

## CONTRACT AGREEMENT

### For the Consulting Services for the Conduct of Feasibility Study for the Pampanga Mass Transit System

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**THIS AGREEMENT** made this 3<sup>rd</sup> 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 SYSTRA PHILIPPINES, INC. (SPI)** with address at 1601 West Tower, Philippine Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig City and **ANGEL LAZARO & ASSOCIATES INTERNATIONAL (ALAI)** with address at LL Building, 160 Panay Avenue Corner EDSA, Quezon City, herein represented by the President of SPI and authorized representative of the Joint Venture, **MARIA RHIZA SAMSON CASTILLO**, 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 Conduct of Feasibility Study for the Pampanga Mass Transit System** in the sum of **Thirty-One Million One Hundred Eighteen Thousand Eight Hundred Eighty-Four Pesos and 74/100 (P31,118,884.74)**, 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. 267 (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 and 2 issued on 12 and 22 November 2018, respectively;
  - (d) Eligibility requirements, documents and/or statements;
  - (e) Performance Security/Bond No. G(13) 026527 issued on 21 December 2018;
  - (f) NBAC-CS Resolution Nos. 163 (2018), 167 (2018), 195 (2018), 204 (2018), 236 (2018), 242 (2018), and and 267 (2018);
  - (g) Highlights of the Negotiation Meeting held on 17 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 deliver to the **Procuring Entity** *(five (5) hard copies of the deliverables to NEDA for review of concerned entities. Electronic/soft copies of the deliverable documents shall also be submitted to DOTr and NEDA)* the following outputs in the form and within the timeline indicated herein:

Deliverables	Timeline
Inception Report and Work and Financial Plan (WFP)	Within (1) month from receipt of NTP
Interim Report	Within two (2) months from acceptance of Inception Report
VE/VA Report	Within one and a half (1.5) months from acceptance of Interim Report
Draft Final Report	Within one and a half (1.5) months from acceptance of VE/VA Report



Deliverables	Timeline
Final Report	Within one (1) month upon receipt of written comments on the Draft Final Report
Monthly Progress Reports	Monthly, within seven (7) calendar days from end of agreed month-period

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.

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

Description	Payment
Upon acceptance of the Inception Report and WFP	15%
Upon acceptance of the Interim Report	30%
Upon acceptance of the VE/VA Report	20%
Upon acceptance of the Draft Final Report	20%
Upon acceptance of the Final Report	15%


7. The Study shall be completed within a period of twelve (12) months, with 10 man-months of work for the **Consultant**, commencing from the date of receipt of the Notice to Proceed (NTP) by the **Consultant**.
8. 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**.
9. 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 NEDA.
10. 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.
11. Any modification, alteration, or addition in the terms of 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.
12. 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.


13. 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:


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

  
**MARIA RHIZA SAMSON CASTILLO**  
President and  
Authorized Representative of the JV of  
SPI and ALAI  
1601 West Tower, Philippine Stock  
Exchange Centre  
Exchange Road, Ortigas Center, Pasig City

Signed in the presence of:

  
**RODERICK M. PLANTA**

  
**SUSAN S. LIM**

## ACKNOWLEDGMENT

Republic of the Philippines)  
**PASIG CITY**) S.S.

Before me this \_\_\_\_\_ day of JAN 03 2019 in **PASIG CITY**,  
personally appeared:

Name	Government Issued Identification Document	Date and Place Issued
<b>JOSE MIGUEL R. DE LA ROSA</b> 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
<b>MARIA RHIZA SAMSON CASTILLO</b> In her capacity as President and Authorized Representative of the JV of SPI and ALAI 1601 West Tower, Philippine Stock Exchange Centre Exchange Road, Ortigas Center, Pasig City	SSS No. 33-1312882-5	Pasig City, 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.

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Book No. V  
Series of 2019.

