WITNESS:
RACHEL PATUCIN

REPUBLIC OF THE PHILIPPINES
PHILIPPINE PORTS AUTHORITY
PORT MANAGEMENT OFFICE - DAVAO
Km. 10, Port Area, Sasa, Davao City

CONTRACT AGREEMENT

Repair of Back-Up Area at Berth No. 10 (Phase-3) Sasa Wharf, Davao City

KNOW ALL MEN BY THESE PRESENTS:

This Contract, made and entered into this 30 JAN 2018 day of _____, 2018, in the City of Davao, Philippines, by and between:

CONTRACTOR:
HI-TONE CONSTRUCTION & DEV'T. CORP.

PHILIPPINE PORTS AUTHORITY, a government instrumentality with corporate powers created under Presidential Decree No. 857, as amended, with principal office at PPA Building, Bonifacio Drive, South Harbor, Port Area, Manila, and Port Management Office - Davao at Km 10, Port Area, Sasa, Davao City represented herein by its duly authorized *Acting Port Manager*, ***ANALEE G. AGUILA,*** and hereinafter referred to as "**PPA**";

- and -

Hi-Tone Construction and Development Corporation a general building and engineering construction company existing in accordance with Philippine laws with office and business address at ***Lidong, Sto. Domingo, Albay,*** represented in this act by ***Edgar S. Acosta,*** and hereinafter referred to as "**CONTRACTOR**".

WITNESS:
LOYJOHANNE L. BEDICO
Construction Foreman A

W I T N E S S E T H :

WHEREAS, in accordance with Republic Act No. 9184 and its Implementing Rules and Regulations, the PPA on ***13 December 2018*** advertised and published in a newspaper of general circulation and posted on the PPA website and PhilGEPS as well as in its bulletin board, an Invitation to Bid for the ***Repair of Back-Up Area at Berth No. 10 (Phase-3), Sasa Wharf, Davao City;***

Philippine Ports Authority:
ANALEE G. AGUILA
Acting Port Manager

WHEREAS, the CONTRACTOR and other prospective bidders submitted their respective bids for the foregoing project;

WHEREAS, after the opening of the bids on ***03 January 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 single calculated

responsive bid in the amount of: ***Twenty-Five Million Three Hundred Forty-Two Thousand Five Hundred Fifty-Eight and 92/100, Philippine Currency (₱25,342,558.92);***

WHEREAS, pursuant to ***BAC Resolution No. 05 Series of 2018*** recommending the award of the contract, award of the contract was made to the CONTRACTOR in a Notice of Award ***22 January 2018*** in the amount of: ***Twenty-Five Million Three Hundred Forty-Two Thousand Five Hundred Fifty-Eight and 92/100, Philippine Currency (₱25,342,558.92)*** after submission of the required documents within the prescribed period and compliance to the conditions stipulated in the IRR of R.A. No. 9184;

WHEREAS, on ***25 January 2018*** 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, the PPA and the CONTRACTOR have agreed, as they do hereby agree, and contract as follows:

WITNESS:
RACHEL PATUON

CONTRACTOR:
HI-TONE CONSTRUCTION & DEV'T. CORP.

ARTICLE I

CONTRACT DOCUMENTS

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
b. Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals and all other documents/statements submitted
c. Performance Security
d. Credit Line in accordance with the provisions of the Revised IRR, if applicable
e. Notice of Award of Contract; and
f. Other contract documents that may be required by existing laws and the PPA such as:

(1) Construction schedule and S-Curve;
(2) Manpower schedule
(3) Construction methods;
(4) Equipment utilization schedule;
(5) Construction Safety and Health Program approved by the DOLE
(6) PERT/CPM
(7) Duly approved Program of Work and Cost Estimates
(8) Certificate of Availability of Funds
(9) Abstract of Bids
(10) Resolution of Award

WITNESS:
LOY JOHANNE L. BEDICO
Construction Foreman A

Philippine Ports Authority:
ANALEE G. AGUILA
Acting Port Manager

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

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, hereby covenants to execute and complete the ***Repair of Back-Up Area at Berth No. 10 (Phase-3), Sasa Wharf, Davao City,*** in conformity in all respects with the provisions of this contract, as follows:

CONTRACTOR:
HI-TONE CONSTRUCTION & DEV'T. CORP.

