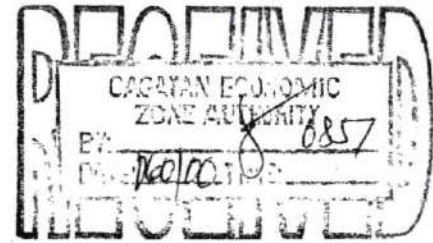


(AP) Lig-5-3
**Office of the President
of the Philippines
Malacañang**



MEMORANDUM FROM THE EXECUTIVE SECRETARY

TO : Administrator and Chief Executive Officer
Cagayan Economic Zone Authority

SUBJECT : **APPROVAL OF THE CONCESSION AGREEMENT
OF THE CAGAYAN ECONOMIC ZONE
AUTHORITY (CEZA) WITH ASIA PACIFIC
INTERNATIONAL TERMINALS, INC. (APT) FOR
THE REHABILITATION, DEVELOPMENT, AND
OPERATION OF PORT OF IRENE**

DATE : 23 May 2000

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Pursuant to the review of the Presidential Management Staff, your Concession Agreement with the Asia Pacific International Terminals, Inc. (APIT) for the rehabilitation, development and operation of Port Irene in Santa Ana, Cagayan, under a Build-Operate-Transfer (BOT) Arrangement is hereby approved.

Submit a status report of actions taken on the matter to the Presidential Management Staff on or before 15 June 2000.

For compliance.

Ronald B. Zamora

RONALDO B. ZAMORA
Executive Secretary

0004-0895

**CONCESSION AGREEMENT
FOR THE DEVELOPMENT, REHABILITATION AND
OPERATION OF PORT IRENE UNDER A
BUILD-OPERATE-AND-TRANSFER ARRANGEMENT**

KNOW ALL MEN BY THESE PRESENTS:

This Agreement entered into this 22nd day of December, 1999, in Pasig City, by and between:

CAGAYAN ECONOMIC ZONE AUTHORITY, a government corporation created under Republic Act 7922, with office address at 7/F Westar Bldg., 611 Shaw Blvd., Pasig City, represented herein by its Administrator and Chief Executive Officer, RODOLFO O. REYES, hereinafter referred to as "**CEZA**";

- a n d -

ASIA PACIFIC INTERNATIONAL TERMINALS, INCORPORATED, a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at Barrio Casambalangan, Sta. Ana, Cagayan, represented herein by its Chairman, RAFAEL J. DIZON, JR., hereinafter referred to as the "**CONCESSIONAIRE**";

W I T N E S S E T H :

WHEREAS, it is the declared State policy contained in Section 20, Article II of the Constitution, and more specifically in Republic Act No. 6957, as amended by Republic Act No. 7718, to recognize the indispensable role of the private sector as the main engine for growth and development and to provide the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects;

WHEREAS, it is likewise the declared State policy contained in Section 2, Republic Act 7922, to actively encourage, promote, induce and accelerate a sound and balanced industrial, economic and social development of the country in order to provide jobs to the people especially those in the rural areas, increase their productivity and their individual and family income, and thereby improve the level and quality of their living condition through the establishment, among others, of special economic zones and freeports in suitable and strategic locations in the country and through measures that shall effectively attract legitimate and productive foreign investments;

WHEREAS, in line with these State policies, the CONCESSIONAIRE submitted an unsolicited proposal to CEZA, to develop and rehabilitate Port Irene in Sta. Ana, Cagayan under a build-operate-and-transfer arrangement pursuant to the BOT Law;

WHEREAS, pursuant to the BOT Law, CEZA caused the publication in newspapers of general circulation (i.e. Philippine Daily Inquirer, Dec. 18, 23 & 29, 1998; Manila Standard, December 18, 23 & 29, 1998; International Herald Tribune, January 4, 1999) notices inviting interested parties to submit

comparative/competitive proposals for the development and rehabilitation of Port Irene;

WHEREAS, no other comparative/competitive proposals have been submitted and CEZA's Pre-qualification, Bids and Award Committee found the bid of CONCESSIONAIRE to be advantageous and beneficial to CEZA;

WHEREAS, after direct negotiations between CEZA and the CONCESSIONAIRE, the draft Concession Agreement was approved by the CEZA Board;

WHEREAS, pursuant to, and in accordance with the Implementing Rules and Regulations of the BOT Law, CEZA, with the concurrence of the Investment Coordination Committee and the NEDA Board, awarded the contract for the development, rehabilitation and operation of Port Irene to the CONCESSIONAIRE, which award has been duly accepted, subject to the terms and condition set forth below;

NOW, THEREFORE, for and in consideration of the foregoing premises, CEZA grants unto the CONCESSIONAIRE and CONCESSIONAIRE hereby accepts from CEZA, the sole and exclusive responsibility to finance, construct, rehabilitate, manage, operate and transfer to CEZA at the end of the Concession Period, the Development Facility of Port Irene, in accordance with the following stipulations:

ARTICLE I DEFINITION OF TERMS

Whenever used in this Agreement or in the recitals hereof, the following terms shall have the meaning ascribed to them as follows:

Section 1.01 "Abandonment"

Abandonment refers to the following:

- (a) During the construction phase of the Project, the failure of CONCESSIONAIRE to prosecute the works for at least Ninety (90) consecutive days without justifiable cause;
- (b) During the operation phase of the project, the failure of CONCESSIONAIRE to operate the terminal for at least Thirty (30) consecutive days without justifiable cause;

Provided, however, that Force Majeure causes directly attributable to CEZA shall be deemed justifiable causes.

Section 1.02 "Acceptable Contractor"

Acceptable Contractor refers to a licensed contractor accredited by the Philippine Contractors Accreditation Board that has no derogatory record that would adversely reflect on its capability to undertake the Works in

accordance with the Performance Standards. A derogatory record, which may result in the non-acceptability of a contractor includes the contractor having been blacklisted by CEZA, or, upon verification of its performance in an ongoing government or private project, having been found, to deliver unsatisfactory quality of work or unsatisfactory performance of its obligations due to fault or negligence.

Section 1.03 "Agreement"

Agreement refers to this Concession Agreement for the Development, Rehabilitation and Operation of Port Irene under the Build-Operate-and-Transfer Arrangement, including all annexes thereof and subsequent amendments, supplements and revisions, subject to existing Government rules and regulations.

Section 1.04 "Annual Guaranteed Payment"

Annual Guaranteed Payment refers to the amount payable by the CONCESSIONAIRE to CEZA annually during the Concession Period consisting of the rental on lands owned by CEZA located within the Port Zone as specified in the Bid Offer and listed in the schedule attached hereto as Annex "A" and made an integral part hereof.

Section 1.05 "Attendant Liability"

Attendant Liability refers to all amounts in each case supported by verifiable evidence from time to time owed or which may become owing by CONCESSIONAIRE to Senior Lenders or persons or entities who have provided, loaned or advanced funds or provided financial facilities to CONCESSIONAIRE for the Project, including, without limitation, all principal, interest, associated fees, charges, reimbursements, and other related expenses (including the fees, charges and expenses of any agents or trustees of such persons or entities), whether payable at maturity, by acceleration or otherwise, and further including amounts owed by CONCESSIONAIRE to its professional consultants and advisers, suppliers, contractors and sub-contractors for the Project.

Section 1.06 "Bid Offer"

Bid Offer (a copy of which is attached hereto as Annex "B" and made an integral part hereof) refers to the proposal of CONCESSIONAIRE to develop and rehabilitate Port Irene under a build-operate-and-transfer arrangement pursuant to the BOT Law.

Section 1.07 "Bid Documents"

Bid Documents (a copy of which is attached hereto as Annex "C" and made an integral part hereof) refer to the document setting out the minimum technical specifications of the Project, the draft Concession Agreement, the form of bid and performance securities, and the instructions to proponents of comparative proposals, consisting of the following: (1) "Instruction to Bidders; (2) "Minimum Design, Performance Standards, and Economic Parameters"; and (3) "Draft Concession Agreement", as initialed for identification by CONCESSIONAIRE and CEZA.

Section 1.08 "BOT LAW"

BOT Law refers to Republic Act No. 6957, as amended by Republic Act No. 7718, including its Implementing Rules and Regulations, prior to amendment on April 8, 1999.

Section 1.09 "Certificate of Completion"

Certificate of Completion refers to the certificate to be issued by CEZA in the form attached hereto as Annex "D" and made an integral part hereof, certifying to:

- (a) the completion by an acceptable Quality Assurance Inspector of all inspection required by CEZA for the equipment and civil works in accordance with the Performance Standards and the acceptance thereof by CEZA; and
- (b) the successful Performance Testing of the Project in accordance with the Performance Standards.

Section 1.10 CEZA Administrator

CEZA Administrator shall refer to the Administrator of the Cagayan Economic Zone Authority.

Section 1.11 CEZA Board

CEZA Board shall refer to the Board of Directors of Cagayan Economic Zone Authority.

Section 1.12 "Concession Period"

Concession Period refers to the fixed original term of twenty five (25) years commencing from the issuance by CEZA of the Certificate of Completion, during which the CONCESSIONAIRE is authorized to operate and maintain the Development Facility of Port Irene.

Section 1.13 "Concessionaire"

CONCESSIONAIRE has the same meaning as the terms "project proponent", "grantee of the franchise", "winning bidder", and "successful bidder" as used in the BOT Law and the Terms of Reference. The CONCESSIONAIRE refers to Asia Pacific International Terminals, Incorporated, including its successors and assigns as may be permitted by Section 7.01.

Section 1.14 "Days"

Days shall, whenever used in this Agreement, refer to calendar days.

Section 1.15 "Development Plan"

Development Plan refers to that portion of the Bid Offer that defines the scope of work and description of the Project.

Section 1.16 "Development Facility"

Development Facility refers to the infrastructure to be built by the CONCESSIONAIRE under the Project within the Site, including the properties and equipment enumerated in Annexes "E" and "E-1". A list of properties mentioned in the Bid Document and classified as immovable properties is initially appended as Annex "E" while a list of properties classified as movable properties, is hereto attached as Annex "E-1", both of which, upon completion of the Project, shall be revised to reflect the properties and equipment belonging to the CONCESSIONAIRE that are actually in the Site and the Terminal Complex, including replacements thereto or substitutions thereof.

Section 1.17 "End Users"

End Users refer to the shippers and passengers within the premises of the Development Facility, lessees, sub-lessees, and tenants, their respective employees, representatives, and guests, and the employees, representatives, and guests of CONCESSIONAIRE.

Section 1.18 "Force Majeure"

Force Majeure shall mean an event or circumstance which is beyond the control of the party seeking to rely on such Force Majeure, which could not reasonably have been foreseen by that party at the date of this Agreement and the consequences of which could not reasonably have been avoided by that party. Subject to the foregoing and Article 11, Force Majeure shall include the following:

- (i) lightning, drought, fire, earthquake, volcanic eruption, landslide, flood, storm, tsunami, typhoon, tornado;
- (ii) epidemic, famine or plague;
- (iii) act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot or civil commotion, terrorism, exercise of military or usurped power;
- (iv) air crash, shipwreck, train wreck or major failure or stoppage of transportation that, in the case of failure or stoppage of transportation, were not reasonably foreseeable;
- (v) meteorites or objects falling from aircraft or other aerial devices, the occurrence of pressure waves caused by aircraft, or other aerial devices travelling at supersonic speeds, chemical or radioactive contamination or ionizing radiation;
- (vi) national, regional or industry-wide strikes;
- (vii) change, repeal or amendment to laws which would in any manner affect any portion of the CONCESSIONAIRE's scope of activity and which would affect, if not prevent the CONCESSIONAIRE from performing his undertakings, obligations, or commitments under this Agreement, the Terms of Reference, and its Annexes;
- (viii) the expropriation, requisition, confiscation or nationalization of the Development Facility by any Government Authority;

- (ix) the imposition of any import restrictions, rationing or allocation by any Government Authority; and
- (x) the withholding or cancellation of any Government Approval not caused by a breach of this Agreement by the CONCESSIONAIRE.

For the avoidance of doubt, lack of funds shall not constitute Force Majeure.

Section 1.19 "Government Approval"

Government Approval shall mean any authorization, consent, approval, license, ruling, permit, tariff, rate, certification, exemption, filing, claim, order, judgment, decree, publication, notices to, declarations of or with or registration by or with, any Governmental Authority.

Section 1.20 "Governmental Authority"

Governmental Authority shall mean the government of the Republic of the Philippines or any political subdivision or agency thereof and any legally constituted entity or competent authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to the said government.

Section 1.21 "Incremental and Consequential Costs"

Incremental and Consequential Costs refer to additional costs properly documented and reasonably incurred by CONCESSIONAIRE during the construction period (including without limitation additional overhead costs and increase in construction costs) in excess of a budgeted or constructed amount, occasioned by, among other things, a delay in the prosecution of Works by reason not attributable to CONCESSIONAIRE, or a deviation from the approved drawings and/or architectural plans and specifications. The amount of Incremental and Consequential Costs shall be certified by the Quality Assurance Inspector appointed pursuant to Section 5.04 (c) hereof.

Section 1.22 "In-Service Date"

In-Service Date refers to the day immediately following the actual/physical receipt by CONCESSIONAIRE of the Certificate of Completion.

Section 1.23 "Liquidated Damages"

Liquidated Damages refer to the amount to be paid by one party to the other upon the occurrence of certain events specified in Section 8.04 hereof. The Liquidated Damages to be paid by CONCESSIONAIRE to CEZA are described in Annex "F", and those to be paid by CEZA to CONCESSIONAIRE are described in Annex "F-1", both Annexes being attached hereto and made integral parts hereof.

Section 1.24 "Location Map"

Location Map refers to the map specifying the particular geographical location of the Site, hereto attached as Annex "G" and made an integral part hereof.

Section 1.25 "Non-Port Revenues"

Non-Port Revenues refer to all other income not classified as Port Revenues, derived within the Development Facility, such as, but not limited to:

- a) lease/rental charges – fees received from tenants renting or leasing stalls and/or offices within the Development Facility.
- b) concession privilege fees for passenger services, food services and transportation utility concessions – fees received from persons or entities allowed by the CONCESSIONAIRE to operate various utility services such as canteen, transportation service, etc.
- c) portage fees – fees for services rendered by porters
- d) car park fees – fees for using the car park areas
- e) advertising fees – fees received from entities advertising their products and services within the Development Facility; and
- f) other incidental or related fees which are generated from the operation inside or on the land side of the Port Zone and within the Development Facility.

Section 1.26 "Percentage Share in Port Revenues"

Percentage Share in Port Revenues refers to the percentage share of CEZA in the Port Revenues of CONCESSIONAIRE as specified in the Bid Offer (Annex "B") and in Section 6.01 (e) hereof.

Section 1.27 "Performance Security"

Performance Security refers to the security that the CONCESSIONAIRE shall deliver to CEZA to ensure the completion of the Works in accordance with Section 5.05(a) hereof.

Section 1.28 "Performance Standards"

Performance Standards refer to the minimum level of performance or output acceptable to CEZA, to be appended hereto as Annex "H" and made an integral part hereof. The Performance Standards shall have two (2) components: the first being applicable during the construction period, which shall be embodied in the approved detailed design and engineering plan, and the second, being applicable during the Concession Period, which shall be embodied in an Operations Manual to be prepared by CONCESSIONAIRE and approved by CEZA. The Operations Manual, which shall be updated as the need arises, shall take into account, among other things, the lay-out of the Terminal, the internationally acceptable standards and practices in operating an international transshipment port terminal comparable to the Project, and the applicability of service

parameters, taking into consideration the availability of services within the Development Facility which are provided by contractors and service providers who are not under the control and supervision of CONCESSIONAIRE.

Section 1.29 "Performance Testing"

Performance Testing refers to the various tests to be conducted jointly by CONCESSIONAIRE and CEZA through the Quality Assurance Inspector on the Project to determine whether or not the Project may be operated in accordance with the Performance Standards.

Section 1.30 "Port Zone"

Port Zone refers to the area designated for port operations, identified in the Cagayan Special Economic Zone and Freeport Land Use Plan, which covers the access road emanating from the national road, stockpiling area (reclaimed area) and the pier as described in CEZA Administrative Order No. 001, Series of 1998, and other areas for future expansion and development, as graphically presented and technically described in Annex "I", which is made an integral part hereof.

Section 1.31 "Port Revenues"

Port Revenues refer to all revenues generated from the following sources:

- a) vessel charges - charges on vessels such as port dues, dockage fees, usage fees, lay up fees
- b) cargo charges - charges on cargo such as wharfage.
- c) storage charges - charges for storing cargo beyond the free storage period
- d) stevedoring fees - fees for all services performed on board vessel; i.e., the process or act of loading and unloading cargo, stowing inside hatches, compartments and on deck or open spaces
- e) craneage fees - fees for the rental and/or operation of cranes or machines used for the transfer of cargoes from ship to land or vice versa.
- f) terminal handling fees - fees for the labor component of handling of cargoes from ship to storage and vice versa.

Section 1.32 "Project"

Project refers to the project to develop, rehabilitate and operate Port Irene under a Build-Operate-and-Transfer Arrangement.

Section 1.33 "Project Management Office"

CEZA Project Management Office refers to an office to be created by CEZA pursuant to existing laws, manned by duly authorized personnel, and specifically assigned to attend to and address all construction-related issues relative to this Agreement. The authority of the CEZA Project Management Office shall be fixed in writing by CEZA, a copy of which shall be served to CONCESSIONAIRE prior to the commencement of Works. Its

decisions or actions shall be merely recommendatory to the CEZA Administrator and Chief Executive Officer. The authority of the CEZA Project Management Office shall cease upon the actual or constructive issuance of the Certificate of Completion.

Section 1.34 "Revenues" or "Gross Revenues"

Revenues or Gross Revenues refer to all Port and Non-Port Revenues, and proceeds from the sale of disposable capital assets, other than those assets forming part of the Development Facility, derived by CONCESSIONAIRE from the Project from every source and on every account.

Section 1.35 "Senior Lender"

Senior Lender refers to any person who have provided or committed long-term debt financing for the Project, together with their respective successors and assigns.

Section 1.36 "Site"

Site refers to the entire area or property on which the Development Facility shall be located, and is more particularly described in CEZA Administrative Order No. 003, Series of 1999, attached hereto as Annex "J" and made an integral part hereof.

Section 1.37 "Tenant Agreements"

Tenant Agreements collectively refer to the lease agreements, which CONCESSIONAIRE may execute for office spaces, booths, commercial spaces or other property in the Development Facility, or the agreements with respect to services to be rendered therein.

Section 1.38 "Terminal Complex"

Terminal Complex refers to that portion of the Development Facility which includes the Terminal and the site on which the Terminal and its support facilities (i.e. roads, car parks, remote parking areas, hotels, shopping centers) shall be located, and wherein ancillary services (i.e. all services and facilities required for ship/seacraft repair and maintenance, cargo handling, catering, shuttle services, duty-free retailing and the like) shall be rendered.

Section 1.39 "Timetable"

Timetable refers to the milestones set forth in Annex "K" which is made an integral part hereof.

Section 1.40 "Transfer Date"

Transfer Date refers to the date when the Development Facility shall be transferred to CEZA in accordance with Article IX hereof.

Section 1.41 "Works"

Works refer to the construction and other architectural and engineering works to be undertaken on the Project prior to In-Service Date.

ARTICLE II PROJECT SCOPE

Section 2.01 "Project Scope"

The scope of the Project shall include:

- (a) Financing the Project at an aggregate cost of P3.386 billion, while maintaining a debt-to-equity ratio of 75:25, or ensuring that the debt portion of the project financing does not exceed seventy-five percent (75%) of the actual project cost; provided that if the actual project cost should exceed the aforesaid amount, CONCESSIONAIRE shall ensure that the 75-25 debt-to-equity ratio is maintained.

- (b) Construction of the Development Facility at the Site, as referred to in the Location Map, either by CONCESSIONAIRE itself or through Acceptable Contractors in accordance with the approved Engineering design, according to the following phases of the Project:

Phase I – immediate port upgrading including repairing, lengthening and widening of the existing berth to accommodate vessels of up to 20,000 DWT class and will allow the docking and loading/unloading of one full load 3rd generation container vessel and one general cargo; developing of a container yard which can handle 17,000 TEUs; provision of cold storage facilities and general cargo warehousing.

Phase II – construction of additional berths to accommodate up to 300,000 TEUs; expansion of the container yard area.

Phase III - construction of additional berths to accommodate an incremental capacity of up to 200,000 TEUs; proportionate expansion of the container yard and acquisition of modern equipment for cargo handling and storage.

- (c) Development and rehabilitation of the Port Irene facility with the capacity to handle containers and attract business from international shipping lines;
- (d) Reclamation, reconfiguration of the Port Zone, provision of modern cargo handling equipment and dredging within the Port Zone to the extent necessary to ensure safe passage and berthing of vessels and to accommodate post-panamax vessels;

- (e) Designing, supplying, delivering to site, construction, installation, erecting, testing, commissioning, contracting or sub-contracting any and all aspects of the Project in accordance with the approved Engineering Design, and operating and maintaining the completed port during the Concession Period, in accordance with the Performance Standards (Annex "H"), subject to the provisions of Section 5.09, provided that CEZA shall retain regulatory powers insofar as compliance with Minimum Design and Specifications are concerned;
- (f) Equipping the Development Facility with such facilities and equipment stated in the Bid Documents, and maintaining or upgrading said facilities and equipment as may, from time to time, be required in the operation of the Development Facility to meet the minimum performance standards as herein specified. The equipment to be supplied by CONCESSIONAIRE shall be those stated in the Bid Documents and shall include, but not be limited to, all communications equipment, signaling cables, and spare parts;
- (g) Testing, pre-commissioning and commissioning the Project and all facilities contained therein, and inspecting the Works to ensure that the same comply with the Performance Standards;
- (h) Formulation of a practical and realistic marketing and business plan to operate, maintain, and promote the port facility;
- (i) Obtaining the building, construction and other permits, licenses, approvals for the Project and of visas and work permits for foreign personnel, recruiting of local labor and complying with all the local and other regulations including the payment of all fees and costs thereof;
- (j) Payment by CONCESSIONAIRE to CEZA of the Annual Guaranteed Payment and the Percentage Share in Port Revenues as stated in Sections 6.01(d) and 6.02(a) of this Agreement, which amounts shall be inclusive of the rental payments for the Site; and
- (k) Complete and unconditional transfer of the Development Facility to CEZA at the end of the Concession Period, free from any and all liens and encumbrances of whatever kind and nature.

Section 2.02 "Franchise"

The CEZA hereby grants unto CONCESSIONAIRE a franchise to operate and maintain the Development Facility during the Concession Period in accordance with the Performance Standards; to charge cargo handling fees, such as Stevedoring, Cranage and Terminal Handling fee, and offer ancillary services for a fee; and to charge and collect all other fees, rentals and other charges in accordance with the rates or schedules stipulated in this Agreement.

Section 2.03 "Rights and Obligations of the Concessionaire"

CONCESSIONAIRE shall, at its own costs have, among others, the following rights and obligations:

- (a) Award contracts for the Project, with or without tender, provided the chosen contractors or sub-contractors of CONCESSIONAIRE are Acceptable Contractors;
- (b) Arrange for the Site preparation activities and the preparation of all design plans required for the Project and approve or reject equipment, facilities and other materials required for the Works;
- (c) Remove consultants and professional advisers for the Project with prior notice to CEZA and appoint other suitable replacements subject to the express written consent to be given by CEZA within fifteen (15) days from receipt of notice from CONCESSIONAIRE of the appointment of the replacement, which consent shall not be unreasonably withheld.
- (d) Purchase materials, equipment and facilities for the Project;
- (e) Appoint, organize and direct staff, to implement, manage and supervise the Project;
- (f) Enter into contracts for the supply of materials and services needed for the Project;
- (g) Enter into Tenant Agreements;
- (h) Acquire additional land for its own account, through direct purchase or lease, should approved detailed architectural and engineering design and specification require such additional land for the construction of the container yard, road network and other facilities. At the end of the Concession Period, such additional land acquired and utilized by the CONCESSIONAIRE for the expansion of the port and installation of port facilities shall remain with the CONCESSIONAIRE or the owner, as the case may be, and shall not be turned-over to CEZA;
- (i) When necessary, donate to CEZA such additional land acquired and utilized by CONCESSIONAIRE for the installation of port facilities but not to exceed 7 hectares;
- (i) Do and perform acts and things necessary or desirable for the completion of the Development Facility in accordance with the Performance Standards contained in this Agreement and the generally accepted engineering standards and the Timetable, and for the efficient management and operation of the Development Facility;
- (j) Operate and maintain the whole Development Facility at Port Irene during the entire Concession Period, with all expenses attendant to the operation and maintenance thereof, e.g., spare parts, labor costs, and other incidental expenses thereof, to be borne by the CONCESSIONAIRE;
- (k) Impose, charge and collect for its own account, in accordance with the BOT Law, all fees, rents and other charges currently imposed and being collected at Port Irene and new fees, rents and other charges, subject to Section 6.01(b) hereof, which, in view of Port Irene being within the Freeport Zone and its international port operations, shall be

denominated in dollars but payable in Philippine Pesos at the prevailing exchange rate at the time of payment, published by the Philippine Dealing System; and,

- (I) Offer other ancillary services for a fee within the port facility.

Section 2.04 "Compliance with Performance Standards and Facility Requirements"

CONCESSIONAIRE shall execute all Works in full compliance with the approved drawings and architectural and engineering plans which implement the conceptual designs submitted by CONCESSIONAIRE in its Bid Offer, referred to in the Performance Standards (Annex "H") except where deviations are necessary as determined and approved in writing by the CEZA Board.

Section 2.05 "Special Obligations of CEZA"

CEZA shall comply with the following special obligations:

- (a) Deliver to CONCESSIONAIRE in accordance with the Timetable, clean possession of the existing pier, reclaimed area, other CEZA properties in Port Irene, free and clear of all tenants, squatters, improvements and/or waste materials, and in a condition suitable for the commencement of Works. Failure by CEZA to effect delivery of clean possession of the foregoing in accordance with the Timetable shall suspend the running of the Timetable until such time as clean possession is actually delivered to and received by CONCESSIONAIRE; provided, however, that the failure of CEZA to deliver clean possession of the foregoing within a period of sixty (60) days from the effectivity of this Agreement shall entitle CONCESSIONAIRE to terminate this Agreement.
- (b) If the approved detailed architectural and engineering design and specifications require additional land for the construction of the container yard, adequate road network and other facilities, CEZA shall exert its best efforts to assist CONCESSIONAIRE in securing, through sale or lease of additional land for the project, including rights-of-way for the purpose of execution by the CONCESSIONAIRE of the work and services under the agreement. CEZA shall further assist CONCESSIONAIRE in the reclamation of additional land if required.
- (c) Exert its best efforts to assist CONCESSIONAIRE in obtaining from the proper Governmental Authority all the necessary permits, licenses, approvals for building and construction works, environmental compliance certificate and other authorizations necessary to commence Works on the Site; provided, however, that if commencement of Works is delayed by the non-issuance of a relevant permit, license, certificate or authorization by any Governmental Authority for any reason despite the prompt, proper and complete

filing and submittal of CONCESSIONAIRE, then the CONCESSIONAIRE shall not be in default, the Performance Security shall not be called upon or forfeited, and the Timetable shall be extended to the extent of the delay. Should the CONCESSIONAIRE's failure to obtain the necessary permits, licenses, approvals for building and construction works, environmental compliance certificate and other authorizations necessary to commence Works on the Site is not directly or indirectly attributable to him, no damages shall be due from CONCESSIONAIRE.

