any suit or liability resulting from claims for damages that may be suffered by the CONTRACTOR's workers and/or third parties, arising from or in connection with the performance of the work. The CONTRACTOR shall at all times stand solely liable and/or responsible for compliance with all existing laws, rules and regulations, and the CONTRACTOR agrees and binds itself to save and hold the OWNER harmless from any and all liabilities in respect thereto or arising therefrom.

Article 12. Acceptance of Work.

12.1 No act of the OWNER or its authorized representative superintending or directing the work or any extension of time for the completion of the work shall be regarded as an acceptance of such work or any part thereof. Acceptance shall be evidenced only by the Certificate of Completion and Acceptance of the PROJECT issued by the OWNER. Before any final payment will be allowed, the CONTRACTOR shall execute an affidavit that it accepts the same as full payment and settlement of all claims or account of the work done and the materials furnished under this Contract.

12.2 No certificate given or payment made under this Contract, except the Final Inspection and Acceptance Certificate or final payment, shall be conclusive evidence of the performance of this Contract, either wholly or in part, and no payment shall be construed to be an acceptance of defective work or improper materials.



Article 13. Non-Waiver.

13.1 No inspection made by the OWNER or its authorized representatives, or payment of money, nor payment after the acceptance of the whole or part of the works, nor any extension of the contract time granted by the OWNER, nor any possession taken by the OWNER or its authorized representatives shall operate as waiver by the OWNER of any of the provisions of this Contract or any right of action reserved to the OWNER for breach of this Contract. This right of action shall be in addition to other remedies granted to the OWNER under existing laws for breach of this Contract.

Article 14. Assignment and Sub-Contract.

14.1 The CONTRACTOR shall not sub-contract, transfer, assign, pledge or make any disposition of the works, or of its interest under this Contract without the prior written approval of the OWNER. Any unapproved assignment, transfer, pledge, sub-contract, or any other disposition, shall be sufficient ground for the OWNER to terminate or cancel this Contract motu proprio without need of judicial action and prejudice to the right of the OWNER to go against the CONTRACTOR for and all damages that the OWNER may suffer by reason thereof.

14.2 Should the OWNER give its written approval, such approval shall not relieve the CONTRACTOR of its responsibilities under this Contract. The CONTRACTOR shall ensure that the terms and conditions of any such sub-contract comply and conform with the terms and conditions of this Contract.

14.3 If any portion of the works/project sub-contracted is not prosecuted faithfully in accordance with the plans and specifications of this Contract and the contract documents, upon written demand by the OWNER, the CONTRACTOR shall remove or replace immediately the sub-contractor. Failure of the OWNER to make such demand shall not relieve the CONTRACTOR of its obligations and the corresponding liabilities under this Contract. The OWNER shall not be responsible for the delays or costs incurred by the CONTRACTOR due to the disapproval or removal of the sub-contractor or due to the delay in the approval by the OWNER of the sub-contract.

Article 15. General Provisions.

15.1 Suppletory Use of Contract Documents. - The Contract Documents shall be suppletory to this Contract. In case of conflict between the Bid Documents and the Contract, the



latter shall control and prevail unless it is very evident that the former is correct. Any and all deficiencies in the provisions of this Contract intended to be covered hereby or otherwise connected with or related to the PROJECT covered hereby, but not expressly covered by the provisions of this Contract shall be supplied by the pertinent provisions of the Bid Documents and shall be binding for purposes of this Contract.

- 15.2 Compliance with Laws, Ordinances, etc. - The CONTRACTOR hereby agrees to hire at least 50% of the unskilled and 30% of the skilled labor requirements to be taken from the available Bona Fide Residents in the City of Calamba subject to the imposition of penalties for failure to observe the same pursuant to the provisions of Republic Act No. 6685, and shall comply with and strictly observe all laws, rules and regulations regarding workman's welfare and condition and the Labor Code of the Philippines.
- 15.3 Modification. - No modification, including transfer or assignment or sub-contracting of any right or obligation under the terms of this Contract, shall be valid unless mutually agreed upon in writing by the parties herein.
- 15.4 Breach. - A material breach by the CONTRACTOR of any warranty, representation or covenant herein made entitles the OWNER, at his option, to rescind the Contract upon written notices to this effect to the CONTRACTOR.

Article 16. Disputes and Arbitration.

- 16.1 All disputes in connection with this Contract and the contract documents, or differences between the parties arising from the interpretation of this Contract and the Contract documents, shall be settled amicably.
- 16.2 In the event that such dispute or disagreement shall not be resolved to the mutual satisfaction of the parties, the matter shall be submitted for arbitration, as provided for under Republic Act No. 876, otherwise known as the "Arbitration Law."
- 16.3 In case a dispute or disagreement arises between the OWNER or its authorized representatives, and the CONTRACTOR on the manner by which the latter is performing the works, the CONTRACTOR shall follow the instructions of the OWNER, or its authorized representatives, relative thereto, provided that such instructions are based upon or in accordance with the approved plans and specifications, otherwise, the CONTRACTOR shall have no right to ask for arbitration or judicial relief.