BILL NO.	DESCRIPTION OF WORK	TOTAL AMOUNT (Pesos)
I.	Mobilization / Demobilization	116,032.00
II.	Removal and Disposal of Existing Paving Blocks	3,388,698.29
III.	Excavation/Backfill and Disposal	3,547,494.88
IV.	Supply, Deliver and Compaction of Selected Fill	1,306,705.39
V.	Supply, Deliver and Compaction of Item 200 for Sub-Base Course	636,327.15
VI.	Supply, Deliver and Compaction of Item 201 for Base Course	844,159.53
VII.	Supply, Deliver and Compaction of Gravel Base (CBR>80)	739,588.60
VIII.	Supply, Deliver, Spread and Compaction of 10% Cement Treated Base Course	2,376,313.57
IX.	Supply, Deliver and Place Leveling Sand Cushion	259,656.10
X.	Supply, Deliver and Install Interlocking Concrete Paving Blocks (6000psi)	10,567,934.26
XI.	Supply of Labor, Materials and Equipment for the Construction of Shear Key	765,237.31
XII.	Supply of Labor, Materials and Equipment for the Fabrication and Installation Manhole and Culverts	409,980.80
XIII.	Supply, Fabricate and Install Project Billboard	34,856.64
XIV.	Construction of Safety and Health and Program (as required under Department Order No. 13)	349,574.40
TOTAL AMOUNT (INCLUDING VAT and All other Taxes)		**₱25,342,558.92**

WITNESS:
LOY JOHANNE L. BEDICO
Construction Foreman A

Philippine Ports Authority:
ANALEE G. AGUILA
Acting Port Manager

WITNESS:

2.02 The CONTRATOR 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, machinery, 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.

The CONTRACTOR further guarantees that all the office facilities and equipment it will provide, if any, in connection with this Contract shall be brand new and in addition thereto, the computer system shall be International Standard Organization compliant and in accordance with the specifications prescribed thereof in the Bid Documents.

CONTRACTOR:
HI-TONE CONSTRUCTION & DEV'T. CORP.

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.

ARTICLE III

CONSIDERATION

WITNESS:
LOY JOHANNE L. BEDICO
Construction Foreman A

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: ***Twenty-Five Million Three Hundred Forty-Two Thousand Five Hundred Fifty-Eight and 92/100, Philippine Currency (₱25,342,558.92),*** 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.

Philippine Ports Authority:
ANALEE G. AGUILA
Acting Port Manager

It is agreed and understood that all bid prices specified in this contract shall be considered as fixed prices and therefore not subject to price adjustment and escalation during the contract implementation, except under extraordinary circumstances and upon prior approval of the Government Procurement Policy Board (GPPB) or when a

Treaty or International or Executive Agreement Expressly allows it. Any request for price escalation under extraordinary circumstances shall be submitted by PPA to the National Economic and Development Authority (NEDA).Extraordinary circumstances shall refer to events that may be determined by the NEDA in accordance with the Civil Code of the Philippines and upon recommendation of the PPA.

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 made under this Contract, except the final payment upon issuance of Certificate of Completion and Acceptance, 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 implementation thereof.

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

3.04 It is likewise 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 work. The CONTRACTOR may, however, request for the substitution of the retention money for each progress billing with irrevocable standby letter of credit from a commercial bank, bank guarantees or surety bond callable on demand issued by any reputable surety or insurance company duly accredited by the Office of the Insurance Commission 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 irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be

WITNESS:

CONTRACTOR:
HI-TONE CONSTRUCTION & DEV'T. CORP.

