

CONTRACT FOR CONSULTANCY AND CONSTRUCTION SERVICES
(Design and Construction of CARIM Building Phase 2)

KNOWN ALL MEN BY THESE PRESENTS:

This Contract is made and entered into by and between:

The **UNIVERSITY OF THE PHILIPPINES**, the national university, created by virtue of Act No. 1870, as amended and strengthened by Republic Act No. 9500, through its constituent university in Mindanao, with principal address at Administration Building, Mintal, Tugbok District, Davao City, represented herein by its Chancellor, **DR. SYLVIA B. CONCEPCION, Ph.d.**, hereinafter referred to as the "**UNIVERSITY**";

-and-

The **ASM FRANCISCO CONSTRUCTION AND DEVELOPMENT CORPORATION**, an entity duly organized and existing under the laws of the Republic of the Philippines, with address at Costaline Street, Dolores, Taytay, Rizal represented herein by its President, **ARCH. ALFREDO M. FRANCISCO**, hereinafter referred to as the "**CONTRACTOR**".

RECITALS:

1. The **UNIVERSITY** has a project entitled "**DESIGN AND CONSTRUCTION OF CARIM BUILDING PHASE 2**" (**PROJECT**), with an approved budget of Thirty Three Million Four Hundred Nine Thousand Ninety and 91/100 Pesos Only (P 33,409,909.91).
2. The **UNIVERSITY**, through its Bids and Awards Committee, published an invitation to bid for the **DESIGN AND CONSTRUCTION OF CARIM BUILDING PHASE 2** in the PhilGEPS website, UP Mindanao website, and in conspicuous places in the University premises for seven days.
3. In response to the said advertisements, two (2) bidders, ASM Francisco Construction & Development Corporation and FFJJ Construction submitted their applications for eligibility and upon checking their eligibility documents, only ASM Francisco Construction and Development Corporation was found to be eligible for bidding.
4. Upon the evaluation of the bids submitted by the lone eligible bidder the Bids and Awards Committee declared failure of bidding, however; upon motion for reconsideration by the ASM Francisco Construction and Development Corporation, the BAC and technical working group of the **UNIVERSITY** reviewed the bid documents and determined that the

conceptual design and other documents of the CONTRACTOR were substantially compliant.

5. Thus, On December 20, 2016, the Bids and Award Committee issued a Resolution declaring **ASM FRANCISCO CONSTRUCTION AND DEVELOPMENT CORPORATION** as compliant and responsive to the requirements and subsequently a Notice of Award was issued by the UNIVERSITY in favor of the **CONTRACTOR**, which the latter accepted.

NOW THEREFORE, the parties agree as follows:

SECTION I CONTRACT DOCUMENTS

- a) The CONTRACTOR and the UNIVERSITY shall be bound by the provisions contained in the following documents, hereinafter referred to as the "Bidding Documents". In case of conflict, the Contract Documents shall take precedence over one another in the following order:
- 1) The Terms of Reference (TOR) and such other amendments contained in the bid bulletin issued for the Contract; and
 - 2) The CONTRACTOR technical and financial proposals;
- b) The Bidding Documents shall form part of the Contract between the CONTRACTOR and the UNIVERSITY superseding the contents of any negotiations and/or agreements, whether oral or in writing, pertaining to the subject of this Contract. . In case of doubt or conflict between and among any items or provisions and the Contract Documents, the CONTRACTOR shall refer the same in writing to the UNIVERSITY for clarification and guidance. The clarification or determination made by the UNIVERSITY shall be binding and conclusive upon the parties.
- c) The CONTRACTOR shall not make any change or alteration in the plans, conditions, and specifications of the PROJECT without prior written approval by the UNIVERSITY.
- d) The parties may, in writing, agree to any revision, alteration, or addition to the terms and conditions of this Agreement or the Contract Documents.

