WITNESS

PHILIPPINE PORTS AUTHORITY

PORT MANAGEMENT OFFICE OF AGUSAN, Port Area, San Francisco Street, Butuan City 8600, PHILIPPINES
Tel. Nos. (085) 342-5352, 342-6451, 815-3449 FAX No. (085) 815-4434 Email: pmo_nasipit@yahoo.com

CONTRACT / AGREEMENT

FOR THE

CONSTRUCTION OF PLANT BOXES AT THE PORT OF NASIPIT

MARTIN C. ATAZAN

KNOW ALL MEN BY THESE PRESENTS:

This Contract, made and entered into this 27th day of July 2018 in the City of Butuan, Caraga Region, Philippines, by and between:

> **PHILIPPINE PORTS AUTHORITY**, **Port Management Office of Agusan**, a government corporation created under Presidential Decree No. 857, as amended, with office address at Francisco St., Port Area, Butuan City, represented herein by its Officer-in-Charge, **JOSE MARIA M. YARES**, hereinafter referred to as "**ENTITY**";

- and -

> **BN BUILDERS AND CONSTRUCTION SUPPLIES,** a company duly established and existing under Philippine laws with office address at Amontay, Nasipit, Agusan del Norte, represented herein by its Proprietor, **ENGR. MARTIN C. ATAZAN**, hereinafter referred to as the "**CONTRACTOR**".

WITNESS

WITNESSETH:

WHEREAS, in accordance with Republic Act 9184 and its Implementing Rules and Regulations, on July 4, 2018, PPA, PMO-Agusan invited three (3) Contractors of known qualifications, by sending a Request for Quotation (RFQ); PPA PMO Agusan Bulletin Board on July 4, 2018; Office of the Provincial Governor of Agusan del Norte and Office of Mayor of Butuan City on July 4, 2018, for the **CONSTRUCTION OF PLANT BOXES AT THE PORT OF NASIPIT,** Agusan del Norte;

WHEREAS, there were three (3) prospective bidders who submitted their bids for the foregoing project;

JOSE MARIA M. YARES

WHEREAS, after the opening of the bids on July 12, 2018, and the conduct of bid evaluation and required post qualification, the bid submitted by the CONTRACTOR at its unit and lump sum prices set forth in its proposal was found to be the Lowest Calculated and Responsive Bid (LCRB);

WHEREAS, the aforesaid bid of the Contractor is lower than the ***Approved Budget for Contract (ABC) of One Hundred Fifty Four Thousand Seven Hundred Ninety Eight Pesos and Fifty Centavos (₱ 154,798.50),*** Philippine Currency;

WHEREAS, pursuant to PMO-Agusan BAC Resolution No. Infra-23-2018, duly approved by the Port Manager, award of the contract was made to the CONTRACTOR in a letter dated July 24, 2018, in the amount of ***One Hundred Fifty Two Thousand Pesos (₱152,000.00),*** Philippine Currency;

WITNESS

WHEREAS, the CONTRACTOR duly accepted the award by signing its conforme on the said Notice of Award;

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants, stipulations and agreements herein contained, and the payment by the **PPA** of a sum of money in the manner hereinafter specified, the PPA and the **CONTRACTOR** have agreed, as they do hereby agree and contract as follows:

ARTICLE I

CONTRACT DOCUMENTS

MARTIN C. ATAZAN

1.01 The following documents shall constitute integral parts of this Contract, as fully as if the contents of the said documents are reproduced, incorporated and set forth herein, and shall govern and control in full force and effect the rights and obligations of the Parties, except as otherwise modified by the terms and conditions of this Contract, or by mutual agreement in writing of both parties, to wit:

a. Bidding Documents consisting of the following:

   1. Request for Quotation (RFQ)
   2. Instruction to Bidders
   3. Bid Form
   4. Drawings

b. Bid Form/Proposal including the following documents/statements, contained in the winning bidder's sealed envelope, as annexes:

   1. PhilGEPS Registration Certificate
   2. Current Mayor's Permit
   3. Bid price in the prescribed Bid Form/RFQ

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c. Other Contract Documents that may be required by PPA

1.02 The following documents shall also be made integral parts of this Contract as if their contents are incorporated, reproduced and set forth herein, and shall have the same force, effect and applicability as the documents enumerated in the immediately preceding paragraph hereof, to wit:

   a. Duly Approved Program of Work and Cost Estimates
   b. Abstract of Bids
   c. Resolution of the BAC Recommending Award
   d. Approval of Award by Approving Authority
   e. Other pertinent documents as may be reasonably required by existing laws and/or PPA

1.03 All Contract documents are and shall remain as the property of the PPA.

JOSE MARIA M. YARES

1.04 The words and expressions in the Contract shall have the same meanings respectively assigned to them in the Contract Documents referred to above.