WITNESS:
LOY JOHANNE L. BEDICO
Construction Foreman A

Philippine Ports Authority:
ANALEE G. AGUILA
Acting Port Manager

posted in favor of PPA shall be valid for a duration to be determined by the 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 of its obligations under this Contract, it shall post prior to the signing of the Contract a performance security in the form of cash or cashier's / manager's check, bank draft/guarantee or irrevocable letter of credit issued by a Universal / or Commercial bank, surety bond callable on demand, issued by a surety or insurance company duly certified by the Office of the Insurance Commission as authorized to issue such security and acceptable to PPA or a combination thereof as may be required by PPA, in accordance with the following schedule:

a. Cash, Cashier / Manager's Check issued by a Universal or Commercial Bank – Ten Percent (10%) of the Total Contract Price; or

b. Bank draft / guarantee or irrevocable letter of credit issued by a Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank – Ten Percent (10%) of the Total Contract Price; or

c. Surety Bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security – Thirty Percent (30%) of the Total Contract Price

d. Any combination of the foregoing – Proportionate to share of form with respect to total amount of security.

4.02 This performance security shall be denominated in the Philippine Pesos and posted in favor of PPA, and shall be forfeited in favor of PPA in the event it is established that the CONTRACTOR is in default in any of its obligations under this Contract.

4.03 Subject to the conditions of the Contract, the performance security may be released by PPA after the issuance of the Certificate of Final Acceptance of the project, provided that PPA has no claims filed against the CONTRACTOR or the surety company and there are no claims for labor and materials filed against the contractor.

4.04 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.

4.05 The CONTRACTOR shall post an additional performance security following the schedule above to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of amendments to order or change orders, extra work orders and supplemental agreements as the case may be. The

WITNESS:
RACHEL PATUUN

CONTRACTOR:
HI-TONE CONSTRUCTION & DEV'T. CORP.

WITNESS:
LOY JOHANNE L. BEDICO
Construction Foreman A

Philippine Ports Authority:
ANALEE G. AGUILA
Acting Port Manager

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 or for partially completed work under this contract which are usable and accepted by PPA, and the use of which in 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 (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original performance security.

WITNESS:

ARTICLE V

COMPLETION TIME: LIQUIDATED DAMAGES

CONTRACTOR:

HI-TONE CONSTRUCTION & DEV'T. CORP.

5.01 The CONTRACTOR agrees and obligates itself to perform and complete all works provided for in this Contract within ***Two Hundred Ten (210) Calendar Days*** (including Sundays and Holidays), reckoned not later than seven (7) calendar days from the date of issuance of the Notice to Proceed. Notice to Proceed shall be issued after this Contract has been signed by the Parties hereof.

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 as provided in the conditions of contract, equal to at least one-tenth (1/10) of one (1) percent of the cost of the unperformed portion of the works for everyday of delay.

WITNESS:

LOY JOHANNE L. BEDICO
Construction Foreman A

5.03 The project or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the PPA Port Management Office of Davao.

5.04 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.

Philippine Ports Authority:

ANALEE G. AGUILA
Acting Port Manager

5.05 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 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.

5.06 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 Section 5.02 hereof and impose other appropriate sanctions.

WITNESS:

ARTICLE VI

EXTENSION OF CONTRACT TIME

6.01 Should the amount of additional work of any kind or other special circumstances of any kind whatsoever occur such as to fairly entitle the CONTRACTOR to an extension of contract time, 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 time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claims 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.

CONTRACTOR: HI-TONE CONSTRUCTION & DEV'T. CORP.

6.02 No extension of contract time shall be granted the CONTRACTOR due to (a) ordinary unfavorable weather conditions (b) inexcusable failure or negligence of CONTRACTOR to provide the required equipment, supplied or materials.

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

WITNESS: LOYSOHANNE L. BEDICO, Construction Foreman A

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, in excess of the number of rainy/unworkable days predetermined by the PPA in relation to 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 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 problem that disrupt construction operation through no fault of the CONTRACTOR maybe considered as additional grounds for extension of contract time provided they are publicly felt and certified by

Philippine Ports Authority: ANALEE G. AGUILA, Acting Port Manager

appropriate government agencies such as DTI, DOLE, DILG and DND, among others. 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.

WITNESS:

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 the 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. It is also understood by the contracting parties that the provisions of R.A. No. 9184 as amended, and its IRR are considered written and part of this contract.

CONTRACTOR:
HI-TONE CONSTRUCTION & DEV'T. CORP.

