

CONTRACT AGREEMENT

For the Formulation of a Master Plan for the Sustainable Urban Infrastructure Development in Butuan City

THIS AGREEMENT made this **07th** day of **January 2019** in Pasig City, Philippines, by and between:

The **NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA)** with address at NEDA-sa-Pasig Bldg., No. 12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City, herein represented by its Undersecretary, **JOSE MIGUEL R. DE LA ROSA**, and hereinafter referred to as the **"Procuring Entity"**;

- and -

The **Joint Venture of PHILKOEI INTERNATIONAL, INC. (PKII) and T.A.M. PLANNERS CO. (TAM)** represented by **Philkoei International, Inc.**, with address at Unit 1701, 17th Floor, The Orient Square Building, F. Ortigas Jr. Road, Ortigas Center, Pasig City, herein represented by its President, **PETER S. SAMOZA**, and hereinafter referred to as the **"Consultant"**;

WHEREAS, upon the invitation of the **Procuring Entity**, the **Consultant** submitted proposal/bid for the Procurement of Consulting Services for the Formulation of a Master Plan for the Sustainable Urban Infrastructure Development in Butuan City in the sum of **Fifty-Eight Million Pesos & 00/100 (PhP58,000,000.00)**, inclusive of all applicable government taxes and charges, professional fees, and other incidental and administrative costs, hereinafter referred to as the **"Contract Price"**;

WHEREAS, the **Procuring Entity** subsequently accepted the proposal/bid of the **Consultant** pursuant to the NEDA Bids and Awards Committee for Consulting Services (NBAC-CS) Resolution No. 255-2018 approved on 14 December 2018.

NOW THEREFORE, the **Procuring Entity** and the **Consultant** have agreed on the following terms and conditions:

1. In this Contract, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be attached, deemed to form, and be read and construed as part of this Contract, to wit:
 - (a) Bidding Documents, consisting of:
 - i. Request for Expression of Interest;
 - ii. Instructions to Proponents/Bidders;
 - iii. Proposal/Bid Data Sheet;
 - iv. General and Special Conditions of Contract; and
 - v. Terms of Reference;
 - (b) Proposal/Bid forms, including all the documents/statements contained in the Proponent's/Bidder's proposal/bidding envelopes, as annexes, and all other documents/ statements submitted (e.g., proponent's/bidder's response

to request for clarifications on the proposal/bid), including corrections to the proposal/bid, if any, resulting from the Procuring Entity's proposal/bid evaluation;

- (c) Bid Bulletin Nos. 1, 2, 3, 4, and 5 issued on 04 October 2018, 16 October 2018, 12 November 2018, 20 November 2018, and 26 November 2018, respectively;
- (d) Eligibility requirements, documents and/or statements;
- (e) Performance Security (*Surety Bond- MICO Bond No. B0029088*);
- (f) NBAC-CS Resolution Nos. 257-2018; 255-2018; 230-2018; 207-2018, 176-2018, 151-2018, and 134-2018;
- (g) Highlights of the Negotiation Meeting held on 18 December 2018;
- (h) Abstract of Bids/Quotation;
- (i) Notice of Award with the Consultant's *conforme* thereto;
- (j) Notice to Proceed;
- (k) Addendum and/or Supplement to the Contract, if any; and
- (l) Other contract documents that may be required by existing laws and/or the Procuring Entity.

3. The **Consultant** shall deliver to the **Procuring Entity** the following outputs in the form and number as well as within the timeline indicated herein.

A *detailed Work and Financial Plan* (WFP) shall be submitted by the **Consultant** to NEDA CARAGA for review (copy furnished NEDA Infrastructure Staff for monitoring purposes and payment processing) within **one (1) month** from the date of commencement as indicated in the NTP.

The **Consultant** shall simultaneously submit four (4) hard copies to NEDA CARAGA and two (2) hard copies to NEDA, of the quality deliverables (see table below) for review and monitoring purposes as well as payment processing. Electronic/soft copies of the deliverable documents shall also be submitted to NEDA.

Output/Deliverable	Timeline
Draft Inception Report including WFP	One (1) month from receipt of NTP
Final Inception Report	15 calendar days after receiving comments from NEDA CARAGA and NEDA
Monthly Progress Reports	Monthly until the end of the eleventh (11 th) month (excluding the 6 th and 9 th months) within seven (7) calendar days from the end of agreed month-period
Situational Analysis Report	Three and a half (3.5) months from receipt of NTP
Midterm Report	Six (6) months from receipt of NTP
Preliminary Business Case/ Pre-FS Reports	Ten (10) months from receipt of NTP
Draft Final Report (Master Plan and Pre-FS)	11 th month from receipt of NTP
INFRACOM/CARAGA RDC/ City Development Council Presentation	Within two (2) weeks from submission of Draft Final Report
Final Report (Master Plan and Pre-FS)	Fifteen (15) calendar days after receipt from NEDA CARAGA and NEDA of the evaluation/comments but not more than twelve (12) months from receipt of NTP

Note: It is noted that while the commencement of activities is anchored on the receipt of NTP, a turnaround period on submission of deliverables is considered in the timeline.