WITNESS

ARTICLE II

CONTRACTOR'S UNDERTAKING
SCOPE OF WORK

2.01 The **CONTRACTOR** in consideration of the payment to be made by the **PPA** to the **CONTRACTOR** as stated in the Contract Documents and this Contract, the latter hereby covenants to execute and complete the **CONSTRUCTION OF PLANT BOXES AT THE PORT OF NASIPIT,** Agusan del Norte, in conformity in all respects with the provisions of this Contract, as follows:

ITEMS	UNIT	QTY	UNIT PRICE	AMOUNT
CONSTRUCTION OF PLANT BOXES AT THE PORT OF NASIPIT	l.m.	101	1504.95	152,000.00
	TOTAL AMOUNT			**P 152,000.00**

MARTIN C. ATAZAN

2.02 The CONTRACTOR agrees to commence, perform and complete the work called for and defined in this Contract at its sole cost and expense and to fully and faithfully furnish all materials, tools, labor, supplies, equipment, services and superintendence for the implementation of this Contract in accordance with the schedule in the Contract Documents forming integral parts of this Contract.

2.03 The CONTRACTOR guarantees, among others, that all tools, equipment, machineries, instruments, accessories and materials it will supply or deliver or install and/or use in the construction and workmanship of all his work under the contract, shall be in accordance with the Contract Documents and shall make good and guarantee the same for a period of twelve (12) months from the time of the issuance of Certificate of Acceptance. Any defect or defects which may later be discovered in the work shall be charged to the account of the CONTRACTOR.

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2.04 The CONTRACTOR recognizes the position of trust and confidence reposed in it under this Contract and agrees to perform its obligations hereunder in the most efficient and competent manner, use its skill and good judgment, always set in good faith and carry on the execution of this Contract in the most sound, expeditious and economical manner consistent with the interest of the PPA.

2.05 The CONTRACTOR shall, prior to the signing/approval of this Contract, submit to PPA a credit line issued by a bank duly authorized/licensed by the Central Bank of the Philippines or a Cash Deposit Certificate in an amount equal to ten percent (10%) of the total project cost, whichever is less.

JOSE MARIA M. YARES

ARTICLE III

CONSIDERATION

3.01 For and in consideration of the full, satisfactory and faithful performance by the CONTRACTOR of all its undertakings defined in and provided for under this Contract and Contract Documents, the PPA agrees to pay the CONTRACTOR the total amount not exceeding ***One Hundred Fifty Two Thousand Pesos (₱152,000.00),*** Philippine Currency, inclusive of the 12% value added tax, payment to be made and computed on the basis of final quantities at the unit bid price for each item of work actually performed and finished for each pay item as determined and accepted by PPA and in the manner set forth in the Contract Documents, as full compensation for everything furnished and done by the CONTRACTOR under this Contract, including all works required but not specifically mentioned and also for all losses and damages to the CONTRACTOR arising out of the work aforesaid, from the action of the elements or from any obstruction

or difficulty encountered in the prosecution of this Contract, for all expenses incurred by or in consequence of the suspension or discontinuance of the contract herein specified and for faithfully completing the contract and the whole thereof, at the time and in the manner provided in the Contract Documents.

Except as herein provided in the Contract Documents or under existing law, it is hereby expressly agreed upon and understood that the stipulated contract price shall not be subject to upward adjustment for any cause or reason whatsoever.

3.02 Final and full payment of the consideration herein above-mentioned shall be upon full completion of the project and fulfillment by the CONTRACTOR of all the terms and conditions set forth in this Contract.

However, it is agreed that no payment or payments be made under this Contract, except the final payment upon issuance of Certificate of Completion, shall be understood as performance of this Contract, either wholly or in part and no payment shall be construed to be an acceptance of defective work or improper supplies/materials.

3.03 Any payment due and payable to the CONTRACTOR may be set off against liquidated damages and payable to the PPA by the CONTRACTOR under this Contract.

3.04 It is likewise agreed and understood that the CONTRACTOR shall show proof evidencing payments by the CONTRACTOR of labor, materials, supplies, insurance premiums, etc., used in the work, before any payment is made to it.

For this purpose, the CONTRACTOR shall, before payment is made on the works accomplished, submit an affidavit certifying to the fact of payments of said labor, materials, supplies, equipment, insurance premiums, etc.