However, should the CONCESSIONAIRE's failure to obtain the relevant permit, license, certificate or authorization is directly or indirectly attributable to him, CONCESSIONAIRE shall be liable to CEZA for damages representing cost of publication and other expenses incurred in the bidding out of the project as well as damages representing unrealized income.

- (d) Exert its best efforts to assist CONCESSIONAIRE in obtaining visas and work permits, and tax exemptions upon completion of the necessary requirements.
- (e) Construct, maintain, and at all times keep in good repair and operating condition all facilities, equipment and infrastructure owned and/or operated by it and which are not part of the Project in accordance with standards set for the conduct of commercial navigation within Port Irene.
- (f) Exert its best efforts to assist CONCESSIONAIRE in obtaining Site utilities such as, but not limited to, water and power, provided, however, that if commencement of Works is delayed by reason of the non-availability of any necessary Site utility without fault or negligence on the part of CONCESSIONAIRE, then the CONCESSIONAIRE shall not be in default, the Performance Security shall not be called upon or forfeited, and the Timetable shall be extended to the extent of the delay.
- (g) Exert its best efforts to make available the Port Zone and all existing rights-of-way, right of access to and possession of, and right to build on agreed boundaries.
- (h) Commits to obtain funds for and to commence construction of a breakwater and dredging of a path to create a navigational channel to assure safe passage of post-panamax vessels, within one-year from the effectivity of this Agreement, in accordance with the specifications contained in Annexes "L" and "L-1", respectively, which are made integral parts hereof, and to complete construction of the breakwater and navigational channel prior to In-Service Date; *Provided*, that in the event that said breakwater and navigational channel are not constructed within such period, the start of the Concession Period shall be delayed/deferred until the completion of the construction of said breakwater.

Further extensions of the breakwater or any construction of additional breakwater and navigational channel shall be subject to

mutual agreement of the parties hereto, with respect to design specifications and sources of funding.

ARTICLE III CONCESSION

Section 3.01 "Concession Period"

- (a) The Concession Period shall be as defined in Section 1.10 hereof. Unless renewed or extended, the Concession Period shall end on the twenty-fifth (25th) anniversary year of In-Service Date. Accordingly, the term of this Agreement and all other Agreements entered into by CONCESSIONAIRE under and pursuant to this Agreement shall be coterminous with the Concession Period, except when such other Agreements are for periods of shorter duration as expressly stated therein.
- (b) At the end of the Concession Period, the CONCESSIONAIRE shall have the right to renew this Agreement at its option under the same terms and conditions for another twenty-five (25) years or to extend the period thereof for such period of time as mutually agreed by the parties, subject to existing government rules and regulations; *Provided*, that at the end of the original Concession Period, there exists no ground for termination of this Agreement by CEZA as specified in Section 8.03 (a) hereof and CONCESSIONAIRE has diligently fulfilled all its obligations under this Agreement; *Provided further*, that the Concession Period shall not exceed a total term of fifty (50) years. Upon receipt of the written notice from CONCESSIONAIRE of its intention to renew or extend the Agreement pursuant to Section 3.01(c) hereof, and compliance by CONCESSIONAIRE with the conditions for renewal or extension herein set forth, CEZA shall execute the necessary renewal or extension contract for the purpose and subject to the approval of the appropriate Governmental Authority.
- (c) For purposes of this Agreement, CONCESSIONAIRE shall inform CEZA in writing of its intention to renew or extend the Concession Period beyond its twenty-five (25) year term at least twenty-four (24) months prior to the expiration of the original Concession Period.

Section 3.02 "Exclusivity"

During the term of this Agreement, CEZA undertakes and guarantees that CONCESSIONAIRE shall have the exclusive right to develop, rehabilitate, operate and maintain Port Irene and the exclusive right to handle cargo within the Cagayan Special Economic Zone and Free Port, except in the proposed fishport to be identified by CEZA.

ARTICLE IV CONCESSION PREMISES

Section 4.01 "Development in General"

Any Site access, improvement and construction of the Development Facility and its adjunct facilities shall be undertaken in such a manner as to minimize interference with the operations at the existing operating portion of Port Irene.

Section 4.02 "Additional Development by CEZA"

Nothing herein shall preclude or inhibit CEZA from developing or utilizing any property of CEZA which is adjacent to, or shares common access to, or common facilities with the Site; *Provided*, that said activities of CEZA shall not compete or interfere with the operations (including retail and other commercial operations) which CONCESSIONAIRE is authorized to conduct in the Development Facility; *Provided, further*, that the use by CEZA of any common access or facility shall not in any way interfere with or prejudice the operation by CONCESSIONAIRE of the Development Facility or require the introduction of additional facilities or the upgrading of existing ones; *Provided finally*, that if any other port facility will be developed by CEZA or under its authority within the Cagayan Special Economic Zone and Free Port, CONCESSIONAIRE shall have exclusive cargo handling rights within said additional facility as provided for under Section 3.02 hereof.

Section 4.03 "Additions and Improvements"

CONCESSIONAIRE may make extraordinary additions and improvements in the Development Facility with the prior written approval of the CEZA Board.

Section 4.04 "Assignment"

CONCESSIONAIRE may assign or encumber its interest in the Development Facility for the exclusive purpose of financing the Project without need for written approval of CEZA, subject to the rules and regulations of the Bangko Sentral ng Pilipinas; *Provided that*, the assignment or encumbrance or its enforcement does not impair the obligations of CONCESSIONAIRE under this Agreement, or prevent it directly or indirectly from complying with said obligations or deprive the public of the appropriate use of the Development Facility during the Concession Period. Any such encumbrance shall be duly recorded with the appropriate register of deeds/government agency.

Section 4.05 "Leasing, Subleasing"

- (a) CONCESSIONAIRE may lease out any portion of the Development Facility without need for written approval of CEZA; provided, the lessee shall use the same for activities reasonably related or incidental to cargo terminal operations in the Development Facility; and provided further, that such use as indicated in the Development Plan is not altered or modified.

- (b) CONCESSIONAIRE may permit its lessees to enter into sub-lease agreements with respect to the latter's respective leased premises subject to written approval of CEZA Administrator; provided, that the sub-lessees shall use the same for activities reasonably related to the international cargo terminal operations in the Development Facility and the use thereof as indicated in the Development Plan is not altered nor modified.

Section 4.06 Destruction of or Damage to Improvements.

No destruction of or damage to any building, improvement, or equipment by fire, windstorm or any other casualty, unless constituting Force Majeure as provided in Section 1.17(a), shall entitle CONCESSIONAIRE to surrender possession of the Development Facility or to terminate or violate any of the provisions of this Agreement.

Section 4.07 "Reservations"

- (a) CEZA expressly reserves any right it may have on or over the Site, such as mineral rights, air space, and easements and rights-of-way for the installation of navigational aids and the maintenance or modification of utility lines and access roads; *Provided*, that the exercise by CEZA of these reserved rights will be without expense to CONCESSIONAIRE, will not hamper CONCESSIONAIRE's use of the Development Facility, and/or will not delay CONCESSIONAIRE in the exercise of its rights or the performance of its obligations hereunder. CEZA shall bear the expense of any replacement, or repair of CONCESSIONAIRE's property arising out of CEZA's exercise of these reserved rights.
- (b) CEZA further reserves its rights to all items and materials of archaeological interest or all hidden treasures (as provided in Articles 438 and 439, New Civil Code) such as but not limited to fossils, coins, articles of value or antiquity and structures or any remains thereof which may be found in the Site or rights of way. If in the process of pursuing the Works CONCESSIONAIRE should discover any item or material of archaeological interest or hidden treasures, CONCESSIONAIRE shall forthwith serve written notice of such fact to CEZA, and the latter shall make necessary arrangement for the retrieval and disposition thereof; provided, however, that if Works are delayed by reason thereof, the CONCESSIONAIRE shall not be in default, the Performance Security shall not be called upon or forfeited, and the Timetable shall be extended to the extent of the delay provided, however, that in case of an extension of the Timetable as herein envisioned, the extension shall not result in a double accounting of benefits or double compensation to Concessionaire and CEZA shall bear the costs of the delay. If the delay lasts for One Hundred Eighty (180) Days or more from the stoppage of the Works, CONCESSIONAIRE may terminate this Agreement.
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ARTICLE V DEVELOPMENT, MANAGEMENT AND OPERATION

Section 5.01 "Construction, Ownership, Operation and Maintenance of the Terminal"

CONCESSIONAIRE shall observe and adhere to the Performance Standards and Timetable stated in Annexes "H" and "K", respectively, as the same may be amended and/or extended from time to time.

Section 5.02 "Preference to Local Contractors/Suppliers"

CONCESSIONAIRE shall, in the award of contracts for the Project, give preference to Philippine contractors and suppliers of materials and services, who are acceptable contractors, whose qualifications or capabilities are in the sole and reasonable judgment of CONCESSIONAIRE, comparable with foreign contractors or suppliers and/or whose products and services are comparable in quality, delivery time, costs, reliability and other terms to those offered by foreign counterparts.

Section 5.03 "Drawings and Designs"

- (a) Immediately upon the effectivity of this Agreement, CONCESSIONAIRE shall commence the preparation of the drawings and architectural and engineering plans and specifications in accordance with the Timetable.
- (b) CONCESSIONAIRE shall submit for the approval of CEZA Board, the drawings and architectural and engineering plans and specifications, which implement the conceptual designs submitted by CONCESSIONAIRE in its Bid Offer, on or before the sixth (6th) calendar month from effectivity hereof. CEZA Board shall not unreasonably withhold its approval of the drawings and architectural and engineering plans and specifications and shall promptly give its approval if the same is in conformity with the minimum design, standards, and specifications prescribed in the Bid Documents.
- (c) CEZA, thru its Administrator, shall inform CONCESSIONAIRE in writing of its approval, rejection, partial approval or partial rejection of said drawings and architectural and engineering plans and specifications proposed by CONCESSIONAIRE, within thirty (30) days from receipt of submittals.
- (d) CONCESSIONAIRE may immediately commence the Works on matters which have been accepted in full, deemed accepted in accordance with Section 5.03(c), as well as partially accepted in writing by CEZA.
- (e) If CEZA informs CONCESSIONAIRE in writing of its acceptance, rejection, partial acceptance or partial rejection of the revised drawings and/or architectural and engineering plans and specifications within the period provided in Section 5.03 (c), CONCESSIONAIRE shall revise the same to address the objections of CEZA, and submit the revised plans, drawings and specifications to CEZA within Fifteen (15) Days from receipt of objection.
- (f) CEZA, thru its Administrator, shall inform CONCESSIONAIRE in writing of its acceptance, rejection, partial acceptance or partial rejection of

the revised drawings and/or architectural and engineering plans and specifications proposed by CONCESSIONAIRE within Fifteen (15) Days from receipt of submittals.

- (g) Upon the issuance by CEZA of its written approval of the final drawings and/or architectural and engineering plans and specifications pursuant to Section 5.03(f), the same shall be the sole basis of the execution of Works.
- (h) A party that seeks a deviation from the approved drawings and/or architectural and engineering plans and specifications shall bear the Incremental and Consequential Costs of such deviation. CEZA, thru its Administrator, shall inform CONCESSIONAIRE in writing of its acceptance, rejection, partial acceptance or partial rejection of deviations proposed by CONCESSIONAIRE within Fifteen (15) Days from receipt of the request of CONCESSIONAIRE for approval of its proposed deviations. Should the evaluation of the proposed deviation require more than Fifteen (15) Days due to the volume of documents involved or the complexity of the deviations, CEZA shall request for additional time to act on the request, which in no case shall be more than Fifteen (15) Days.
- (i) CONCESSIONAIRE may immediately commence the Works on deviations that have been accepted, or partially accepted in writing by CEZA.
- (j) Should CEZA inform CONCESSIONAIRE in writing of its rejection or partial rejection of the proposed deviations within said period, CONCESSIONAIRE may proceed with the original plans prior to the proposed deviations, provided, that CONCESSIONAIRE shall not be responsible for any adverse effect that may result from the inherent defect(s) of the original plans. Alternatively, CONCESSIONAIRE may elect to revise the proposed deviations in order to address the objection of CEZA and re-submit the same to CEZA Board, for approval. In the latter case, the process and period for approval specified in Section 5.03(h) shall apply.
- (k) Deviations from the approved drawings and/or architectural and/or engineering plans and specifications may be proposed by CEZA by the submission of the former to CONCESSIONAIRE of the revised drawings and/or plans reflecting the deviation; provided, that if a failure to comply with the Performance Standards should be attributable to deviations proposed by CEZA, CONCESSIONAIRE shall not be responsible therefor and CEZA shall bear the costs and expenses which may be incurred in taking the necessary remedial measures.

Section 5.04 "Supervision, Monitoring and Inspection of Construction"

- (a) CEZA shall monitor all of CONCESSIONAIRE's plans and programs for the development, construction and maintenance of the Project prior to the implementation of the same to ensure conformity with the Development Plan and accepted engineering practices.

- (b) CONCESSIONAIRE shall inform CEZA and the Quality Assurance Inspector (as hereinafter defined) in writing of any major inspections as set forth in the Timetable at least Five (5) Days prior to the intended inspection date. Taking into consideration the Timetable, CEZA shall exert best efforts not to postpone said inspections. However, should CEZA request for a postponement, CEZA shall inform CONCESSIONAIRE thereof at least Two (2) Days prior to the stated inspection date. CONCESSIONAIRE and CEZA shall agree on the re-scheduled inspection date, which shall be held at the earliest time possible. The delay caused by such postponement shall result in an adjustment to the Timetable and shall not be construed as a breach by CONCESSIONAIRE of any of its obligations in this Agreement.
- (c) CEZA's acceptance of the Works subject of inspection are limited to compliance with the approved drawings and architectural and engineering plans and specifications and the Performance Standards, as certified by the Quality Assurance Inspector. For this purpose, CEZA and CONCESSIONAIRE shall, within Sixty (60) Days from execution date hereof jointly appoint a reputable and professional quality assurance inspector (the "Quality Assurance Inspector") in accordance with the Guidelines on the Procurement of Consulting Services for Government Projects (Implementing Rules and Regulations as of December 1992) prescribed by the National Economic and Development Authority. The functions of the Quality Assurance Inspector shall include, among others:
- i. review of the preliminary and detailed design and engineering;
 - ii. periodic inspection of the Works and expediting thereof, as well as the final inspection of the Works preparatory to the issuance of the Certificate of Completion;
 - iii. verification and checking of quality and quantity of Works accomplished by the contractor as against the approved drawings and architectural plans and specifications, and the Timetable;
 - iv. make recommendations for corrective measures to be undertaken on defects in the Works;
 - v. verification and recommendation for approval of statements of Work accomplished and recommendations for the approval of the partial release of the Performance Security pursuant to Section 5.05(c);
 - vi. determination of the amount of Incremental and Consequential Costs to be borne by the relevant party hereto, in the appropriate cases specified herein; and
 - vii. such other functions as may be stipulated in the relevant consultancy contract between the Quality Assurance Inspector on the one hand, and the CEZA and CONCESSIONAIRE, on the other.

In the discharge of its functions, the Quality Assurance Inspector shall at all times act fairly and impartially. The appointment of the Quality Assurance Inspector shall be evidenced by a consultancy contract containing terms and conditions mutually acceptable to both the Quality Assurance Inspector, on the one hand, and CEZA and CONCESSIONAIRE, on the other. Upon the execution of the relevant consultancy contract, the same shall form part of this Agreement. The reasonable compensation of the Quality Assurance Inspector shall be for the account of both CEZA and the CONCESSIONAIRE.

- (d) If the Quality Assurance Inspector finds the Works subject of inspection acceptable, it shall certify such fact to CEZA and CONCESSIONAIRE. CEZA, thru its Administrator, shall issue a written certificate of approval and serve the same to CONCESSIONAIRE within Five (5) Days from receipt of the written report of the Quality Assurance Inspector. If the Quality Assurance Inspector finds the Works wholly or partly unacceptable, it shall likewise certify such fact to CEZA and CONCESSIONAIRE. CEZA shall within the same period issue a written certificate of total or partial disapproval of the Works inspected, citing the findings of the Quality Assurance Inspector. Should CONCESSIONAIRE not receive written acceptance, rejection, partial acceptance or partial rejection of the Works inspected within the period set forth, CEZA shall be deemed to have accepted the Works subject of inspection and CONCESSIONAIRE may proceed with further Works. All inspected Works which have been accepted or deemed accepted by CEZA in accordance with the foregoing procedure shall be taken into account in the periodic partial releases of the Performance Security pursuant to Section 5.05(c).
- (e) If based on the findings of the Quality Assurance Inspector, CEZA informs CONCESSIONAIRE in writing of its rejection or partial rejection of the portion of the Works subject of the inspection within the period provided in Section 5.04(d), CONCESSIONAIRE shall have the Works re-done at its own costs to conform with the recommendations. Whereupon, the Works re-done shall again be subject to inspection by the Quality Assurance Inspector in accordance with the procedure in Section 5.04(d).
- (f) The acceptance by CEZA of particular Works shall not absolve CONCESSIONAIRE from its other duties and obligations under this Agreement, not connected with the performance of other Works, and, in particular, from complying with the Development Plan and the Performance Standards.
- (g) CONCESSIONAIRE shall maintain at the Site an efficient and capable organization with an adequate capacity and number of construction, operating and maintenance equipment and facilities to satisfactorily develop, construct, operate or maintain the Project in a safe, efficient, environmentally sound and professional manner.

Section 5.05 "Schedule and Amount of Milestone Bonding; Performance Security; Partial Releases of Performance Security"

- (a) The Performance Security. CONCESSIONAIRE shall within Thirty (30) Days from the signing of this Agreement, submit to CEZA a Performance Security in the amount of ONE HUNDRED FORTY MILLION (P140,000,000.00) PESOS, Philippine Currency. The Performance Security shall answer for and guarantee the completion of the Works in accordance with the Performance Standards and the Timetable, and the payment of Liquidated Damages, which CONCESSIONAIRE may be required to pay pursuant to Section 8.05 of this Agreement. The Performance Security shall be valid for the entire duration of the construction period up to the issuance of the Certificate of Completion.
- (b) Form. The Performance Security may be in the form of cash, manager's check, bank draft confirmed by a local bank acceptable to CEZA, irrevocable standby letter of credit issued by a reputable bank acceptable to CEZA; provided, that if the letter of credit is issued by a foreign bank, it must be confirmed by a local bank or offshore banking unit; surety bond callable on demand issued by the Government Service Insurance System (GSIS) or by surety or insurance companies duly registered with and accredited by the Insurance Commission; or a combination thereof. The issuing bank, surety or insurance company concerned, if of foreign nationality, shall be required to submit itself to the jurisdiction of the Philippine courts.
- (c) Partial Releases. The Performance Security shall be partially released by CEZA from time to time to the extent of the percentage of completion certified by the Quality Assurance Inspector in accordance with the Timetable (i.e., the part thereof which is applicable during the construction period) which CONCESSIONAIRE shall submit to CEZA for approval. Partial releases shall be made within Five (5) Days from the date CEZA accepts such portions of the Works pursuant to Section 5.04, as follows:

<u>MILESTONES</u>	<u>EVENT</u>	<u>AMOUNT TO BE RELEASED</u>
I a. Structural Assessment of Port Irene b. Topographic Survey c. Geographical Investigation d. Materials Sourcing e. Wave/tidal Analysis f. Preliminary Design g. Detailed Engineering h. Cost Estimates i. EIS Preparation j. Technical Specification k. Tender Documents l. Yard Sizing and Layout m. System Operation and Design	12 mos.	30%

II. Construction of Berth 1	18 mos.	30%
III. Construction of Berth 2	24 mos.	40%

- (d) Renewal. The Performance Security (as reduced from time to time pursuant to partial releases envisioned in Section 5.05(c) above) shall be renewed annually during the construction period and until finally released by CEZA pursuant to paragraph (i) of this Section, and shall continue and remain in force during such period. Within the renewal period, CEZA may enforce the liability of CONCESSIONAIRE upon said Performance Security. When renewed, the amount shall be adjusted accordingly.
- (e) Replacement and Additional Securities. If the Performance Security furnished by CONCESSIONAIRE to CEZA in connection with this Agreement is issued by a non-governmental financial institution and it subsequently becomes unacceptable to CEZA for the reason that said non-governmental institution is no longer in good standing, registered with and/or accredited by the Insurance Commission, and/or the total actual cost of government undertaking has exceeded the estimated cost of government undertaking mentioned in paragraph (a) hereof, CONCESSIONAIRE shall, upon written request of CEZA, promptly furnish a additional security or replacement security as may be required to protect the interests of CEZA in the prosecution of the Project contemplated under this Agreement; provided, however, that the additional or replacement security shall not be more onerous to or more burdensome for CONCESSIONAIRE than what is required hereunder.
- (f) Termination. In case of termination of this Agreement pursuant to Section 8.03 (a) hereof by reason of the failure of CONCESSIONAIRE to complete the Works in accordance with the Performance Standards and the Timetable for causes primarily attributable to CONCESSIONAIRE and provided that its violation or non-performance was not due to Force Majeure or due to causes attributable to CEZA, CEZA shall call on the Performance Security.
- (g) Adjustment of the Timetable. The parties agree that delays caused by:
- (i) Force Majeure; or
 - (ii) Any circumstance directly or primarily attributable to CEZA (or any other governmental agency or instrumentality having jurisdiction), which causes a delay in the Works, including, but not limited to, review of documents, inspections of Works, and the like; which cannot be compensated for by a catch-up program to be mutually agreed by CEZA and CONCESSIONAIRE, shall justify adjustments in the Timetable, which adjustments shall be reduced into writing. In the event CONCESSIONAIRE should incur a delay by reasons other than those specified above, the CEZA Board, shall give CONCESSIONAIRE a

reasonable grace period in order to catch up with the Timetable; provided, that CONCESSIONAIRE shall be entitled to only one grace period for meeting each milestone without incurring liability for delay; provided, further, that all Works shall be completed not later than thirty six (36) months from the date CONCESSIONAIRE gets clean possession of the Site pursuant to the Timetable; provided, finally that if CONCESSIONAIRE is not able to catch up within the grace period, CONCESSIONAIRE shall pay CEZA liquidated damages using the formula specified in Annex "F".

- (h) Abandonment. In the case of abandonment by CONCESSIONAIRE prior to the In-Service Date, the Performance Security as reduced from time to time pursuant to partial releases envisioned in section 5.05(c) hereof, shall be callable on demand in its entirety by CEZA.
- (i) Complete Release. The Performance Security shall be irrevocably released by CEZA upon the actual or constructive receipt by CONCESSIONAIRE of the Certificate of Completion as provided herein.

Section 5.06 "Certificate of Completion"

- (a) CONCESSIONAIRE shall inform CEZA and the Quality Assurance Inspector of the proposed final inspection of the Works and performance testing at least Five (5) days prior to the intended date of inspection and testing.
- (b) If on the final inspection and performance testing of the Works, the Quality Assurance Inspector finds that the Works comply with the approved drawings and architectural and engineering plans and specifications, and the Development Facility meets the Performance Standards, then it shall, within Five (5) Days from completion of the final inspection, certify such fact to CONCESSIONAIRE and CEZA. Whereupon, CEZA shall issue and deliver to CONCESSIONAIRE, within Five (5) Days from receipt of the certificate of the Quality Assurance Inspector, a Certificate of Completion releasing to CONCESSIONAIRE its Performance Security. If CEZA fails to issue the Certificate of Completion within the period specified without the Quality Assurance Inspector having made any reservation pursuant to Section 5.06(d), then the Certificate of Completion shall be deemed issued by CEZA and received by CONCESSIONAIRE upon the lapse of the period and CONCESSIONAIRE shall be entitled to the release of the Performance Security.
- (c) The issuance by CEZA of the Certificate of Completion shall not release CONCESSIONAIRE from the performance of its other obligations under this Agreement, not connected with the performance of the Works.
- (d) If on the final inspection of the Works, the Quality Assurance Inspector should have any reservations with respect to any portion of the Works or compliance with the Performance Standards, it shall within Five (5) Days from completion of its final inspection, certify such fact to CONCESSIONAIRE and CEZA. Whereupon, CEZA shall within Five (5) Days from receipt of such certificate, inform CONCESSIONAIRE in

writing of the same and CONCESSIONAIRE shall promptly make necessary repairs to comply with the Performance Standards.

- (e) Subsequent inspections (i.e., after completion of the repairs referred to in Section 5.06(d) above) shall be done in accordance with the procedure set forth above.
- (f) CONCESSIONAIRE shall, upon the completion of the construction work, delivery and installation of equipment, notify CEZA as to the official start of commercial operations of the port facility.

Section 5.07 "Equipment"

Pursuant to the operational audit required under this Agreement, CEZA may conduct annual physical inventory of the equipment in the Development Facility.

Section 5.08 "Insurance"

- (a) CONCESSIONAIRE shall, at its own expense, procure and maintain at all times during the term of this Agreement, a comprehensive insurance coverage for the Development Facility, specifically, the insurance listed in Annex "M", which is made an integral part hereof. For this purpose, CONCESSIONAIRE shall solicit offers on the best terms available in the market from GSIS or reliable insurers of adequate financial strength and experience, registered with and accredited by the Insurance Commission. The CONCESSIONAIRE shall ensure that the CEZA, its officers and employees shall be named as additional insured under the policies covering third party liability.
- (b) Whenever an insurance claim arises, CONCESSIONAIRE undertakes to file the insurance claim with the insurer within seven (7) Days from the occurrence of the event giving rise to the claim.
- (d) Insurance proceeds shall be first applied exclusively by CONCESSIONAIRE to the repair, restoration, and/or replacement of the Development Facility, or the portions thereof which have been damaged or lost.
- (e) To the extent possible, CONCESSIONAIRE shall include a stipulation in the insurance contract that the insurance proceeds shall be disbursed to CONCESSIONAIRE in accordance with its timetable for conducting the repair, restoration, and/or replacement of the Development Facility or the portions thereof which have been damaged or lost.
- (f) If CONCESSIONAIRE does not apply the insurance proceeds which it may receive from the insurer solely for the purposes set forth above, CONCESSIONAIRE shall be liable to pay Liquidated Damages, except if CONCESSIONAIRE financed the repair or restoration works or the replacement cost of the damaged or lost Development Facility with its own funds.
- (g) CONCESSIONAIRE shall be liable for any cost deficiency should any insurance proceeds be insufficient to cover the necessary repair and/or

restoration works, or the cost of replacement, as the case may be; provided, however, that any excess of said insurance proceeds, if any, shall inure to the exclusive benefits of CONCESSIONAIRE.

- (h) During the construction of the Development Facility, CONCESSIONAIRE shall (directly or through its contractors) procure and maintain a builder's all-risk insurance to cover the entire Works for any and all types of damages arising from any cause whatsoever, death of persons including personnel of CONCESSIONAIRE, its contractors, subcontractors, and CEZA, and of damage to property, caused by the Works or CONCESSIONAIRE's vehicles, tools, equipment or personnel. To the extent legally possible, CONCESSIONAIRE and CEZA shall be joint beneficiaries of such policy or policies.
- (i) CONCESSIONAIRE shall provide CEZA with copies of all duly executed insurance policies within Fifteen (15) Days from its receipt of the same. Unjustified failure to do so shall give rise to the termination of this Agreement.

