

Office of the President

DEPT. OF ENVIRONMENT & NATURAL RESOURCES
Malacañang

OCT 22 1993

N. 1442
DEPT. OF ENVIRONMENT & NATURAL RES.
OCT 22 1993

OCT 22 1993

MEMORANDUM

To : HONORABLE ANGEL C. ALCALA
Secretary
Department of Environment and Natural Resources

Subject : Mineral Production Sharing Agreement with
C.T.P. Construction and Mining Corporation
dated 11 January 1993

Please be informed that, upon the favorable recommendation made in your Memorandum dated 11 January 1993 and pursuant to Section 2, Article XII of the 1987 Constitution and Section 3 of Executive Order No. 279 (25 July 1987), the President has APPROVED the Mineral Production Sharing Agreement entered into on 11 January 1993 by the Government of the Republic of the Philippines, thru the Secretary, Department of Environment and Natural Resources (DENR), with C.T.P. Construction and Mining Corporation for the exploration, development and commercial utilization of mineral deposits located in Adlay, Carrascal, Surigao del Sur covering an approximate area of 3,564 hectares, SUBJECT to strict compliance with the auditing/accounting requirements, insofar as the financial regime and the production sharing provisions thereof are concerned, and SUBJECT FURTHER to the following qualifications:

- a. Determination by DENR that at least 60% Filipino equity in C.T.P. Construction and Mining Corporation obtains as of the date of this approval;
- b. Inclusion of the clause "Without prejudice to the obligation of the Contractor under Section 15.3 (c)" at the beginning of the second paragraph of Section 2.17 of the agreement;
- c. Amendment of Section 3.1 to read as follows: "The initial term of this Agreement shall be twenty five (25) Contract Years from the Effective Date, subject to termination as provided herein."

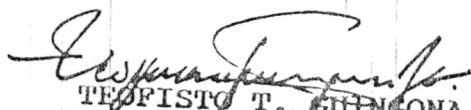
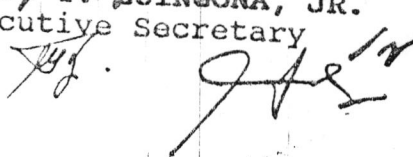
No. MUR - 360 - 2 - 2/2
MUR - 314 - 1 - 12/3

renewable upon mutual consent of the Parties for another period of twenty five (25) years under such terms and conditions as may be mutually agreed upon by the Parties";

- d. Addition of the following sentence at the end of the last paragraph of Section 10.1 (n) (iii) (a) - "The CONTRACTOR shall comply with such conditions as may be stipulated in the relevant Environment Compliance Certificate issued by the proper government authority";
- e. Addition of the following clause at the end of Section 14.2 of the agreement - "such as but not limited to Contractor's failure, without justifiable cause, (i) to conduct Mining Operations and other activities in accordance with duly approved Work Programs and any modification thereof approved by the Secretary, without prejudice to Sections 9.3 and 15.3, or (ii) to remit the fees and other monies payable to the Government under this Agreement";
- f. Replacement of the phrase "three (3) months notice" found in the first sentence of the first paragraph of Section 14.3 of the agreement with the phrase "six (6) months notice"; and
- g. Addition of the following clause at the end of Section 15.3 (a) of the agreement - "provided that the Party whose ability to perform is affected shall have taken all appropriate precautions, due care and reasonable alternative measures with the objective of avoiding such failure or delay and of carrying out its obligations under this Agreement".

It is advised that future similar contracts shall observe the foregoing.

By authority of the President:


TEOFISTO T. GUINGONA, JR.
Executive Secretary


MINERAL PRODUCTION SHARING AGREEMENT

MPSA no. 018-93-XI

This MINERAL PRODUCTION SHARING AGREEMENT (this "Agreement") is made and entered into in Quezon City, Metro Manila, Philippines, this 11th day of JANUARY 1993 by and between:

The REPUBLIC OF THE PHILIPPINES, hereinafter referred to as the GOVERNMENT, represented in this act by the Secretary of the Department of Environment and Natural Resources, with offices at Department of Environment and Natural Resources Building, Visayas Avenue, Diliman, Quezon City, Metro Manila

-and-

C.T.F. CONSTRUCTION AND MINING CORPORATION, a corporation duly organized and existing under the laws of the Republic of the Philippines, hereinafter referred to as the CONTRACTOR, with office at 11 President Avenue, BF Homes, Parañaque, Metro Manila and represented in this act by its President, CLARENCE T. PIMENTEL, as authorized by its Board under Annex "A" which forms an integral part hereof.