3.05 All payments shall be subject to existing government accounting and auditing rules and regulations.

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

3.07 The total "retention money" shall be due for release upon final acceptance of the works. The CONTRACTOR may, however, request for the substitution of the retention money for each progress billing with surety bonds callable on demand of amounts equivalent to the retention money substituted for and acceptable to PPA, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten percent (10%) retention shall be made. Said surety bonds, to be posted in favor of PPA, shall be valid for a duration to be determined by PPA and will answer for the purpose for which the ten percent (10%) retention is intended, i.e., to cover uncorrected discovered defects and third party liabilities.

ARTICLE IV

PERFORMANCE SECURITY

4.01 To guarantee the faithful performance of the CONTRACTOR under the Contract, it shall post upon the signing of the Contract a Performance Security in the form of cash, manager's check, cashier's check, bank draft/guarantee, surety bond,

callable on demand, issued by the Government Service Insurance System or a combination thereof, in accordance with the following schedule:

a. cash, manager's check, cashier's check, irrevocable letter of credit, bank draft - five percent (5%) of the total contract price

b. bank guarantee - ten percent (10%) of the total contract price

c. surety bond - thirty percent (30%) of the total contract price

4.02 This performance security shall be posted in favor of PPA, and shall guarantee the payment of the amount of the security as penalty in the event it is established that the CONTRACTOR is in default in his obligation thereunder.

4.03 In the execution of the performance security, the following conditions shall be complied with:

a. It shall be executed in accordance with the form prescribed therefore

b. It shall be at least co-terminus with the final completion of the project

c. The following provisions shall form part of the performance security. "The right to institute action on the penal bond pursuant to Act No. 3688 of any individual firm, partnership, corporation and association supplying the CONTRACTOR with labor and material for the prosecution of the work is hereby acknowledged and confirmed".

4.04 Subject to the conditions of the Contract, the performance security may be released by PPA after the issuance of the certificate of completion of the project, provided that there are no claims for labor and materials filed against the contractor or the surety company.

4.05 Should any surety upon the bond for the performance of this contract become unacceptable to the PPA, the CONTRACTOR shall promptly furnish such replacement security as may be required from time to time up to the sum equal to the amount of the original surety.

4.06 The CONTRACTOR shall post an additional performance security to cover any cumulative increase of more than ten percent (10%) over the original value of the Contract as a result of adjustments in unit prices, and/or change orders, extra work orders and supplemental agreements. The CONTRACTOR shall cause the extension of the validity of the performance security to cover approved contract time extensions.

4.07 In case of a reduction in the contract value and for partial work completed by the CONTRACTOR and accepted by PPA and in which the judgment of PPA shall not affect the structural integrity of the entire project, PPA may allow a proportional reduction in the original performance security, provided that any such reduction is more than ten percent (l0%) and that the aggregate of such reduction is not more than fifty percent (50%) of the original performance security.

ARTICLE V

COMPLETION TIME: LIQUIDATED DAMAGES

5.01 The CONTRACTOR agrees and obligates itself to perform and complete all works provided for in this Contract within **TEN CALENDAR DAYS (10) including Sundays and Holidays**, reckoned immediately after the issuance of the Notice to

Proceed issued by PPA. Notice to Proceed shall be issued after the approval of this Contract by the Port Manager.

5.02 Time is of the essence of this Contract. Should the CONTRACTOR refuse or fail to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the CONTRACTOR shall pay the PPA for liquidated damages, and not by way of penalty, an amount which shall be at least equal to one-tenth of one percent (0.1%) of the cost of the unperformed portion for every day of delay. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, PPA shall rescind the contract, without prejudice to other courses of action and remedies open to it.

5.03 It is understood that the damages herein provided are fixed and agreed liquidated damages and to be entitled to such damages, PPA does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due the CONTRACTOR under the contract and/or collect such liquidated damages from the retention money or other securities posted by the CONTRACTOR, whichever is convenient to PPA.

5.04 In case that the delay in the completion of the work exceed a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the CONTRACTOR, PPA may rescind the contract, forfeit the CONTRACTOR'S performance security and take over the prosecution of the project or award the same to a qualified contractor through negotiated contract.

5.05 In no case, however, shall the total sum of liquidated damages exceed ten percent (10%) of the total contract price, in which event the contract shall automatically be taken over by PPA or award the same to a qualified contractor through negotiation and the erring CONTRACTOR's performance security shall be forfeited. The amount of the forfeited performance security shall be aside from the amount of the liquidated damages that the CONTRACTOR shall pay PPA under the provisions of this clause.

ARTICLE VI

EXTENSION OF CONTRACT TIME

6.01 Should the amount of additional work of any kind or other special circumstance of any kind whatsoever occur such as to fairly entitle the CONTRACTOR to an extension of contract time, PPA shall determine the amount of such extension; provided that PPA is not bound to take into account any claim for an extension of time unless the contractor has prior to the expiration of the contract time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claim have arisen, delivered to PPA notices in order that it could have investigated them at that time. Failure to provide such notice shall constitute a waiver by the CONTRACTOR of any claim. Upon receipt of full and detailed particulars, PPA shall examine the facts and extent of the delay and shall extend the contract time for completing the contract work when, in PPA's opinion, the findings of facts justify an extension.

