

CONTRACT AGREEMENT

For the Consulting Services on the Conduct of Feasibility Study of the Ipo Dam 3 Project

THIS AGREEMENT made this 7th 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 ENGINEERING AND DEVELOPMENT CORPORATION OF THE PHILIPPINES (EDCOP)** with address at 10th Floor JELP Building, 409 Shaw Boulevard, Mandaluyong City and **CEST, INCORPORATED (CEST)** with address at Unit 1404 Prestige Tower, F. Ortigas Jr. Ave., Ortigas Center, Pasig City, herein represented by the President of EDCOP and authorized representative of the Joint Venture, **ORLANDO M. CABLAYAN**, 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 on the Conduct of Feasibility Study of the Ipo Dam 3 Project** in the sum of **Fifty-Three Million Four Hundred Ninety-Three Thousand Four Hundred Twenty Pesos (P53,493,420.00)**, 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. 265 (2018) approved on 20 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 and 3 issued on 22 October 2018, 12 November 2018, and 21 November 2018, respectively;
 - (d) Eligibility requirements, documents and/or statements;
 - (e) Performance Security No. BD-G13-HOM-0095962 issued on 07 January 2019;
 - (f) NBAC-CS Resolution Nos. 150 (2018), 177 (2018), 180 (2018), 202 (2018), 240 (2018), and 265 (2018);
 - (g) Highlights of the Negotiation Meeting held on 18 December 2018;
 - (h) Abstract of Bids;
 - (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. 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 provisions of this Contract in all respects.
 4. 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.
 5. The **Consultant** shall submit a detailed Work and Financial Plan (WFP) to the MWSS-CO for review (copy furnished NEDA for monitoring purposes and payment processing) within seven (7) calendar days from the date of commencement as indicated in NTP.
 6. The **Consultant** shall deliver to the **Procuring Entity** *(four (4) hard copies to MWSS-CO for review and two (2) hard copies to NEDA for monitoring purposes and payment processing. An electronic/soft copy shall also be submitted to MWSS-CO/NEDA)* the following outputs in the form and within the timeline indicated herein:

Deliverables	Timeline
Draft Inception Report including WFP	One (1) month from receipt of NTP
Final Inception Report including WFP	Ten (10) working days after receiving comments from the MWSS/NEDA
Monthly Progress Reports	Monthly, within seven (7) calendar days from end of agreed month-period

Deliverables	Timeline
Preliminary Report	Due at the end of the fourth (4th) month from receipt of NTP
Mid-Term Report	Due at the end of the sixth (6th) month from receipt of NTP
Draft Final Report	Due on the eighth (8th) month from receipt of NTP
Final Report	Due fourteen (14) working days after receipt from the MWSS/NEDA of the evaluation/comments but not more than nine (9) months from the receipt of NTP

MWSS-CO/NEDA shall provide comments on the Draft Inception Report within ten (10) calendar days from submission.

7. Payment shall be made in accordance with the following delivery schedule:

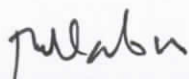
Deliverable	Payment Schedule
Upon acceptance of the Final Inception Report	15%
Upon acceptance of the Preliminary Report	15%
Upon acceptance of the Mid-Term Report	20%
Upon acceptance of the Draft Final Report	25%
Upon acceptance of the Final Report	25%

8. The Study shall be completed within a period of nine (9) months, commencing from the date of receipt of the Notice to Proceed (NTP) by the **Consultant**.
9. The hardware and software which were procured for this consulting services shall be in the name of the **Procuring Entity**. Acquiring and using a proprietary hardware and software which will continue after the undertaking on a subscription basis shall be subject for the approval of the **Procuring Entity**.
10. The **Procuring Entity** has the continual access to the proprietary software of the **Consultant** and/or its external consultants, with no additional cost to the **Procuring Entity**. The **Consultant** shall ensure the compatibility version of the software to MWSS-CO/NEDA.
11. Where the **Consultant** refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted in writing, and is hereby under default under the Contract, the **Consultant** shall pay the **Procuring Entity** for liquidated damages, and not by way of penalty, an amount, as provided in the conditions of the Contract, equal to at least one tenth (1/10) of one percent (1%) of the cost of the underperformed portion of the works for every day of delay. Should the amount of liquidated damages reach 10% of the total contract price, the **Procuring Entity** may terminate the Contract without prejudice to any further action it may lawfully take to recover whatever losses incurred due to non-performance of the **Consultant**.

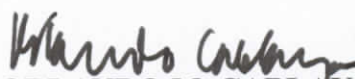
12. To be entitled to liquidated damages, the **Procuring Entity** need not prove that it incurred actual damages. Such amount shall be deducted from any money due or which may become due to the **Consultant** under the Contract and/or collect such liquidated damages from the retention money or any other security posted by the **Consultant**, whichever preference the **Procuring Entity** selects.
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. 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, Philippines.
16. In case of a court suit, the venue shall be the courts of competent jurisdiction in Pasig City, Philippines, 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.