Section 5.09 " Temporary Take-over of Operations by CEZA"

Upon CONCESSIONAIRE's written request, CEZA may temporarily take over the operations of the Development Facility in the following instances:

- (a) In case of emergencies that are of such nature and/or extent as would require government intervention, such as, but not limited to:
 - i. labor-related emergencies such as strikes, lockouts, pickets and stoppage of work;
 - ii. emergencies occasioned by the occurrence of natural calamities which CONCESSIONAIRE is unable to cope with;
 - iii. emergencies occasioned by political upheavals or political disturbances;
 - iv. emergencies arising from the commission of crimes such as piracy, smuggling, illegal drug trafficking and other similar crimes; and
 - v. such other emergencies which are best addressed by CEZA through its agencies and instrumentalities.

CONCESSIONAIRE shall identify in the written request for temporary take-over the specific functions which are to be turned over to CEZA; provided, that functions not included in the written request shall continue to be exercised by CONCESSIONAIRE. CEZA shall return to CONCESSIONAIRE the specific functions turned over to it pursuant to the written request, immediately upon the termination of the emergency which gave rise to such turn-over, provided, that CEZA shall in any event return the functions to CONCESSIONAIRE after the lapse of Ten (10) Days, unless CONCESSIONAIRE makes a written request for an extension of time, provided, further, that CEZA's take-over of the specified functions cannot extend beyond Thirty (30) Days, inclusive of all extensions.

- (b) CEZA shall also have the right to temporarily take over the operations of the Development Facility if CONCESSIONAIRE fails to operate the same for One (1) Day. The take-over by CEZA shall be limited to such functions as are indispensable for the uninterrupted operations of the Development Facility, and shall exclude, among other things, administrative and fiscal functions. Within Three (3) Days from take-over by CEZA of the operations of the Development Facility, CONCESSIONAIRE shall give CEZA a written notice of readiness to resume control of operations. CEZA shall return to CONCESSIONAIRE the operations of the Development Facility immediately upon receipt of said CONCESSIONAIRE's written notice. If no such written notice is received by CEZA within the period specified, or CONCESSIONAIRE fails to resume control of operations despite CEZA's return thereof to CONCESSIONAIRE, and take-over by CEZA lasts for Thirty (30) consecutive Days or more, the CONCESSIONAIRE shall be deemed to have committed Abandonment.
- (c) In the event the Development Facility or any part thereof, and/or the operations of CONCESSIONAIRE or any part thereof become the subject matter of or be included in any notice, notification or declaration concerning or relating to acquisition, seizure or appropriation by CEZA in times of war, national emergency, or rampant criminal activities, CEZA shall, by written notice to CONCESSIONAIRE, be entitled to immediately take over the operations of the Development Facility. During such take-over by CEZA, the Concession Period shall be suspended; *Provided that*, upon the termination or cessation of war, hostilities, national emergency or criminal activities, the operations shall be returned to CONCESSIONAIRE, at which time, the Concession Period shall commence to run again.
- (d) In the event CONCESSIONAIRE should default in the payment of an Attendant Liability, and the default has resulted in the acceleration of the payment due date of the Attendant Liability prior to its stated date of maturity, the Senior Lender concerned and CONCESSIONAIRE shall immediately inform CEZA in writing of such default. CEZA shall, within One Hundred Eighty (180) Days from receipt of the joint written notice of the Senior Lender concerned and CONCESSIONAIRE, either:
- (i) temporarily take over the operation of the Development Facility and enter into a direct agreement with Senior Lender concerned on the payment of Attendant Liabilities, subject to approval of the Monetary Board; or,
 - (ii) allow the Senior Lender concerned, if qualified, to be substituted as CONCESSIONAIRE and operator of the Development Facility in accordance with the terms and conditions hereof, or designate a qualified operator acceptable to the CEZA Board to operate the Development Facility, likewise under the terms and conditions of this Agreement.
- (e) If CEZA Board should, by written notice, allow the Senior Lender whose Attendant Liability became due and demandable by acceleration by reason of CONCESSIONAIRE's default, to be substituted as

CONCESSIONAIRE, the Senior Lender concerned shall form and organize a concession company qualified to take over the operation of the Development Facility. If the concession company should elect to designate an operator for the Development Facility, the concession company shall in good faith identify and designate a qualified operator acceptable to CEZA within One Hundred Eighty (180) Days from receipt of CEZA Board's written notice. If the concession company, acting in good faith and with due diligence, is unable to designate a qualified operator within the aforesaid period, then, CEZA shall take over the Development Facility. In order to prevent a disruption of service, CONCESSIONAIRE shall continue to operate the Development Facility pursuant to the terms and conditions of this Agreement, until such time as CEZA or the Senior Lender concerned shall have taken over the Development Facility.

- (f) During the period of temporary take-over by CEZA under Section 5.09(b) and Section 5.09(d), CEZA shall, in addition to the Annual Guaranteed Payment and the Percentage Share in Port Revenues, be entitled to reimbursement of: 1) CEZA's actual operational costs plus ten (10%) percent of the operational costs as indicated in the CONCESSIONAIRE'S income statement at the time of the take-over, and, 2) the actual cost incurred by CEZA to settle CONCESSIONAIRE'S Attendant Liability; Provided that, CEZA shall, if appropriate, render an accurate accounting of its transactions, and shall not be liable to CONCESSIONAIRE for any loss or damage to the Development Facility as well as for any other liability resulting from its temporary operations of the Development Facility unless due to acts, omissions or negligence, directly or indirectly attributable to it. Any amount determined to be payable by CONCESSIONAIRE to CEZA shall be added to the amount next payable by it to CEZA, and any amount payable by CEZA to CONCESSIONAIRE shall be offset against the amount next payable by CONCESSIONAIRE to CEZA.
- (g) For the purpose of preventing a disruption of the operations in the Development Facility, CEZA shall initiate and take remedial measures in the event CONCESSIONAIRE should be in imminent danger of defaulting an obligation secured by a lien on the Development Facility. Accordingly, if CONCESSIONAIRE is of the reasonable opinion that it shall be unable to meet a payment obligation secured by a lien on the Development Facility, CONCESSIONAIRE shall give prompt written notice to CEZA. Upon receipt of such notice, CEZA shall immediately appoint a financial controller to manage the cash position of CONCESSIONAIRE, and CONCESSIONAIRE shall accept such controllership. The financial controller shall ensure that after making provision for administrative expenses and depreciation, the cash resources of CONCESSIONAIRE shall first be used and applied to meet all payment obligations secured by a lien on the Development Facility. Any excess cash, after meeting such payment obligations, shall be earmarked for the payment of all sums payable by CONCESSIONAIRE to CEZA under this Agreement. If by reason of the foregoing CEZA should be unable to collect in full payments due to CEZA under this Agreement, then the unpaid balance shall be accrued and shall earn interest at the rate of twelve percent (12%) per annum, from the date of accrual up to the date of full payment; *Provided that*, the said
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unpaid balance shall be paid within a period of ninety (90) days. When the temporary liquidity of CONCESSIONAIRE shall have been corrected and the cash position of CONCESSIONAIRE should indicate its ability to meet its maturing obligations, then the financial controllership shall terminate. The cost of financial controllership shall be for the sole account of CONCESSIONAIRE. The foregoing remedial measures shall be applicable only while there remains an unpaid and outstanding debt secured by a lien on the Development Facility, or any part thereof.

Section 5.10 Administrative and Operational Functions

CONCESSIONAIRE shall have the right to formulate rules and regulations governing the administration and operation of the Development Facility of Port Irene, which are consistent with applicable laws, rules and regulations. The rules and regulations shall be formulated to ensure the safety, convenience and comfort of the End Users, to prevent and/or minimize loss or damage to the Development Facility; and for such other purposes as any owner or manager of property of similar kind may be reasonably expected to promulgate, subject to the approval of CEZA Board. Copies of said rules and regulations shall be furnished to all concerned agencies of CEZA at least Five (5) Days prior to their effectivity, but in no case later than Five (5) Days after their promulgation.

Section 5.11 Non-Liability for Loss or Damage

Except for causes attributable to the acts, omissions or negligence of CEZA, CEZA assumes no responsibility or liability for loss or damage to the Development Facility or any property of or under the control of CONCESSIONAIRE, including cases where CEZA takes over the operations of the Development Facility pursuant to Section 5.09, whether caused by fire, water or other causes, nor shall it assume any liability to third parties or responsibility for any other liability arising from the operations of the Development Facility. CEZA shall within a reasonable time from the execution of this Agreement, agree in writing on the mechanics and procedure of the take over of operations at the Development Facility pursuant to Section 5.09, in order to determine the respective rights and liabilities of the parties in such events.

Section 5.12 Reports

CONCESSIONAIRE shall furnish to CEZA, bi-annual statistical data of its annual Gross Revenues and operational activities and the maintenance and development of the facilities and equipment in the Port Area and the Development Facility. CEZA and CONCESSIONAIRE shall within a reasonable time from the execution of this Agreement, agree in writing on the format and contents of such bi-annual report.

Section 5.13 Scope of Maintenance and Repairs

- (a) CONCESSIONAIRE shall, at all times during the term of this Agreement, keep the concession premises neat, clean and sanitary,

usable, and in proper working condition and in compliance with minimum maintenance requirements established by the Performance Standards. For this purpose, CONCESSIONAIRE shall establish water and sewerage and sewage treatment facilities and proper waste management facilities in the Development Facility to ensure an environmentally friendly system of waste, wastewater, sewage treatment and disposal. CONCESSIONAIRE shall likewise ensure that such facilities shall be adaptable to CEZA's waste treatment and disposal facilities. The provisions shall conform with CEZA's basic engineering design as contained in CEZA's feasibility studies for the Water and Sewage System and Solid Waste Management systems to be established in the Cagayan Special Economic Zone and Freeport.

- (b) CONCESSIONAIRE shall maintain and repair, at its expense and account, all elements of the Development Facility, which shall include, but shall not be limited to, the roof, structural and non-structural elements of the walls of all buildings, roadways, cargo roads and service roads constructed by CONCESSIONAIRE, except for vehicular lanes, and all other roads or structures constructed by CONCESSIONAIRE, which shall be maintained by CONCESSIONAIRE accordingly.
- (c) CONCESSIONAIRE shall at its own cost, maintain and/or repair the Development Facility, and keep an adequate inventory of supplies and spare parts until the Transfer Date and shall use its best efforts to ensure that during such period, the Development Facility is in good condition and operating under the set operating parameters. For this purpose, an amount equivalent to four percent (4%) of the construction cost, inclusive of the cost of the inventory of supplies and spare parts maintained by the CONCESSIONAIRE, shall at all times be set aside, maintained and reserved from a portion of the Project's Revenues for the cost of repairs and maintenance.

CONCESSIONAIRE may keep the foregoing reserves in the form of restricted retained earnings.

- (d) Except when the damage or loss occurs at the time the Development Facility is under the management and control of CEZA under Section 5.09, or when the damage or loss is directly attributable to CEZA or any of its agencies or instrumentalities, CEZA shall not be obliged to make any repairs, alterations, additions or improvements to the Development Facility, or any property or facilities therein during the term of this Agreement. However, should CONCESSIONAIRE fail to make any repairs which it is liable to perform, or fail to commence work thereon and prosecute said work diligently after a reasonable period of time, CEZA shall serve written notice to CONCESSIONAIRE of its failure to make the repairs. If CONCESSIONAIRE fails to commence repairs expeditiously and to complete the same within a reasonable time (taking into account the nature of the repair work required), CEZA shall have the option to make the repairs and CONCESSIONAIRE shall within Five (5) Days from receipt of the invoice duly approved by the CEZA Administrator, reimburse CEZA for the costs thereof, including the administrative overhead expense attendant thereto.

Section 5.14 Operation of Facility

Upon the completion of the Development Facility, CONCESSIONAIRE shall operate the same in accordance with the parameters set in the Performance Standards either by itself or through another entity acceptable to CEZA as contractor-operator. The arrangement between CONCESSIONAIRE and contractor-operator, if any, shall be reduced into writing and shall, upon execution, be appended hereto as an annex, and made an integral part hereof. In the event CONCESSIONAIRE should want to change the contractor-operator, or should the latter resign or otherwise be unable to discharge its functions, the CONCESSIONAIRE, with prior written consent of CEZA Board (which consent shall not be unreasonably withheld), shall designate a new contractor-operator with qualifications equivalent to or better than those of the original contractor-operator.

Section 5.15 Utilities

CONCESSIONAIRE shall be responsible for the payment of all water, light, fuel, garbage collection and disposal services, electric power, gas, telephone and other utilities used within the Development Facility during the Concession Period.

ARTICLE VI REVENUES, GOVERNMENT SHARE, RATE ADJUSTMENTS, AND AUDIT

Section 6.01 Revenues

- (a) At any time during the Concession Period, for the service it will render in the Development Facility, CONCESSIONAIRE shall be allowed to impose and collect for its own account, all fees, rents and charges constituting Port Revenues at such rates as may be determined by CONCESSIONAIRE to be competitive with those charged on other port facilities except vessel and cargo charges which shall be imposed and collected at Port Irene at the rates proposed by CONCESSIONAIRE, as follows:

Years 1 - 5	No charges
Years 6 - 7	not to exceed 10% of Port of Manila rates
Years 8 - 9	not to exceed 20% of Port of Manila rates
Years 10 - 11	not to exceed 30% of Port of Manila rates
Years 12 - 13	not to exceed 40% of Port of Manila rates
Years 14 and onwards	not to exceed 50% of Port of Manila rates

- (b) At any time during the Concession Period, CONCESSIONAIRE may impose new fees, rents, and charges other than those contemplated in Section 6.01(a) subject to the written approval of CEZA, which shall not be unreasonably withheld.
- (c) All Revenues shall accrue to CONCESSIONAIRE, excluding those which according to law properly belong to the Government of the Philippines. The remittance of the Port Revenues allocated to CEZA under the Bid

Offer as its Percentage Share in the Port Revenues shall be in accordance with Section 6.02 (a)(ii) hereof.

- (d) In consideration of the rights and privileges granted to the CONCESSIONAIRE, the CONCESSIONAIRE shall pay to CEZA the Annual Guaranteed Payment, which consists of the fixed rate of rental on the lands owned by CEZA located within the Port Area, and the Percentage Share in the Port Revenues as defined in Section 1.25 hereof; i.e. the fifty percent (50%) share of CEZA in the revenues derived from the charges on vessels and cargo only, starting from the sixth year of the Concession Period.

Section 6.02 Payments to CEZA

- (a) CONCESSIONAIRE shall pay to CEZA, the following:
- i. The Annual Guaranteed Payment, which shall be payable as follows:
 1. During the first five (5) years from In-Service Date, semestrally in arrears remitted on or before the Fifth (5th) Day after the end of each semester; and
 2. From the Sixth (6th) year from In-Service Date up to the end of the Concession Period, quarterly, remitted on or before the Fifteenth (15th) Day after the end of each quarter.
 - ii. The Percentage Share in Port Revenues, which shall be payable by CONCESSIONAIRE to CEZA semestrally in arrears, remitted on or before the Fifteenth (15th) Day following the end of each semester of each year of the Concession Period.
- (b) The Annual Guaranteed Payment and the Percentage Share in Port Revenues shall be paid in Philippine Pesos.
- (c) The CONCESSIONAIRE shall at its own cost, aggressively promote locally and internationally the use of the Development Facility and incidental services therein.
- (d) For the failure to remit the foregoing payments to CEZA within Five (5) Days from the prescribed due dates, a penalty of two percent (2%) per month, compounded annually, shall be imposed on CONCESSIONAIRE.

Section 6.03 Adjustment of Charges Constituting Port Revenues and Non-Port Revenues

- (a) Adjustment in fees and charges constituting Port Revenues shall be allowed whenever necessary to keep the same competitive with rates prevailing in other port facilities.
- (b) CONCESSIONAIRE shall at all times be judicious in fixing fees and charges constituting Non-Port Revenues in order to ensure that the adjustments made are reasonable and that End Users are not unreasonably deprived of services, and shall seek the approval of the

CEZA Board for such fees and charges. In this regard, CEZA may exercise its regulatory powers and reduce said fees and charges, if in the reasonable opinion of CEZA the said fees have become exorbitant resulting in the unreasonable deprivations of End Users of such services.

Section 6.04 Interim Adjustment

- (a) CONCESSIONAIRE may apply for and, if warranted, may be granted an interim adjustment of the fees and charges constituting Port Revenues upon the occurrence of extraordinary events resulting from any of the following:
 - i. an increase since the last adjustment by at least Fifteen Percent (15%) in the Consumer Price Index for Region II, based on National Census and Statistics Office publications;
 - ii. an increase since the last adjustment in power rates billing by at least fifteen percent (15%); and
 - iii. an increase since the last adjustment in the 180-day Treasury Bill interest rates by at least thirty percent (30%).
- (b) The application for an interim adjustment, which shall be accompanied by verifiable evidence of the occurrence of any of foregoing and other supporting documents or calculations justifying the adjustment, shall be submitted to CEZA, within Sixty (60) Days from the happening of any of the aforesaid extraordinary events, otherwise, the right to an interim adjustment shall be deemed waived.
- (c) The interim adjustments shall be allowed whenever necessary to keep the same competitive with rates prevailing in other port facilities.

Section 6.05 Audit Requirements

For the purpose of ascertaining the Revenues, CONCESSIONAIRE shall install, at the Development Facility a revenue monitoring system, whether electronic or non-electronic, which it may deem appropriate, for the use of both CEZA and CONCESSIONAIRE, provided, that the same shall not hamper the efficiency of operations of CONCESSIONAIRE and or its tenants.

ARTICLE VII ASSIGNMENTS AND TRANSFERS

Section 7.01 Prohibition Against Assignment/Transfer of the Agreement

Except as otherwise provided in this Agreement, CONCESSIONAIRE shall not, either directly or indirectly, assign, hypothecate, encumber or transfer this Agreement or any interest herein.

Section 7.02 Listing and Trading of Shares of Stock

CEZA shall not pose any objections to the eventual listing and trading of the shares of stock of CONCESSIONAIRE in the Philippine Stock Exchange, Inc. and in such other foreign and local exchanges.

ARTICLE VIII

DISPUTE RESOLUTION, TERMINATION AND DAMAGES

Section 8.01 Dispute Resolution

Should disputes, disagreements, controversies or differences between the parties arise in connection with this Agreement, the parties shall, as far as practicable, settle the same amicably. In an attempt to amicably settle a dispute, the parties shall refer the matter to arbitration in accordance with Republic Act No. 876 or the "Arbitration Law".

Section 8.02 Notice of Violation

A non-defaulting party shall give the defaulting party written notice of any violation of this Agreement or a failure to perform any commitment or undertaking in this Agreement, giving the defaulting party Thirty (30) Days from receipt of the written notice to respond or to take corrective measures. If an agreement or mutually acceptable solution is not reached pursuant to Section 8.01 of this Agreement, the issue shall be submitted to arbitration in accordance with Section 10.01.

Section 8.03 Grounds for Termination of Agreement

This Agreement may be terminated on the following grounds:

(a) By CEZA:

- i. Subject to the provision of Sections 5.05(f) and (g), failure of CONCESSIONAIRE to finish the Works in accordance with the Timetable and Performance Standards;
- ii. Commission by CONCESSIONAIRE of a material breach of this Agreement which is not cured upon the lapse of the applicable grace period;
- iii. Except as otherwise permitted in this Agreement, a change of control of CONCESSIONAIRE arising from the sale, assignment, transfer or other disposition of capital stock which results in an ownership structure violative of statutory or constitutional limitations, or without prior approval of CEZA;
- iv. A pattern of continuing or repeated non-compliance, willful violation, or non-performance of other terms and conditions hereof which is hereby deemed a material breach of this Agreement; and

- v. Unjustified failure of CONCESSIONAIRE to provide CEZA with copies of all duly executed insurance policies pursuant to Section 5.08(i); and,
- vi. Abandonment by CONCESSIONAIRE pursuant to Section 1.01 and 5.09(b).

(b) By CONCESSIONAIRE:

- i. Breach by CEZA of any of its material obligations under this Agreement;
 - ii. Breach by CEZA of any of its warranties, undertakings and covenants herein, whether such breach be committed directly or through circumvention;
 - iii. Commission of an act, or an omission, or the occurrence of an event directly or indirectly attributable to CEZA, which materially and adversely affects the interest, financial or otherwise, of the CONCESSIONAIRE in the Project;
 - iv. Failure of CEZA to deliver clean possession of the site within 60 days pursuant to Section 2.05(a);
 - v. Destruction or damage to building constituting Force Majeure under Section 4.06; and
 - vi. Changes in circumstances as provided in Section 12.12.
- (c) For purposes of Section 8.03, the non-defaulting party shall serve written notice to the defaulting party, specifying the ground for termination and giving the defaulting party a period of One Hundred Eighty (180) Days within which to initiate and complete corrective or remedial measures to the satisfaction of the non-defaulting party. If no satisfactory corrective or remedial measures are taken and/or completed by the defaulting party after the lapse of the period granted, then the non-defaulting party shall serve upon the defaulting party a written notice of termination indicating the effective date of termination which shall in no case be earlier than six (6) months from and after receipt by the defaulting party of the written notice of termination.

Section 8.04 Liquidated Damages.

- (a) If the termination of this Agreement is caused by a default of CEZA under Section 8.03(b), then CEZA shall pay CONCESSIONAIRE Liquidated Damages as set forth in Annex "F-1";
- (b) If the termination of this Agreement is caused by default of CONCESSIONAIRE under Section 8.03(a)(i) and Section 5.05(g); then CONCESSIONAIRE shall pay CEZA Liquidated Damages as set forth in Annex "F".

Section 8.05 Termination Procedure and Consequences of Termination

- (a) In the event the Agreement is terminated pursuant to Section 8.03(a) hereof, CEZA shall have the following options:
- i. CEZA may take over the Development Facility and enter into a direct agreement with Senior Lenders on the payment of Attendant Liabilities, subject to approval of the Monetary Board; or
 - ii. CEZA may allow the CONCESSIONAIRE's Senior Lenders who hold a lien on the Development Facility to designate a new operator; provided, the designated operator is qualified under existing laws and is acceptable to CEZA; in which events CEZA shall be entitled to collect from CONCESSIONAIRE the Liquidated Damages.
- (b) In the event the Agreement is terminated by the CONCESSIONAIRE pursuant to Section 8.03(b) hereof, CONCESSIONAIRE, in addition to the collection of Liquidated Damages may require CEZA to purchase the Development Facility on an "as-is-where-is" basis, at a price determined by an independent appraiser acceptable to both parties. Prior to the full payment of the purchase price, CONCESSIONAIRE shall continue to operate the Development Facility and shall be entitled to withhold all payments to CEZA for the purpose of offsetting the same, first, against Liquidated Damages, and thereafter, against the purchase price to be established. Upon full payment of the price and Liquidated Damages, the Development Facility shall be immediately transferred to CEZA.
- (c) As an alternative remedy to CONCESSIONAIRE in case of breach of CONCESSIONAIRE's right to exclusivity under Section 3.02, CONCESSIONAIRE may waive its right to terminate this Agreement, and in lieu of termination continue operating the Development Facility in accordance herewith. In such an event, the Annual Guaranteed Payment from time to time payable by CONCESSIONAIRE to CEZA shall be adjusted, deducting the amount/income derived by CEZA from other port operations in violation of the aforementioned exclusivity clause, retroactive to the beginning of the year on which the right to terminate occurred. If the adjusted Annual Guaranteed Payment should, result in a negative amount, the negative amount shall be deducted from the Percentage Share in Port Revenues payable to CEZA for the concession year in review, and if not sufficient, shall be carried over as a deduction from payment to CEZA for the next following year/s until fully liquidated.

Section 8.06 Corollary Obligations Resulting From Termination

- (a) CEZA shall recognize the terms and conditions of all Tenant Agreements, and from the effectivity of termination shall exercise all rights and assume all obligations of CONCESSIONAIRE thereunder.
- (b) Commencing from the date of termination, CEZA shall likewise be responsible for the full payment of all taxes, fees, charges, and assessments of whatever kind or nature which may be imposed on the Development Facility or any portion thereof, excluding back taxes or

taxes in arrears, which shall be for the sole account of the CONCESSIONAIRE, and when appropriate, shall cause the immediate transfer of all titles over the Development Facility, excluding titles over lands which may be in the name of CONCESSIONAIRE, subject to Section 9.01 hereof.

- (c) In the event the Terminal Complex is purchased by CEZA, all securities held by CEZA in connection with this Agreement shall be discharged and returned to CONCESSIONAIRE.

Section 8.07 Termination of Agreement by Reason of Force Majeure

Any provision in this Agreement to the contrary notwithstanding, CONCESSIONAIRE shall be entitled to terminate this Agreement if the Development Facility or any portion thereof, or any other vital installation or facility necessary for the operation of the Development Facility should be destroyed by an event constituting Force Majeure, and the effect thereof, as shown by substantial and verifiable evidence, is to make the continuous operation of the Terminal Complex impractical or financially non-viable, except if the proceeds of insurance are sufficient to make the necessary restoration and/or reconstruction; provided, however, that the Concession Period shall be suspended during the entire period of restoration and/or reconstruction. In the event of termination of this Agreement by reason hereof, CONCESSIONAIRE shall not be entitled to collect Liquidated Damages from CEZA.

ARTICLE IX TRANSFER OF DEVELOPMENT FACILITY

Section 9.01 Transfer

- (a) Prior to the Transfer Date, CONCESSIONAIRE shall arrange for the training of certain key personnel related to the operation of the Development Facility. The cost thereof shall be for the sole account of CONCESSIONAIRE. On the Transfer Date, CONCESSIONAIRE shall transfer to CEZA (and shall execute such documents as may reasonably be necessary to effect such transfer), free from any lien or encumbrance created by CONCESSIONAIRE, for and in consideration of the sum of ONE PESO (P1.00), all its rights, title to and interest in the Development Facility. For this purpose, CEZA or its duly designated Concessionaire/Operator for the Development Facility, shall have the exclusive option to either: (i) enter into a contract of lease for all lands, not titled to CEZA, on which the Development Facility is situated under such terms mutually agreed upon by the parties; or (ii) purchase said lands at the fair market value prevailing on Transfer Date as determined by an independent appraiser mutually acceptable to CEZA and CONCESSIONAIRE. CEZA shall signify its option in writing, not later than Thirty (30) Days from Transfer Date.
- (b) CONCESSIONAIRE shall also deliver to CEZA on such date such operating manuals, plant operation, design drawings and other information as may reasonably be required by CEZA to enable it to take over the operation of the Development Facility.

Section 9.02 Development Facility

Only the premises, properties, equipment and items enumerated in Annex "E" (excluding Annex "E-1") and "J" (or the replacements and substitutions therefor) as part of the Development Facility shall be transferred to CEZA, subject to Section 2.03(h) hereof.

Section 9.03 Inventories

Six (6) months prior to the Transfer Date, CEZA and CONCESSIONAIRE shall agree on the mechanics of transfer and security arrangements for the Development Facility; provided, however, that CONCESSIONAIRE shall be liable for any discrepancies between the inventory listed in Annex "E" and the actual inventory transferred to CEZA and that CONCESSIONAIRE shall continue to exercise the same care regarding the Development Facility until actual transfer thereof to CEZA on the Transfer Date.

Section 9.04 Warranties

CONCESSIONAIRE shall transfer the Development Facility to CEZA on an "as-is-where-is" basis but inclusive of warranty of title; provided, that surviving warranties given by manufacturers, suppliers and contractors shall likewise be transferred by CONCESSIONAIRE to CEZA. CONCESSIONAIRE shall be under no liability whatsoever to CEZA in respect of the operation of the Development Facility by CEZA or any person as designated by CEZA. CEZA shall at all times keep CONCESSIONAIRE fully indemnified against any liability to any person arising from the use or operation of the Development Facility after the Transfer Date.