6.02 No extension of contract time shall be granted to the CONTRACTOR due to (a) ordinary unfavorable weather conditions (b) inexcusable failure or negligence of CONTRACTOR to provide the required equipment, supplies or materials, or (c) other causes for which the Government is not directly responsible.

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

6.04 No extension of contract time shall be granted when the reason given to support the request for extension was already considered in the determination

of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection.

6.05 Extension of contract time shall be granted for rainy/unworkable days considered unfavorable for the prosecution of the works at the site, based on the actual conditions obtained at the site, for such period in excess of the number of rainy/unworkable days predetermined by the PPA and/or for the equivalent period of delay due to major calamities such as exceptionally destructive typhoons, floods and earthquakes and epidemics and for causes such as non-delivery on time of materials , working drawings or written information to be furnished by the PPA, non-acquisition of permit to enter private properties within the right-of-way resulting in complete paralization of construction activities and other meritorious causes as determined by the PPA's authorized Engineer and approved by the PPA. Shortage of construction material, general labor strikes and peace and order problems that disrupt construction operations through no fault of the CONTRACTOR may be considered as additional grounds for extension of contract time provided they are publicly felt and certified by appropriate government agencies such as DT, DOLE, DILG and DND, among others. Provided further, that the written consent of bondsmen must be attached to any request of the CONTRACTOR for extension of contract time and submitted to the PPA for consideration and that the validity of the performance security shall be correspondingly extended.

ARTICLE VII

ENTIRE CONTRACT

7.01 Provisions to the contrary notwithstanding, it is agreed that this is an entire contract for one whole complete work and that partial payments on account by the PPA or the use of parts of the work or equivalent shall not constitute an acceptance of any part of the work before its entire completion and final acceptance in writing by the PPA.

ARTICLE VIII

CONTRACTOR'S LIABILITY

8.01 The Parties, likewise, hereby agree that the employees of the CONTRACTOR are not employees of the PPA; hence, the PPA shall not in any way be liable or responsible for any personal injury or damages, including death sustained or caused by any of the employees of the CONTRACTOR and/or his SUB-CONTRACTOR or agent or supplier whether or not occurring during the performance of their duties. The CONTRACTOR agrees and binds itself to indemnify the PPA for whatever injuries or damages caused or occasioned or contributed to by the failure, negligence or conduct of the CONTRACTOR and/or its employees, sub-contractors, agent and supplier or consultants arising out of or in connection with or on the occasion of the performance of this Agreement. The CONTRACTOR shall, at all times, stand solely liable and/or responsible for the enforcement of, and compliance with all existing laws, rules and regulations and binds itself to save and hold the PPA free and harmless from any and all liability in respect thereof and/or arising therefrom and/or by reason of this Contract and its implementation.

8.02 The Contractor shall assume full responsibility for the contract work from the time project construction commenced up to final acceptance by the government and shall be held responsible for any damage or destruction of the works except those occasioned by *force majeure*. The contractor shall be fully responsible for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by his

construction work and shall be required to put up a warranty security in the form of cash, bank guarantee, letter of credit, GSIS or surety bond callable on demand, in accordance with the following schedule:

Form of Warranty	Minimum Amount in % of Total Contract Price
1. Cash deposit, cash bond or letter of credit	Five percent (5%)
2. Bank guarantee	Ten percent (10%)
3. Surety bond	Thirty percent (30%)

The warranty security shall be stated in Philippine Pesos, shall remain effective during the applicable warranty period of fifteen (15) years, and shall be returned only after the lapse of the said warranty period.

8.03 The defects liability period shall be one (1) year from project completion up to final acceptance by the Government. During this period, the contractor shall undertake the repair works, at his own expense, of any damage to the project on account of the use of materials of inferior quality within ninety (90) days from the time the head of the procuring entity has issued an order to undertake repair. In case of failure or refusal to comply with this mandate, the Government shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand.

Failure to comply with the preceding paragraph means the contractor shall suffer perpetual disqualification from participating in any public bidding and his property or properties shall be subject to attachment or garnishment proceedings to recover the costs. All payables of government in his favor shall be offset to recover the costs.

8.04 After final acceptance of the project by the Government, the contractor shall be held responsible for structural defects and/or failure of the completed project within the warranty period of six (6) months from final acceptance, except those occasioned by *force majeure* and those caused by other parties.