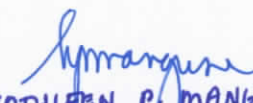
Signed, sealed, and delivered by:



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, Philippines

Signed, sealed, and delivered by:


ORLANDO M. CABLAYAN
President and
Authorized Representative of the JV of
EDCOP and CEST
10th Floor JELP Building
409 Shaw Boulevard, Mandaluyong
City, Metro Manila

Signed in the presence of:


KATHLEEN P. MANGUNE


LEILA L. FLORES

ACKNOWLEDGMENT

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

Before me this _____ day of JAN 08 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	Official Passport No. S0012632A	02 November 2017 DFA Manila, Philippines
ORLANDO M. CABLAYAN In his capacity as President and Authorized Representative of the JV of EDCOP and CEST 10 th Floor JELP Building 409 Shaw Boulevard, Mandaluyong City, Metro Manila	Philippine Passport No. EC0888437	22 April 2014 DFA NCR East, Philippines

all known to me and to me known to be the same persons who executed the foregoing instrument consisting of five (5) 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.

Doc. No. 171
Page No. 35
Book No. CCV11
Series of 2019.

ATTY. RAMON L. CARPIO
NOTARY PUBLIC
NP 0479-17 2018-2019 Comm. Expires Dec. 31, 2019.
Roll of Attorney's No. 22172
IBP No. AR000682 Jan. 4, 2019 Quezon City
PTR No. 3402705 1/04/18 Mandaluyong City
TIN 106-918-897
MCLE V-Compliance No. 0017243, 3/30/16
2nd Flr. JELP Business Solutions Center
409 Shaw Blvd., Mandaluyong City

**Highlight of Discussion and Agreements on Contract Negotiation
18 December 2018, 4/F OADG-IP Conference Room, NEDA**

AGENDA	KEY ISSUES/CONCERNS/DISCUSSION	AGREEMENTS
Negotiation Meeting on the Consulting Services on the Conduct of Feasibility Study of the Ipo Dam 3 Project	<p>The following authorized representatives attended the negotiation meeting presided over by Vice-Chairperson Greg Pineda:</p> <ol style="list-style-type: none"> 1. Mr. Jeremy John Borlongan – End-User/TWG; 2. Ms. Geraldine Bayot – End-User/TWG; 3. Mr. Jose Alfred Escoto – TWG/MWSS 4. Mr. Delfin Sespene – TWG/MWSS 5. Mr. Orlando Cablayan – EDCOP 6. Mr. Jephthy Albuena – CEST 	
	<p>The following queries and clarifications were raised:</p> <ol style="list-style-type: none"> 1. Implementing Agency <p>The End-User clarified that the implementing agency for the subject study is the Metropolitan Waterworks and Sewerage System-Corporate Office (MWSS-CO) and not the Local Water Utilities Administration (LWUA).</p>	
	<ol style="list-style-type: none"> 2. Request for Data and Information <p>In cases when the Consultant may needs data/information from different agencies/entities, they may request for an endorsement from the End-User.</p>	Upon the issuance of the Notice to Proceed and subject to a Confidentiality and Non-Disclosure Agreement, the Consultant may request in writing a certification citing their conduct of the subject study in behalf of NEDA and MWSS-CO.
	<ol style="list-style-type: none"> 3. Procurement of Assets, Equipment and Proprietary Software <p>Since the payment scheme for the subject study is on a lump-sum basis, all major expenses (e.g. proprietary software) should be made with prior consent of NEDA. Likewise, all equipment, materials, data, etc. acquired for the study shall be turned over to NEDA at the conclusion of the study. These will become the property of NEDA.</p>	The Consultant agreed and will comply.
	<ol style="list-style-type: none"> 4. Facilities <p>The End-User reiterated that as stated in the TOR (Section 7.3.2) the Consultant shall be responsible for the provision of the necessary office space for the project, within close proximity to MWSS. He noted that in the Consultant's financial proposal, there was an amount allocated for rental but the location of the office was not indicated.</p>	The matter will be discussed during the inception stage.
	<ol style="list-style-type: none"> 5. Regular Team Meetings <p>The End-User recommended that meetings be conducted on a monthly basis to keep track of the project's progress and to schedule additional meetings, as may be necessary or whatever critical problems are encountered.</p>	The Consultant agreed and will comply stating that they want the client to provide comments on progress

AGENDA	KEY ISSUES/CONCERNS/DISCUSSION	AGREEMENTS
	<p>The End-User likewise suggested that report on expenses incurred by the Consultant be done during meetings noting that the payment scheme for the project is on a lump-sum basis.</p> <p>Monthly meeting may be held not necessarily in NEDA, but can be done also in MWSS.</p>	reports to enable them to address problems, if there are any, which will become part of the final report.
	<p>6. Conduct of Sedimentation Analysis</p> <p>On the query whether the sediment analysis is on top of the sub-tasks included in the TOR, the Consultant confirmed that they will conduct additional sedimentation analysis as needed.</p> <p>The Consultant said that most of the sediment from the main waterways would already be trapped at the main duct, which the Consultant would have to do analysis on additional sediment.</p>	The Consultant will conduct additional sedimentation analysis as needed.
	<p>7. Lump-sum Contract</p> <p>The End-User reminded the Consultant that payment shall be subject to submission of deliverables. In other words, it is on a milestone payment basis.</p>	The Consultant agreed and will comply.
	<p>8. Access to Angat Dam</p> <p>In case there is a need for the Consultant to access Angat Dam, they have to notify DILG for assistance and the necessary permit.</p>	

Signed :


JOSE MIGUEL R. DE LA ROSA


ORLANDO M. CABLAYAN