

CONSTRUCTION CONTRACT

KNOW ALL MEN BY THESE PRESENTS:

This contract is made and entered in the City of Pasig, Metro Manila, by and between:

The **CITY OF PASIG**, a Local Government Unit duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at City Hall, Caruncho Avenue, Pasig City, herein represented by **HON. VICTOR MA REGIS N. SOTTO**, in his capacity as City Mayor;

- and -

WAY MAKER GENERAL CONTRACTOR OPC, a domestic company duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at **PASIG CITY**, herein represented by **MS. JAZZIE ANN S. PERSIA**, Authorized Representative, hereinafter referred to as the **CONTRACTOR**.

WHEREAS, on 07 August 2023, the Bids and Awards Committee (BAC) of the CITY OF PASIG conducted a public bidding for the: **ASPHALT OVERLAY AT EAST CAPITOL DRIVE (FROM STA. MONICA TO WEST CAPITOL DRIVE) BRGY. KAPITOLYO, PASIG CITY;**

WHEREAS, the CONTRACTOR submitted the Lowest Calculated Responsive Bid (LCRB) in the said bidding in the amount of: **NINE MILLION EIGHT HUNDRED NINETY-FIVE THOUSAND TWO HUNDRED NINE AND 53/100 PESOS (PHP 9,895,209.53);**

WHEREAS, the CITY OF PASIG awarded the project to the CONTRACTOR in accordance with the Implementing Rules and Regulations of Republic Act No. 9184;

NOW, THEREFORE, in view of the foregoing premises and for and in consideration of mutual covenants and undertakings, the parties hereto have agreed as follows:

ARTICLE I DOCUMENTS COMPRISING THE CONTRACT

The following documents shall be deemed as an integral part of this contract and by the terms and conditions embodied therein are deemed reproduced by way of reference and/or incorporation:

1. Approved Plans and Specifications
2. Certification of Availability of Fund
3. Invitation to Apply for Eligibility and to Bid
4. Contractor's Proposal with corresponding Bid Bonds
5. Addenda and/or Supplemental/Bid Bulletins, if any
6. Abstract of Bids
7. Resolution to Award
8. Notice of Award and Conformity of the Contractor
9. Approved Budget for the Contract/Program of Work
10. Bar Chart PERT/CPM Network Diagram and Cash Flow
11. Performance Bond
12. Certification of Service Contract of Registered Licensed Engineer who will be in - charge and responsible for the project.
13. Certification of List of Equipment which should be used for the project and specified whether owned or leased.

Recommending Approval:

ENGR. ARTAXEVES V. GERONIMO
OIC-City Engineering Office

JAZZIE ANN S. PERSIA
Authorized Representative

**ARTICLE II
SCOPE OF WORK**

The CONTRACTOR shall fully and faithfully furnish all necessary labor, materials and equipment, tools and appliance/s for the various items of work described in the Bill of Quantities.

**ARTICLE III
CONTRACT PRICE**

In consideration for the work to be undertaken by the CONTRACTOR specified in Article II hereof, the CITY OF PASIG shall pay the CONTRACTOR the fixed amount of **NINE MILLION EIGHT HUNDRED NINETY-FIVE THOUSAND TWO HUNDRED NINE AND 53/100 PESOS (PHP 9,895,209.53)**.

**ARTICLE IV
PERFORMANCE SECURITY**

Before the signing of this Contract, the CONTRACTOR shall have submitted a Performance Security in favor of the CITY OF PASIG in any of the following forms:

1. Cash or cashier's/manager's check issued by a Universal or Commercial Bank. The cashier/manager's check may be issued by other banks certified by the Bangko Sentral ng Pilipinas (BSP) as authorized to issue such financial instrument. - in the amount of ten percent (10%) of the Total Contract Price or **NINE HUNDRED EIGHTY-NINE THOUSAND FIVE HUNDRED TWENTY AND 95/100 PESOS (PHP 989,520.95)**; or
2. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank. The same shall be confirmed or authenticated by a Universal or Commercial Bank if issued by a foreign bank. The bank draft/guarantee, or irrevocable letter of credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument. - in the amount of ten percent (10%) of the Total Contract Price or **NINE HUNDRED EIGHTY-NINE THOUSAND FIVE HUNDRED TWENTY AND 95/100 PESOS (PHP 989,520.95)**; or
3. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security. - in the amount of thirty percent (30%) of the Total Contract Price or **TWO MILLION NINE HUNDRED SIXTY-EIGHT THOUSAND FIVE HUNDRED SIXTY-TWO AND 86/100 PESOS (PHP 2,968,562.86)**.