SECTION II OBLIGATIONS OF THE CONTRACTOR

The main objective of the Design Services is to produce the final and complete set of contract documents as requirement for the bidding process. The CONTRACTOR will perform the following:

- 2.1 To conduct preliminary services to include conference with the University's authorized representative and inspection of the project site;
- 2.2 To conduct design development studies and produce approved Schematic Design based from the output of the conference;
- 2.3 To produce complete set of Contract Documents consisting of the following:
 - a) Complete set of Technical Drawings (Architectural, Structural, Electrical, Sanitary/plumbing & Mechanical)
 - b) Technical specifications;
 - c) Bill of Quantities and detailed cost estimates;
 - d) Structural design analysis; and
 - e) Building permit forms.
- 2.4 To sign and seal all Contract Documents; and
- 2.5 To conduct periodic visits during construction.

The CONTRACTOR must regularly coordinate the details of the structural design with the technical team of the Campus Planning and Development Office (CPDO) of the UNIVERSITY. Upon approval of the design by the authorized officials of the UNIVERSITY, CPDO shall issue a "Permit to Construct thereafter.

SECTION III SCOPE OF WORKS

The CONTRACTOR and its allied professionals shall perform the following tasks in three (3) phases:

3.1 Design Development Phase

Prepares Design Development Documents consisting of the following:

- 1) Schematic design that includes perspective, floor plans, elevations, and sections;
 - 2) Outline specifications to fix and illustrate the size and character of the entire project in its essentials as to kinds of materials, type of structure, electrical, and Sanitary systems.
- b) Submits to the UNIVERSITY a further Statement of Probable Project Construction Cost.

3.2 Contract Documents Phase

- a) Prepares from approved Design Development Documents, the complete Construction Drawings and Specifications setting forth in detail the work required for the architectural, structural, electrical, plumbing/sanitary, mechanical and other service-connected equipment.

- b) Prepares Technical Specifications describing type and quality of materials, finish, manner of construction and the general conditions under which the project is to be implemented.
- c) Prepares Bill of Quantities and Detailed Cost Estimates using UNIVERSITY's Detailed Estimate format.
- d) Furnishes the UNIVERSITY the following:
 - 1. One (1) set original copy (in tracing paper and soft copy in AUTOCAD file) of drawings;
 - 2. Six (6) complete sets of drawings in blueprint (all signed & sealed);
 - 3. Three (3) sets of Technical Specifications (in hard & soft copy);
 - 4. Three (3) sets of Bill of Quantities and Detailed Cost estimates (in hard and soft copy);
 - 5. Three (3) sets of signed and sealed Structural Design Analysis; and
 - 6. One (1) set of signed and sealed Building Permit forms.
- e) Keeps the UNIVERSITY informed of any adjustments to previous Statements of Probable Project Construction Cost indicated by changes in scope, requirements or market conditions.
- f) Assist in filing the required documents to secure approval of government authorities having jurisdiction over the design of the project.

3.3 Construction Phase

- a. Supply and provide all labor, materials, tools and equipment, including power and water, transportation and other facilities, services, and all related work for the PROJECT, in accordance with the issued plans, drawings, schedule, technical specifications and other related contract documents, necessary to prosecute the work to completion, as called for in the Plans/Scope of Works.
- b. At its own expense, be responsible for the unloading, unpacking, and inspection of all materials, machinery, and equipment delivered to the construction site, and shall also be responsible for the storage, control, transportation, safekeeping, and any other necessary arrangement for such materials, machinery, and equipment within the site.
- c. Ensure adequate protection at all times of all materials machinery, and equipment in the construction site against damage, robbery, and pilferage, and shall be responsible for any damage or loss.

- d. Render warranty services on all work performed in accordance with the provisions of this Agreement and the Contract Documents incorporated hereto.

SECTION IV HUMAN RESOURCE REQUIREMENTS

The CONTRACTOR should have a business permit and DTI registration and should either be a licensed Civil Engineer or Architect registered with Professional Regulation Commission. He/she should hold an updated and valid PRC License or ID. The CONTRACTOR will be the one responsible for the hiring of his allied professionals to include – Architect/Civil Engineer, Sanitary Engineer/Master Plumber, Professional Electrical Engineer, Mechanical Engineer, draftsman, autocad operator, renderer, quantity surveyor/estimator, specification writer, and other manpower requirements necessary to accomplish the tasks stated above.