**ATTY. JOSE LITO E. CONSTANTINO**  
Notary Public for  
Pasig, San Juan and Pateros  
Until December 31, 2020  
G/F Pasig City Hall, Brgy. San Nicolas, Pasig City  
ROLL NO. 31102 / 5-04-1981  
IBP NO. 055238 / 11-21-2018  
PTR NO. 5158453 / 01-03-2019  
MCLE NO. VI-10-17 valid until April 14, 2022  
TEL. NO. 232-590-923  
APPOINTMENT NO. 53 (2019-2020)  
CONTACT NO. 0949-924-0131 / 0927-311-2426



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

AGENDA	KEY ISSUES/CONCERNS/DISCUSSION	AGREEMENTS
Contract Negotiation Meeting on the Consulting Services for the Conduct of Feasibility Study for the Pampanga Mass Transit System	The following authorized representatives attended the negotiation meeting:  1. Ms. Christine Laumond – JV of Systra-ALAI; 2. Mr. Sherwin Solano – JV of Systra-ALAI; 3. Mr. Joel Magbanua – TWG; 4. Ms. Luelle Jingco – TWG; 5. Mr. Christopher Bryan Dizon – TWG; 6. Ms. Lea Hernandez – TWG; and 7. Ms. Criselle Santos – End-User.	
	The following queries and clarifications were raised:  1. Definition of “intracity” connectivity  In response to the Consultant's comment in its technical proposal, the End-User clarified that the “intracity” connectivity pertains to connectivity within cities while “intercity” connectivity refers to connectivity between cities. Noting that the study is for a mass transport system for the province of Pampanga, the Consultant suggested that it would be more appropriate to use the term “intraprovince”.	The End-User agreed to the Consultant's suggestion.
	2. Scope of intracity connectivity to be covered by the F/S  Relatedly, the End-User also requested clarification on the Consultant's rationale for limiting the intracity mass transit plan that it intends to provide to only two (2) cities within the province, as indicated in the Technical Proposal. The Consultant explained that the budget would be sufficient to cover only two (2) cities, and thus requested guidance on the cities to be covered.	The Consultant will provide an intraprovince mass transport plan, and an intracity mass transport plan for two (2) cities within the province (i.e., San Fernando going to Angeles).
	3. On the findings of two other transport projects (Spur Line and Dry Port) as inputs to the Pampanga Mass Transit System Project.  On the Consultant's comment on the interrelatedness of the subject study with that of the Spur Line and Dry Port projects, which are also in the same stage of procurement, the End-User expressed no objection to the Consultant's use of the findings from the other two (2) studies, noting that the Systra Philippines Incorporated (SPI) is also party to the Joint Ventures (JVs) determined to be the highest-rated bidder for said studies. However, it was stressed that subject study will nonetheless be	The Consultant agreed to comply.

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	<p>treated as a standalone undertaking, and findings from the other two (2) studies (and vice-versa) may be used only upon confirmation/approval of NEDA and/or the corresponding Implementing Agency.</p>	
	<p>4. Documents/information needed at the start of the contract</p> <p>On the list of documents/information that the Consultant indicated in its Technical Proposal to be necessary at the start of the contract, the End-User reiterated from discussions during the Pre-bid Conference that the Consultant may request for available information/data subject to execution of Confidentiality and Non-Disclosure Agreement (CNDA).</p>	<p>The Consultant noted the requirement.</p>
	<p>5. Consultant's request for one (1) staff member each from the Department of Transportation (DOTr) and Province of Pampanga as members to the Value Engineering/Value Analysis (VE/VA) workshop.</p> <p>The End-User raised the following:</p> <p>a. Whether the Consultant was referring to personnel from the Local Government Unit (LGU) or the NEDA Regional Office (NRO) in its mention of a staff member from the Province of Pampanga</p> <p>The Consultant responded that the initial intention was to enlist a member from the LGU, but expressed no objection to additional participation from the NRO.</p> <p>b. Whether the requested personnel shall be treated as members of the team or resource persons, noting the possible conflict in roles of the members of DOTr, LGU, and NRO as both contributor to the VE/VA study and eventual evaluator of the output</p> <p>The Consultant remarked that the personnel are encouraged to be part of the team so that their position in the selection of options is duly considered. She likewise noted that the personnel, especially those with a background in similar undertakings, may serve as resource persons.</p> <p>c. That ample time is needed for coordinating the minimum expertise requirements of the requested personnel with the participating agencies prior to the VE/VA workshop.</p>	<p>Participation will be requested from both the Pampanga LGU and NRO 3.</p> <p>The Consultant agreed to explore the possibility for the requested personnel to serve as only resource persons for the VE/VA workshop. However, she requested that said personnel be present nonetheless for the entire duration of the workshop.</p> <p>The Consultant agreed to inform the End-User of the requirements in advance.</p>