**ARTICLE V
CONTRACT DURATION**

The CONTRACTOR shall commence work upon receipt of the Notice to Proceed and shall complete the project within **SIXTY (60) CALENDAR DAYS** from receipt of the Notice to Proceed, inclusive of Saturdays, Sundays and legal Holidays.

**ARTICLE VI
NEGATIVE SLIPPAGE**

To ensure the timely implementation of the project and the effective management of the performance of the CONTRACTOR, the following calibrated actions in response to delays in the implementation of the project are hereby adopted:

Recommending Approval:

ENGR. ANTONIO V. GERONIMO
OIC-City Engineering Office

JAZZIE ANN S. PERATA
Authorized Representative

1. Negative slippage of five percent (5%) –

The CONTRACTOR shall be given a warning and be required to:

- a. Submit a detailed "catch-up" program every two weeks in order to eliminate the slippage and to restore the project to its original schedule;
- b. Accelerate work and identify specific physical targets to be accomplished over a definite period of time; and
- c. Provide additional input resources such as the following: money, manpower, materials, equipment, and management, which shall be mobilized for this action.

The CITY OF PASIG through the City Engineering Office shall exercise closer supervision and meet the contractor every other week to evaluate the progress of work and resolve any problems and bottlenecks.

2. Negative slippage of ten percent (10%)–

The CONTRACTOR shall be issued a final warning and be required to come-up with a revised detailed "catch-up" program with weekly physical targets together with the required additional input resources.

The CITY OF PASIG through the City Engineering Office shall intensify on-site supervision and evaluation of the project performance to at least once a week and prepare contingency plans for a possible termination of the contract or take-over of the work by administration or contract.

3. Negative slippage of fifteen percent (15%) –

The CITY OF PASIG through the City Engineering Office and the recommendation of the relevant Contract Termination and Review Committee shall initiate termination of the contract or take-over of the work by administration or contract in accordance with Section 53.3 of the IRR of RA No. 9184 and the Revised Guidelines for the Implementation of Infrastructure Projects by Administration.

The CITY OF PASIG shall likewise take proper transitory measures to minimize work disruptions, e.g., take-over by administration while negotiation or rebidding is on-going.

**ARTICLE VII
LIQUIDATED DAMAGES**

The CONTRACTOR shall complete the construction of the project as stipulated in Article V hereof. If the CONTRACTOR fails to complete the same within the stipulated time, the CONTRACTOR shall pay the CITY OF PASIG Liquidated Damages (LD) in an amount equal to at least one tenth (1/10) of one percent (1%) of the unperformed portion of the works for every day of delay.

In case the delay in the completion of the work exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the CONTRACTOR, the city may rescind the contract, forfeit the contractor's Performance Security and takeover the project or award the same to a qualified contractor through negotiated contract.

In case the total sum of liquidated damages reaches ten percent (10%) of the total contract price, the CITY OF PASIG has the following options:

Recommending Approval:
ENGR. ARTALEXES V. GERONIMO
OIC-City Engineering Office

JAZZIE ANN S. PERSTA
Authorized Representative

(i) Terminate the contract pursuant to the Guidelines on Termination of Contracts and forfeit the erring contractor's performance security. After termination, the CITY OF PASIG may either (i) take over the contract; or (ii) resort to any of other alternative methods of procurement provided under R.A. No. 9184 and its implementing rules and regulations; or

(ii) Allow the contractor to continue the works without prejudice to the continued imposition of liquidated damages until the works have been completed. This does not, however, preclude the CITY OF PASIG from resorting to termination of the contract under R.A. No. 9184 and its implementing rules and regulations.

ARTICLE VIII PROGRESS PAYMENT AND RETENTION MONEY

Once a month, the contractor may submit a statement of work accomplished (SWA) or progress billing and corresponding request for progress payment for work accomplished. The SWA should show the amounts which the contractor considers itself to be entitled to up to the end of the month, to cover (a) the cumulative value of the works it executed to date, based on the items in the Bill of Quantities, and (b) adjustments made for approved variation orders executed.

The CITY OF PASIG shall check the CONTRACTOR's SWA and certify the amount to be paid to the contractor as progress payment. Except as otherwise stipulated in the Instruction to Bidders, materials and equipment delivered on the site but not completely put in place shall not be included for payment.

The procuring entity shall deduct the following from the certified gross amounts to be paid to the contractor as progress payment:

- a) Cumulative value of the work previously certified and paid for.
- b) Portion of the advance payment to be recouped.
- c) Retention money in accordance with the condition of contract.
- d) Amount to cover third party liabilities.
- e) Amount to cover uncorrected discovered defects in the works.

No payments shall be made to the CONTRACTOR unless a certificate of accomplishment is issued by the CITY OF PASIG, fully supported with an affidavit by the CONTRACTOR that all costs for labor and materials within the relevant period are fully paid by the CONTRACTOR.