ARTICLE IX

RESPONSIBILITY OF THE CONTRACTOR

9.01 The CONTRACTOR shall assume full responsibility for the entire contract work until its final acceptance by the PPA and shall be held responsible for any damage or destruction of works until such final acceptance.

9.02 The CONTRACTOR shall be fully responsible for the safety, protection, security and convenience of its personnel, third parties and the public at large, as well as the works, equipment, installation and the like to be affected by the construction work.

9.03 Any actionable act or acts of **ENGR. MARTIN C. ATAZAN** arising out of or in the course of this Contract shall be understood and binding as an act of **BN Builders and Construction Supplies,** and vice-versa.

ARTICLE X

INSPECTION AND CONSTRUCTION OF CONTRACT WORK

10.01 Inspection of the contract work shall be made by the PPA while such contract work is in progress to ascertain that the completed works comply in all respects,

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with the standards and requirements set forth in the Contract Documents. Notwithstanding such inspection, the CONTRACTOR shall be held responsible for the acceptability of the finished works. The CONTRACTOR shall promptly replace all materials and correct all works determined by the PPA as failing to meet requirements at CONTRACTOR's own expense.

ARTICLE XI

NON-ASSIGNMENT AND NO SUB-CONTRACT

MARTIN C. ATAZAN

11.01 The CONTRACTOR shall not, without the written approval of the PPA, assign, transfer, pledge, sub-contract or make any other disposition of interest in this Contract. Any unapproved assignment, transfer, pledge, sub-contract or any other disposition, shall be sufficient ground for the PPA to terminate or cancel this Contract motu propio without need of judicial action pursuant to paragraph 18.04 hereof. Should the PPA give its written approval, such consent shall not relieve the CONTRACTOR of its responsibilities under the Contract. The CONTRACTOR shall ensure that the terms and conditions of any such sub-contractor shall comply and conform with the terms and conditions of the Contract. The CONTRACTOR shall be responsible for the observance by any such sub-contractor of the terms and conditions of the Contract.

11.02 If any portion of the project sub-contracted is not prosecuted faithfully in accordance with the Contract, the sub-contractor shall be removed or replaced immediately upon the written request of the PPA, provided, however, that any failure of PPA to make such a request shall not relieve the CONTRACTOR of its obligations under the Contract. PPA shall not be responsible for the delays or costs incurred by the CONTRACTOR because of the disapproval or removal of the sub-contractor or because of the late submittal of its or his approval.

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ARTICLE XII

INSURANCE

12.01 The CONTRACTOR shall, prior to the commencement of work, secure the standard CONTRACTOR's All Risk (CAR) insurance from the Government Service Insurance System (GSIS) to insure the works against all losses or damages arising from whatever cause for which the CONTRACTOR is responsible under the Contract.

ARTICLE XIII

WARRANTY

JOSE MARIA M. YARES

13.01 The CONTRACTOR shall assume full responsibility for the contract work from the time project construction commenced up to final acceptance by the PPA and shall be held responsible for any damage or destruction of the works, except those occasioned by force majeure. The CONTRACTOR shall also be responsible for the safety, protection, security, and convenience of the personnel, third parties, and the public at large, as well as the works, equipment, installation, and the like to be affected by the construction work. For this purpose, the CONTRACTOR shall put warranty security in the form of cash, bank guarantee, letter of credit or surety bond, callable on demand issued by any reputable surety or insurance company duly accredited by the Office of the Insurance Commission and acceptable to PPA in accordance with the following schedule:

a. Cash or letter of credit - Five percent (5%) of the total contract price

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b. Bank guarantee - Ten percent (10%) of the total contract price
c. Surety bond - Thirty percent (30%) of the total contract price

The warranty security shall be stated in Philippine Pesos, shall remain effective during the warranty period as stated in Section 13.03 hereof and shall be returned only after the lapse of the said warranty period.

13.02 The defect liability period for the project covered by this Contract shall be one (1) year from the project completion up to final acceptance thereof by the PPA. During this period, the CONTRACTOR shall undertake the repair works, at his own expense, of any damage to the said project within NINETY (90) days from the time the PPA or his duly authorized representative has issued an order to undertake repair. In case of failure or refusal to comply with this order, PPA shall undertake such repair works and the CONTRACTOR shall fully reimburse the former for all the expenses incurred therein upon demand.

MARIUM C. ATAZAN

13.03 After final acceptance of the project by the PPA, the CONTRACTOR shall be held responsible for structural defects and/or failure of the said project within the period of FIFTEEN (15) years from the date of final acceptance thereof by the PPA.