SECTION V CONTRACT PRICE

5.1 For and in consideration of the performance and accomplishment of the PROJECT, the UNIVERSITY shall pay the CONTRACTOR the total amount of **TWENTY NINE MILLION NINE HUNDRED EIGHTY NINE THOUSAND SEVEN HUNDRED NINETY SEVEN Pesos Only** (P29,989,797.00). Payment shall not be made more than once a month.

5.2 The Contract Price is inclusive of all duties, taxes, license premiums, fees and charges which may accrue by virtue of the PROJECT, such as but not limited to permit and registration fees, municipal and personal property taxes, fees for storage or consumption, employment taxes, payments and contributions imposed by law and insurance. All such fees shall be for the account of the CONTRACTOR. Any exemption in the payment of the foregoing shall be credited to the UNIVERSITY. The CONTRACTOR is obligated to inform the UNIVERSITY in writing of any exemptions obtained by or granted to it with respect to taxes, licenses, and other fees. The CONTRACTOR shall pay all costs incurred in the preparation of this Agreement, including notarial fees.

5.3 No changes shall be made on the Contract Price by reason of escalation in currency, the price of materials, tolls, equipment, or labor supervening during the course of the PROJECT, except under conditions specified by law. Any adjustments in the Contract Price shall be done in accordance with guidance provided by law.

5.4 The payment of escalation costs shall be subject to the unilateral and written approval of the UNIVERSITY and to availability of funds.

5.5 Should the UNIVERSITY require the CONTRACTOR to perform any variation order in the form of a change order, or extra work order, the additional costs of such work shall be added to the Contract Price, provided that the cumulative amount of the variation order does not exceed ten percent (10%). In exceptional cases, where it is urgently necessary to complete the original scope of work, the UNIVERSITY may require the CONTRACTOR to perform a variation order beyond ten percent (10%) but not more than twenty percent (20%).

5.6 The cost of variation orders shall be subject to prior written agreement by both parties, upon recommendation of the office of the Campus Architect before execution or implementation.

5.7 Any amount payable to the CONTRACTOR may be compensated against liquidated damages payable to the UNIVERSITY under this Agreement.

**SECTION VI
TIME OF COMPLETION AND LIQUIDATED DAMAGES**

6.1 The CONTRACTOR shall perform and complete the PROJECT to the satisfaction of the UNIVERSITY within FOUR Hundred EIGHTY (480) CALENDAR DAYS reckoned from the stipulation as provided in the Notice to Proceed.

6.2 Time being of the essence of the PROJECT, delay in the completion of the PROJECT may be excusable only if the same is due to force majeure, additional work approved by the UNIVERSITY, or for any other circumstance as may be determined by the UNIVERSITY. Upon failure of the CONTRACTOR to complete the work stipulated in this Contract within the time provided, the CONTRACTOR shall pay the UNIVERSITY at least 1/10th of ONE (1) PERCENT of the cost of the unperformed portion of the WORKS for each day of delay in the completion of the Contract, said payment to be made as liquidated damages, and not by way of penalty; and the UNIVERSITY may deduct from any sum due or to become due to the CONTRACTOR any accrued sum from liquidated damages as hereinafter stated, without need of any court action.

6.3 Force Majeure is defined as any circumstance beyond the control of the parties, which directly prevent the parties from performing their obligations such as but not limited to extraordinary weather conditions, fires, earthquakes or other natural calamities, valid work stoppage or orders of competent authority, civil disorder, war or other hostilities.

6.4 Should there arise any circumstance provided in 4.2 above which affects the performance of its obligations, the party concerned shall notify the other in writing setting forth such facts and circumstances within five (5) days of its occurrence. Should there be need to extend the period of compliance with its obligations, both parties shall agree on a reasonable period within which to comply with the undertaking. Any other

request for extension by the CONTRACTOR may be granted or denied by the UNIVERSITY at its sole discretion.