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 person 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 bind 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 occasion of the performance of this Contract. 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 there from and/or by reason of this Contract and its implementation.

WITNESS:
LOY JOHANNE L. BEDICO
Construction Foreman A

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 work until such final acceptance.

Philippine Ports Authority:
ANALEE G. AGUILA
Acting Port Manager

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 ***EDGAR S. ACOSTA*** arising out of or in the course of this Contract shall be understood and binding as an act of ***Hi-Tone Construction & Development Corporation*** or vice-versa.

WITNESS:

RACHEL PATULOT

ARTICLE X

INSPECTION & 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 or stages comply in all respects, 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 correct all works determined by the PPA as failing to meet requirements, at CONTRACTOR'S own expense.

CONTRACTOR:

HI-TONE CONSTRUCTION & DEV'T. CORP.

ARTICLE XI

NON-ASSIGNMENT AND NO SUBCONTRACT

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 **motupropio** without need of judicial action pursuant to Section 19.04 hereof. Should the PPA give its written approval, such consent shall not relieve the CONTRACTOR of its responsibilities under the Contract. The CONTRACTOR shall insure that the terms and conditions of any such sub-contract 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.

WITNESS:

LOY JOHANNE L. BEDICO
Construction Foreman A

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.

Philippine Ports Authority:

ANALEE G. AGUILA
Acting Port Manager

WITNESS:

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)or any private insurance company duly accredited by Insurance Commission** 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

CONTRACTOR: **HI-TONE CONSTRUCTION & DEV'T. CORP.**

13.01 The CONTRACTOR shall assume full responsibility for the contract work from the time project construction commended up to final acceptance thereof 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 be 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.

13.02 The **defects liability period** for the project covered by this Contract shall be one (1) year from project completion up to final acceptance thereof by the PPA. The said defects liability period shall be covered by the Performance Security of the CONTRACTOR as required in Section 39.1 of the IRR of R.A. No. 9184 and Article IV of this Contract. During this period, the performance security shall guarantee that the CONTRACTOR shall undertake and complete the repair works, at its own expense, of any damage to the said project within NINETY (90) DAYS from the time the PPA General Manager 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.

WITNESS: **LOY JOHANNE L. BEDICO** Construction Foreman A

13.03 After final acceptance of the project by the PPA, the CONTRACTOR shall be responsible for structural defects and/or failure of the said project within the warranty period in accordance with Section 62.2.3.2 of the IRR of R.A. 9184 from the date of final acceptance thereof by the PPA. For this purpose, the CONTRACTOR shall put up a **Warranty Security** in the form of cash or letter of credit issued by a Universal or Commercial Bank, Bank guarantee confirmed by a Universal or Commercial Bank or surety bond, callable on demand issued by the Government Service Insurance System (GSIS) or a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security and acceptable to PPA in accordance with the following schedule:

Philippine Ports Authority: **ANALEE G. AGUILA** Acting Port Manager

a. Cash or letter of credit issued by a Universal or Commercial Bank – Five percent (5%) of the total contract price

WITNESS:

b. Bank guarantee confirmed by a Universal or Commercial Bank – Ten percent (10%) of the total contract price
c. Surety bond callable upon demand – Thirty percent (30%) of the total contract price

The warranty security shall be denominated in Philippine Pesos, remain effective for one (1) year from the date of issuance of the Certificate of Final Acceptance by PPA and be returned only after the lapse of the said one (1) year period.

ARTICLE XIV

TAXES, LICENSES, PERMITS AND FEES

CONTRACTOR: HI-TONE CONSTRUCTION & DEV'T. CORP.

14.01 The CONTRACTOR's tax, licenses, permits, fees and all other taxes, fees or charges of whatever form, kind or nature due or which may be due to the national and/or local government units and/or its instrumentalities/agencies 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.

14.02 The CONTRACTOR shall pay taxes in full and on time and that failure to do so shall entitle PPA to suspend payment to the CONTRACTOR. Further, the CONTRACTOR shall during the term of this Contract regularly present to PPA a tax clearance from the Bureau of Internal Revenue (BIR) as well as a copy of its income and business tax returns duly stamped and received by the BIR and duly validated with the tax payments made thereon.