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4. In consideration of the payments to be made by the **Procuring Entity** to the **Consultant**, the **Consultant** hereby covenants to execute and complete the Consulting Services and remedy any defects therein in conformity with the provisions of this Contract in all respects.
5. The **Procuring Entity** hereby covenants to pay the **Consultant** in consideration of the execution and completion of the Consulting Services, the Contract Price or such other sum as may become payable under the provisions of this Contract at the time and in the manner prescribed by this Contract.
6. Billing for reimbursable items shall be on a monthly basis, based on the actual expenses incurred and supported by official receipts/documents or certification of actual expenditures made under oath, including the monthly progress reports.
7. Billing for *non-reimbursable items, including professional fees*, shall be in accordance with the following delivery schedule, *upon recommendation and endorsement of NEDA CARAGA as the Implementing Agency to the NEDA*, subject to usual government accounting and auditing requirements:

Output/Deliverable	Payment Schedule
Upon review and acceptance of the Inception Report and WFP	15%
Upon acceptance of the Situational Analysis Report	15%
Upon acceptance of the Midterm Report	20%
Upon acceptance of the Preliminary Reports: Business Case/Pre-FS	15%
Upon submission of the Draft Final Report	15%
Upon acceptance of the Final Report	20%
TOTAL	100%

8. An advance payment shall be made to cover mobilization costs, but shall not exceed FIFTEEN PERCENT (15%) of the contract amount, subject to the posting of an irrevocable standby letter of credit issued by an entity acceptable to NEDA and of an equal amount to the advance payment. The advance payment shall be repaid by the **Consultant** by deducting from his subsequent billings/payments such sum as agreed upon during contract negotiations until fully liquidated within the duration of the contract.
9. All submitted outputs/reports/documents under this contract, including but not limited to tracings, as-built drawings, estimates, digital information, computer model and data, specifications, investigations, and studies completed or partially completed, inspection logs, and photographs, shall be the property of NEDA upon completion of the work / full payment of the contract or termination of the Agreement. Copyrights will be governed by existing laws, rules and regulations.
10. After the project completion, the **Consultant** shall provide the NEDA free access to the in-house software used for the study for the required revisions of the

modelling for purposes of presentation for at least six (6) months but not to exceed one (1) year.

11. The Study shall be completed within a period of 12 months commencing from the date of receipt of the **Consultant** of the NTP.
12. A monthly progress meeting shall be conducted between the NEDA and the **Consultant** to discuss any potential problems or issues that may cause delays in the completion of the project/study.
13. This Contract shall not create an employer-employee relationship between the **Procuring Entity** and the **Consultant** nor shall the services rendered herein be considered as government service. The **Consultant** shall not be entitled to benefits enjoyed by the regular personnel of the government.
14. Any amendment, modification or addition to the terms under this Contract shall be made in writing and signed by the parties and/or their authorized representatives, otherwise, it shall not bind the parties hereof.
15. Where the Consultant refuses or fails 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 NEDA 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 every day of delay. Should the number of liquidated damages reach ten percent (10%) of the contract amount, NEDA shall, at its own discretion, terminate the contract without prejudice to any further action it may take to recover whatever losses incurred due to non-performance of the Consultant.

To be entitled to such liquidated damages, NEDA 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 to 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 NEDA.
16. Should any dispute related to this Contract and/or rights of the Parties arise, the same shall be submitted to mutual consultation, mediation and arbitration, in the order of application. The venue of the proceedings shall be in Pasig City.
17. In case of a court suit, the venue shall be the courts of competent jurisdiction in Pasig City, to the exclusion of all other courts.

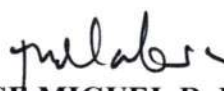
IN WITNESS WHEREOF, the parties have caused this contract to be executed in accordance with the laws of the Republic of the Philippines on the day and year first above written.


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Signed, sealed, and delivered by:

Signed, sealed, and delivered by:


JOSE MIGUEL R. DE LA ROSA
Undersecretary
NEDA Central Support Office
NEDA-sa-Pasig Building
No. 12 Saint Josemaria Escriva Drive
Ortigas Center, Pasig City


PETER S. SAMOZA
President
Philkoei International, Inc.
Unit 1701, 17th Floor, The Orient Square Bldg.
F. Ortigas Jr. Road, Ortigas Center
Pasig City

Signed in the presence of:


KATHLEEN P. MANGUNE


MICHAEL V. TOMELDAN

ACKNOWLEDGMENT

Republic of the Philippines)
MANDALUYONG CITY) S.S.

Before me this _____ day of **JAN 14 2019** in **MANDALUYONG CITY**,
personally appeared:

Name	Government Issued Identification Document	Date and Place Issued
JOSE MIGUEL R. DE LA ROSA In his capacity as Undersecretary NEDA Central Support Office NEDA-sa-Pasig Bldg. No. 12 Saint Josemaria Escriva Drive Ortigas Center, Pasig City	Passport No. S0012632A	Valid until November 01, 2022
PETER S. SAMOZA In his capacity as President Philkoei International, Inc. Unit 1701, 17 th Floor, The Orient Square Bldg. F. Ortigas Jr. Road, Ortigas Center Pasig City	Passport No. P8034491A	21 July 2018 / DFA NCR East

all known to me and to me known to be the same persons who executed the foregoing instrument consisting of six (6) pages including this page, together with the documents deemed and construed part of this Contract, on which this acknowledgment is written, duly signed by their instrumental witnesses, and they acknowledged to me that the same is their own free and voluntary act and deed as well as that of the entities which they represent.

WITNESS MY HAND on the date and place first hereinabove stated.

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Series of 2019.

ATTY. GLADYS KAYE L. CHUA
NOTARY PUBLIC FOR MANDALUYONG CITY
APPT. NO. 0522-18 UNTIL DECEMBER 31, 2019
ROLL OF ATTY NO. 66695
PTR No. 2844070 JAN. 14, 2019- MANDALUYONG CITY
LIFETIME IBP NO. 014002; JULY 29, 2016 -- ZAMBASULTA CHAPTER
MCLE COMPLIANCE VI; JUNE 04, 2018
UNIT GI-32 ST. FRANCIS SQUARE BLDG., BANK DRIVE COR.,
JULIA VARGAS ST., MANDALUYONG CITY