6.5 Upon the occurrence of any circumstance of force majeure, the CONTRACTOR shall endeavor to continue in the performance of its obligations so far as reasonably practicable. In such cases, the CONTRACTOR shall give the UNIVERSITY written notice of the steps it proposes to take, including any reasonable alternative means for the performance of its obligations. The CONTRACTOR shall not take any such steps unless authorized in writing by the UNIVERSITY.

6.6 In no case shall extension of time for completion be granted in any of the following circumstances:

- a. Ordinary unfavorable weather conditions
- b. Labor problems or disputes involving the Contractor's employees, workers or personnel or those of its sub-contractor's, agents or suppliers
- c. When the reason given for the request for extension has already been considered in the determination of the original completion time

6.7 CONTRACTOR, the CONTRACTOR shall be liable to pay liquidated damages in accordance with the provisions of the Implementing Rules and Regulations of R.A. No. 9184. The UNIVERSITY shall have the option to demand payment of, or deduct such damages from any amounts due to the CONTRACTOR. The UNIVERSITY shall notify the CONTRACTOR in writing of its choice of action under this section.

6.8 The provisions on liquidated damages notwithstanding, the UNIVERSITY has the right to take all necessary and appropriate steps to effect an immediate takeover of the construction work either by itself or by another contractor, and to forfeit the Performance Bond and charge against the CONTRACTOR and its sureties any excess cost occasioned thereby in finishing the PROJECT, together with any liquidated damages that may be due to the UNIVERSITY under any of the following circumstances;

- a. If the progress of the work is delayed by at least twenty percent (20%) of the contract period plus any extension duly granted, or does not conform with the work schedule such that from all indications the CONTRACTOR may not be able to complete the PROJECT within the stipulated time; or
- b. If the CONTRACTOR violates any of the conditions, warranties, or covenants under this Agreement.

6.9 In the event of takeover, whatever contracts entered into by the CONTRACTOR in the pursuit of its obligations under this Agreement which the UNIVERSITY may want to assume are hereby deemed assigned to the UNIVERSITY, provided, that the UNIVERSITY shall not

be liable for unpaid obligations previously incurred by the CONTRACTOR prior to the takeover. The right of the UNIVERSITY to take over the the PROJECT shall be without prejudice to other rights and legal remedies it may be entitled to.

6.10 The lawful occupation by the UNIVERSITY of any portion of the PROJECT shall not be deemed a waiver of any of its rights nor shall it diminish any liability of the CONTRACTOR for liquidated damages for delays in other portions of the PROJECT.

SECTION VII PAYMENTS

The UNIVERSITY shall pay the CONTRACTOR not more than once a month based on the value of work accomplished less ten percent (10%) retention (regardless of the percentage of completion of the Contract) and the Expanded Withholding Tax for the duration of the Contract.

As required by Philippine law, the Contractor's Expanded Withholding Tax withheld from each payment to the CONTRACTOR shall be transmitted by the UNIVERSITY to the Bureau of Internal Revenue in favour of the CONTRACTOR'S Tax Identification Number.

No payments shall be made unless payment requests are on the prescribed form and bear the approval of the UNIVERSITY and UP Mindanao CPDO. The full and final payment, together with the ten percent (10%) retention, if unused, shall be paid to the CONTRACTOR as provided for and upon compliance of all requisites under the General Conditions of the Contract.

In some cases, payments of eighty percent (80%) of the value of specially fabricated and uninstalled materials may be made if the condition under the General Conditions of the Contract are complied with.

SECTION VIII CHANGES AND/OR REVISIONS

Any changes and/or revisions requested by the UNIVERSITY after approval of the Design Development Documents shall be subjected to compensation agreed by both parties.