16.4 Notwithstanding the arbitration proceedings, upon the request of the OWNER, the CONTRACTOR shall continue the works upon the instructions of the OWNER.

Article 17. Miscellaneous.

17.1 The CONTRACTOR hereby warrants that it has not given nor promised to give any money, gift or any material favor/consideration to any official or employee of the OWNER to secure this Contract. Any violation of this warranty shall be sufficient ground for the OWNER to revoke or cancel this Contract without need of judicial intervention.

17.2 The pertinent provisions of the Implementing Rules and Regulations -A of R.A. No. 9184 are herein incorporated and made integral part of this Contract for compliance by the parties, in the absence of applicable provisions herein.

17.3 The CONTRACTOR shall not in any manner and under any circumstance, assume or answer for any liability to any third person or entity in connection with or respecting the land on which the project shall be constructed or any building and structure built or constructed thereon.

17.4 This Contract is executed and delivered in eight (8) copies, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto hereby affix their respective signatures this 15<sup>th</sup> day of April, 2004.

"OWNER"

"CONTRACTOR"

The CITY GOVERNMENT OF  
CALAMBA

LIBERTY BUILDERS & DEVT  
CORPORATION

By:

By:

Hon. SEVERINO J. LAJARA  
City Mayor

Engr. WILLIAM O. MOLINA  
Vice President - Operations

Signed in the presence of:



Republic of the Philippines)  
Province of Laguna ) S.S.  
CITY OF CALAMBA )  
-----X

ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in the City of Calamba, Province of Laguna, personally appeared Hon. Severino J. Lajara with CTC No. 01080372 issued at the City of Calamba on January 07, 2004, and Engr. William O. Molina with CTC No. 20983138 issued at the City of Pasay on February 13, 2004, both known to me and to me known to be the same persons who executed the foregoing instrument and acknowledged to me that the same are their own free and voluntary acts and deeds.

This instrument refers to a Construction Contract, consisting of fifteen (15) pages including this page wherein the acknowledgment is written, were signed by the parties and their two instrumental witnesses on each and every page hereof.

WITNESS MY HAND AND SEAL this APR 15 2004

ATTY. MACARIO A. AGOSILA  
NOTARY PUBLIC  
UNTIL DECEMBER 31, 2005  
PTR NO 5766493 / 1-7-04  
CALAMBA CITY

Doc. No. 398  
Page No. 88  
Book No. 13  
Series of 2004.

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*[Handwritten signature]*



**OFFICE OF THE SANGGUNIANG PANLUNGSOD**

EXCERPTS FROM THE MINUTES OF THE REGULAR SESSION OF THE SANGGUNIANG PANLUNGSOD OF CALAMBA HELD LAST AUGUST 13, 2007 AT THE SESSION HALL OF THE NEW CITY HALL BUILDING, BARANGAY REAL, CITY OF CALAMBA AT 10:30 IN THE MORNING.

PRESENT.

HON. ATTY. PURSINO C. ORUGA	City Vice-Mayor, Presiding Officer
HON. DYAN DV. ESPIRIDION	City Councilor
HON. RUTH MARIANO-HERNANDEZ	City Councilor
HON. LUIS VERGEL G. BARCRO	City Councilor
HON. LEEANNE P. ALDABE	City Councilor
HON. EDUARDO R. SILVA	City Councilor
HON. JOSE MOREL D. MANAIG	City Councilor
HON. JOSE V. PRADAS	City Councilor
HON. CHRISTIAN NIÑO S. LAJARA	City Councilor
HON. DIOSDADO J. LAJARA	City Councilor, ABC-President
HON. LESTER P. ALBO	City Councilor, SK-President

ABSENT

HON. DENNIS R. LANZANAS	City Councilor
HON. POCHOLO J. PLATON	City Councilor

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RESOLUTION NO. 193  
 Series of 2007

A RESOLUTION AUTHORIZING THE HON. MAYOR JOAQUIN M. CHIPECO, JR. TO ISSUE A NOTICE TO RESUME TO LIBERTY BUILDERS, INC. FOR THE IMMEDIATE REHABILITATION OF THE CALAMBA SHOPPING CENTER.

WHEREAS, the City Government of Calamba represented by the Hon. Mayor Joaquin M. Chipeco, Jr. executed and signed with Australian Professional Realty, Inc. a Mutual Settlement Agreement wherein the City Government shall be in the possession and operation of the Calamba Shopping Center,

WHEREAS, there is a need to rehabilitate the Calamba Shopping Center,

NOW THEREFORE, on motion of Coun. JM. D. MANAIG duly seconded, by all the members present, be it resolved as it hereby resolved to authorize the Hon. Mayor Joaquin M. Chipeco, Jr. to issue a Notice to Resume to Liberty Builders, Inc. for the immediate rehabilitation of the Calamba Shopping Center

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CERTIFIED TRUE & CORRECT:

ATTY. PURSINO C. ORUGA  
 City Vice-Mayor, Presiding Officer

ATTESTED BY:

FAVIANA J. PATINIO  
 Secretary, City Council

APPROVED BY:

JOAQUIN M. CHIPECO, JR.  
 City Mayor