Section 9.05 Taxes, Fees, Charges and Assessments

Upon the turnover of the Development Facility to CEZA, all taxes, fees, charges and assessments on the Development Facility, which may accrue thereafter, shall be for the sole account of CEZA.

ARTICLE X VENUE AND COST OF LITIGATION

Section 10.01 Venue and Cost of Litigation

Any dispute or controversy between the parties arising from this Agreement involving any clauses, matter or thing whatsoever herein contained, or the operation or construction hereof or the rights, duties and liabilities of any party hereunder, shall be amicably settled by the parties within the period specified in Section 8.01. Failing which, the matter shall be submitted to arbitration pursuant to Republic Act No. 876.

The arbitration proceedings shall be held in the Republic of the Philippines. The arbitration award shall be final and conclusive between the parties and may be enforced in accordance with Republic Act No. 876. The cost of arbitration and the enforcement of the award shall be for the sole account of the party adjudged liable by the arbitral tribunal.

ARTICLE XI FORCE MAJEURE

Section 11.01 Effect of Force Majeure

A party shall neither be responsible/liable nor deemed in breach hereof because of delay in the performance of its obligations hereunder due solely to Force Majeure; provided, that:

- (a) The non-performing party shall, as far as practicable, within forty-eight (48) hours from the occurrence of the Force Majeure, send a written notice to the other describing the particulars thereof;
- (b) The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (c) The affected party uses reasonable efforts to remedy its inability to perform;
- (d) When the affected party is able to resume performance of its obligations under this Agreement, the party shall give the other party written notice to that effect; and
- (e) The Force Majeure was not primarily caused by any grossly negligent or intentional act or omission of the non-performing party, or its failure to comply with any law, rule, regulation, order or ordinance or by his default or breach of the Agreement.

If Force Majeure should result in the temporary cessation or interruption of the operation of the Development Facility by CONCESSIONAIRE, then CONCESSIONAIRE shall be entitled to a proportionate reduction of the Annual Guaranteed Payment referred to in Section 6.02(a)(i), unless the loss occasioned by Force Majeure is fully covered by insurance.

Section 11.02 Liability for Force Majeure

The provision of Section 11.01 notwithstanding, where the occurrence of Force Majeure is caused by or is directly attributable to the acts or omission of a party to this Agreement, such party shall not be exempt from the consequences resulting from the Force Majeure (whether or not such consequences result in a breach of any of the provisions of this Agreement), and such party shall be fully responsible for all the direct, indirect and consequential losses or damages which the other party may suffer by reason of such Force Majeure.

Section 11.03 No Force Majeure

(a) The CONCESSIONAIRE shall not have the right to rely on as Force Majeure:

- (i) any strike which is limited to the employees of the CONCESSIONAIRE or its subcontractors;
- (ii) any delay or default of the CONCESSIONAIRE's subcontractors in the performance of their obligations; or
- (iii) breakdown or ordinary wear and tear of materials, equipment, machinery or parts of the port facility;

(b) The CEZA shall not have the right to rely on as Force Majeure:

- (i) The imposition of any import restrictions, rationing or allocation by any Government Authority;
- (ii) The withholding or cancellation of any Government Approval not caused by a breach of this Agreement by the CONCESSIONAIRE.

ARTICLE XII MISCELLANEOUS

Section 12.01 Compliance with Government Rules and Regulations

CONCESSIONAIRE shall, during the term of this Agreement, strictly comply with all laws, policies, guidelines and rules and regulations now existing or hereafter promulgated by CEZA. CEZA's Implementing Rules and Regulations, all policies, guidelines, rules and regulations, and all applicable laws, as may be amended from time to time, shall be read into and made integral parts of this Agreement; *Provided*, that such amendments, policies and guidelines shall have no material adverse effect on CONCESSIONAIRE's operation of Port Irene.

Section 12.03 Headings; Grammatical Usage; Names

Words in the singular number are deemed to include the plural when the sense requires, and the plural shall similarly include the singular. Where all government agencies are named, the name used is deemed to include any successor agency in the event the name is changed or the relevant functions are transferred.

Section 12.04 Exemption from Liability

CONCESSIONAIRE hereby holds CEZA free and harmless from any and all liabilities, claims for damages and/or suits for or by reason of death or deaths of or injury or injuries to any person or persons or damage to property of any kind, while in the site or concession premises or any part thereof, or occasioned by any use of said areas of service or any part thereof or any activity carried on by CONCESSIONAIRE in connection therewith, except (i) in case of temporary take-over of the Development

Facility by CEZA, (ii) for liabilities, claims for damages and/or suits brought against employees, agents, officers, or representatives of various agencies of CEZA performing functions in the Port Area/Development Facility, and (iii) for events caused directly by the acts or omission of CEZA or its employees, agents, officers or representatives.

Section 12.05 Mutual Trust

In entering into this Agreement, the parties recognize that it is impracticable to make provisions for every contingency that may arise in the course of performance hereof. Accordingly, the parties hereby declare it to be the intention that this Agreement shall operate between them with fairness and without detriment to the interest of either of them. If in the course of performance of this Agreement, a particular circumstance or event occurs which is not otherwise covered by this Agreement resulting in unfairness to any of the parties or materially affecting the financial viability of the project, then the parties shall exert their best efforts to agree upon such action as may be necessary and equitable to remove the cause or causes of the same and/or to address the problem.

Section 12.06 Non-Relief From Accrued Liability

The termination of this Agreement shall not relieve either party of any liability that may have already accrued hereunder.

Section 12.07 Non-Relinquishment or Non-Waiver of Rights

The failure of any party to this Agreement to insist upon a strict performance of any of the terms, conditions and covenants hereof shall not be deemed a relinquishment or waiver of any right or remedy that either party may have under this Agreement or under the law, nor shall it be construed as a waiver of any subsequent breach or default of the terms, conditions, or covenants herein contained which shall be deemed in full force and effect. No waiver of any right by either party shall be deemed to have been made unless expressed in writing and signed by both parties.

Section 12.08 Notices

- (a) Any notice permitted or required to be served upon CONCESSIONAIRE may be served upon it by CEZA at CONCESSIONAIRE's address indicated above until CONCESSIONAIRE shall give notice in writing to CEZA of any change in its address.
- (b) Any notice permitted or required to be served upon CEZA may be served upon it by CONCESSIONAIRE at its address indicated above until CEZA shall give notice in writing to CONCESSIONAIRE of any change in its address.

Section 12.09 Separability Clause

The invalidation of the terms, conditions, stipulations, covenants, conditions, or restrictions, or any part hereof by a final judgment of a court of competent jurisdiction shall not affect the other provisions hereof. If necessary for the full implementation of this Agreement, the parties shall promptly negotiate in good faith for alternate provisions to replace any provision which has been so declared invalid by a court of competent jurisdiction, subject to the provision of Section 8.01 hereof in case the parties fail to reach an agreement on the matter.



Section 12.10 Special Warranty

CONCESSIONAIRE hereby warrants that it has not given or promised any consideration to any official of CEZA in order to obtain this Agreement, and that the execution of this Agreement shall not result directly or indirectly in a violation of the Anti-Graft and Corrupt Practices Act.


Section 12.11 Environment

CONCESSIONAIRE shall at all times keep the Site in a sanitary condition and in compliance with the environmental requirements (i.e. water and sewage treatment systems, solid waste management systems, and the like) and mitigation measures specified in the Environmental Compliance Certificate issued in respect of the Project and in accordance with the laws of the Philippines. If it is necessary in the development, construction, operation or maintenance of the Project to interrupt or obstruct the drainage of the surface or the flow of artificial drains, CONCESSIONAIRE shall be liable for all damages caused by such interruption or obstruction that may occur except to the extent that the damages arise from the negligence or willful misconduct of CEZA. CONCESSIONAIRE shall assume responsibility for any costs and liabilities arising from any adverse environmental damage or health-impact that are caused by operation of the Development Facility, excluding, however, liabilities directly attributable to seacraft/vessel operations not under its supervision and control.

Environmental Impact Mitigation Program - CONCESSIONAIRE shall implement its own environmental management and monitoring program agreed upon by the CONCESSIONAIRE and CEZA and will allow CEZA to conduct environmental audits and monitoring at the project site and environs during construction and during operation of the port facility. As part of the program, the CONCESSIONAIRE should make a proposal and upon approval thereof, implement a plan for the protection and preservation and regimentation of the corals and other aquatic or marine resources that may be found in the construction site or within the peripheral areas which may be destroyed or severely affected by the construction activities and eventual port operations. Moreover, a reception facility should be put up by the CONCESSIONAIRE to handle waste disposal of the docking vessels.



Section 12.12 Changes in Circumstances

- (a) In the event that as a result of any law (which law does not violate the non-impairment clause of the Philippine Constitution) enacted by the Congress of the Republic of the Philippines, or as a result of any such
- 

laws (including any official interpretation thereof which CONCESSIONAIRE has relied upon in entering into this Agreement) in force at the date hereof being amended, modified or repealed, the interest of CONCESSIONAIRE in the Project and/or CONCESSIONAIRE's financial return on its investment is materially reduced, prejudiced, or otherwise adversely affected, the parties shall meet and agree on remedial measures, which may include without limitation, the reduction of the fees payable by CONCESSIONAIRE to CEZA referred to in Section 6.02(a). If no agreement with respect to the said issues is reached within Ninety (90) Days from the commencement of said meeting of the parties, then CONCESSIONAIRE may invoke the provisions of Sections 8.03(b) and 8.05(b).

- (b) The parties further acknowledge that the CONCESSIONAIRE's Bid Offer is premised upon CEZA's assurances that except for certain persons who at the time of execution hereof are exempted by law from the payment of the Port Fees, no other person or entity is entitled to any exemption from any of the fees and charges assessed for the use of the Development Facility or for any service rendered thereat. Accordingly, if any person or entity (other than persons exempt by law from the payment of such fees) should, under proof of statutory exemption, refuse to pay any fee or charge for the use of the facilities at the Development Facility, or to pay any fee or charge for any service rendered thereat, then the unpaid amount constituting the CONCESSIONAIRE's receivable shall be assigned to CEZA and offset against the whole or a part of the Annual Guaranteed Payment, as necessary, and if the receivable is not fully covered, then it shall be further offset against the Percentage Share in Gross Revenues, Provided that the CONCESSIONAIRE shall inform CEZA in writing of such claim of exemption and refusal to pay, within Five (5) Days from the date payment is due from said person or entity. The offset contemplated herein shall be effected on an annual basis, without the necessity on the part of CONCESSIONAIRE to bring the appropriate court action against the non-paying person or entity.

Section 12.13 Confidentiality

Information, documents and other papers relative to this Project and the Bid Offer which are necessary or vital to the security of the Development Facility, as determined jointly by the parties, shall be kept confidential and shall not be disclosed to any person or entity without the prior written approval of CEZA and CONCESSIONAIRE. However, any of the parties hereto, with the prior written consent of the other, may issue from time to time press releases containing non-sensitive information in relation to the progress of the construction of the Development Facility improvements being constructed thereon and the like.

Section 12.14 Governing Law

The BOT Law or Republic Act No. 6957, as amended by Republic Act No. 7718, as well as its Implementing Rules and Regulations prior to amendment on April 8, 1999, and all pertinent laws of the Republic of the Philippines shall be applied in interpreting and applying the terms and conditions of this Agreement.

Section 12.15 Entire Agreement, Amendments and Supplements

This Agreement contains the entire agreement and understanding between CEZA and CONCESSIONAIRE as to the subject matter hereof and merges and supersedes all prior agreements, commitments, representations, writings, and discussion between them. This Agreement may not be amended, changed, modified or supplemented in any way except by an instrument in writing executed by both CEZA and CONCESSIONAIRE.

Section 12.16 Visitorial Powers

CONCESSIONAIRE shall make available at all times and within reasonable office hours for inspection, examination and audit by CEZA, all books of accounts on, and properties and inventory related to, and all other records concerning, the Gross Revenues; provided, that the right of CEZA to inspect, examine and audit the records and books of accounts shall be exercised by CEZA officials pursuant to and within the limits of the duties and functions vested upon their respective offices by law.

Section 12.17 Office Space

CONCESSIONAIRE shall make available temporary or permanent offices within the concession premises as CEZA and its agencies and instrumentalities may reasonably request for the performance of their official functions in the Development Facility, Provided, however, that such office spaces shall not be in excess of what is reasonably necessary for the conduct of such official functions.

Section 12.18 Conflict

In case of a conflict between any of the provisions of this Agreement and any provision of any document or instrument relating to the Project (whether or not forming part of the Bid documents), the provisions hereof shall prevail.

Section 12.19 Effectivity

This Agreement shall become effective upon the approval by the Office of the President of the Republic of the Philippines and shall remain in full force and effect until the end of the Concession Period, unless sooner terminated, cancelled or revoked in accordance with the pertinent provisions hereof.

CEZA and the CONCESSIONAIRE, by their respective representatives, have caused this Agreement to be signed on the day and at the place first written.

CAGAYAN ECONOMIC ZONE AUTHORITY

By :

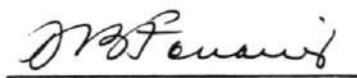
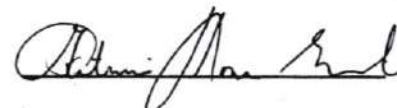

RODOLFO O. REYES
Administrator and Chief Executive Officer

ASIA PACIFIC INTERNATIONAL TERMINALS, INC.
CONCESSIONAIRE

By:


RAFAEL J. DIZON, JR.
President

SIGNED IN THE PRESENCE OF

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
PASIG CITY, METRO MANILA) S.S.

BEFORE ME, a Notary Public for and in Pasig City, Metro Manila, this 9th
day of February, 1999 personally appeared:

<u>NAME</u>	<u>COM. TAX CERT.</u>	<u>DATE/PLACE ISSUED</u>
CAGAYAN ECONOMIC ZONE AUTHORITY		
ASIA PACIFIC INTER- NATIONAL TERMINALS, INC.		
RODOLFO O. REYES	01630842	2/4/2000 - Pasig City
RAFAEL J. DIZON, JR.	01850185	1/18/2000 - Taguig

known to me and to me known to be the same persons who executed the
foregoing Concession Agreement for the Development, Rehabilitation and

Operation of Port Irene under a Build-Operate-Transfer Arrangement, and who acknowledged to me that the same is their free and voluntary act and deed, as well as of the institutions which they respectively represent.

This instrument consists of forty-six (46) pages, and signed by the parties on the execution page hereof.

IN WITNESS WHEREOF, I have hereby set my hand and affixed my notarial seal on the place and date first above written.


NOTARY PUBLIC

Doc. No. 8;
Page No. 2;
Book No. I;
Series of 1999.
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GERALDINE LIZA A. GUNTANG
NOTARY PUBLIC
UNTIL DECEMBER 31, 2001
PTR NO. 7753558 1/18/2001
PASIG CITY

Concession agreement/11-08-99/disk 9.

ANNEX "A"

SCHEDULE OF ANNUAL GUARANTEED PAYMENT

<u>YEAR</u>	<u>FIXED</u>	<u>VARIABLE</u>
1 - 5	7	0
6 - 7	10.	5% of Gross Income
8 - 9	10.5	5% of Gross Income
10 - 11	11.	5% of Gross Income
12	11.5	5% of Gross Income
13 - 14	11.5	7% of Gross Income
15 - 16	11.5	9% of Gross Income
17 - 18	11.5	11% of Gross Income
19 - 20	11.5	13% of Gross Income
21 - 22	11.5	15% of Gross Income
23 - 24	11.5	17% of Gross Income
25 - onwards	11.5	19% of Gross Income

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ANNEX "A"

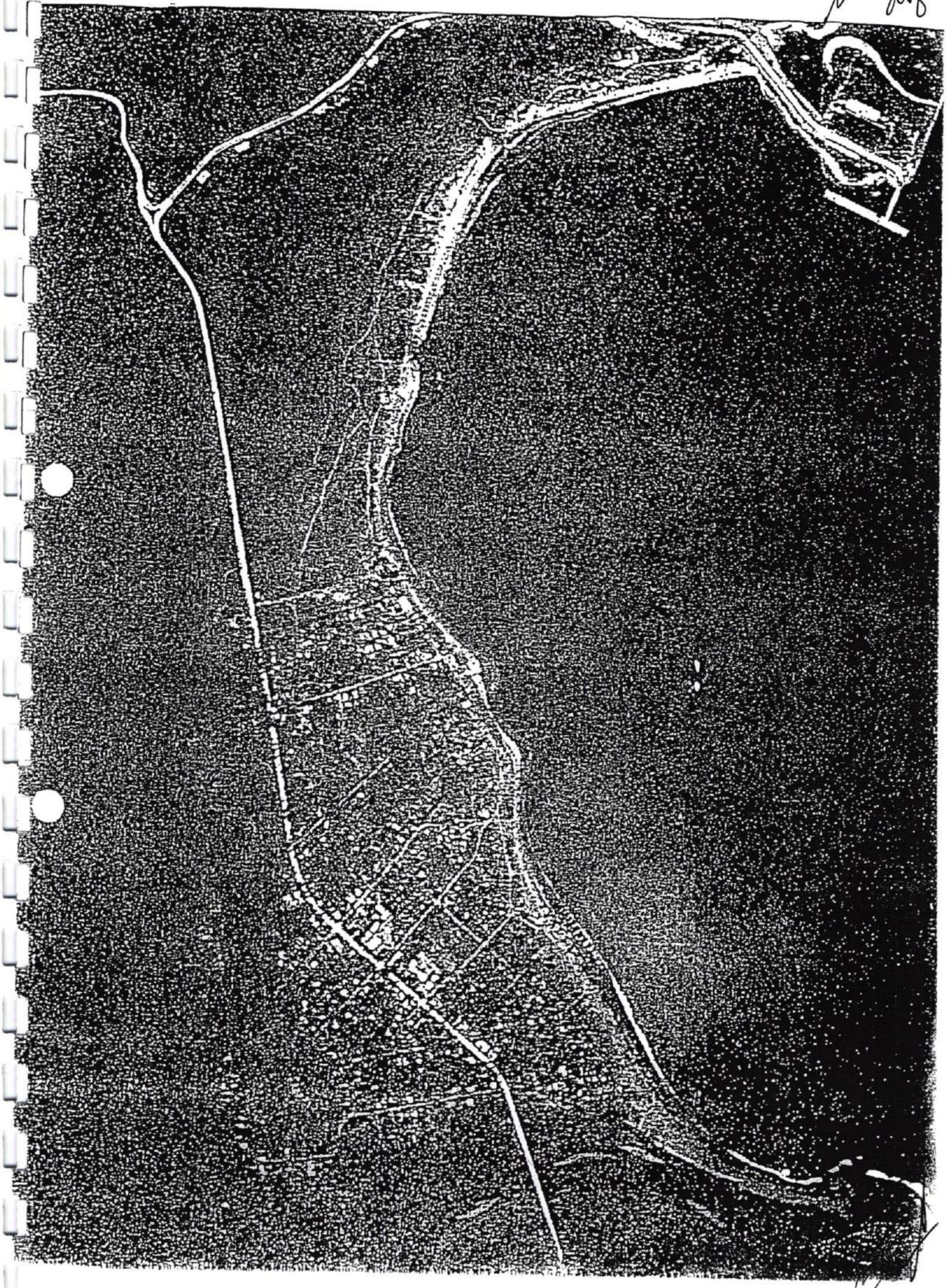
Map of the planned port area including existing Port Irene. A bigger and clearer view of this map is available and can be viewed at CEZA office.

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MINIMUM DESIGN

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REHABILITATION, DEVELOPMENT AND OPERATION OF PORT IRENE UNDER BUILD-OPERATE-TRANSFER (BOT) SCHEME

MINIMUM DESIGN, PERFORMANCE STANDARDS AND ECONOMIC INDICATORS

This document provides information on minimum design and performance standards/specifications, desired quantity and quality of the outputs of the facility including environmental standards as prescribed by DENR. Non-conformity with any of these minimum requirements shall render the bids non-responsive. Economic parameters to be used in the proposal are likewise prescribed in this document.

MINIMUM PORT DESIGN AND PORT FACILITIES REQUIREMENT

The development will proceed in three phases based on the projected cargo volume and the support facilities that the redevelopment of Port Irene will require. The first phase of development (Year 0-5), or the short-term plan, involves immediate port upgrading to capture overflow transshipments from Hongkong and Singapore and allow some export shipments into Taiwan. The proponent is therefore, expected to invest to finance the rehabilitation and development of Port Irene.

Phase 1 will require the following work and infrastructure development within the port area:

1. Repairing, lengthening and widening of the existing berth to accommodate vessels of up to 20,000 DWT class and will allow the docking and loading/unloading of one fully load 3rd generation container vessel plus one (1) general cargo or other vessel of between 5,000 to 20,000 tons deadweight. The design shall allow for the possible future extension of the wharf/pier to a length necessary to accommodate two 3rd generation container vessels plus one general cargo or other vessel of between 5,000 to 20,000 tons deadweight.
2. The water depth alongside the wharf shall give clearance from the seabed of at least 14 meters at mean low water level to allow berthing of a 3rd generation container vessel.
3. The wharf/pier and Port facilities shall be designed to suit a frequency of initially one (1) berthing per week but should eventually increase to two (2) 3rd generation container vessels calling at the port per week.
4. The wharf/pier and Port facilities shall be designed to operate at an efficiency of a minimum of forty (40) container movements per hour per berth station to allow a 3rd generation container vessel to be turned around within 48 to a maximum of 60 hours.

5. Development of a container yard which can handle 17,000 TEUs (equivalent to one month of container volume). If the containers are stacked at three levels and the bottom area is 8 feet by 20 feet per container, the container yard area should be 10 to 12 hectares. The container yard is to be provided with approximately 200 units of reefer plugs (120 and 220 volts) and the wharf/pier with the necessary utility hotel type hook-ups to service berthed vessels.
6. Apart from the container transshipment operations, provision shall be made in the design for secondary general cargo operations.
7. The design and construction shall include cold (refrigerated) storage facilities and general cargo warehousing of some 4,000 to 5,000 square meters with elevated loading/unloading dock at truck floor height and having main entrance door(s) with a minimum 14'0" height clearance.
8. Provision shall be made in the design for equipment and machinery repair/workshop building and a port administration building to accommodate office personnel/staff.
9. The design shall include a medical and first aid clinic with ambulance and a fire station with fire truck; a helicopter landing pad and associated facilities; and radio and telecommunication facilities.
10. A security fence of reinforced hollow block walling topped razor slash wire shall surround port operating and container and general cargo storage areas separating these facilities from the administrative and support services areas.
11. Primary electric power is to be sourced from the local electrical supply/area distribution concessionaire. The port design shall include the main substation/interface, stand-by power generation facilities, and all port power and lighting distribution systems. Cabling shall be routed underground as far as possible to avoid difficulties in transportation height restrictions around the facilities.
12. Special attention is to be paid to soil compaction/stabilization in the design and construction to load bearing surfaces and pavements, particularly in the storage areas, to prevent operational problems.
13. Provision shall be made for ship bunkering including necessary storage tanks and loading/unloading distribution lines and facilities for fuel, bunker and lubricating oils, etc.
14. A deep well water source is to be established and provision is to be made in the design for water storage, any water treatment required and a water distribution system.

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15. The design and construction shall include drainage and wastewater collection and disposal including treatment facilities as required.
16. The design and final constructed port shall comply with all applicable environment and pollution control laws and regulations.

Phase II

The second phase (Year 6-20) shifts the role of Port Irene into a catalyst for the industrialization of the region. In essence, Port Irene will support the development of the CSEZFP by providing the facilities for loading the Zone's exports and those emanating from the Cagayan Valley, and unloading their imports. At the same time, the port will raise its capacity for accommodating a projected increase in transshipment volume.

1. Construction of additional berths to accommodate potential increase projected to reach as much as 300,000 TEUs,
2. Expansion of the container yard area. It should be increased by 50% to accommodate increase in the container volume,
3. Acquisition of additional equipment such as cranes, etc.,
4. Improvement/upgrading of harbor roads, office buildings, and other port buildings, and
5. A specialized storage facility for a specific major mineral export (either copper concentrate or black sand) should the region eventually become capable of exporting these products as projected. A 25,000-50,000 ton storage capacity is recommended in this case.

Phase III

The third phase (beyond Year 20), or the long-term plan, signifies the fulfillment of the vision of Port Irene as a major transshipment and foreign trade hub. This will entail further increases in berthing, cargo handling, and storage capacity - including the establishment of a state-of-the-art container terminal and further expansion of the port area. The long-term strategy is to develop Port Irene primarily into a major transshipment hub, and secondarily into a foreign trade port. With the projected sustained growth in cargo volume engendered by these objectives, the port will require the following:

1. Additional berths to accommodate an incremental capacity of up to 200,000 TEUs,

Cagayan Economic Zone Authority
Minimum Design, Performance Standards and Economic Indicators
Rehabilitation, Development And Operation Of Port Irene

2. A proportionate expansion of the container yard, and
3. Acquisition of modern equipment for cargo handling and storage.

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ANNEX "B"

**BID OFFER PROPOSAL OF APIT TO DEVELOP AND
REHABILITATE OPERATE PORT IRENE**

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Chapter 2.
PORT IRENE REDEVELOPMENT
THROUGH BUILD-OPERATE-TRANSFER (BOT) SCHEME

In the late 1970's, Port Irene used to handle 200,000-300,000 metric tons (MT) of cargo annually. The port, however, lost substantial business and eventually became inactive due to the closure of Batong Buhay Gold Mine, the log export ban, and the decline in the production of molasses. Facilities were left to deteriorate in 1986 with the change in the presidential administration. Although there were initial plans to rehabilitate the port, these did not materialize.


Port Irene, however, has been given a new lease on life as recent developments created opportunities that would potentially make it a prime shipping destination in both the country and in the Asia-Pacific region. These developments include:

- The creation of the Cagayan Special Economic Zone (CSEZ) Authority, transferring the jurisdiction of the port from the Philippine Port Authority (PPA) to CSEZ; the ecozone will require backup port facilities to export successfully;
- The adoption of build-operate-transfer (BOT) arrangements, which means that the redevelopment of the port can proceed without waiting for unlikely government funds;
- The possible need for another regional transshipment hub, from which the return of Hong Kong to China may create, and the subsequent high cost of shipping and cargo handling services elsewhere in the region.

The proponents plan to redevelop Port Irene into a transshipment hub and an international shipping center for the products of the Cagayan SEZ. Developments will proceed under a proposed unsolicited BOT scheme.

A. The BOT Offer

The proponents intend to spend P1.6 billion initially and another P1.6 billion subsequently (Years 14-25). Of this amount, an initial P500 million will go to the improvement of existing infrastructure and new facilities (another P500 million is planned for civil works in Years 14-25) for the right to operate the port for 50 years. Under the proposed BOT arrangement, the proponents will be allowed to generate revenues from cargo handling and storage. Charges on vessels and cargoes collected from Year 6 onwards will be split equally between the proponent and the Cagayan SEZ Authority.