WITNESS: LOY JOHANNE L. BEDICO, Construction Foreman A

ARTICLE XV

AGREEMENT MODIFICATION

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 by the parties hereof.

Philippine Ports Authority: ANALEE G. AGUILA, Acting Port Manager

15.02 A variation order (change order/extra work order) may be issued by PPA under the conditions set forth in the applicable provision of Republic Act No. 9184 and its Implementing Rules and Regulations.

15.03 The PPA may, at any time by written order and without notice to Sureties, direct the CONTRACTOR to perform extra work necessary to and within the General Scope of the project as bid and awarded. The CONTRACTOR shall be paid for additional/extra work items whose unit prices shall be derived based on the following:

WITNESS:

a. For additional/extra works duly covered by change orders involving work items which are exactly the same or similar to those in the original contract, the applicable unit prices of work items in the original contract shall be used.

b. For additional/extra works duly covered by Extra Work Orders involving new work items that are not in the original contract, the unit prices of the new work items shall be based on the direct unit costs used in the original contract (e.g. unit cost of cement, rebars, form lumber, labor rate, equipment rental, etc.). All new components of the new work item shall be fixed prices, provided the same is acceptable to both PPA and the CONTRACTOR, and provided further that the direct unit costs of new components shall be based on the CONTRACTOR's estimates as validated by PPA via documented canvass in accordance with existing rules and regulations. The direct cost of the new work item shall then be combined with the mark-up factor (i.e. taxes and profit) used by the contractor in his bid to determine the unit price of the new work item.

15.04 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.

CONTRACTOR:
HI-TONE CONSTRUCTION & DEV'T. CORP.

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, CONTRACTOR to correct bad conditions which are unsafe for workers or for the general public to carry out valid orders given by the PPA 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.

WITNESS:
LOY JOHANNE L. BEDICO
Construction Foreman A

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.

ARTICLE XVII

INDIVISIBILITY OF OBLIGATION

Philippine Ports Authority:
ANALEE G. AGUILA
Acting Port Manager

17.01 It is the intent of the Contract that all the documents, annexes and addenda forming part thereof, 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.

WITNESS:

PAGATPAT (PATVIN)

ARTICLE XVIII

ARBITRATION, REMEDY AND RELIEF

18.01 Should there be any dispute or difference of any kind whatsoever which shall arise between the parties in connection with the implementation of this Contract, the Parties hereto shall make every effort to resolve amicably such dispute or difference by mutual consultation. In the event that such dispute or disagreement be not resolved to their mutual satisfaction, the matter shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Laws" and Republic Act No. 9285; otherwise known as the "Alternative Dispute Resolution Act of 2004". Provided, however that disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be submitted thereto. Provided, further that by mutual agreement the parties hereto may agree in writing to resort to other alternative modes of dispute resolution. Provided, finally that the arbitration proceeding shall be without prejudice to the right of PPA to rescind or terminate this contract in accordance with Article XIX, Section 19.04 hereof.

CONTRACTOR:

HI-TONE CONSTRUCTION & DEV'T. CORP.

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 the 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 all court actions in connection with or arising out of this contract shall be laid exclusively in the proper court of the City of Davao.

WITNESS:

LOY JOHANNE L. BEDICO
Construction Foreman A

18.03 It is clearly understood that in the case a dispute or disagreement arises between the PPA and the CONTRATOR 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

Philippine Ports Authority:

ANALEE G. AGUILA
Acting Port Manager

19.01 It is expressly agreed and understood that in case of irreconcilable conflict between the provisions of this Contract and 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 **motuproprio,** in case of breach thereof by the CONTRACTOR, without need of judicial action by giving at least Ten (10) days 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 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, machinery, tools, materials, and/or supplies brought to the project site without the written approval of the PPA.

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 (10%) percent 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.

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 satisfaction 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.

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. Any increase in cost which the PPA may incur as a result of its take-over of the project pursuant to Sections 19.04, 19.05 and 19.06 shall be borne by and charged to the CONTRACTOR.