WITNESSETH :

WHEREAS, the 1987 Constitution of the Republic of the Philippines (the "Constitution") provides in Article XII, Section 2 that all lands of the public domain, waters, minerals, coal, petroleum and other natural resources are owned by the state and that the exploration, development and utilization shall be under the full control and supervision of the state; and

WHEREAS, the Constitution further provides that the state may directly undertake such activities, or it may enter into a co-production, joint venture, or production sharing agreements with Filipino citizens, or Corporations or Associations at least sixty per centum of whose capital is owned by such citizens; and

WHEREAS, by Executive Order No. 279 issued on July 25, 1987, the Secretary of the Department of Environment and Natural Resources is authorized to enter into production sharing agreements in furtherance to the objectives of the government and the constitution to bolster the national economy through systematic development and utilization of mineral lands; and

WHEREAS, the Government desires to avail itself of the financial resources, technical competence and skill which Contractor is capable of applying to the mining operations of the project contemplated herein; and

WHEREAS, Contractor desires to join and assist the Government in the development and utilization for commercial purposes of certain chromite deposits and other minerals existing in the Contract Area (as hereinafter defined) and any other Minerals which may be discovered in such Contract Area ; and

WHEREAS, Contractor has available to it the capital, technical competence and skills necessary to carry out the Mining Operations herein described.

NOW, THEREFORE, for and in consideration of the premises , the mutual covenants, terms and conditions hereinafter set forth , it is hereby stipulated and agreed as follows :

SECTION I

SCOPE

1.1 This Agreement is a mineral production sharing agreement entered into pursuant to Executive Order No. 2. The primary purpose of this agreement is to provide for the exploration, development, and commercial utilization of certain chromite deposits and other mineral deposits existing within the Contract Area, with all necessary services, technology and financing to be furnished or arranged for by the Contractor in accordance with the provisions of this Agreement. The Contractor shall not, by virtue of this Agreement, acquire any title to lands encompassed within the Contract Area.

1.2 The Contractor shall undertake and execute, for and on behalf of the Government, Mining Operations with the provision of this Agreement, and is hereby constituted and appointed for the purposes of this Agreement the exclusive entity to conduct Mining Operations in the Contract Area .

1.3 The Contractor shall assume all exploration risk such that if no Minerals in commercial quantity are developed and produced, it will not be entitled for reimbursement.

1.4 During the term of this agreement, the total value of production and sale of Minerals derived from the Mining Operations contemplated herein shall be accounted for and divided between the Government and Contractor, in accordance with Section VIII hereof.

SECTION II

DEFINITIONS

As used in this Agreement, the following words and terms, whether in singular or plural, shall have the following respective meanings :

2.1 Agreement means this Production Sharing Agreement.

2.2 Associated Minerals means ore minerals which occur together with the principal ore mineral.

2.3 Budget means an estimate of expenditures to be made by Contractor in Mining Operations contemplated hereunder to accomplish the Work Program for each particular period.

2.4 Calendar Year or Year means a period of twelve (12) consecutive months starting with the first day of January and ending on December 31, while "Calendar Quarter" means a period of three (3) consecutive months with the first calendar quarter starting with the first day of January.

2.5 Central Bank means the Central Bank of the Republic of the Philippines.

2.6 Commercial Production means the production of sufficient quantity of minerals to sustain economic viability of mining operations as specified in the approved Work Program. Production of chromite ore required to test and/or develop a viable processing system or supply a pilot plant used for such testing in quality and volume specified in the Work Program, shall not be considered in the determination of commercial production.

2.7 Constitution or Philippine Constitution means the 1987 Constitution of the Republic of the Philippines, adopted by the Constitutional Commission of 1986 on October 15, 1986 and ratified by the People of the Republic of the Philippines on February 2, 1987.

2.8 Contract Area means the area within the jurisdiction of the Republic of the Philippines which is the subject of the herein Contract, as diminished pursuant to the relinquishment obligations of the Contractor as herein set forth.