Aside from the capital outlays, the proponents will pay the following to the CSEZ Authority:

- The mandated 5% tax on ^{gross} net income;
- Lease payment on port area land (excluding privately owned land) under the following scheme:
 - ⇒ P7 million annually or P10/sqm/month, whichever is higher, during the first five years after the rehabilitation of the port, which will probably start two years from the date of the BOT approval;
 - ⇒ P10 million annually, increasing by 5% every two years, from year 6 to year 12, and fixed beyond the 12th year;
 - ⇒ An additional payment of 5% of gross income from sixth to 12th year;
 - ⇒ A 2-percentage point increment on the additional payment every two years from year 13 to year 25, and fixed beyond the 25th year (hence, it will be 7% of gross income in Years 13-14, 9% in Years 15-16, ..., 19% by Year 25 and onwards)

The CSEZ Authority will start to collect the payments two years after the approval of the BOT proposal or when the port is fully operational, whichever comes first.

The Authority also stands to benefit from charges on vessels and cargoes (split equally with APIT). However, in order to effectively attract spillover transshipments from Hongkong, Singapore, Taiwan, and even Thailand, the proponents are recommending that there should be no charges up to Year 5. After the development of the port, charges shall then be gradually increased at the rates indicated below:

Years 6-7	10% of Port of Manila rates
Years 8-9	20% of Port of Manila rates
Years 10-11	30% of Port of Manila rates
Years 12-13	40% of Port of Manila rates
Years 14 and onwards	50% of Port of Manila rates

The most recent schedule (3 April 1995) of vessel and cargo charges in the Port of Manila is found in Annex "B".

B. Financial Benefits Derived by Cagayan SEZ Authority

Based on projected container traffic (*see Market Aspects*) and net income (*see Financial Aspects*) of the BOT project, Cagayan SEZ Authority is expected to benefit financially from the proposed arrangement – from P7 million in the first year to roughly P560 million by the 25th year (these are annual figures). Details of the benefits are found in Table 2-1 below.

Table 2-1
FINANCIAL BENEFITS TO CAGAYAN SEZ AUTHORITY
OF THE PORT IRENE BOT PROJECT
(P'000)

Year	Tax Payments	Lease Payments	Vessel Charges	Cargo Charges	Total Benefits
1	0	7,000	0	0	7,000
2	0	7,000	0	0	7,000
3	1,100	7,000	0	0	8,100
4	3,205	7,000	0	0	10,205
5	5,610	7,000	0	0	12,610
6	7,532	21,721	3,331	8,985	41,569
7	9,594	23,590	3,429	9,255	45,867
8	12,438	26,256	7,061	19,065	64,819
9	14,931	28,767	7,269	19,637	70,604
10	18,279	32,205	11,225	30,338	92,048
11	21,126	35,448	11,715	31,248	99,538
12	24,762	38,781	16,076	42,915	122,535
13	27,438	54,924	16,545	44,203	143,109
14	31,844	59,799	21,285	56,911	169,839
15	35,903	81,814	21,906	58,617	198,240
16	38,956	90,179	22,712	59,789	211,635
17	42,200	120,001	23,148	60,986	246,335
18	46,842	132,015	23,592	62,206	264,656
19	50,614	171,773	24,046	63,450	309,883
20	56,086	189,476	24,507	64,718	334,788
21	61,342	239,925	25,342	66,013	392,022
22	68,013	262,226	25,823	67,332	423,394
23	73,532	324,299	26,314	68,680	492,825
24	83,331	355,945	26,816	70,054	436,146
25	70,132	390,896	27,326	71,453	559,806

C. Port Development Strategy

The redevelopment of Port Irene will be based on the projected cargo volume and the support facilities that this will require. The development will proceed in three phases:

- The first phase of development (Year 0-5), or the short-term plan, involves immediate and cost-effective port upgrading to capture overflow transshipments from Hongkong and Singapore and allow some export shipments into Taiwan. These are the most expedient revenue sources, enabling investors to quickly recover initial costs and eventually generate the surplus needed to help fund subsequent development phases.

- The second phase (Year 6-20) shifts the role of Port Irene into a catalyst for the industrialization of the region. In essence, Port Irene will support the development of the Cagayan Special Economic Zone by providing the facilities for loading the zone's exports and unloading its imports. At the same time, the port will raise its capacity for accommodating a projected increase in transshipment volume.
- The third phase (beyond Year 20), or the long-term plan, signifies the fulfillment of the vision of Port Irene as a major transshipment and foreign trade hub. This will entail further increases in berthing, cargo handling, and storage capacity -- including the establishment of a state-of-the-art container terminal and further expansion of the port area.

Details of the port infrastructure plan, including capital equipment needed and operational aspects such as manning and maintenance, are discussed in the Technical Aspects of the study.

- Phase I

Redevelopment includes, but is not limited to the following:

- ⇒ Repairing, lengthening and widening of the existing berth to accommodate vessels of up to 20,000 DWT class. Of the projected annual throughput of around 200,000 TEUs in the latter stages of Phase I, an average of eight 20,000 DWT vessels are estimated to call in at the port.
- ⇒ Development of a container yard which can handle 17,000 TEUs (equivalent to one month of container volume). If the containers are stacked at three levels and the bottom area is 8 feet by 20 feet per container, the container yard area should be 10 to 12 hectares.
- ⇒ Establishment of housing for port personnel to ensure quicker deployment and maintenance of port activities.
- ⇒ Other infrastructure such as roads especially within the port.
- ⇒ Creation of livelihood activities to keep families of port personnel within the port zone. The livelihood activities will mainly involve poultry and livestock raising which will be slaughtered, processed and shipped to Taiwan as exports. Hence, additional areas will be required to house the poultry and livestock farms, slaughterhouse/abattoir, processing facilities, and cold storage.

It is therefore recommended that on top of the existing port area, additional areas (for container yard, housing, livelihood, etc.) be annexed/purchased for immediate and future port use.

- Phase II

To accommodate the increasing cargo traffic, due in part to the operations of Cagayan SEZ, the following developments need to be considered:

- ⇒ Construction of additional berths. During this phase, annual throughputs have the potential to reach as much as 300,000 TEUs.
- ⇒ Expansion of the container yard area. It should be increased by 50%, or by another 5 hectares.
- ⇒ Construction/improvement of the port-industrial zone access roads. This could be a joint project of Port Irene investors and the Cagayan SEZ authority, or whoever is granted the right to operate the industrial zone.
- ⇒ Acquisition of additional equipment such as cranes, etc.
- ⇒ Improvement/upgrading of harbor roads, office buildings, and other port buildings.
- ⇒ A specialized storage facility for a specific major mineral export (either copper concentrate or black sand), should the region eventually become capable of exporting these products as projected. A 25,000-50,000 ton storage capacity is recommended in this case.

- Phase III

The long-term strategy is to develop Port Irene primarily into a major transshipment hub, and secondarily into a foreign trade port. With the projected sustained growth in cargo volume engendered by these objectives, the port will require the following:

- ⇒ Additional berths to accommodate an incremental capacity of up to 200,000 TEUs
- ⇒ A proportionate expansion of the container yard
- ⇒ Acquisition of modern equipment for cargo handling and storage

At this point, Port Irene may be congested; this justifies the expansion plans to be carried out in the future. Moreover, a separate state-of-the-art container terminal should be considered for development. San Vicente could be a potential expansion site, considering its proximity to Port Irene.

ANNEX B

Schedule of Port and Cargo Handling
Charges in the Port of Manila

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PPA implements new port charges

The Philippine Ports Authority implements starting April 3 this year the first of two steps of increases in port charges. The second step will be implemented starting April 3 next year.

Dollar-denominated port charges (port dues and dockage) for international trade vessels and wharfage on import/export cargo will increase 30 percent over the base rate within two years. Charges for domestic vessels and their cargo, on the other hand, will increase 60 percent over the same period. There are no increases for cargo storage.

Among the salient provisions of the new port charges schedule are:

- (1) reduction of wharfage dues and berthing and usage fees in private ports to 50 percent of those charged in public ports;
- (2) change of the charging base for wharfage from revenue ton to metric ton;
- (3) increase in the maximum gross revenue tonnage (GRT) from 30,000 to 50,000 GRT for dockage/anchorage billing;
- (4) increase in the minimum charge for domestic wharfage fee to P5.00 and foreign wharfage to P10;
- (5) penalties for dockside berthing of idle vessels and those subject to restraining orders, writ of attachments and other similar orders when there is an alternative berth other than dockside.

The schedule narrows down the rate disparities charged international vessels and their cargo vis-a-vis domestic vessels and their cargo.

While there is still cross-subsidy by international vessels for domestic vessels, the gap in port charges is smaller.

Port charges in private ports are 50 percent less than those in public ports in recognition of the fact that there is negligible public funds invested in the development of private ports. The reduced rates are meant to encourage more private investments in the construction of port facilities for specialized cargo.

Changing the charging base from revenue ton to metric ton simplifies the computation for wharfage, gives a fixed and more uniform implementation of this charge, and clears a problematic area in its computation.

Because of the rapidly increasing size of vessels, the old computation of dockage based on 30,000 GRT maximum is now obsolete. Hence, the new computation uses 50,000 GRT as maximum for dockage.

The minimum charge for wharfage is increased to P5.00 and P10 for domestic and foreign cargoes, respectively to cope with the increases in the cost of supplies and manhours of personnel.

For the first time, the PPA penalizes idle vessels 300 to 500 percent and those under litigation 600 to 1,000 percent for using dockside berths. This is meant to discourage such vessels from unnecessarily staying at berth and is meant to free these berths for operating vessels. Idle vessels and those under litigation do not pay this charge if they stay at the anchorage areas for idle vessels.

Another important innovation is the power given to the PPA Board of Directors to adjust

(from page 2)

or suspend the free storage period, and/or increase the storage charges for ports declared as congested.

Besides the usual exemptions from port charges given to cargo of BOI-registered firms and those granted special exemptions by laws enacted or decreed after 01 January 1976, the new schedule of port charges also grants exemptions to the following:

- (1) vessels for drydocking or repair, which are exempted from dockage/usage fees;
- (2) vessels, foreign or domestic, certified for shipbreaking, which are exempted from all vessel charges. Scraps resulting from shipbreaking are also exempted from wharfage;
- (3) donations from international and local organizations which are authorized or registered with the DSWD or Office of the President, which are exempted from wharfage and storage charges.
- (4) vessels in distress or those calling at any port for humanitarian reasons, which are exempted from all vessel charges.

The last time the PPA increased its port charges was in 1983 or more than ten years ago. Since then, prices have increased an average of 230 percent. The construction and rehabilitation cost of ports, payment of salaries and wages for its personnel, and repayment cost of foreign loans incurred for the development of major ports have all increased tremendously. Hence, the need for increasing port charges, which are made in consonance with the provisions of Malacañang Memorandum Circular No. 121 requiring the public sector to amend its rates according to the costs of providing the service.

The deliberations for the new set of charges started way back in 1991 culminating in a series of public-private sector dialogues conducted by the Authority's Commercial Services Department in various parts of the country to arrive at the most fair and just rates.

The new rates do not adversely affect in competitiveness of Philippine ports in relation to other ports in the ASEAN region. It also has negligible impact on the prices of basic commodities like rice, corn and sugar, which are projected to increase by an average of only 1/1,000 of a peso (P0.0010) per kilo.



Republic of the Philippines
PANGASIWAAN NG BAUGSIAN NG PILIPINAS
(PHILIPPINE PORTS AUTHORITY)
Maritime Bldg., South Harbor, Port Area
Manila, Philippines
Tel. Nos. 47-87-04, 40-81-68, 48-24-02

09 March 1994

PPA MEMORANDUM CIRCULAR
NO. 07 - 94

TO : All Port District Managers
Port Managers
Port Users
Others Concerned

SUBJECT : 1994 Port Tariff Rates

Pursuant to Memorandum Circular 121 issued by Malacañang on 02 November 1991, and in accordance with the guidelines promulgated by the Department of Finance (DOF), the two-steps increases in port charges as approved by the Secretary of Transportation and Communication last 2 March 1994, shall take effect April 3, 1994, thence April 3, 1995.

This amends/supersedes PPA Memorandum Circular No. 06-85.

For compliance

CARLOS L. AGUSTIN
General Manager



Republika ng Pilipinas
PANGASIWAAN NG DAUNGAN NG PILIPINAS
(PHILIPPINE PORTS AUTHORITY)
Maritime Bldg., South Harbor, Port Area
Manila, Philippines
Tel. Nos. 47-92-04, 40-81-66, 48-24-93

A. CHARGES ON VESSELS

1. Vessels engaged in foreign trade, including those engaged in barter trade, that enter any port, whether private or government, shall be charged **PORT DUES** on each call based on GRT, as follows:

Effective April 3, 1994	Effective April 3, 1995
US\$0.074	US\$0.081

2. Vessels engaged in foreign trade, including those engaged in barter trade, that berth at any port of call shall also be charged **DOCKAGE** at **BERTH** per GRT per calendar day or fraction thereof, as follows, provided that, for purposes of computation, a maximum of 50,000 GRT shall be used:

	Effective April 3, 1994	Effective April 3, 1995
At a Government Port	US\$ 0.036/GRT	US\$ 0.039/GRT
At a Private Port officially registered with PPA	US\$0.018/GRT	US\$0.020/GRT

3. Vessels engaged in foreign trade that do not berth but drop anchor at either a government or privately-owned port, whether operated exclusively or commercially, shall also be charged **DOCKAGE** at **ANCHORAGE** of one-half (1/2) of the corresponding dockage at berth at a government port, subject to the same maximum 50,000 GRT, as follows:

Effective April 3, 1994	Effective April 3, 1995
US\$0.018/GRT	US\$ 0.020/GRT

4. Vessels engaged in domestic trade that berth or drop anchor at any government port shall be charged a port **USAGE FEE**, as follows:

	Effective April 3, 1994	Effective April 3, 1995
Below 6 GRT	NO CHARGE	
6 to 100 GRT-per calendar day or fraction	P26.30	P30.10
Over 100 GRT-per GRT per calendar day or fraction thereof	P0.263	P0.301

Provided, that vessels engaged in domestic trade that call at an officially registered private port whether operated exclusively or commercially shall be charged at one-half (1/2) of the usage fee at a government port.

Provided further, that registered bay and river trade vessels shall also be charged one-half (1/2) of the required **USAGE FEE** but in no case less than or more than the following charges for a calendar day or fraction:

	Effective April 3, 1994	Effective April 3, 1995
Not less than	P26.30	P30.10
Not more than	P131.60	P150.40

5. Vessels engaged in domestic trade that are authorized to temporarily lay up and anchor at any port shall be charged a **LAY UP FEE** corresponding to one-half (1/2) of the applicable **USAGE FEE**.

	Effective April 3, 1994	Effective April 3, 1995
6 - 100 GRT-per calendar day or fraction	P13.15	P15.05
Over 100 GRT-per GRT per calendar day or fraction	P0.132	P0.150

6. Idle vessels occupying dockside berth at any government port despite a shilling order from the Port Manager or his authorized representative to give way to an incoming operating vessel, shall be assessed a charge of 300% of applicable dockage fee for foreign vessels and 500% of the applicable usage fee for domestic vessels, provided that payment of such fees shall be made by the owners, agents or representatives prior to actual departure from berth. However, vessels occupying dockside berth at any government port, but are subject of a restraining order, injunction, writ of attachment, and other similar orders by a competent court or authority, shall be assessed a charge of 600% of the applicable dockage for foreign vessels, and 1,000% of the applicable usage fee for domestic vessels; provided, that the payment of such assessed fees shall be made by the party granted the favorable judgement or order, and, provided further, that the same is made immediately after the court or competent authority's decision.

B. CHARGES ON CARGOES

7. All non-containerized foreign cargoes coming in (imported), going out (exported) or transhipped through a government-owned wharf shall be charged **WHARFAGE** for the use of port facilities on the basis of the total metric or revenue tonnage whichever is applicable, rounded off to the nearest ton, as follows.

If Imported

	Effective April 3, 1994	Effective April 3, 1995
a. Cargoes in Sack/Bags/Bulk/ Uncruted Live Animals/Steel Products Logs and Lumber/Heavy Lift Per Metric Ton	P33.85	P36.65
b. Others Per Revenue Ton	P28.20	P30.55

If Exported

a. Cargoes in Sacks/Bags/Bulk/ Uncruted Live Animals/Steel Products, Logs and Lumber/Heavy Lift Per Metric Ton	P16.90	P18.35
b. Others Per Revenue Ton	P14.10	P15.25

Foreign Transshipment

A single charge per metric or revenue ton payable by the shipping/line agent

a. Cargoes in Sacks/Bags/Bulk/ Steel Products, Logs and Lumber/ Heavy Lift Per Metric ton	US\$ 0.769	US\$ 0.833
b. Others Per Revenue ton	US\$ 0.641	US\$ 0.694

PROVIDED that the minimum charge shall be P10.00.

8. All containerized foreign cargoes (FCL or LCL singles) shall be charged WHARFAGE per box, as follows:

	Effective April 3, 1994	Effective April 3, 1995
<u>If Imported</u>		
20 - ft	P 479.40	P 519.35
35 - ft	606.30	656.85
40 - ft	719.10	779.05
45 - ft	846.00	916.50
<u>If Exported</u>		
20 - ft	P 239.70	P 259.70
35 - ft	304.55	329.95
40 - ft	360.95	391.05
45 - ft	423.00	458.25
<u>Foreign Transshipment</u>		
20 - ft	US\$ 11.02	US\$ 11.93
35 - ft	13.84	14.99
40 - ft	16.40	17.77
45 - ft	19.22	20.83

PROVIDED, that if cargoes in a box are owned by more than one (1) shipper/consignee, that is, LCL containers, the WHARFAGE for non-containerized cargoes shall apply; and PROVIDED FURTHER that NO WHARFAGE shall be charged on empty containers, i.e. without contents of any sort.

9. All non-containerized domestic cargoes shall be charged WHARFAGE as they enter or leave a government-owned wharf on the basis of their total revenue or metric tonnage rounded off to the nearest ton, as follows:

	Effective April 3, 1994	Effective April 3, 1995
a. Cargoes in Sacks/Bags/Bulk/ Uncrated Live Animals/Steel Products, Logs and Lumber/Heavy Lift Per Metric ton	P2.75	P3.15
b. Others Per Revenue ton	P2.30	P2.65

PROVIDED, that the minimum charge shall be P5.00.

10. Domestic containerized cargoes (FCL or LCL singles) shall be charged WHARFAGE on a box basis as the box enters or leaves a government-owned wharf at the following rates:

	Effective April 3, 1994	Effective April 3, 1995
10 - ft box or shorter	P 18.40	P 21.05
20 - ft	36.85	42.10
35 - ft	46.05	52.65
40 - ft	55.25	63.15
45 - ft	64.50	73.70

PROVIDED that if cargoes in a box are owned by more than one shipper/consignee (LCL), the wharfage for non-containerized cargo shall apply. PROVIDED FURTHER that no wharfage shall be charged on an empty box, i.e., without contents of any sort.

11. The WHARFAGE for all foreign and domestic cargoes whether containerized or not that are loaded or discharged on a vessel at anchor without using any wharf of a government or at a privately-owned port whether operated

exclusively or commercially, shall be one-half (1/2) of the corresponding charge collected at a government-owned port.

C. CHARGES ON STORAGE

12. A STORAGE shall be charged on cargoes that remain in any government-owned port beyond the "free storage period".

The said period is defined for all types of cargoes as follows:

- | | |
|---|---|
| a) For Imported Cargoes | 6 calendar days after the day that the last item of cargo is discharged from the carrying vessel. |
| b) For Export Cargoes | 5 calendar days from the day that the cargo is received at the port. |
| c) For Foreign Transhipment | a total of 15 calendar days from the day of arrival to the day of departure. |
| d) For Domestic Cargoes Entering any port | 2 calendar days prior to the day that the carrying vessel is scheduled to arrive as announced and approved by the PPA Port Manager. |
| e) For Domestic Cargoes Discharged at any port | 2 calendar days after the day that the last item of cargo is unloaded from the carrying vessel. |
| f) For Domestic Cargoes that are "Shutout" (not loaded on their scheduled vessel) | 2 calendar days after vessel's departure. |

PROVIDED that if the cargo is not loaded as scheduled, the resulting fee shall be paid for by whoever is at fault.

13. The STORAGE for non-containerized cargoes shall be determined on the basis of the number of calendar days that the cargo stays in port after the "free storage period" and the total revenue tonnage of the cargo according to the following schedule per revenue ton per day or fraction, as follows:

Imported Cargoes	P 7.50
Cargoes for Export	3.75
Foreign Transhipment	US \$ 0.171
Domestic Cargoes	P5.65

14. The STORAGE of a container whether or not it contains cargo shall be determined on the basis of the number of calendar days the cargo stays in port after the prescribed "Free Storage Period" as follows:

Existing Rates
(No Increase)

Foreign Imported Box	
20 - ft	P 240.65
35 - ft	421.10
40 - ft	481.30
45 - ft	541.45
Foreign Exported Box	
20 - ft	P 60.15
35 - ft	105.30
40 - ft	120.30
45 - ft	134.40
Foreign Transhipped Box	
20 - ft	US\$ 5.47

45 - 0	12.22
Domestic Buz	
10 - 0	P63.45
20 - 0	180.50
35 - 0	314.90
40 - 0	360.95

15. The FPA Board of Directors shall have the power to adjust or suspend the "free storage period" and/or increase the storage charges for ports declared by it as congested. PROVIDED, that foreign transshipment containers shall not be subject to the said escalation.

EXEMPTIONS FROM PORT CHARGES

16. Notwithstanding the above provisions, cargoes of duly BOI-registered firms as well as those granted special exemptions by law enacted or decreed after 1 January 1976 shall be exempted from payment of port charges until otherwise revoked or amended.
17. Vessels for drydocking or repair at any duly authorized drydocking shipyard facilities shall be exempted from dockage/usage fees from the time it calls at a shipyard facility up to the time the drydocking or repair is completed.
18. Vessels (foreign or domestic) certified for shipbreaking at a duly accredited shipbreaking yard shall be exempted from all vessel charges. Scraps resulting from shipbreaking of foreign vessels which are re-exported or sold locally shall be exempted from wharfage. Scraps resulting from shipbreaking of domestic vessels shall likewise be exempted from wharfage.
19. Vessels in distress or those calling at any port for humanitarian reasons shall also be exempted from all vessels charges.
20. Donations from international or local organizations duly authorized or registered by the DSWD or the Office of the President shall be exempted from wharfage and storage charges provided, there is evidence that the same is requested for release/delivery within seven (7) days from notice of arrival.

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A. CHARGES ON VESSELS

Vessels engaged in foreign trade, including those engaged in barter trade, that enter any port, whether private or government, shall be charged PORT DUES on each call based on GRT, as follows:

Existing Rates	Effective April 3, 1994	Effective April 3, 1995
US\$ 0.062/GRT	US\$ 0.074	US\$ 0.081

Vessels engaged in foreign trade, including those engaged in barter trade, that berth at any port of call shall also be charged DOCKAGE at BERTH per GRT per calendar day or fraction thereof, as follows, provided that, for purposes of computation, a maximum of 50,000 GRT shall be used:

	Existing Rates	Effective April 3, 1994	Effective April 3, 1995
At a Government Port	US\$ 0.030/GRT	US\$ 0.036/GRT	US\$ 0.039/GRT
At a Private Port officially registered with PPA	US\$ 0.021/GRT	US\$ 0.018/GRT	US\$ 0.020/GRT

Vessels engaged in foreign trade that do not berth but drop anchor at either a government or privately-owned port, whether operated exclusively or commercially, shall also be charged DOCKAGE at ANCHORAGE of one-half (1/2) of the corresponding dockage at berth at a government port, subject to the same maximum 50,000 GRT, as follows:

Existing Rates	Effective April 3, 1994	Effective April 3, 1995
US\$ 0.015/GRT	US\$ 0.018/GRT	US\$ 0.020/GRT

Vessels engaged in domestic trade that berth or drop anchor at any government port shall be charged a port USAGE FEE, as follows:

	Existing Rates	Effective April 3, 1994	Effective April 3, 1995
Below 6 GRT		NO CHARGE	
6 to 100 GRT-per calendar day or fraction	P 18.80	P 26.30	P 30.10
Over 100 GRT-per GRT per calendar day or fraction	P 0.133	P 0.253	P 0.301

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thereof

Provided, that vessels engaged in domestic trade that call at an officially registered private port whether operated exclusively or commercially shall be charged at one-half (1/2) of the usage fee at a government port.

Provided further, that registered bay and river trade vessels shall also be charged one-half (1/2) of the required USAGE FEE but in no case less than or more than the following charges for a calendar day or fraction:

	Existing Rates	Effective April 3, 1994	Effective April 3, 1995
Not less than	P 18.30	P 26.30	P 30.10
Not more than	P 94.00	P 131.60	P 150.40

Vessels engaged in domestic trade that are authorized to temporarily lay up and anchor at any port shall be charged a LAY UP FEE corresponding to one-half (1/2) of the applicable USAGE FEE.

	Existing Rates	Effective April 3, 1994	Effective April 3, 1995
6 - 100 GRT-per calendar day or fraction	P 9.40	P 13.15	P 15.05
Over 100 GRT-per GRT per calendar day or fraction	P 0.094	P 0.132	P 0.150

Idle vessels occupying dockside berth at any government port despite a shifting order from the Port Manager or his authorized representative to give way to an incoming operating vessel, shall be assessed a charge of 300% of applicable dockage fee for foreign vessels and 500% of the applicable usage fee for domestic vessels, provided that payment of such fees shall be made by the owners, agents or representatives prior to actual departure from berth. However, vessels occupying dockside berth at any government port, but are subject of a restraining order, injunction, writ of attachment, and other similar orders by a competent court or authority, shall be assessed a charge of 600% of the applicable dockage for foreign vessels, and 1,000% of the applicable usage fee for domestic vessels; provided, that the payment of such assessed fees shall be made by the party granted the favorable judgement or order, and, provided further, that the same is made immediately after the court or competent authority's decision.

B. CHARGES ON CARGOES

- 1) Non-containerized foreign cargoes coming in (imported), going out (exported) or transhipped through a government-owned wharf shall be charged WHARFAGE for the use of port facilities on the basis of the total metric or revenue tonnage whichever is applicable, rounded off

to the nearest ton, as follows

<u>If Imported</u>	<u>Existing Rates</u>	<u>Effective April 3, 1994</u>	<u>Effective April 3, 1995</u>
a. Cargoes in Sacks/Bags/Bulk/ Uncrated Live Animals/ Steel Products, Logs and Lumber/Heavy Lift Per Metric Ton	P 28.20	P 33.85	P 36.65
b. Others Per Revenue Ton	P 23.50	P 28.20	P 30.55

If Exported

a. Cargoes in Sacks/Bags/Bulk/ Uncrated Live Animals/ Steel Products, Logs and Lumber/Heavy Lift Per Metric Ton	P 14.10	P 16.90	P 18.35
b. Others Per Revenue Ton	P 11.75	P 14.10	P 15.25

Foreign Transshipment

A single charge per metric
or revenue ton payable
by the shipping/line
agent

a. Cargoes in Sacks/Bags/Bulk/ Steel Products, Logs and Lumber/Heavy Lift Per Metric ton	US\$ 0.641	US\$ 0.769	US\$ 0.833
b. Others Per Revenue ton	US\$ 0.534	US\$ 0.641	US\$ 0.694

PROVIDED that the minimum charge shall be P10.00.