ARTICLE XIV

TAXES, LICENSES, PERMITS AND FEES

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14.01 The CONTRACTOR's tax, licenses, permits and fees which may be due the local and/or national government on account of the performance and completion of the work stipulated herein, fees for the testing of materials and samples and fees for the testing and inspection of the installation by all agencies having jurisdiction and all necessary and incidental expenses relative thereto including preparation of documents and notarial fees shall be paid for and obtained by the CONTRACTOR on its own account. Should the PPA be compelled to advance the same, PPA is hereby authorized to deduct the amount advanced from whatever amount due the CONTRACTOR from PPA.

ARTICLE XV

AGREEMENT MODIFICATION

JOSE MARIA M. YARES

15.01 No modification, alteration or waiver of any provision herein contained shall be binding on the Parties hereto unless evidenced by a written amendment signed and approved by the appropriate approving authorities.

15.02 A variation order (change order/extra work order) may be issued by PPA under the conditions set forth in the Implementing Rules and Regulations of R.A. 9184.

15.03 The PPA may, at any time by written order and without notice to the Sureties, direct the CONTRACTOR to perform extra work necessary to and within the General Scope of the Contract. The CONTRACTOR shall promptly proceed with the extra work provided the cumulative amount of the variation order does not exceed ten percent (10%) of the original price. The CONTRACTOR shall be paid on the basis of the unit prices indicated in the original contract price or for work items similar to those in the original contract. If the contract does not contain any rate applicable to the additional or extra work, then suitable prices shall be based on the direct unit costs in the original contract. In the case of extra work involving an increase of twenty five percent (25%) or more of the original contract price or adjusted original contract price to be covered by a

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supplemental agreement, the price shall be agreed upon by the parties covering the entire extra work, under any of the following methods:

a. By applicable unit prices contained in the original price or adjusted original contract price for like work.

b. By cost-plus percentage basis where the cost represents the expenses incurred, exclusive of profit and contractor'' tax, while the plus represents a certain percentage of the cost which shall not exceed fifteen percent (15%). The CONTRACTOR shall be reimbursed for all actual necessary costs, as determined by:

(1) his direct labor costs;

(2) all materials used in the extra work;

(3) all supplies, fuel lubrications, power and other incidentals;

(4) a reasonable base equipment rental for use of his construction equipment; and

(5) current rental rates for use of construction equipment not owned by the contractor.

MARTIN C. ATAZAN

15.04 If the parties are unable to agree on any of the modes of payment specified in Section 14.03 (a), the extra work shall be done on a cost-plus percentage basis described in Section 14.03 (b) above.

15.05 The cost of the extra work done shall be submitted at the intervals to be determined by the Project Engineer in a satisfactory form which shall be approved or adjusted at once by PPA. Request for payment by the CONTRACTOR for any extra work shall be accompanied by a statement, with the approved supporting forms, giving a detailed accounting and record of amount for which he claims payment. Said request for payment shall be included with the CONTRACTOR's statement of progress payment.

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ARTICLE XVI

SUSPENSION OF WORK

16.01 The PPA or its duly authorized representative shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, due to force majeure or any fortuitous events or for failure on the part of the CONTRACTOR to correct bad conditions which are unsafe for workers or for the general public to carry out valid orders given by the Government or to perform any provisions of the contract, or due to adjustment of plans to suit field conditions as found necessary during construction. The CONTRACTOR shall immediately comply with such order to suspend the work wholly or partly.

JOSE MARIA M. YARES

In case of total suspension or suspension of activities along the critical path, which is not due to any fault of the CONTRACTOR, the elapsed time between the effective order of suspending operation and the order to resume work shall be allowed the CONTRACTOR by adjusting the contract time accordingly.

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ARTICLE XVII

INDIVISIBILITY OF OBLIGATION

17.01 It is the intent of the Contract that all the documents, annexes and addenda forming part hereof, shall be read together and that each and every provision or stipulation hereof be given full force, effect and applicability. However, in the event that one or more provisions or stipulations herein be declared null and void by the courts or otherwise rendered ineffective, the remaining provisions and stipulations shall not be affected thereby.

MARTIN C. ATAZAN

ARTICLE XVIII

REMEDY AND RELIEF

18.01 Should there be any dispute or controversy in connection with this Contract or difference between the Parties arising from the interpretation of this Contract, the Parties hereto shall, as far as practicable, settle the same amicably. In the event that such dispute or disagreement be not resolved to their mutual satisfaction, the matter shall be submitted to the Construction Industry Arbitration Commission (CIAC) created by the Executive Order No. 008, implementing Presidential Decree No. 1748 and R.A. 876, as amended; Provided, however that the arbitration proceeding shall be without prejudice to the right of PPA to rescind or terminate this contract in accordance with Article XVIII, paragraph 18.04.