2.9 Contract Year means a period of twelve (12) consecutive months counted from the Effective Date of this Agreement or from the anniversary of such Effective Date.

2.10 Contractor means C.T.P. CONSTRUCTION AND MINING CORPORATION and assignee or assignees of any interest of C.T.P. CONSTRUCTION AND MINING CORPORATION under this agreement provided such assignment of any such interest is accomplished pursuant to the provisions hereof.

2.11 Declaration of Mining feasibility means a document proclaiming the presence of minerals in a specific site that are recoverable by socially acceptable, environmentally safe and economically sound methods included in the Mine Development Plan for a period of three (3) years in the case of Integrated Agreement.

2.12 Effective Date means the Date of approval of this Agreement by the President of the Republic of the Philippines.

[Handwritten signatures and initials at the bottom of the page]

2.13 Environment means physical factors of the surroundings of human beings, including land, water, atmosphere, climate, sound, odors, taste and biological factors of animals and plants and the social factors of aesthetics.

2.14 Executive Order means that certain order of the President of the Republic of the Philippines issued on July 25, 1987 and known as Executive Order No. 279.

2.15 Exploration means the examination and investigation of lands and offshore areas supposed to contain valuable minerals by drilling, trenching, shaft sinking, tunneling, test pitting and other means, for the purpose of probing the presence of mineral deposits and the extent thereof.

2.16 Exploration Period shall mean the time period from the Effective Date of this Agreement, and actual activities in the Contract Area shall commence not later than three (3) months after the signing of the Contract. The Exploration Period shall be for at most two (2) years from the Effective Date, as may be extended with the consent of the government by not more than two (2) years or a maximum total of four (4) years from the Effectivity Date of this Agreement.

2.17 Force Majeure means acts or circumstances beyond the reasonable control of the Party to this Agreement affected thereby, including without limitation, war, insurrection, civil disturbance, blockade, sabotage, embargo, strike and other labor conflict, riot, epidemic, earthquake, storm, flood or other adverse weather conditions, explosion, fire, act of God or the public enemy, breakdown of machinery having a major effect on the operations, and any cause (whether or not of the kind hereinbefore described) over which the affected party has no reasonable control and which is of such a nature as to delay, curtail or prevent timely action by the party affected.

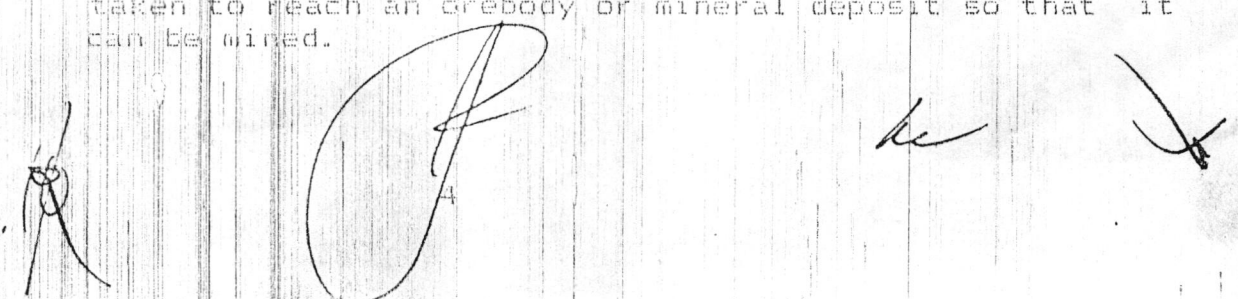
The force majeure mentioned in this section, except those of general knowledge, shall be reported to DENR Regional Office concerned within fifteen (15) calendar days from occurrence.

2.18 Foreign Exchange means any currency other than that of the Republic of the Philippines acceptable to Government and the Contractor.

2.19 Government means the Government of the Republic of the Philippines or any of its agencies and instrumentalities.

2.20 Gross Output means the actual market value of the minerals or mineral products derived from mining operations as defined under the National Internal Revenue Code.

2.21 Mine Development refers to steps necessarily taken to reach an orebody or mineral deposit so that it can be mined.

The bottom of the page features several handwritten signatures and initials. On the left, there is a signature that appears to be 'R'. In the center, there is a large, stylized signature that looks like 'P'. To the right of 'P', there are two smaller signatures: one that looks like 'he' and another that looks like 'J'.