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 procuring entity, 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.

The Total Retention Money shall be due for release upon Final Acceptance of the works. However, the CONTRACTOR may request the substitution of the Retention Money for each progress billing with irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand of amounts equivalent to the retention money substituted for and Acceptable to Government 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 or surety bonds to be posted in favor of the CITY OF PASIG shall be valid for a duration to be determined by the CITY OF PASIG and will answer for the purpose for which the ten percent (10%) retention is intended, i.e. to cover uncorrected defects and third party liabilities.

Recommending Approval:

ENGR. ANTONIO V. GERONIMO
OIC-City Engineering Office

JAZZIE ANN S. PERISA
Authorized Representative

ARTICLE IX WARRANTY

The CONTRACTOR shall assume full responsibility for the contract work from the time project construction commenced up to final acceptance by the CITY OF PASIG. During such period, the CONTRACTOR shall be held responsible for any damage or destruction of the works, except those occasioned by *force majeure*. The CONTRACTOR shall be required to put up a warranty security in any of the following forms:

1. Cash or Letter of Credit issued by a Universal or Commercial Bank: provided, however, that the Letter of Credit shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. The Letter of Credit may be issued by other banks certified by the Bangko Sentral ng Pilipinas (BSP) as authorized to issue such financial instrument. -in the amount of five percent (5%) of the Total Contract Price or **FOUR HUNDRED NINETY-FOUR THOUSAND SEVEN HUNDRED SIXTY AND 48/100 PESOS (PHP 494,760.48)**; or
2. Bank guarantee confirmed by a Universal or Commercial Bank. The bank draft/guarantee may be issued by other banks certified by the BSP as authorized to issue such financial instrument. - in the amount of ten percent (10%) of the Total Contract Price or **NINE HUNDRED EIGHTY-NINE THOUSAND FIVE HUNDRED TWENTY AND 95/100 PESOS (PHP 989,520.95)**; or
3. Surety bond callable upon demand issued by the Government Service Insurance System or a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security. - in the amount of thirty percent (30%) of the Total Contract Price or **TWO MILLION NINE HUNDRED SIXTY-EIGHT THOUSAND FIVE HUNDRED SIXTY-TWO AND 86/100 PESOS (PHP 2,968,562.86)**.

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

ARTICLE X MOBILIZATION PAYMENT

For projects where the Contract Price is at least Ten Million Pesos (P10,000,000.00), the CONTRACTOR may apply with the CITY OF PASIG for mobilization payment. Upon the submission by the CONTRACTOR of a written request, the CITY OF PASIG may provide such mobilization payment to the CONTRACTOR in the amount of not more than 15% of the Contract Price. The mobilization payment shall be conditioned upon the submission by the CONTRACTOR of an irrevocable standby letter of credit from a commercial bank, a bank guarantee, or a surety bond callable upon demand issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the CITY OF PASIG. This letter of credit, surety bond, or bank guarantee must be equal in value to the mobilization payment and must be accepted by the CITY OF PASIG.

ARTICLE XI ADDITIONAL PROVISIONS

1. The CITY OF PASIG shall not be liable for any violation of labor laws in connection with the employer-employee relationship between the CONTRACTOR and his/her/its workers and/or employees.

Recommending Approval:

ENGR. ARTA XERXES V. GERONIMO
OIC-City Engineering Office

JAZZIE ANN S. DENISA
Authorized Representative

2. Republic Act No. 9184, its Implementing Rules and Regulations and such other laws, decrees, letters of instructions, codes, and memorandum circulars affecting infrastructure projects in local government units shall form part of this Contract.
3. The CONTRACTOR shall comply with City Ordinance No. 026, series of 2004 and/or any other law or City Ordinance providing preferential rights to bonafide residents of **BARANGAY KAPITOLYO** and/or Pasig City for employment in the project. Such preferential right shall cover at least eighty percent (80%) of the total personnel needs for the project.
4. The CONTRACTOR shall be solely liable for any injury, hospitalization, death, or damage to properties as a consequence of the implementation of the project. The CONTRACTOR shall settle all his/her/its financial obligations to other suppliers/dealers within thirty (30) days from due date; otherwise the amount shall be deducted from all his/her/its receivables/collectibles from the CITY OF PASIG in relation to the project.
5. In case of disallowance of claim for payment or its equivalent by the Commission on Audit or any other competent body/tribunal, the CONTRACTOR shall reimburse the CITY OF PASIG for such disallowed amount and/or the CITY OF PASIG may deduct any such amount from the CONTRACTOR's receivables/collectibles from the CITY OF PASIG in relation to the project or any other project with the CITY OF PASIG.
6. Any dispute, controversy or claim arising out of or relating to this Contract, or the breach, termination or invalidity thereof shall be settled by arbitration before the Construction Industry Arbitration Commission (CIAC) in accordance with the CIAC Rules of Procedure Governing Construction Arbitration then in force.
7. The CONTRACTOR shall pay taxes in full and on time, and failure to do so will entitle the CITY OF PASIG to suspend payment for any good or service delivered. The CONTRACTOR shall regularly present upon demand by the CITY OF PASIG any tax clearance, income and other tax returns duly stamped and received by the BIR, and duly validated with the tax payments made thereon. (Executive Order No. 398 series of 2005).
8. In case of Variation or Change Order relating to the materials or scope of work implemented by the CONTRACTOR without the approval of the CITY OF PASIG, the entire project cost will not be paid by the CITY OF PASIG. Any monies and/or materials used shall be forfeited in favor of the CITY OF PASIG.
9. Any increase in the cost of construction materials and/or labor are not the responsibility of the CITY OF PASIG. The same are hereby excluded as an obligation of the CITY OF PASIG in this contract.