18.02 Should the PPA be constrained to resort to court action to enforce or safeguard its rights and interests under this Contract, the CONTRACTOR shall be liable to the PPA for attorney's fees in an amount equivalent to twenty percent (20%) of the total sum claimed in the complaint, exclusive of other damages and the expenses of litigation. Venue of such court action shall be laid exclusively in the proper court of the City of Manila.

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18.03 It is clearly understood that in case a dispute or disagreement arises between the PPA and the CONTRACTOR regarding the manner by which the latter is performing works, the CONTRACTOR shall follow the instruction of the PPA relative thereto, otherwise, it shall have no right to ask for arbitration or go to court for relief.

ARTICLE XIX

OTHER COVENANTS

JOSE MARIA M. YARES

19.01 It is expressly agreed and understood that in case of irreconcilable conflict between the provisions of any of the contract documents, the former shall be controlling.

19.02 It should also be clearly understood that any payment or failure of the PPA to demand compliance with any of the terms and conditions of this Contract or any act of liberality on the part of the PPA shall not be construed or considered as a waiver on the part of the PPA for the enforcement of this Contract, nor shall it relieve the CONTRACTOR of any of its obligations provided thereunder.

19.03 Under no circumstances shall the PPA be held liable for the payment of any extra work, or extra cost of work, change of work, or change order undertaken without the prior written approval of the PPA to perform said work.

19.04 Notwithstanding any provision to the contrary, the PPA has the right to terminate, cancel and/or rescind this Contract motu propio, in case of breach thereof by the CONTRACTOR, without need of judicial action by giving at least ten (10) days

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written Notice to that effect to the CONTRACTOR, which Notice shall be final and binding on all the parties. In such event, the PPA may take over and continue the project and the contracts and agreements entered into by the CONTRACTOR with third parties, which the PPA in its discretion, may want to assume are hereby conclusively deemed assigned to the PPA. For this purpose, the CONTRACTOR hereby agrees and obligates itself to incorporate or cause to be incorporated in any contract or agreement with third parties, as same is connected with or related to the performance of any or all of the CONTRACTOR's obligations and undertakings hereunder, a stipulation providing for its assignability to and assumption by the PPA at the option of the PPA. It is further agreed and understood that upon receipt of the Notice mentioned above, the CONTRACTOR cannot remove, withdraw or pull-out any of the equipment, machineries, tools, materials and/or supplies brought to the project site without the written approval of the PPA.

MARTIN C. ATAZAN

Within thirty (30) days after termination, cancellation or rescission of this Contract, the Parties shall settle their respective accountabilities as of the date of termination, cancellation or rescission, including the refund of any and all advances made plus legal interest from date of receipt of the amount or amounts advanced.

19.05 It is expressly agreed that whenever the CONTRACTOR is behind schedule in its contract work and incurs ten percent (10%) or more negative slippage based on its approved PERT/CPM, the PPA may undertake the whole or portion of the unfinished work by administration or by negotiation through another qualified CONTRACTOR at the current valuation price pursuant to the provisions of P.D. 1870.

Whenever a work activity in the project is not being done on schedule per approved PERT/CPM, the PPA shall notify and direct the CONTRACTOR to immediately undertake such work activity. If within fifteen (15) days from receipt of such notice, the CONTRACTOR fails to start work and to show a satisfactory performance, PPA may take over the whole or portion of such work and have such work done by administration or award the same to another qualified contractor through negotiated contract at the current valuation price.

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19.06 The PPA has the right to require the CONTRACTOR to supply and provide the required tools, materials, supplies, equipment, facilities and to increase the number of workers assigned to the work when exigencies of the service so require. Should the CONTRACTOR fail, refuse or neglect to comply with the same, PPA shall have the option to take over the project in whole or in part or award the same to another CONTRACTOR through negotiated contract at the current valuation price in accordance with P.D. 1870. Any increase in cost which the PPA may incur as a result of its take-over of the project pursuant to paragraphs 18.04, 18.05 and 18.06 shall be borne by and charged to the CONTRACTOR.

JOSE MARIA M. YARES

19.07 The CONTRACTOR shall provide and do everything necessary to perform its obligations under this Contract according to the true intent and meaning of all the contract documents taken together, whether the same may or may not be shown or described particularly in the drawings, plans and specifications provided that the same can be inferred therefrom. Should the CONTRACTOR find discrepancy in the drawings, plans and specifications, it shall immediately refer the same to the PPA, whose decision shall be followed.

19.08 The CONTRACTOR guarantees and warrants the availability, quality and genuineness of all machineries, equipments, accessories, tools, materials and supplies it will supply, deliver and use in the construction and workmanship of all its work under this Contract, and shall, on its own account and expense, make good any defect or defects which may be discovered within one (1) year after the Certification of Completion and Acceptance has been issued by the PPA.