All containerized foreign cargoes (FCL or LCL singles) shall be charged WHARFAGE per box, as follows:

<u>If Imported</u>	<u>Existing Rates</u>	<u>Effective April 3, 1994</u>	<u>Effective April 3, 1995</u>
20 - ft	P 399.50	P 479.40	P 519.35
35 - ft	505.25	606.30	659.85
40 - ft	599.25	719.10	779.05

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45 - ft	705.00	846.00	916.50 ✓
<u>If Exported</u>			
20 - ft	P 199.75	P 239.70	P 259.70 ✓
35 - ft	253.80	304.55	329.95
40 - ft	300.80	360.95	391.05 ✓
45 - ft	352.50	423.00	458.25 ✓
<u>foreign Transhipment</u>			
20 - ft	US \$ 9.18	US\$ 11.02	US\$ 11.93 ✓
35 - ft	11.53	13.84	14.99
40 - ft	13.67	16.40	17.77 ✓
45 - ft	16.02	19.22	20.83 ✓

PROVIDED, that if cargoes in a box are owned by more than one (1) shipper/consignee, that is, LCL Containers, the WHARFAGE for non-containerized cargoes shall apply; and PROVIDED FURTHER that NO WHARFAGE shall be charged on empty containers, i.e. without contents of any sort.

All non-containerized domestic cargoes shall be charged WHARFAGE as they enter or leave a government-owned wharf on the basis of their total revenue or metric tonnage rounded off to the nearest ton, as follows:

	Existing Rates	Effective April 3, 1994	Effective April 3, 1995
1. Cargoes in Sacks/Bags/Bulk/Unrated Live Animals/Steel Products, Logs and Lumber/Heavy Lift			
Per Metric ton	P 1.98	P 2.75	P 3.15
2. Others			
Per Revenue ton	P 1.65	P 2.30	P 2.65

PROVIDED, that the minimum charge shall be P 5.00.

Domestic containerized cargoes (FCL or LCL singles) shall be charged WHARFAGE on a box basis as the box enters or leaves a government-owned wharf at the following rates:

	Existing Rates	Effective April 3, 1994	Effective April 3, 1995
1 ft box or shorter	P 13.16	P 10.40	P 21.05
2 ft	20.32	36.85	42.10
3 ft	32.90	46.05	52.65
4 ft	39.48	55.25	--

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PROVIDED that if cargoes in a box are owned by more than one shipper/consignee (LCL), the wharfage for non-containerized cargo shall apply: PROVIDED FURTHER, that no wharfage shall be charged on an empty box, i.e., without contents of any sort.

the WHARFAGE for all foreign and domestic cargoes whether containerized or not that are loaded or discharged from a vessel at anchor without using any wharf of a government or at a privately-owned port whether operated exclusively or commercially, shall be one-half (1/2) of the corresponding charge collected at a government-owned port.

C. CHARGES ON STORAGE

STORAGE shall be charged on cargoes that remain in any government-owned port beyond the "free storage period".

The said period is defined for all types of cargoes as follows:

For Imported Cargoes	6 calendar days after the day that the last item of cargo is discharged from the carrying vessel.
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For Export Cargoes	5 calendar days from the day that the cargo is received at the port.
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For Foreign Transshipment	a total of 15 calendar days from the day of arrival to the day of departure.
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For Domestic Cargoes Entering any port	2 Calendar days prior to the day that the carrying vessel is scheduled to arrive as announced and approved by the PPA Port Manager.
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For Domestic Cargoes Discharged at any port	2 Calendar days after the day that the last item of cargo is unloaded from the carrying vessel.
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For Domestic Cargoes that are "Shutout" (not loaded on their scheduled vessel)	2 Calendar days after vessel's departure.
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PROVIDED that if the cargo is not loaded as scheduled, the resulting fee shall be paid for by whoever is at fault.

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EXEMPTIONS FROM PORT CHARGES

6. Notwithstanding the above provisions, cargoes of duly BOI-registered firms as well as those granted special exemptions by law enacted or decreed after 1 January 1976 shall be exempted from payment of port charges until otherwise revoked or amended.
7. Vessels for drydocking or repair at any duly authorized drydocking shipyard facilities shall be exempted from dockage/usage fees from the time it calls at a shipyard facility up to the time the drydocking or repair is completed.
8. Vessels (foreign or domestic) certified for shipbreaking at a duly accredited shipbreaking yard shall be exempted from all vessel charges. Scraps resulting from shipbreaking of foreign vessels which are re-exported or sold locally shall be exempted from wharfage. Scraps resulting from shipbreaking of domestic vessels shall likewise be exempted from wharfage.
9. Vessels in distress or those calling at any port for humanitarian reasons shall also be exempted from all vessels charges.
10. Donations from international or local organizations duly authorized or registered by the DSWD or the Office of the President shall be exempted from wharfage and storage charges provided, there is evidence that the same is requested for release/delivery within seven (7) days from notice of arrival.

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The STORAGE for non-containerized cargoes shall be determined on the basis of the number of calendar days that the cargo stays in port after the "free storage period" and the total revenue tonnage of the cargo according to the following schedule per revenue ton per day or fraction, as follows:

Imported Cargoes	₱ 7.50
Cargoes for Export	3.75
Foreign Transhipment	US \$ 0.171
Domestic Cargoes	₱ 5.65

The STORAGE of a container whether or not it contains cargo shall be determined on the basis of the number of calendar days the cargo stays in port after the prescribed "Free Storage Period". as follows:

Existing Rates

(No Increase)

Foreign Imported Box

20 - ft	₱ 240.65
35 - ft	421.10
40 - ft	481.30
45 - ft	541.45

Foreign Exported Box

20 - ft	₱ 60.15
35 - ft	105.30
40 - ft	120.30
45 - ft	134.40

Foreign Transhipped Box

20 - ft	US \$ 5.47
35 - ft	9.57
40 - ft	10.94
45 - ft	12.22

Domestic Box

10 - ft	₱ 63.45
20 - ft	180.50
35 - ft	314.90
40 - ft	360.95

The PPA Board of Directors shall have the power to adjust or suspend the "free storage period" and/or increase the storage charges for ports declared by it as congested. PROVIDED, that foreign transshipment containers shall not be subject to the said escalation.

PORT OF MANILA
 SCHEDULE OF CARGO HANDLING TARIFF
 SOUTH HARBOR
 EFFECTIVE AUGUST 01, 1994

IN ACCORDANCE WITH
 PPA MEMO CIRCULAR
 NO. 16-94

Basis

Containerized

Vessel Charges (Stevedoring)

Non-Self Sustaining Vessel

1. CY/FCL

Loaded

20 footer

/box 1,398.00

40 footer

/box 1,957.00

Empty

20 footer

/box 1,176.00

40 footer

/box 1,515.00

2. CFS/LCL -Inbound/Outbound

20 footer

/box 3,464.00

40 footer

/box 5,048.00

3. Shifting on Board

/box 1,060.00

4. Shifting via dock/barge/
 vice versa

/box 2,384.00

5. Foreign Transhipment (without rework)

20 footer

/box 2,237.00

40 footer

/box 2,798.00

Self-Sustaining Vessel

1. CY/FCL

Loaded

20 footer

/box 762.00

40 footer

/box 1,338.00

Empty

20 footer	/box	563.00
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40 footer	/box	899.00
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2. CFS/LCL -Inbound/Outbound

20 footer	/box	2,833.00
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40 footer	/box	4,404.00
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3. Shifting on Board	/box	453.00
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4. Shifting via dock/barge/ vice versa	/box	1,157.00
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5. Foreign Transhipment (without rework)

20 footer	/box	1,012.00
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40 footer	/box	1,567.00
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Cargo Charges (Arrastre)

1. FCL - Import

20 footer	/box	1,188.00
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40 footer	/box	2,726.00
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FCL - Export

20 footer	/box	970.00
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40 footer	/box	2,228.00
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2. CFS/LCL - Import and export rate, based on actual weight or measurement of LCL cargoes applying the general cargo rate.

Miscellaneous Charges (payable by whoever requested for the services)

Lifting and closing of hatch covers, lids and supporting beams (non-self sustaining vessels only)	/hatch	1,239.00
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Making fast & letting go lines	/call	188.00
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Pier Lighting (night operations -1800H to 0600H)	/hour	25.00
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REEFER Charges (Plug in/out)

/box/hr or fraction

20 footer	24.00
40 footer	56.00

A minimum of 6 hour shall be imposed on import reefer vans

/box

20 footer	144.00
40 footer	336.00

Reefer vans for export shall be subject to one (1) hour minimum

a. B.O. Turnover Survey

gang/hour 313.00

b. Shoring/Recouping Labor Cost, only.

gang/hour 135.00

Materials, subject to the determination of both parties based on actual usage.

Equipment Rental (includes operator)

a. Shore Crane

per hour or fraction thereof 2,266.75

b. Crane - 100 ton mobile crane minimum of twelve (12) container moves, but not more than two (2) hours.

/minimum 8,846.75

Less than 6 container moves

/hour 482.95

Rental Rate from the expiration of the two (2) initial hours

/hour 4,323.65

c. Other Equipment

Crane (Mobile 100 Tons Capacity
Crane 50 Tons Capacity
Crane 25 Tons Capacity
Crane Container Barge Tango

/hour	4,323.65
/hour	1,766.95
/hour	1,009.70
/hour	620.00

Forklift 20 Tons Capacity
Forklift 10 Tons Capacity
Forklift 3 Tons Capacity

/hour	504.80
/hour	277.75
/hour	192.80

Toploader 25 Tons Capacity
Toploader 35 Tons Capacity

/hour	757.25
/hour	1,009.70

Shifter/Straddle Carrier 35 Tons Capacity

/hour 1,009.70

Tractor Head
Truck, Stake

/hour	277.75
/hour	192.80

d. Chassis w/ Truck/Tractor		
20 footer	/box	122.70
40 footer	/box	243.20
e. Pallets (outside rental)	/hour	24.10
f. Stripping - FCL		
- 100% examination	/box	2,185.50
- Over 10% but below 100% exam	/box	2,185.50
- BOC Spot Checking/10% exam.	/box	1,093.30
	/box	334.10

Daily Charges

Stand-by Charges

a. Manpower

Applies to causes beyond the control and not through the fault or negligence of the cargo handling operator, including but not limited to:

- a. inclement weather
- b. waiting for vessel to dock
- c. breakdown of vessel gear
- d. waiting for cargo/truck/barges
- e. men engaged but not put to work

a) On-Dock	gang/hour	474.35
b) On-Board	gang/hour	311.65
Shore Crane	/minute	123.80
Equivalent to Four (4) Container Lifts per hour or fraction thereof	/hour	2,469.80

Labor Services

On-Dock

Containerized Cargo Delivery Gang	gang/hour	200.30
BO Turn-over Gang	gang/hour	313.00
Stripping and Stuffing - BOC	gang/hour	135.10
Container Shoring	gang/hour	135.10
Utility	gang/hour	322.60
Barge Delivery Operation	gang/hour	432.40
Lashing/Unlashing (Containerized/RO-RO)	gang/hour	219.25
Discharging Vessel/Barge Operation/Stripping	gang/hour	577.20
Lashing/Unlashing Gang	gang/hour	395.95
Container Crane Optns. (Loading/Unloading)	gang/hour	608.30
Self-Sustained Container Vessel (Loading/Unloading)	gang/hour	723.35
Integrated General Cargoes & Units	gang/hour	677.30

b. On-Board

Regular Gang	gang/hour	268.95
Big Gang	gang/hour	315.50
Manlighter Gang	gang/hour	187.45
Lashing/Unlashing/Shoring	gang/hour	311.65

Personnel Services

Antigo	/hour	27.10
Batteryman	/hour	27.50
Cabo	/hour	27.90
Cabo B.O.	/hour	27.90
Carpenter	/hour	27.30
Checker Posting B.O.	/hour	27.30
Checker Delivery	/hour	28.30
Checker Posting	/hour	28.30
Checker Receiving	/hour	28.30
Checker Transfer	/hour	28.10
Clerk	/hour	27.30
Cooperer B.O.	/hour	26.90
Deliveryman	/hour	26.90
Electrician	/hour	26.90
Foreman Delivery	/hour	28.40
Foreman Receiving	/hour	28.40
Gatekeeper	/hour	30.30
Gearlockerman	/hour	26.90
Inspector B.O.	/hour	28.40
Inspector Gate	/hour	30.30
Lineman	/hour	26.90
Locator	/hour	26.90
Locator Van	/hour	26.90
Mechanic	/hour	28.30
Mechanic Helper	/hour	27.70
Moderno	/hour	26.80
Operator Crane (2)	/hour	34.70
Operator Forklift	/hour	27.10
Operator Gantry Crane	/hour	26.80
Operator Mobile	/hour	28.20
Operator Tractor	/hour	29.90
Reeler Technician	/hour	25.80
Signalman	/hour	27.30
Special Cargoman	/hour	25.90
Supervisor	/hour	30.90
Supervisor B.O.	/hour	30.90
Superintendent	/hour	32.80
Utilityman	/hour	26.90
Welder	/hour	26.90
Winchman	/hour	27.30
Baggage Master	/hour	27.90

7. Checking Charge
(Shipside Delivery)

IRT 6.50

Roll-on-Roll-off Charges

1. Vessel Charges (Stevedoring)

IRT 27.10

2. Cargo Charges (Arrastre)

IRT 54.45

Miscellaneous Charges (payable by whoever requested for the services)

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Making fast & telling go lines

/call 211.55

Pier Lighting (night operations
1800H to 0600H)

/hour 28.30

a. B.O. Turnover Survey

gang/hour 351.80

b. Shoring/Recouping

Labor Cost, only

gang/hour 151.30

Materials, subject to the
determination of both parties
based on actual usage.

Equipment Rental (includes operator)

a. On-Dock

Crane (Mobile) 100 Tons Capacity /hour 5,130.80

Crane 50 Tons Capacity /hour 2,095.75

Crane 25 Tons Capacity /hour 1,198.20

Forklift 20 Tons Capacity /hour 599.05

Forklift 10 Tons Capacity /hour 329.60

Forklift 3 Tons Capacity /hour 228.60

Toploader 25 Tons Capacity /hour 898.65

Toploader 35 Tons Capacity /hour 1,198.20

Shifter/ Straddle Carrier 35 Tons Capacity /hour 1,198.20

Tractor Head /hour 329.60

Truck, Stake /hour 228.60

b. On-Board

Forklift 3 Tons Capacity /hour 390.00

Outside rental of pallets /hour 28.60

Charges

Basis

by Charges on Manpower

applies to causes beyond the control and not
through the fault or negligence of the cargo
handling operator, including but not limited

- a. inclement weather
- b. waiting for vessel to dock
- c. breakdown of vessel gear
- d. waiting for cargo/truck/barges
- e. men engaged but not put to work

a) On-Dock	gang/hour	562.90
b) On-Board	gang/hour	305.10

Labor Services

Basis

Gang Services

a) On-Dock		
General Cargo Delivery Gang	gang/hour	291.90
B.O Turn-over Gang	gang/hour	371.40
Utility	gang/hour	383.05
Barge Delivery Operation	gang/hour	513.10
Lashing/Unlashing (RO-RO)	gang/hour	260.20
Discharging Vessel/Barge Operation/Stripping	gang/hour	685.00
Lashing/Unlashing Gang	gang/hour	469.90
Self-Sustained Vessel (Loading/Unloading)	gang/hour	858.40
Integrated General Cargoes & Units	gang/hour	1,041.05

b) On-Board		
Regular Gang	gang/hour	301.95
Big Gang	gang/hour	354.25
Manlighter Gang	gang/hour	210.45
Lashing/Unlashing/Shoring	gang/hour	349.95

Personnel Services

Antigo	/hour	32.20
Batteryman	/hour	32.55
Cabo	/hour	33.15
Cabo B.O.	/hour	33.15
Carpenter	/hour	32.35
Checker Posting B.O.	/hour	32.35
Checker Delivery	/hour	33.55
Checker Posting	/hour	33.55
Checker Receiving	/hour	33.55
Checker Transfer	/hour	33.35
Clerk	/hour	32.35
Cooper B.O.	/hour	32.35

Deliveryman	/hour	32.00
Electrician	/hour	32.00
Foreman Delivery	/hour	32.00
Foreman Receiving	/hour	33.75
Gatekeeper	/hour	33.75
Gearlockerman	/hour	35.00
Inspector B.O.	/hour	32.00
Inspector Gate	/hour	33.75
Lineman	/hour	36.00
Locator	/hour	32.00
Locator Van	/hour	32.00
Mechanic	/hour	32.00
Mechanic Helper	/hour	33.60
Moderno	/hour	32.90
Operator Crane (2)	/hour	31.85
Operator Forklift	/hour	41.15
Operator Gantry Crane	/hour	32.20
Operator Mobile	/hour	31.85
Operator Tractor	/hour	33.50
Reefor Technician	/hour	35.50
Signalmen	/hour	34.10
Special Cargoman	/hour	32.35
Supervisor	/hour	32.00
Supervisor B.O.	/hour	36.70
Superintendent	/hour	36.70
Truck Driver	/hour	38.85
Utilityman	/hour	32.20
Welder	/hour	32.00
Winchman	/hour	32.00
Boysgo Master	/hour	32.35
	/hour	33.15

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APPLICATION OF CHARGES

1. CONTAINER OPERATION

A. VESSEL CHARGES

1. CY/FCL

shall cover the following services:

1.1 For work performed on board the vessel.

- i. Discharging and loading of containers, loaded or empty from vessel to dock and vice versa.
- ii. Lashing and unlashings
- iii. Opening and closing of hatch covers, lids and supporting beams.

1.2 For work performed at the container yard (CY):

1.2.1 Quay Transfer Operation:

- i. Receiving container, loaded or empty, from the vessel and moving from alongside the carrying vessel to the yard and vice versa.

1.2.2 Container Stacking and Unstacking Operation:

- ii. Stacking and Unstacking of import and export container, loaded or empty, at the CY including all shifting moves inherent to Stacking and Unstacking operation.
- iii. Securing containers from damage inside the terminal.

2. CFS/LCL

Shall cover the following services:

- i. For all services performed for CY/FCL as discussed above;
- ii. In addition, the following activities are covered:
 - a. Shifting of empty vans from CY to CFS for stuffing or vice versa for stripping
 - b. Moving of stuffed containers back to CY from CFS for loading or vice versa.
 - c. Stuffing or stripping and all related services. Container loadability at a minimum of 21 cbm. for 20 foot and 50 cbm for 40 foot
 - d. Loading of empty containers from place of storage unto chassis or trailers for delivery.

- iii. Complete stripping of inbound LCL containers within three (3) working days from date of permit to strip issuance, shifting of stripped containers to CY and delivery or transfer to outside port zone.

- 3. Transshipment - only vessel charges apply, except when there is a need for rework where stripping or stuffing charge shall apply in addition to vessel charges.

B. CARGO CHARGES

1. CY/FCL

Shall cover the following services at the Container Yard (CY), as follows:

- 1.1. Receiving of export FCL from place/s outside port zone (OPZ).
- 1.2. Moving import FCL containers from storage area to examination area to pre-delivery area up to delivery area
- 1.3. Mounting of FCL import unto trailer/chassis for delivery to consignee or for transfer to place/s OPZ.
- 1.4. Securing containerized cargoes from damage inside the terminal.

2. CFS/LCL

Shall cover the following services at the Container Freight Station (CFS), as follows:

- 2.1. Receive loose export cargoes from tail of consignee's transportation coming from places outside port zone.
- 2.2. Deliver or transfer loose import cargoes onto tail of consignee's transportation.
- 2.3. Check cargoes by marks/countermarks and quantity.
- 2.4. Sort, pile, stow and classify cargoes in their designated areas.
- 2.5. Recoup if damaged by the terminal operator.
- 2.6. Secure import and export cargoes from damage and pilferage inside the warehouse.

CONVENTIONAL OPERATION

A. VESSEL CHARGES⁷

Conventional Cargoes - General or Breakbulk

- For stevedoring services defined as follows:

Work performed on board vessel, that is the process or act of loading and unloading cargo, stowing inside hatches compartments and on deck or open spaces on board vessel. Related services to stevedoring are the activities of rigging ship's gear, opening and closing hatches.

Other stevedoring services, which may be performed by the regular gang, are considered extra services, and shall be charged in accordance with the extra labor tariff. These services shall include but are not limited to the following:

- a. cleaning holds
- b. laying and shifting of dunnage
- c. building bulkheads
- d. breaking of hardened cargo
- e. shoveling of bulk cargo where there are cargo separators
- f. building bulkheads
- g. shoring/unshoring
- h. lashing/unlashing
- i. rebagging
- j. stripping of containers on board vessel

B. CARGO CHARGES

Conventional Cargoes - General or Breakbulk

Shall cover the following services:

1. Receive and load cargoes from/to ship's tackle with the use of dock (arrastre) gang and cargo handling equipment;
2. Check cargoes by marks and quantity, acknowledge and sign receipt of cargo for loading/discharging;
3. Sort, pile, stow and classify cargoes in their designated areas in sheds/open storage/warehouse;
4. Check and recoup bad order and damaged cargoes if damage is caused by the contractor;
5. Deliver/transfer cargo onto and receive from tail of consignee's transportation or ship's tackle; and
6. Secure cargoes from pilferage and losses while under custody.

TERMS AND CONDITIONS

All conventional export cargoes are entitled to 18.30% discount on cargo charges (arrastre).

LCL containers stuffed outside the port and brought inside the port shall be charged the applicable rate for FCL.

Receiving export cargoes/delivery of import cargoes shall be charged extra labor services fee only when done outside of vessel operations and beyond regular working hours.

Dangerous cargoes shall be charged in accordance with PPA Administrative Order No. 02-89.

PPA reserves the right:

- a. to impose at any time the use of a shore crane for self-sustaining vessel when vessel's gears are slow or incapable of efficient operations.

- b. to direct the stripping of FCL containers and no-commercial value balikbayan boxes on a case to case basis when found necessary in the interest of port efficiency.

This tariff includes overtime pay, standard labor complement and equipment (except equipment on board), twenty-four (24) hours vessel operation, Monday to Sunday including holidays except when the port is declared closed by the Authority.

Revenue ton as used in this tariff is equivalent to 1,000 kilograms or 1.1326 cubic meters (40 cu.ft.) whichever yields the greater amount of revenue.

General or breakbulk includes cargoes in crates, boxes, drums, sacks, baskets, rolls, bales, vehicles and other loose cargoes, animals, poultry, crated or uncrated.

Palletized cargo refers to a single unit/package stacked on a portable platform or deck called a pallet which shall not be less than one (1) metric ton or 1.1326 cubic meters, with its own fittings/attachment, and which can be transported, usually by a mechanical appliance such as forklift truck.

Steel products include iron and steel sheets, billets, bars, bundle of pipes and pipe fitting, other metal products, single or in bundles, without marks, mixed-up or with illegible marks, to be received in the open and sorted out by invoice assortment and specifications for proper delivery or loading.

Heavy lift cargo refers to a very large and heavy single unit cargo, the minimum weight is five tons (5), such as, locomotives, bulldozers, large machineries, and other heavy and large equipment or parts and which is normally discharged or loaded by a heavy lifting derrick, crane or boom.

A copy of the Inward and Outward Manifest and Stowage Plan of the vessel shall be furnished the terminal operator for the discharging and loading of containerized and non-containerized cargoes (if any).

Responsibility and Liability for Losses and Damages. The Contractor's liability for cargo and vessel equipment losses and damage/s shall be governed by the provisions of the Management Contract.

No customer shall be refused services by the cargo handler on account of dispute in the interpretation of this tariff unless explicitly authorized by the Authority.

No charges shall be imposed by the contractor unless otherwise authorized in this tariff or by the Authority.

All queries, problems and interpretations arising out of the provisions of this tariff, including its schedule of rates, charging bases as well as the applicable terms and conditions shall be referred to the Commercial Services Department (CSD) for final resolution. Provided however, that such queries and problems, when referred to the CSD, shall have with them all the necessary/pertinent documents, receipts, bills/invoices and all other particulars of the issue/s including the results of the preliminary evaluation of the PMO/PDO Manager concerned, to facilitate resolution of the same.

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ANNEX "C"

BID DOCUMENTS

- A) INSTRUCTIONS TO BIDDERS
- B) MINIMUM DESIGN
- C) DRAFT CONCESSION AGREEMENT

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INSTRUCTIONS TO BIDDERS

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REHABILITATION, DEVELOPMENT, AND OPERATION OF PORT IRENE UNDER BUILD-OPERATE-TRANSFER (BOT) SCHEME

INSTRUCTIONS TO CHALLENGERS/BIDDERS

1. GENERAL INFORMATION

1.1. INTRODUCTION

The Cagayan Economic Zone Authority (CEZA) was created through Republic Act 7922, otherwise known as the "Cagayan Special Economic Zone Act of 1995", and signed by President Fidel V. Ramos on February 24, 1995. CEZA is a government corporate body under the Office of the President tasked to manage and supervise the Cagayan Special Economic Zone and Freeport (CSEZFP) which covers the entire municipality of Sta. Ana and the islands of Fuga, Barit and Mabbag in the municipality of Aparri, Province of Cagayan.

The area is envisioned to be a self-sustaining, eco-friendly industrial zone and mixed-use new township development. It is being developed to be a major transshipment center for agro-industrial, light and medium, and high-technology and knowledge-based industries with world-class tourism facilities and establishments. It will also provide for residential and commercial districts complete with state-of-the-art utilities and infrastructure support systems.

The development of CSEZFP will be anchored on a tri-nodal development nucleus: the creation of a transshipment industry, agro-industrial development by enhancing agricultural produce and endowments with foreign technology and capital for value-added yields, and the development of tourism and leisure facilities.

1.2. UNSOLICITED PROPOSAL

An Unsolicited Proposal to develop and rehabilitate Port Irene under a Build-Operate-Transfer (BOT) scheme was submitted by a private prospective contractor. Located in Casambalangan Bay in Sta. Ana, Cagayan, Port Irene is a key component of the over-all development plan of the CSEZFP. The development of Port Irene is in line with the CEZA's objective to create a sustainable mixed-use industrial zone supported by an international seaport and to encourage private participation in the implementation of the port project. Once operational, the port will serve future locators in the Zone as well as cater to transshipment cargoes.

Pursuant to Republic Act 6957, as amended by Republic Act No. 7718 and its Implementing Rules and Regulations, CEZA published the Invitation to Pre-qualify and Submit Comparative Proposals in the *Manila Standard* and *Philippine Daily Inquirer* on December 18, 23 and 29, 1998 and in the *International Herald Tribune* (Atlantic edition) on December 28, 1998 and *International Herald Tribune* (Asia-Pacific edition) on January 4, 1999. The Unsolicited Proposal was presented and approved by the Investment Coordinating Committee (ICC) Technical Board on 14 August 1998 and approved for publication by the ICC Cabinet Committee on 10 December 1998.

CEZA is requesting qualified bidders to submit comparative or competitive proposals for the development, rehabilitation and operation of Port Irene through Build-Operate-Transfer (BOT) arrangement.

1.3. LEGAL FRAMEWORK

The law governing BOT projects is Republic Act No. 6957 as amended by R.A. No. 7718, otherwise known collectively as the BOT law. The Implementing Rules and Regulations (IRR) for this legislation is entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes." It was enacted in line with the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development and to provide appropriate incentives to mobilize private resources for the purpose. RA 7718 was approved into law on May 5, 1994. It amends previous BOT legislation adopted in 1990. The IRR supplementing this legislation was approved in July 1994. The bidding process defined herein is based on RA 7718 and its IRR. Interested bidders are advised to read and familiarise themselves with RA 7718 and its IRR.