SECTION IX DISPUTE RESOLUTION

The parties undertake to faithfully comply with their obligations in good faith. In case of conflict arising from this Agreement, both parties agree to freely and voluntarily submit themselves to necessary consultation and negotiation for purposes of amicable settlement and find a mutually acceptable solution to their dispute within sixty (60) days from receipt of a written complaint / notice from the injured party. Existing University policies on alternative dispute resolution shall be followed by the parties.

Should the parties fail to reach an amicable settlement for their dispute, the same shall be submitted to arbitration in accordance with Republic Act No. 9285 or the Alternative Dispute Resolution Law of 2004. The exclusive venue or arbitration shall be in Davao City.


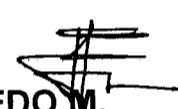
**SECTION X
LIABILITY CLAUSE**

The UNIVERSITY shall not be liable for any damage or prejudice caused to third persons arising out of related to this contract, provided that there was no negligence on the part of the UNIVERSITY.

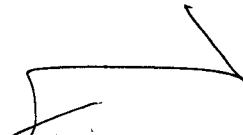
**SECTION XI
TAXES**

Taxes or other fees, if there be any, shall not be borne by the UNIVERSITY.

IN WITNESS WHEREOF, the parties have affixed their signatures this ___ day of _____ 2016 at Davao City, Philippines.

UNIVERSITY OF THE PHILIPPINES MINDANAO  DR. SYLVIA B. CONCEPCION Chancellor	ASM FRANCISCO CONSTRUCTION AND DEVELOPMENT CORPORATION  ARCH. ALFREDO M. FRANCISCO, President
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SIGNED IN THE PRESENCE OF:


ANTONIO R. OBSIOMA
Vice-Chancellor for Administration
U.P. Mindanao


ZENAIDA G. CALATRAVA, CPA
Chief, Accounting Office
U.P. Mindanao

Republic of the Philippines
CITY OF DAVAO.....)SS.
X-----X

ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in the City of Davao, Philippines personally appeared:

NAME	IDENTIFICATION
SYLVIA B. CONCEPCION	TIN 110-837-312-000 24 June 1999

Known to me to be the same persons who executed the foregoing instruments and acknowledged to me that the same is their free and voluntary act and deed and that of the entities they respectively represent in this instance.

This instrument refers to a Contract for Consultancy Services (Design and Construction of CARIM Building Phase 2) consisting of eleven (11) pages, including this page. The parties and their instrumental witnesses have signed every page.

WITNESS MY HAND AND NOTARIAL SEAL this DEC 28 day of 2016 at Davao City, Philippines.

Doc.No. 173 :
Book No. 35 :
Page No. LXXVIII
Series of 2016.

ATTY. CHARMAINE P. VALENTIN
NOTARY PUBLIC FOR DAVAO CITY
UNTIL DECEMBER 31, 2016
PTR NO. 8544608: 12-21-2015: DC
IBP NO. 0989276: 12-21-2015: DC
COMMISSION SERIAL NO. 074-2015
DAVAO CITY
ROLL NO. 62086

ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in the City of Davao, Philippines personally appeared:

NAME	IDENTIFICATION
ALFREDO SM. FRANCISCO	<u>TIN 004-471-354</u>

Known to me to be the same persons who executed the foregoing instruments and acknowledged to me that the same is their free and voluntary act and deed and that of the entities they respectively represent in this instance.

This instrument refers to a Contract for Consultancy Services (Design and Construction of CARIM Building Phase 2) consisting of eleven (11) pages, including this page. The parties and their instrumental witnesses have signed every page.

DEC 27 2016

WITNESS MY HAND AND NOTARIAL SEAL this ____ day of _____ 2016 at Davao City, Philippines.

Sample

Doc.No. 244:
Book No. 49:
Page No. X:
Series of 2016.

JAMES MICHAEL D. CABADING
 Notary Public
 Until December 31, 2017
 Roll of Attorney's No. 64012
 PTR OR. No. 1029715-01/18/16
 IBP OR. No. 6930633-01/18/16

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Henry

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