WITNESS

19.09 The CONTRACTOR agrees and obligates itself to restore to its original condition, on its own account, any public road, pavement, streets or open space and/or public or private property which are excavated or in any manner used by the CONTRACTOR in connection with the performance of its obligations under this Contract.

19.10 The CONTRACTOR agrees and binds itself to hold and save PPA free and harmless from any damage, claims and rights of action arising out of or by reason of this Contract and all injuries that may be suffered by PPA due to the failure, negligence, delay or conduct on the part of the CONTRACTOR and/or its employees in the performance of their obligations under this Contract.

MARTIN C. ATAZAN

19.11 No final payment of the Contract shall be made to the CONTRACTOR without the Certificate of Completion of the local works to be restored mentioned in paragraph 18.09 hereof, otherwise the cost of restoration shall be made available out of any collectible/receivable by the CONTRACTOR from the PPA.

19.12 Notwithstanding any extra work, change of work or orders made, if any, by the PPA, it is agreed that the same shall be completed within the period herein fixed and provided.

19.13 The CONTRACTOR shall hold the PPA free and harmless from whatever suit and hereby binds and obligates itself to indemnify the PPA for any and all liabilities, losses, damages, judgment, awards, fines, penalties and all expenses, legal or otherwise, of whatever kind and nature, arising from and by reason of this Contract, due to the fault, negligence, act, omission, delay, conduct, breach of trust or non-observance or violation of this Contract or any stipulation and warranty by the CONTRACTOR and/or any of its employees, agents, representatives or sub-contractors.

WITNESS

ARTICLE XX

SPECIAL REPRESENTATION

20.01 The CONTRACTOR hereby represents that all documents it submitted which form integral parts hereof are authentic and duly executed with all the required formalities for the same and that the facts and/or data contained therein are true and correct.

A breach of this representation including all misrepresentation in the documents or suppression of material facts therein, which if known, could have disqualified the CONTRACTOR such that this Contract would not have been made and entered into, gives the PPA the immediate right or recourse to motu propio rescind, abrogate or otherwise terminate the Contract without need of judicial action, in accordance with paragraph 18.04 hereof.

JOSE MARIA M. YARES

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

ARTICLE XXI

BUDGETARY REQUIREMENT

21.01 The parties hereto hereby adopt and incorporate herein by reference, by **Notice of Budget Allocation Reference No. 20180078** dated January 19, 2018.

ARTICLE XXII

EFFECTIVITY

22.01 This Contract shall become effective after the same have been signed by the parties and approved by the Port Manager of PMO-Agusan.

IN WITNESS WHEREOF, the Parties have hereunto signed this Contract on the date and place first herein above written.

PHILIPPINE PORTS AUTHORITY	**BN BUILDERS AND CONSTRUCTION SUPPLIES**
By:	By:
JOSE MARIA M. YARES	**ENGR. MARTIN C. ATAZAN**
Officer-in-Charge	Proprietor

WITNESSES:

Certified Funds Available:

8/7/18

ROSEMARIE A. RASONABE
Acting Division Manager A, Finance Division

APPROVED:

JOSE MARIA M. YARES
Officer-in-Charge

ACKNOWLEDGMENT

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

BEFORE ME, a Notary Public for and in the City of Butuan, Philippines, personally appeared the following persons with their respective Residence Certificates, to wit:

NAME			TIN NO.
1. **JOSE MARIA M. YARES**	2 8 7 1 3 5 3 1	Nasipit/01-12-18	126-318-961
2. **ENGR. MARTIN C. ATAZAN**	2 8 6 8 0 6 3 0	Amontay, Nasipit, Agusan del Norte, 1/5/18	112-754-810

who are known to me to be the same persons who executed and signed the foregoing instrument and who acknowledged to me that the same is their true and voluntary acts and deeds and that of the entity which they respectively represent.

This instrument is a Contract/Agreement for the **CONSTRUCTION OF PLANT BOXES AT THE PORT OF NASIPIT,** Agusan del Norte, consisting of Sixteen (16) pages, including this page where the Acknowledgment is written. Pages 1 to 14 are signed on the left margin thereof and page 15 is signed at the corresponding spaces provided therefore by the Parties and their instrumental witnesses and sealed with my notarial seal.

AUG 03 2018

WITNESS MY HAND AND SEAL this ___ day of _____, at Butuan City, Agusan del Norte, Philippines.

NOTARY PUBLIC

ATTY. [illegible] ALEGADO
NOTARY PUBLIC
ATTY'S ROLL NO. 29333
IBP NO. 1061930
PTR NO. BC 1466501
EXPIRES DEC. 31, 2019

Doc. No. 299;
Page No. 60;
Book No. 17;
Series of 2018