1.4. CAVEAT

This information is given to assist prospective firms to make their own research and evaluation of this project, and to aid them in the preparation of the proposal. The call for bid is made for the purposes of determining the best possible offer in the market. CEZA assumes no obligation to compensate or indemnify any bidder for any expenses or loss it may incur in the preparation of its bid, nor does it guarantee that an award will be made to any bidder under this tender. Neither does this call for bids confer a right on any bidder for an action for damages or unrealized profits or other damages.

CEZA has exerted an appropriate effort to ensure the accuracy and the completeness of the information in the TOR and its various attachments. Nevertheless, CEZA is not liable for any inaccuracies which may occur. In all cases, interested parties should conduct their own due diligence, investigation, analysis and projections deemed material to their bids.

By accepting these TOR, the recipient acknowledges and accepts that: (1) none of the information contained herein will be used by the recipient or any of its employees or representatives in any manner whatsoever, in whole or in part, other than in connection with its evaluation of the work on the specific basis proposed herein; (2) without limiting the generality of the foregoing, the recipient will not reproduce and/or distribute these TOR to any person other than a limited number of the recipient's employees or representatives who have a clear need to know such information; and (3) any proposed action by the recipient which are inconsistent in any way with the foregoing agreements will require prior written consent of the CEZA.

Conduct of bidding shall follow the procedure provided in the Implementing Rules and Regulations of Republic Act 6957, as amended by R.A. 7718, otherwise known collectively as the BOT Law.

1.5. DEFINITION OF TERMS

The following words or terms are used and shall have the following meaning, except where the context otherwise requires:

"Agreement" means the Concession Agreement to build-operate-transfer the Port of Irene between the successful project contractor and CEZA.

"Applicant/Bidder" means any firm, partnership, corporation or consortium engaged in the construction, shipping and port services industry that applies for pre-qualification.

"Authority" or "CEZA" means the Cagayan Economic Zone Authority, a government agency under the executive branch of the Government.

"Concessionaire" means the winning bidder with whom CEZA enters into an Agreement to undertake the project activities herein specified.

2. PROJECT DESCRIPTION

2.1. THE PROJECT

The project will require the Concessionaire to develop, rehabilitate and operate Port Irene into a transshipment hub and an international shipping center that will support the development of the CSEZFP and the rest of the Cagayan Valley. Towards this end, the bidders have to assess the conditions of the existing pier, determine what needs to be done to enable the port to handle containers and attract regular calls from international shipping lines, and formulate a practical and realistic marketing and business plan to operate and maintain the facility. A feasibility study therefore will be required detailing the technical, marketing, organizational and financial evaluation including assumptions and projections. The development will likely entail some reclamation, reconfiguration of the port area, provision of modern cargo handling equipment and dredging to a desired depth of at least 13 meters to accommodate post-panamax vessels.

Pursuant to Section 12.3 of the BOT-IRR, CEZA shall grant the winning challenger/bidder the franchise to operate and maintain the facility including collection of tolls, fees, rentals and other charges within the port in accordance with the schedules stipulated in the approved contract.

The Concessionaire shall be responsible for the financing, designing, supplying, delivering to site, construction, installation, erecting, testing, commissioning of the project, operating and maintaining the completed port as described in the Minimum Design and Performance Standard. The Concessionaire shall also be responsible for

obtaining the building, construction and other permits, licenses, approvals for the project and of visas and work permits for foreign personnel, recruiting of local labor and complying with all the local and other regulations including the payment of all fees and costs thereof.

CEZA will not impose a specific layout or port configuration, but will leave this to the judgement of the bidder/applicant. However, the layout, allocation of spaces (sheds, container yard, etc.) and choice of cargo handling equipment mix must lead to an efficient port operation. The scheme adopted by the contractor will be evaluated by CEZA as an indication of the bidder's competence.

2.2. CONTRACTUAL ARRANGEMENT

The BOT is a contractual agreement whereby the project proponent undertakes the construction, including financing of a given infrastructure facility and the operation and maintenance. A fixed term for the operation of the infrastructure facility will be awarded to the project proponent. The project proponent is allowed to charge facility users, appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment and operating and maintenance of the project. After the fixed term, which will not exceed 50 years, the project proponents will transfer the facility to CEZA.

2.3. PUBLIC UTILITY CLASSIFICATION

Port Operation being a Public Utility requires that the facility operator must be a Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission and owned up to at least 60% by Filipinos. In case the project proponent is a joint venture or consortium, the members or participants shall submit a sworn statement undertaking that if awarded the contract, they shall bind themselves jointly and severally responsible for the obligations of the proponent under the contract. And, if members of the joint venture or consortium organize themselves as a corporation registered under Philippine laws, the liabilities of such members under the contract shall be in accordance with said laws.

2.4. CONCESSION PERIOD

The Concessionaire will be provided with a 25-year Concession Period. CEZA will grant the winning bidder the right to operate the port, charge cargo handling fees, such as Stevedoring, Cranage and Terminal Handling fee, and offer ancillary services for a fee within the port. CEZA expects to be paid a fixed rental on the land located within the port area. Any additional income share or payment to CEZA may be proposed by the bidder. The Concession Period may be extended by mutual agreement of the concerned authorities subject to good performance and fulfilment of past obligations and negotiation of commercial terms. The original concession together with the extension shall not exceed a total of 50 years. Moreover the extension and the new terms and conditions of the contract will be subject to the ICC's no objection clearance.

2.5. PORT REGULATIONS

CEZA currently adopts the port regulations of the Republic of the Philippines, under the Philippine Ports Authority (PPA). However, CEZA is in the process of drafting its own port regulations. It is anticipated that these will be in effect within the first year of the concession.

2.6. RIGHT-OF-WAY AND LAND CONVERSION CONFLICTS

CEZA owns the following in the port area:

- Land: Reclaimed area, consist of earth-fill about 40,000 square meters;
- Rock Bulkhead: Concrete retaining wall with boulders and rocks piled along side the reclaimed area of a total length of approximately 272 meters;
- Access Road: Gravel-paved road on compacted base, course connecting the wharf to the national road with a total length of approximately 2 kilometers; and
- Building: A one-story timber framed building with plastered cement concrete hollow block and plywood walls, nipa-hut roofing on timber frames, plain cement finish floor, concrete hollow blocks and double wall plywood partitioners, glass jalousie windows and plywood flush type door. It is provided with electrical and plumbing facilities. The floor area is approximately 64 square meters.

The whole planned port area is attached as Annex A.

All other land requirements needed for the expansion and development of Port Irene shall be secured by the Concessionaire either through direct purchase or lease. CEZA shall exert its best effort to assist the Concessionaire in securing these additional lands for the project, if required, including right-of-way and resolution of land conversion conflicts for the purpose of execution by the Concessionaire of the work and services under the agreement.

Upon the completion of the Concession Period, the land that was used for the expansion and development which was leased or purchased will remain with the owner of the property. All reclaimed land, however, shall become the property of CEZA at the end of the Concession Agreement.

2.7. OWNERSHIP, OPERATION AND MAINTENANCE

The Concessionaire shall, upon the completion of the construction work, delivery and installation of equipment, notify CEZA as to the official start of commercial operations of the facility. The Concessionaire shall operate and maintain the whole port

during the entire Concession Period. All expenses attendant to the operation and maintenance of the facility e.g., spare parts, labor costs and other incidental expenses thereof shall be for the account of the contractor.

The staffing, equipment mix, and projected cost of operating and managing the port must be part of the submission. Bidders will be evaluated as to the completeness, realism, and reasonableness of their operating costs forecasts.

2.8. ENVIRONMENTAL IMPACT MITIGATION PROGRAM

The Concessionaire shall implement at their own cost, an environmental management and monitoring program agreed upon by the Concessionaire and CEZA and will allow CEZA to conduct environmental audits and monitoring at the project site and surrounding environment during construction and during operation of the facility. As part of the program, the Concessionaire should make a proposal and upon approval thereof, implement a plan for the protection and preservation of the corals and other aquatic resources that may be found in the construction site or within the peripheral areas which may be destroyed or severely affected by the construction activities and eventual port operations. Moreover, a reception facility should be put up by the Concessionaire to handle waste disposal of the docking vessels. Prior to the contract signing, the Concessionaire should obtain an Environmental Compliance Certificate (ECC) for the project.

2.9. CONCESSION AGREEMENT

CEZA will enter negotiations with the preferred bidder based upon the form of Concession Agreement which is Part III.

Except as specifically noted in the Concession Agreement, CEZA is not prepared to discuss changes to the Concession Agreement, and bidders should anticipate adhering to its terms, other than those provisions which are designated as being open to negotiation.

The Concessionaire shall operate and maintain Port Irene for a Concession Period of twenty five (25) years commencing from the commercial operation date or two years after contract signing, whichever comes first. The period may be extended by mutual agreement subject to good performance and fulfilment of past obligations and negotiation of commercial terms, but shall not exceed a total term of fifty (50) years. The extension of the Concession Period as well as the new terms and conditions will be subject to a no objection clearance by the ICC.

3. GOVERNMENT INCENTIVES/GUARANTEES

Under Sec. 4-A of RA 7718 as amended, it explicitly prohibits any direct government guarantee, subsidy or equity for unsolicited proposals is explicitly prohibited. Incentives for the project are limited to the following:

- BOT project contractors shall be entitled to privileges and incentives similar to those given by the Government to BOI registrants under the Omnibus Investment Code of 1987.
- All other incentives as provided in RA 7922 shall be provided to the contractors.
- CEZA will make available the portion of the port area CEZA currently owned.
- CEZA, on a best effort basis, will assist in the acquisition of right-of-way, right of access and possession of, rights to build on agreed boundary and the resolution of land conversion conflicts.
- CEZA, on a best effort basis, will assist the Concessionaire in obtaining permits, licenses and approvals for building and construction works, visas and work permits, and tax exemptions upon completion of the necessary requirements.

4. SUBMISSION, OPENING AND EVALUATION OF BIDS

4.1. PRE-QUALIFICATION, BIDDING AND AWARD TIMETABLE

18 December 1998	First Issue of the Invitation for Comparative Proposals
23 December 1998	Second Issue of the Invitation for Comparative Proposals
29 December 1998	Third Issue of the Invitation for Comparative Proposals
4 January 1999 to 15 January 1999	Issuance of Instruction to Bidders/Other Tender Documents
22 January 1999	Pre-Bid Conference
27 January 1999	Site Visit
Not later than 12:00 Noon of 26 March 1999	Submission of Bids
2:00 P.M. of 26 March 1999	Opening of Qualification Documents
26 April 1999	Opening of Technical Proposals for Qualified Bidders
26 May 1999	Opening of Financial Proposals for Qualified Bidders
11 June 1999	Announcement of Highest Complying Bidder
12 July 1999	Deadline for Contractor of Unsolicited Proposal to Match Highest Complying Bidder, if Bid is Higher than the Bid of the Unsolicited Proposal, or Award of Contract to Bidder of Unsolicited Proposal if Unsolicited Bid is Higher Than Those Submitted in Comparative Proposals.
13 July 1999	Negotiations with Original Bidder if He Matches Bid of Highest Complying Bidder, or with Highest Bidder if Original Bidder Fails to Match the Proposed Payment of Highest Complying Bidder.

4.2. SUBMISSION OF BIDS

Bidders shall be required to submit their bids on or before the deadline stipulated above in three (3) separate envelopes, with the name of the bidder and the project in capital letters addressed to:

The Chairman
Prequalification, Bids and Award Committee (PBAC)
CAGAYAN ECONOMIC ZONE AUTHORITY
7th Floor Westar Building, 611 Shaw Boulevard
Pasig City 1603, PHILIPPINES

Mailed documents must reach the Chairman of the PBAC before or on the closing date specified above.

The first envelope shall be marked "Do Not Open Before 26 March 1999", labeled "Qualification Documents" and prepared in five (5) copies. The copies shall be marked "Original", "First Copy", and "Second Copy", etc. All copies shall be legible and authentic photocopies of the original. In case of discrepancy among the copies, the "Original" shall prevail.

The Qualification Documents shall contain the following:

- a. *Legal Requirement:* Applicant must be a Filipino or, if a corporation must be duly registered with the Securities and Exchange Commission, and owned up to at least sixty percent (60%) by Filipinos. In case the applicant is a consortium, the members or participants shall submit a sworn statement undertaking that if awarded the contract they shall bind themselves jointly and severally responsible for the obligations of the project proponent under the contract.
- b. *Experience or Track Record:* By itself or through the member firms of a consortium or through a contractor(s) which the project proponent may have engaged for the project, the project proponent and or/its contractor(s) must have successfully undertaken a project(s) similar to or related to the subject infrastructure /development to be bid.
- c. *Financial Capacity:* The project proponent must have adequate capability to sustain the financing requirements for the detailed engineering design, construction and/or operation and maintenance phases of the project, as the case may be. It shall be measured in terms of (i) proof of ability of the project proponent and or consortium to provide a minimum amount of equity to the project, and (ii) a letter testimonial from reputable banks attesting that the project proponent and or members of the consortium are banking with them, that they are in good financial standing, and they have adequate resources.

d. *Acceptance of Criteria and Waiver of Rights to Enjoin Project:* All prospective bidders should submit documents under oath stipulating that the bidder (i) has accepted the criteria for the qualification of documents established by CEZA and (ii) waives any right it may seek and obtain a writ of injunction or prohibiting or restraining order against CEZA or its PBAC to prevent or restrain the qualification of documents or any proceedings related thereto, the holding of a bidding or any proceeding, related thereto, the negotiation of and the award to a successful bidder and the carrying out of the awarded contract.

e. *Other Qualification Requirements:*

The following documents must also be submitted under oath.

- The applicant has not been suspended or black-listed by CEZA or by any other agency, whether in its capacity as an individual entity or in partnership or corporation or as a member of a joint venture;
- The applicant has no record of unsatisfactory performance particularly non-compliance with contract term, plans and specifications; no record of defective workmanship and materials supplied, abandonment of work and similar deficiencies;
- The applicant has no overdue debts of any kind toward the Revenue Authorities, the Customs, or the Social Security System of the Republic of the Philippines or of the Applicant's country;
- The applicant has no record of unsatisfactory performance and no criminal or civil cases in court pending or finally decided against him involving non-payment of tax, duty or undertaking with the Government or any of its subdivision, branches or instrumentalities, including government-owned or controlled corporations, both local and foreign; and
- To prevent a monopoly of port operation in the country, and to ensure that the winning Bidder will have no conflict of interest and that the necessary improvements, developments, rehabilitation will be implemented as soon as the bid is awarded, the applicant should not be operating and managing directly or indirectly, either on its own or in consortium with others, an international seaport currently in operation in the Philippines nor own at least 20% of the outstanding capital stock of a corporation, partnership or other entity which operates on its own or in consortium with others, an international seaport currently operating in the Philippines.

The first envelope shall contain the Statement of Bid which contain the name of the individual bidder or if the bidder is a consortium of bidders, state the names and addresses of each of the members of the consortium. In the case of a consortium, each

individual member of the consortium must include a letter of intent or similar document indicating its degree of participation and willingness to participate. This letter must be a duly notarized statement. The following qualification documents shall be included in the first envelope (Please refer to Part IV - Bid Forms).

Qualification Documents	Mark Documents As Follows
Legal Requirements	
1. Certified true copy of certification of registration and from the Department of Trade and Industry or the Security and Exchange Commission.	Exhibit 1
2. Certified true copy of Articles of Incorporation	Exhibit 2
3. Certification authorizing CEZA to verify the authenticity and correctness of Qualification Documents. (pro-forma provided)	Exhibit 3
4. Certified copy of the duly attested board resolution authorizing the corporation's representative to sign Qualification Documents, bid and contract.	Exhibit 4
5. Corporate Profile (pro-forma-provided)	Exhibit 5
6. Brief narrative description of the firm	Exhibit 6
7. List of Stockholder's and/or others financially interested in your organization owning 5% or more stock or other interest (for corporation) (pro-forma provided)	Exhibit 7
8. Chairman and members of the Board of Directors (pro-forma provided)	Exhibit 8
9. Officers of the corporation, i.e., President, Vice President, General Manager, etc.(for corporation) (pro-forma provided)	Exhibit 9
Experience or Track Record	
1. List of all completed projects (pro-forma provided)	Exhibit 10
2. List of on-going projects with supporting documents.	Exhibit 11
Financial Requirements	
1. Proof of ability of the project proponent and or consortium to provide a minimum amount of equity to the project.	Exhibit 12
2. Testimonial letter from reputable banks attesting that the project proponent and or members of the consortium are banking with them, that they are in good financial standing, and they have adequate resources.	Exhibit 13

3. Financial Statements audited by an independent Certified Public Accountant or Accounting Firm.	Exhibit 14
Other Documents	
1. Certification under oath by duly authorized signatory/designated officer for acceptance of criteria.	Exhibit 15
2. Certification under oath by duly authorized signatory/designated officer for waiver of rights to enjoin project	Exhibit 16
3. Certification under oath by duly authorized signatory/designated officer, complying with all the Qualification Requirements under Section e	Exhibit 17

The second envelope shall be marked "Do Not Open Before 26 April 1999", labelled "Technical Proposal" and shall be prepared in five (5) copies. The copies shall be marked "Original", "First Copy", and "Second Copy", etc. All copies shall be legible and authentic photocopies of the original. In case of discrepancy among the copies, the "Original" shall prevail.

The Technical Proposal equivalent to a feasibility study shall contain the following:

- a. *Technical Soundness (preliminary engineering)*: This should contain the preliminary design of the project in conformity with the minimum design and performance standards and specifications set forth in a separate document. The engineering surveys, plans and estimates should be undertaken within +/- 20% of the final quantities. The construction methods and schedules should also be presented and shown to be feasible or "doable".
- b. *Operational Feasibility*: The proposed organization, methods and procedures for operating and maintaining the completed port must be well defined and should be shown to be workable.
- c. *Environmental Standards*: The proposed design and the technology of the project to be used must be in accordance with the environmental standards set forth by CEZA under the related bidding documents and acceptable to the Department of Environment and Natural Resources (DENR). Any negative or adverse effects on the environment as a consequence of the project as proposed by the Bidder must be properly identified, including the corresponding corrective/mitigating measures.
- d. *Project Cost*: The breakdown of the construction costs shall be presented to show that all components of the port system are properly addressed. The list of equipment and their rated output as well as prices shall be included. CEZA shall

evaluate the soundness and completeness of the cost estimate. An equity of not less than 30% of the total project cost shall be maintained. Hence, financing should not exceed 70% of the project cost.

- e. *Business Plan.* The proposal should contain the marketing and business plan that the proponent will implement in order to attain the marketing projections. It should detail how the bidder proposes to manage, operate, market and the develop the port and its facilities. It should consists of detailed estimates and projections in tabular form.
- f. *Bid Security* in the form of cash, certified check, manager's check, letter of credit or bank draft/guarantee issued by a reputable bank or a surety bond callable on demand issued by an entity duly registered and recognized by the Office of the Insurance Commissioner and acceptable to CEZA, or any combination thereof payable to CEZA.

The third envelope shall be marked "Do Not Open Before 26 May 1999", labelled "Financial Proposal" and prepared in five (5) copies. The copies shall be marked "Original", "First Copy", and "Second Copy", etc. All copies shall be legible and authentic photocopies of the original. In case of discrepancy among the copies, the "Original" shall prevail.

The Financial Proposals shall contain the following:

- Proposed Payment schedule
- Present value of proposed payments based on the discounting rate and foreign exchange rate prescribed in the Minimum Design, Performance Standards and Economic Parameters.

The bidder/challenger should set forth an undertaking to pay based on their proposed schedule of payments. All proposed payments shall be payable on a monthly basis beginning from the date specified in the Minimum Design, Performance Standard and Economic Parameters.

4.3. EVALUATION PROCESS

The First Stage Evaluation

The first stage evaluation shall involve the evaluation of qualification documents enumerated above. Legal Requirements, Experience or Track Record and Financial Capability are the criteria for the evaluation during the first stage

Evaluation of Qualification Documents for all applicants shall be conducted pursuant to Rule 5 of the IRR of RA 7718 and other qualification requirements set forth in these Instructions to Bidders.

Only those bids which have been determined to have positively passed the first stage of evaluation shall be qualified and considered for the next stage.

The Second Stage Evaluation

The second stage evaluation shall involve the assessment of the technical, operational, environmental, and construction cost of the proposal as contained in the bidders second envelope vis-à-vis the prescribed requirements and criteria/minimum standards and basic parameters prescribed in the bidding documents

CEZA shall evaluate the technical proposals of the bidder in accordance with the following criteria:

- a. *Technical Soundness (preliminary engineering):* The preliminary design of the project should conform to the minimum design and performance standards and specifications. The engineering surveys, plans and estimates should be undertaken within $\pm 20\%$ of the final quantities. The construction methods and schedules should also be presented and shown to be feasible or "doable".
- b. *Operational Feasibility:* The proposed organization, methods and procedures for operating and maintaining the completed port including management organization, staff experience, maintenance plan, operational system.
- c. *Environmental Standards:* This concerns with the compliance of the proposed design and the technology of the project to be used with the environmental standards set forth by the Department of Environment and Natural Resources (DENR). Proposed mitigating measures shall also be evaluated and considered.
- d. *Project Cost:* The level of investment as outlined in the capital investment /infrastructure plan, the project's return on investment, and the appropriateness and practicality of the proposed investment in infrastructure and equipment shall be considered.
- f. *Business Plan.* Under this heading, throughput volume, pricing, and the marketing and business plan shall be evaluated. The marketing evaluation that the proponent will implement in order to attain the marketing projections will be checked if it is realistic in light of market conditions, whether it satisfies CEZA's basic objectives and whether it is feasible of accomplishment. This assessment will take into account the bidder's understanding of the market and the bidder's ability to persuade shipping lines and shipper's to use Port Irene (as a point of origin/destination and transshipment) and therefore generate the increase in the traffic volume required to sustain the level of capital investment, method of operation, and the bidder's investment program for expanding the capacity of the Port to meet the increase demand. The ability of the bidder to implement its plans, to support the investment, and to withstand potential losses will be considered.

Only those bids which have been determined to have positively passed the second stage of evaluation shall be qualified and considered for the third stage.

The PBAC shall complete the evaluation of the technical proposals within thirty (30) calendar days from the date the bids are opened.

The Third Stage Evaluation

The third stage evaluation shall involve the assessment and comparison of the financial proposals. The Bidder shall submit the traffic and financial projections based on his envisioned development of the Port of Irene for the next 25 years. The financing plan shall indicate the equity, loans and other sources to finance the project from construction to operation. All assumptions used for the financial projection should be clearly stated.

CEZA shall assess and compare the financial proposals of the contractors based on present value of the proposed payments to CEZA, taking into consideration the valuation of proposed components and sub-components.

The best choice for the Government is the financial proposal whose payments to CEZA over the 25 year Concession Period is the highest. Financial items dependent on speculative variables shall be given weights from 0% (improbable) to 50% (likely), and factored into the cash flow stream. Guaranteed or firm payments to CEZA shall be taken at their face values, but will be supported later by a performance bond or security.

The award of contract for the implementation of the project where an earlier bidder has submitted an unsolicited proposal is somewhat different from an open bid or direct solicitation route. For this particular bidding, CEZA will consider the payments to be made by the Concessionaire to the government. The assessment and comparison of the financial proposals of bidders shall be based on present value of proposed payments. In the third stage evaluation, the highest payment proposal among the challengers shall be considered for comparison with the payment proposed by the original proponent. In the event that the highest payment proposal among the challengers is higher than that submitted by the original proponent, the latter shall have the right to match said price proposal within 30 working days. Should the original project proponent fail to match the higher payment proposal submitted within the specified period, the contract shall be awarded to the tenderer of the higher payment. On the other hand, if the original project contractor matches the submitted higher payment proposal within the specified period, the original project proponent shall immediately be awarded the project.

4.4. BID AND BID SECURITY VALIDITY PERIOD

Bid security should be in the form of cash, certified check, manager's check, letter of credit, or bank draft/guarantee issued by a reputable bank, or a surety bond callable on demand issued by an entity duly registered and recognized by the Office of the Insurance

Commissioner and acceptable to CEZA, or any combination thereof payable to CEZA in accordance with the following schedules:

Required Bid Security	Estimated Project Cost
Not less than 2.0% of the estimated cost of construction	Less than P5.0 B
not less than 1.5% of the estimated cost of construction but at least P100 million	P5.0 B to P10.0 B
not less than 1.0% of the estimated cost of construction but at least 150 million	P10.0 B

The posting of the bid security is for the purpose of guaranteeing that the proposed contract awardee shall within seven (7) calendar days from receipt of Notice of Award enter into contract with CEZA and furnish the required performance security within the time prescribed therefor.

In case the bid security is issued by a foreign bank the bid security has to be confirmed and validated by it's local branch in the Philippines or a bank that is duly registered and authorized by the Bangko Sentral ng Pilipinas (BSP).

Bids and bid securities shall be valid for a period of 180 days from the date of opening of the bids.

5. REQUIREMENTS OF REGULATORY BODIES

Winning Bidder is required to obtain but not limited to the following:

1. Environmental Compliance Certificate issued by Department of Environment and Natural Resources (DENR);
2. Water Permit issued by the National Water Resources Board (NWRB); and
3. The Philippine Contractors Accreditation Board (PCAB) for the registration requirements of contractors.

6. MONETARY RULES AND REGULATIONS GOVERNING FOREIGN EXCHANGE REMITTANCES

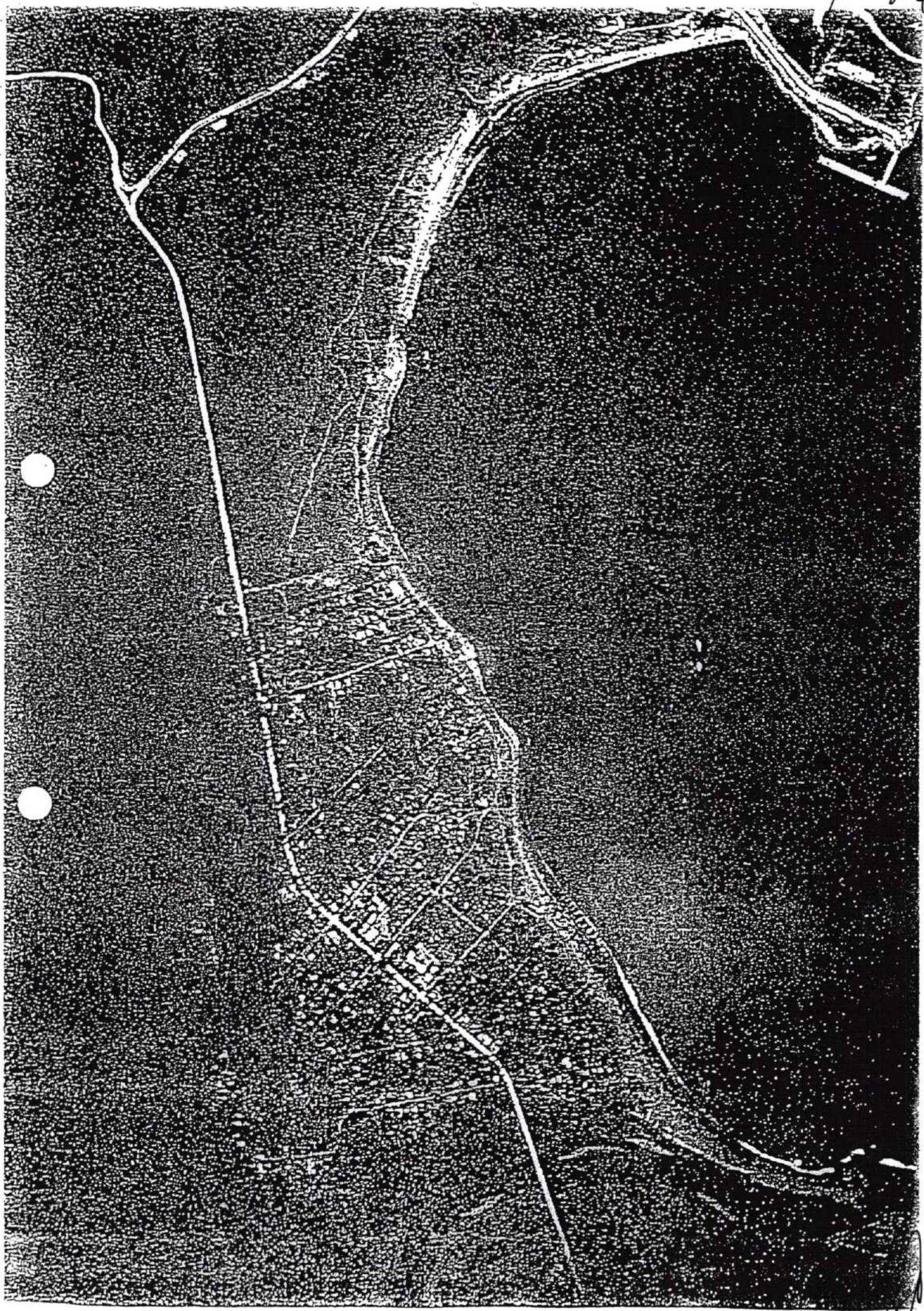
Existing banking laws and Bangko Sentral ng Pilipinas (BSP) rules and regulations shall apply to foreign exchange and other current account transactions (trade and non-trade), local and foreign borrowings, foreign investments, establishments and operation of local and foreign banks, foreign currency deposit units, offshore banking units and other financial institutions under the BSP.