WITNESS:
RACHEL PAMUIN

CONTRACTOR:
HI-TONE CONSTRUCTION & DEV'T. CORP.

WITNESS:
LOY JOHANNE L. BEDICO
Construction Foreman A

Philippine Ports Authority:
ANALEE G. AGUILA
Acting Port Manager

WITNESS:

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 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.

CONTRACTOR:

HI-TONE CONSTRUCTION & DEV'T. CORP.

19.09 CONTRACTOR agrees and binds itself to hold and save PPA free and harmless from any damage, claims and rights of action by third parties 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 obligation under this Contract.

19.10 No final payment of the contract shall be made to the CONTRACTOR without the Certificate of Completion and/or Acceptance from the Office of the City Engineer of the City concerned of the local works to be restored mentioned in paragraph 19.08 hereof, otherwise the cost of restoration shall be made available out of any collectable/receivable by the CONTRACTOR from the PPA.

19.11 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.

WITNESS:

LOY JOHANNE L. BEDICO
Construction Foreman A

19.12 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.

ARTICLE XX

SPECIAL REPRESENTATION

Philippine Ports Authority:

ANALEE G. AGUILA
Acting Port Manager

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 date contained therein are true and correct. A breach of this representation including all misrepresentation in the documents or suppression of materials facts herein, 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 **motuproprio** rescind, abrogate or otherwise terminate the contract without need of judicial action, in accordance with Section 19.04 hereof.

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.

WITNESS:

ARTICLE XXI

BUDGETARY REQUIREMENT

21.01 The parties hereto hereby adopt and incorporate herein by reference, Letter of Instruction No. 767 dated 16 November 1978 issued by the Office of the President, as implemented by the Letter Circular dated 7 December 1978 of the Department of Budget and Management.

21.02 The Contractor shall bear the cost of notarization of this Contract

CONTRACTOR:

HI-TONE CONSTRUCTION & DEV'T. CORP.

ARTICLE XXII

EFFECTIVITY

22.02 This Contract shall become effective on the date of the issuance of the Notice to Proceed by the PPA, as represented by the Head of the Procuring Entity, pursuant to Rule XI, Section 37.4.1 of the Implementing Rules and Regulations of R.A. No. 9184.

WITNESS:

LOY JOHANNE L. BEDICO
Construction Foreman A

Philippine Ports Authority:

ANALEE G. AGUILA
Acting Port Manager

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

PHILIPPINE PORTS AUTHORITY

By:

ANALEE G. AGUILA
Acting Port Manager

CONTRACTOR

By:

EDGAR S. ACOSTA
President, Hi-Tone Construction and Development Corporation

WITNESSES:

LOY JOHANNE L. BEDICO
Construction Foreman A

RACHEL PATULIN
Contractor's Witness

ACKNOWLEDGEMENT

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

BEFORE ME. A Notary Public for and in the City of Davao, Philippines, personally appeared the following persons with their respective Competent Evidence of Identities and CTCs to wit:

NAME	Competent Evidence of Identity	CTC No.	Date/Place Issued
EDGAR S. ACOSTA	**PRC ID:0041563**	**11486956**	**01/05/18 Legazpi City**
ANALEE G. AGUILA	**PPA ID No. 01991988**	**33673733**	**01/08/18 Davao City**

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 project ***Repair of Back-Up Area at Berth No. 10 (Phase-3), Sasa Wharf, Davao City*** consisting of ***Nineteen (19) pages***, including this page where the Acknowledgment is written. ***Page 1 to 17*** is signed on the left margin thereof and ***page 18*** is signed at the corresponding spaces provided therefore by the Parties and their instrumental witnesses and sealed with my notarial seal.

WITNESS MY HAND AND SEAL this JAN 30 2018 day of _____, 2018 at Davao, Philippines.

NOTARY PUBLIC

JAMES MICHAEL D. CABADING
NOTARY PUBLIC
UNTIL DECEMBER 31, 2020
ROLL OF ATTORNEY'S NO. 64012
PTR OR. NO. 9734955 - 12/27/17
IBP OR. NO. 025507 - 01/08/18

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