IN WITNESS WHEREOF, the parties hereto set their hands
 this SEP 15 2023, 2023 at Pasig City.

CITY OF PASIG

**WAY MAKER GENERAL
 CONTRACTOR OPC**
 Contractor

By:

By:

HON. VICTOR MA REGIS N. SOTTO
 City Mayor

MS. JAZZIE ANN S. PERSIA
 Authorized Representative

Jazzie Ann S. Persia
 10/18/23
 JAZZIE ANN S. PERSIA

Recommending Approval:

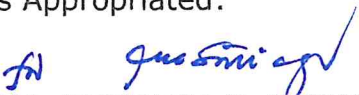

ENGR. ARTAXERXES V. GERONIMO
 OIC-City Engineering Office

WITNESSES:



ENGR. CRISTINA S. DIASANTA
(Printed Name and Signature)

(Printed Name and Signature)

Funds Appropriated:


MS. MA. THERESA B. HERNANDEZ
OIC - City Budget Office 

Funds Obligated:


MS. JUVY A. CUENCO
City Accountant
106-2623-06-0692-8751-R)

Funds Available:


MS. MARITA A. CALAJE
City Treasurer

Recommending Approval:


ENGR. ARTAXERXES V. GERONIMO
OIC-City Engineering Office

A C K N O W L E D G M E N T

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

BEFORE ME, a Notary Public for and in the City of Pasig, on this day of
15 SEP 2023, 2023, personally appeared:

Name	Government ID	Issue and Expiry Date
JAZZIE ANN S. PERSIA	TIN ID # 348-480-281-000	07/21/2021 Pasig City

Known to me to be the same person who executed the foregoing Construction Contract consisting of Eight (8) pages, and who acknowledged to me that the same is their own free and voluntary act and deed as well as the free and voluntary act and deed of the entity they duly authorized to represent.

WITNESS MY HAND AND NOTARIAL SEAL, on the date and place first above written.

Doc. No. 466
 Page No. 89
 Book No. 10
 Series of 2023.

ATTY. MOSES ELEAZAR B. PUA
 Notary Public for Marikina City
 Appointment No. 19 (2023-2024)
 Until 31 December 2024
 Roll No. 62637
 PTR No. 9397427, January 4, 2023; Marikina City
 ISP No. 291836, January 10, 2023; Rizal
 MCLE Compliance No. VII - 0029082
 CUOLA Alicante Tower Marquinton Condominium,
 Sumulong Hi-way cor. Toyota Avenue,
 Barangay Sto. Niño, Marikina City

A C K N O W L E D G M E N T

BEFORE ME, a Notary Public for and in the City of Pasig on this day of
OCT 17 2023, 2023, Personally appeared Victor Ma. Regis N. Sotto, known to me and to be is known to be the same person who executed the foregoing instrument and who acknowledged to me that the same is his free and voluntary act and deed as well as that of the entity he represents.

This Instrument consists of Eight (8) page/s, including this page in which this Acknowledgment is written and duly signed by the Parties.

WITNESS MY HAND SEAL AND NOTARIAL SEAL, on the date and place first above written.

Doc. No. 198
 Page No. 40
 Book No. V
 Series of 2023.

ROSICA LEIRA ELLA G. MANSUJETO
 Notary Public for Pasig, San Juan & Pateros
 Until 31 December 2023
 Appointment No. 107
 PTR No. 0162889, 09 January 2023, Pasig City
 IBP No. 249506, 09 January 2023, RSM
 Roll of Attorneys No. 69990
 MCLE Compliance No. VII-0009528
 Valid until 14 April 2025
 Unit 5E2 8101 Pearl Plaza Building,
 Pearl Drive, Ortigas Centre, Pasig City