ANNEX "A"

Map of the planned port area including existing Port Irene. A bigger and clearer view of this map is available and can be viewed at CEZA office.

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MINIMUM DESIGN

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REHABILITATION, DEVELOPMENT AND OPERATION OF PORT IRENE UNDER BUILD-OPERATE-TRANSFER (BOT) SCHEME

MINIMUM DESIGN, PERFORMANCE STANDARDS AND ECONOMIC INDICATORS

This document provides information on minimum design and performance standards/specifications, desired quantity and quality of the outputs of the facility including environmental standards as prescribed by DENR. Non-conformity with any of these minimum requirements shall render the bids non-responsive. Economic parameters to be used in the proposal are likewise prescribed in this document.

MINIMUM PORT DESIGN AND PORT FACILITIES REQUIREMENT

The development will proceed in three phases based on the projected cargo volume and the support facilities that the redevelopment of Port Irene will require. The first phase of development (Year 0-5), or the short-term plan, involves immediate port upgrading to capture overflow transshipments from Hongkong and Singapore and allow some export shipments into Taiwan. The proponent is therefore, expected to invest to finance the rehabilitation and development of Port Irene.

Phase 1 will require the following work and infrastructure development within the port area:

1. Repairing, lengthening and widening of the existing berth to accommodate vessels of up to 20,000 DWT class and will allow the docking and loading/unloading of one fully load 3rd generation container vessel plus one (1) general cargo or other vessel of between 5,000 to 20,000 tons deadweight. The design shall allow for the possible future extension of the wharf/pier to a length necessary to accommodate two 3rd generation container vessels plus one general cargo or other vessel of between 5,000 to 20,000 tons deadweight.
2. The water depth alongside the wharf shall give clearance from the seabed of at least 14 meters at mean low water level to allow berthing of a 3rd generation container vessel.
3. The wharf/pier and Port facilities shall be designed to suit a frequency of initially one (1) berthing per week but should eventually increase to two (2) 3rd generation container vessels calling at the port per week.
4. The wharf/pier and Port facilities shall be designed to operate at an efficiency of a minimum of forty (40) container movements per hour per berth station to allow a 3rd generation container vessel to be turned around within 48 to a maximum of 60 hours.

5. Development of a container yard which can handle 17,000 TEUs (equivalent to one month of container volume). If the containers are stacked at three levels and the bottom area is 8 feet by 20 feet per container, the container yard area should be 10 to 12 hectares. The container yard is to be provided with approximately 200 units of reefer plugs (120 and 220 volts) and the wharf/pier with the necessary utility hotel type hook-ups to service berthed vessels.
6. Apart from the container transshipment operations, provision shall be made in the design for secondary general cargo operations.
7. The design and construction shall include cold (refrigerated) storage facilities and general cargo warehousing of some 4,000 to 5,000 square meters with elevated loading/unloading dock at truck floor height and having main entrance door(s) with a minimum 14'0" height clearance.
8. Provision shall be made in the design for equipment and machinery repair/workshop building and a port administration building to accommodate office personnel/staff.
9. The design shall include a medical and first aid clinic with ambulance and a fire station with fire truck; a helicopter landing pad and associated facilities; and radio and telecommunication facilities.
10. A security fence of reinforced hollow block walling topped razor slash wire shall surround port operating and container and general cargo storage areas separating these facilities from the administrative and support services areas.
11. Primary electric power is to be sourced from the local electrical supply/area distribution concessionaire. The port design shall include the main substation/interface, stand-by power generation facilities, and all port power and lighting distribution systems. Cabling shall be routed underground as far as possible to avoid difficulties in transportation height restrictions around the facilities.
12. Special attention is to be paid to soil compaction/stabilization in the design and construction to load bearing surfaces and pavements, particularly in the storage areas, to prevent operational problems.
13. Provision shall be made for ship bunkering including necessary storage tanks and loading/unloading distribution lines and facilities for fuel, bunker and lubricating oils, etc.
14. A deep well water source is to be established and provision is to be made in the design for water storage, any water treatment required and a water distribution system.

15. The design and construction shall include drainage and wastewater collection and disposal including treatment facilities as required.
16. The design and final constructed port shall comply with all applicable environment and pollution control laws and regulations.

Phase II

The second phase (Year 6-20) shifts the role of Port Irene into a catalyst for the industrialization of the region. In essence, Port Irene will support the development of the CSEZFP by providing the facilities for loading the Zone's exports and those emanating from the Cagayan Valley, and unloading their imports. At the same time, the port will raise its capacity for accommodating a projected increase in transshipment volume.

1. Construction of additional berths to accommodate potential increase projected to reach as much as 300,000 TEUs,
2. Expansion of the container yard area. It should be increased by 50% to accommodate increase in the container volume,
3. Acquisition of additional equipment such as cranes, etc.,
4. Improvement/upgrading of harbor roads, office buildings, and other port buildings, and
5. A specialized storage facility for a specific major mineral export (either copper concentrate or black sand) should the region eventually become capable of exporting these products as projected. A 25,000-50,000 ton storage capacity is recommended in this case.

Phase III

The third phase (beyond Year 20), or the long-term plan, signifies the fulfillment of the vision of Port Irene as a major transshipment and foreign trade hub. This will entail further increases in berthing, cargo handling, and storage capacity – including the establishment of a state-of-the-art container terminal and further expansion of the port area. The long-term strategy is to develop Port Irene primarily into a major transshipment hub, and secondarily into a foreign trade port. With the projected sustained growth in cargo volume engendered by these objectives, the port will require the following:

1. Additional berths to accommodate an incremental capacity of up to 200,000 TEUs,

2. A proportionate expansion of the container yard, and
3. Acquisition of modern equipment for cargo handling and storage.

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DRAFT CONCESSION AGREEMENT

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CERTIFICATE OF COMPLETION
(Pro Forma)

PROJECT/ LOCATION _____

CONTRACTOR: _____

This is to certify that the above-stated project has been satisfactorily completed on _____ (date) _____ in accordance with the Plans and Specifications and Performance Standards under the Concession Agreement, based on the Final Inspection Report of the Inspectorate team dated _____.

This is to further certify that all inspection required by CEZA has been completed; that the Performance Testing of the Project has been successful and that CEZA hereby accepts the Works as defined in the Concession Agreement and completely and irrevocably releases to CONCESSIONAIRE its Performance Security.

This Certification hereby relieves CONCESSIONAIRE of its obligations to construct the Development Facility in accordance with the approved Plans and Specifications and Performance standards but does not relieve it from its obligations and responsibilities and undertaking repair works stipulated at Section 5.13, paragraphs b and c of the Concession Agreement.

Administrator, CEZA

CONFORME:

Asia Pacific International Terminals, Inc.

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ANNEX "E"

LIST OF IMMOVABLE PROPERTIES
FOR THE PROPOSED DEVELOPMENT FACILITY

1. Container freight station
2. Administration building
3. Power house building
4. Canteen building
5. Maintenance shop
6. Quarantine shed
7. Guardhouse 1 and frisking station
8. Dockworkers change house and toilet
9. Guardhouses 2 and 3
10. Firehouse
11. Parking sheds
12. Elevated water tank
13. Entrance arch
14. Communications tower
15. Wastewater treatment plant
16. Yard lighting masts
17. Truck drivers' waiting shed
18. Fuel tank depot
19. Substation
20. Weighbridge
21. Fuel filling station
22. Back-up generator

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LIST OF MOVABLE PROPERTIES
FOR THE PROPOSED DEVELOPMENT FACILITY

	Item	Units (all phases)
1.	Container cranes	6
2.	Rubber-tired gantry cranes	10
3.	Low-boom forklift	4
4.	High-boom forklift	2
5.	Truck/tractor	36
6.	45-footer chassis	4
7.	Combo chassis	8
8.	40-footer chassis	24
9.	Spreader	3
10.	Computer/communications equipment	-

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ANNEX "F"

LIQUIDATED DAMAGES TO BE PAID BY CONCESSIONAIRE TO CEZA

If the delay exceeds twenty percent (20%) of the approved construction time stipulated in the contract plus any time extension duly granted the liquidated damages will be computed as follows for each calendar day of delay:

LD - Liquidated Damages

PCC - Project Construction Cost minus the value of the completed
Portions of the project certified by the Agency

LD = .01% x PCC x # of days delayed

If the delay exceeds twenty percent (20%) of the approved construction period inclusive of the extension or grace period stipulated in the contract, CEZA shall rescind the contract, forfeits the proponent's performance security and proceed with the procedures prescribed under Sec. 12.17b of R.A. 7718.

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ANNEX "F-1"

LIQUIDATED DAMAGES PAYABLE
BY CEZA TO CONCESSIONAIRE

CEZA shall pay Liquidated Damages to CONCESSIONAIRE in accordance with the following formula:

$$LD = AC + (ROR \times AC)$$

LEGEND:

LD = Liquidated Damages

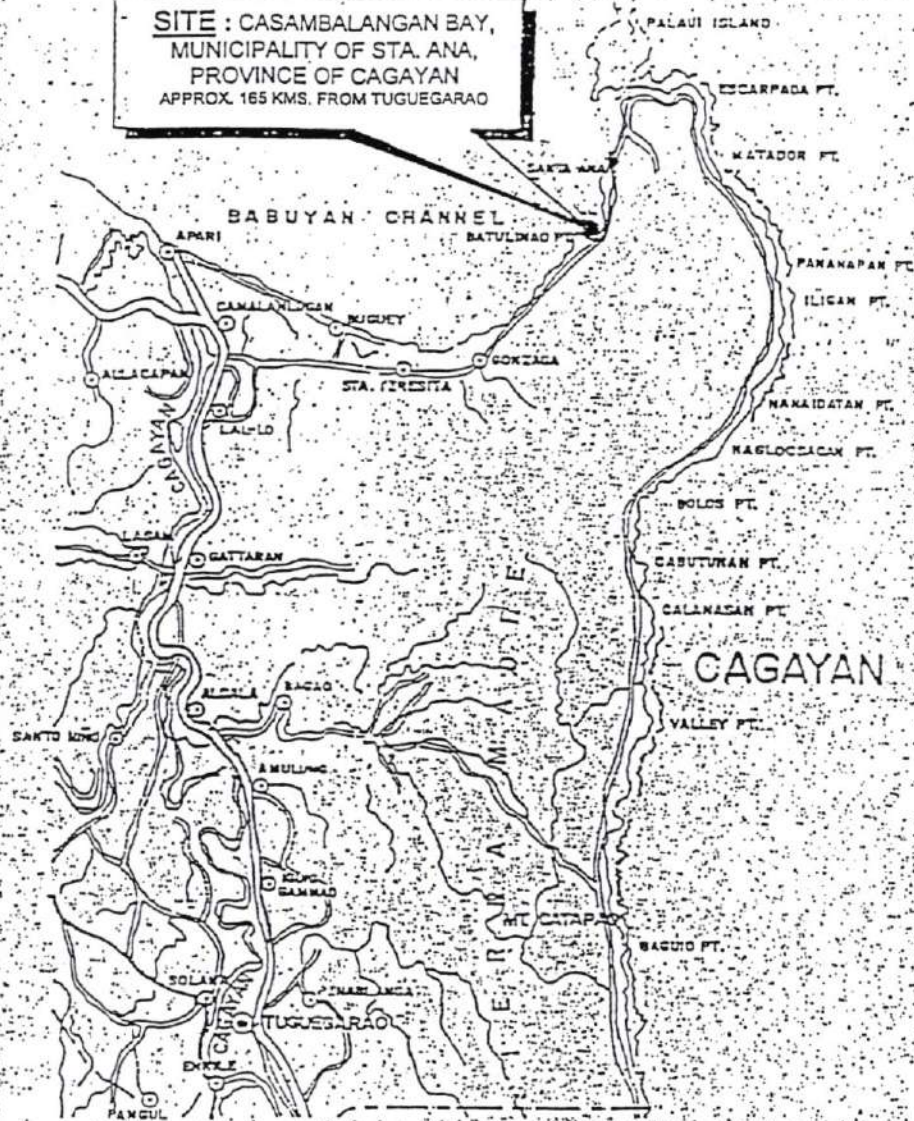
AC = Actual Cost incurred on the Project by CONCESSIONAIRE
at the time of termination

ROR = Reasonable Rate of Return on CONCESSIONAIRE's Cost
which is fixed at 16%

Handwritten marks and signatures in the bottom right corner, including a large checkmark and several initials.

ANNEX "G"

**SITE : CASAMBALANGAN BAY,
MUNICIPALITY OF STA. ANA,
PROVINCE OF CAGAYAN
APPROX. 165 KMS. FROM TUGUEGARAO**



LOCATION MAP
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Handwritten signature and initials.

Performance Standards

The CONCESSIONAIRE shall comply with the following Performance Standards:

For Phase I (Year 0-5), which involves immediate port upgrading to capture overflow transshipments from Hongkong and Singapore to allow some export shipments into Taiwan:

1. Repairing, lengthening and widening of the existing berth to accommodate vessels of up to 20,000 DWT class and will allow the docking and loading/unloading of one full load 3rd generation container vessel plus one (1) general cargo or other vessel of between 5,000 to 20,000 tons deadweight. The design shall allow for the possible future extension of the wharf/pier to a length necessary to accommodate two 3rd generation container vessels plus one general cargo or other vessel of between 5,000 to 20,000 tons deadweight.
2. The water depth alongside the wharf shall give clearance from the seabed of at least 14 meters at mean low water level to allow berthing of a 3rd generation container vessel.
3. The wharf/pier and Port facilities shall be designed to suit a frequency of initially one (1) berthing per week but should eventually increase to two (2) 3rd generation container vessels calling at the port per week.
4. The wharf/pier and Port facilities shall be designed to operate at an efficiency of a minimum of forty (40) container movements per hour per berth station to allow a 3rd generation container vessel to be turned around within 48 to a maximum of 60 hours.
5. Development of a container yard which can handle 17,000 TEUs (equivalent to one month of container volume). If the containers are stacked at three levels and the bottom area is 8 feet by 20 feet per container, the container yard area should be 10 to 12 hectares. The container yard is to be provided with approximately 200 units of reefer plugs (120 and 220 volts) and the wharf/pier with the necessary utility hotel type hook-ups to service berthed vessels.
6. Apart from the container transshipment operations, provision shall be made in the design for secondary general cargo operations.
7. The design and construction shall include cold (refrigerated) storage facilities and general cargo warehousing of some 4,000 to 5,000 square meters with elevated loading/unloading dock at truck floor height and having main entrance door(s) with a minimum 14'0" height clearance.
8. Provision shall be made in the design for equipment and machinery repair/workshop building and a port administration building to accommodate office personnel/staff.
9. The design shall include a medical and first aid clinic with ambulance and a fire station with fire truck; a helicopter landing pad and associated facilities;

and radio and telecommunication facilities.

10. A security fence of reinforced hollow block walling topped razor slash wire shall surround port operating and container and general cargo storage areas separating these facilities from the administrative and support services areas.
11. Primary electric power is to be sourced from the local electrical supply/area distribution concessionaire. The port design shall include the main substation/interface, stand-by power generation facilities, and all port power and lighting distribution systems. Cabling shall be routed underground as far as possible to avoid difficulties in transportation height restrictions around the facilities.
12. Special attention is to be paid to soil compaction/stabilization in the design and construction to load bearing surfaces and pavements, particularly in the storage areas, to prevent operational problems.
13. Provision shall be made for ship bunkering including necessary storage tanks and loading/unloading distribution lines and facilities for fuel, bunker and lubricating oils, etc.
14. A deep well water source is to be established and provision is to be made in the design for water storage, any water treatment required and a water distribution system.
15. The design and construction shall include drainage and wastewater collection and disposal including treatment facilities as required.
16. The design and final constructed port shall comply with all applicable environment and pollution control laws and regulations.

For **Phase II** (Year 6-20), which involves providing facilities for loading the Zone's exports and unloading their imports and raising Port Irene's capacity for accommodating increase in transshipment volume:

1. Construction of additional berths to accommodate potential increase projected to reach as much as 300,000 TEUs.
2. Expansion of the container yard area. It should be increased by 50% to accommodate increase in the container volume.
3. Acquisition of additional equipment such as cranes, etc.
4. Improvement/upgrading of harbor roads, office buildings, and other port buildings.
5. A specialized storage facility with a 25,000-50,000 ton storage capacity for a specific major mineral export (either copper concentrate or black sand), should the region eventually become capable of exporting these products as projected.

For **Phase III** (Year 20 onwards), which involves the fulfillment of the vision of Port Irene as a major transshipment and foreign trade hub, entailing further increases in berthing, cargo handling, and storage capacity - including the establishment of a state-of-the-art container terminal and further expansion of the port area:

1. Additional berth to accommodate an incremental capacity of up to 200,000 TEUs
2. A proportionate expansion of the container yard.
3. Acquisition of modern equipment for cargo handling and storage.

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TECHNICAL DESCRIPTION OF ANNEX "I"

RECLAIMED AREA OF PORT IRENE		
TECHNICAL DESCRIPTION		
LINE	BEARING	DISTANCE
LM-1	N71-08W	1941.65 M
1-2	S38-40W	23.63 M
2-3	S39-33W	26.49 M
3-4	S46-51W	43.37 M
4-5	S23-17W	40.89 M
5-6	S05-48E	27.82 M
6-7	S37-05E	19.82 M
7-8	S87-15E	27.44 M
8-9	N72-05E	21.43 M
9-10	S75-23E	13.07 M
10-11	S53-09E	8.79 M
11-12	S66-56E	16.82 M
12-13	N85-52E	27.48 M
13-14	S70-21E	15.67 M
14-15	S79-22E	10.73 M
15-16	S58-21E	28.90 M
16-17	N37-43E	33.33 M
17-18	N16-46E	121.83 M
18-19	N18-28E	11.11 M
19-20	N16-29E	12.37 M
20-21	N16-57E	67.52 M
21-22	N78-43W	168.45 M
22-23	S02-33W	47.50 M
23-1	S16-30W	37.12 M
LINE	BEARING	DISTANCE
LM-1	N68-10W	1767.26 M
1-2	S74-32E	68.25 M
2-3	N15-30E	46.52 M
3-4	S74-19E	15.73 M
4-5	S16-09W	186.15 M
5-6	N74-21W	15.05 M
6-7	N16-02E	131.10 M
7-8	N74-53W	67.85 M
8-1	N14-12E	8.96 M





Cagayan Economic Zone Authority

ADMINISTRATIVE ORDER NO. 003
SERIES OF 1999

**SUBJECT : TECHNICAL DESCRIPTION OF PROJECT SITE FOR THE
DEVELOPMENT, REHABILITATION AND OPERATION
OF PORT IRENE IN STA. ANA, CAGAYAN UNDER A
BUILD-OPERATE-AND-TRANSFER ARRANGEMENT**

Pursuant to the provisions of Section 6 (d) and (e) of Republic Act 7922, otherwise known as the Cagayan Special Economic Zone Law of 1995, the following Administrative Order is hereby promulgated relative to the Concession Agreement between the Cagayan Economic Zone Authority (CEZA) and the Asia Pacific International Terminal, Inc. (APIT) for the development, rehabilitation and operation of Port Irene in Sta. Ana, Cagayan under a Build-Operate-And-Transfer Arrangement :

WHEREAS, pursuant to, and in accordance with the Implementing Rules and Regulations of Republic Act No. 6957 as amended by Republic Act No. 7718, otherwise known as the BOT Law, CEZA, with the concurrence of the Investment Coordinating Committee and the Board of the National Economic and Development Authority, awarded the contract for the development, rehabilitation and operation of Port Irene within the Cagayan Special Economic Zone and Freeport to the Asia Pacific Terminal, Inc. (APIT), which award has been duly accepted, subject to the terms and conditions set forth in the Concession Agreement for the said project;

WHEREAS, under Section 1.15 of the Concession Agreement, the Development Facility includes the Port Area, Terminal Complex, and the properties and equipment belonging to APIT therein;

WHEREAS, under Section 1.34 of the Concession Agreement, the term "Site" refers to the entire area or property on which the Development Facility is located, more accurately defined and specifically delineated in the Technical Description thereof;

WHEREAS, Section 1.34 makes particular reference to a CEZA Administrative Order embodying the aforementioned Technical Description;

NOW, THEREFORE, for and in consideration of the foregoing premises, the Technical Description of the Site wherein the Development Facility is located is hereby reproduced, to wit :

<u>Corner</u>	<u>Bearing</u>	<u>Distance</u>
1-2	N 53 28 W	531.64 M
2-3	N 43 38 W	1770.29 M
3-4	N 06 11 E	884.62 M
4-5	N 81 28 E	1082.11 M
5-6	S 33 54 E	2605.11 M
6-7	S 71 34 W	632.97 M
7-8	S 47 48 W	150.31 M
8-9	S 63 02 W	195.76 M

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[Signature]


9-10
10-1

S 77 38 W
N 01 05 W

83.80 M
67.78 M

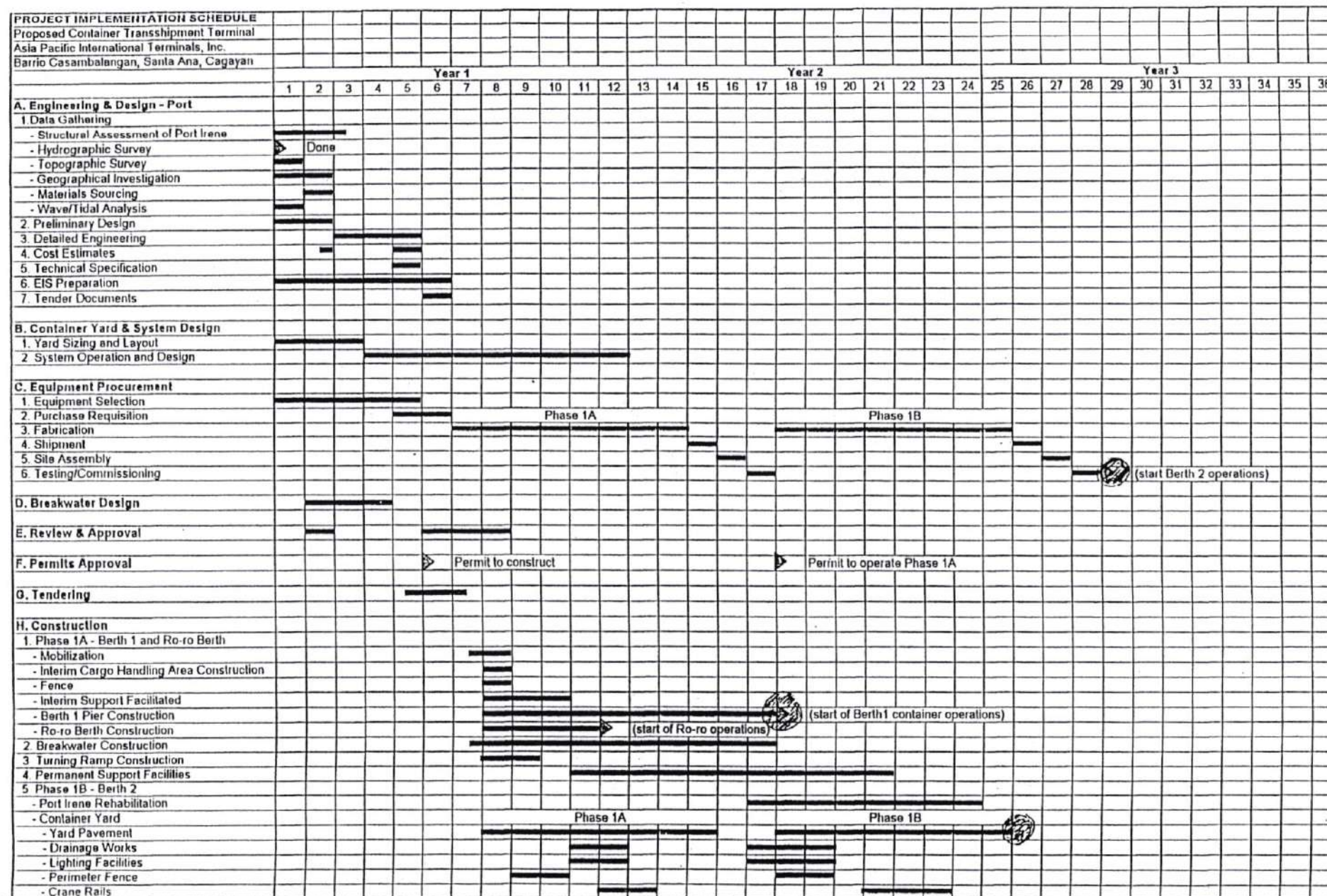
This Order shall take effect on 29th of July, 1999, and shall remain in full force and effect until the end of the Concession Period as provided in the Concession Agreement, unless the same is sooner terminated, cancelled or revoked in accordance with pertinent provisions therein.

Pasig City, Philippines, July 29, 1999.


RODOLFO O. REYES
Administrator and Chief Executive Officer



TIMETABLE



LEGEND:

SPECIFICATION OF BREAKWATER DESIGN FOR PORT IRENE

Length : 250 meters (approximate)

Design : To be mutually agreed upon by the engineers of
CEZA and the CONCESSIONAIRE

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**SPECIFICATION OF NAVIGATIONAL CHANNEL TO BE DREDGED
TO ACCOMMODATE POST-PANAMAX VESSELS**

Width	:	300 meters
Length	:	2,000 meters
Depth	:	-14 m below water level
Design	:	To be mutually agreed upon by the engineers of CEZA and the CONCESSIONAIRE

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LIST OF INSURANCES TO BE PROCURED
FOR THE DEVELOPMENT FACILITY

1. Builders All-Risk Insurance
2. Theft Insurance
3. Fire Insurance
4. Material Damage Insurance
5. Business Interruption Insurance

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