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	<p>6. Breakdown of costs per activity</p> <p>The End-User noted that the costs per activity were not provided in the Consultant's Financial Proposal. Instead, the Consultant provided lump sum amounts covering all activities of the undertaking. The End-User stressed the need for the cost breakdown to ensure consistency of activities between the Technical Proposal and Financial Proposal. The Presiding Chair likewise noted the necessity of providing said breakdown for transparency and accountability purposes, as well as guidance for all concerned.</p>	<p>The Consultant will provide the breakdown of costs per activity as part of the Inception Report.</p>
	<p>7. Office Rent/Accommodation/Clerical Assistance</p> <p>The End-User noted that, in the Consultant's Financial Proposal Form (FPF) 5, no amount was indicated for Office/Accommodation/Clerical Assistance, and that the Terms of Reference (TOR) state that the Consultant shall be responsible for the provision of necessary office space, which should be located in close proximity to the DOTr. It was further noted that, while the SPI office is in close proximity to the DOTr Office in Mandaluyong, the main DOTr Office is located in Clark.</p>	<p>The matter will be cleared with DOTr.</p>
	<p>8. Deliverables and timelines</p> <p>The End-User raised the following:</p> <ul style="list-style-type: none"> <li>a. In view of possible challenges that may be encountered during the course of study, i.e., the Consultant's coordination with relevant LGUs during the election period, the End-User requested the Consultant to provide details on its risk identification and management plan for the study.</li> <li>b. The Consultant may be requested to present its findings from the Draft Final Report to the NEDA Board Committee on Infrastructure (INFRACOM) and/or the Regional Development Council (RDC) during the corresponding schedule indicated in the Schedule/Work Plan attached to the TOR.</li> </ul>	<p>The Consultant will provide a Risk Identification and Management Plan.</p> <p>The Consultant noted the requirement.</p>
	<p>9. Allocation of man-months/schedule for professional staff</p> <p>The End-User noted from the Consultant's Technical Proposal Form (TPF) 7 that the</p>	<p>The Consultant shall submit the name of its assigned</p>



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	allocation of man-months for the Team Leader is only four (4) months, and stressed that the Team Leader is expected to be accessible and present throughout the duration of the study. The Consultant was thus requested to assign a Deputy Team Leader to oversee the project's activities in the absence of the Team Leader, at no additional cost to the Government.	Deputy Team Leader prior to contract signing.
	10. Ownership of documents  The End-User reminded the Consultant that all reports, including other documents prepared by the Consultant under the study, shall become and remain the property of NEDA, and future use, reproduction, and/or distribution of the same documents is strictly prohibited unless formal written consent is given by NEDA.	The Consultant will comply.
	11. Counterpart personnel  The End-User likewise reminded the Consultant of Section 3.7.3 of the TOR which provides that Government, i.e., NEDA, NRO 3, and DOTr, shall have the option to detail a total of five (5) counterpart personnel to the study for the purpose of on-the-job capacity building and technology/knowledge transfer.	The Consultant noted the requirement.

Signed :

  
JOSE MIGUEL R. DE LA ROSA

  
MARIA RHIZA SAMSON CASTILLO