

CONSULTANCY CONTRACT
(Design Consulting Services of the UP Mindanao TTBD Lactic Acid Pilot Plant [PBM No. 2023-24])

THIS AGREEMENT is made and entered into by and between:

The **UNIVERSITY OF THE PHILIPPINES**, the national university of the Philippines, created by virtue of Act No. 1870, as amended and re-organized and operating by virtue of Republic Act No. 9500, through its constituent unit, the **UNIVERSITY OF THE PHILIPPINES MINDANAO (UP MINDANAO)**, established by virtue of Republic Act No. 7889, with office address at Administration Building, Mintal, Tugbok District, Davao City, represented herein by its Chancellor, **LYRE ANNI E. MURAO, Ph.D.**; hereinafter referred to as the "**UNIVERSITY**";

and

The **ASYANA CONSTRUCTION CONSULTANCY AND TRADING**, an entity duly organized and existing under the laws of the Republic of the Philippines, with address at Unit 201 Anaheim The Levels, Pacific Rim Road, Filinvest Alabang, Muntinlupa City, represented herein by its General Manager, **FERNANDO L. BALLASIO**, hereinafter referred to as the "**CONSULTANT**".

WHEREAS, the **UNIVERSITY** is desirous that the **CONSULTANT** execute **Design Consulting Services of the UP Mindanao TTBD Lactic Acid Pilot Plant (PBM No. 2023-24)**, hereinafter called "the Services" and the **UNIVERSITY** has accepted the Bid for **Two Million Six Hundred Seventy Thousand Pesos (P2,670,000.00)** by the **CONSULTANT** for the execution and completion of such Works and the remedying of any defects therein.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. SERVICES

- i. The **CONSULTANT** (Attached as Annex "A" is the Omnibus Sworn Statement Affidavit of Fernando L. Ballasio) shall perform the services specified in **Annex B, "Terms of Reference,"** which is made an integral part of this Contract ("the Services").
- ii. The **CONSULTANT** shall provide the personnel listed in **Annex C, "Consultant's Personnel,"** to perform the Services.
- iii. The **CONSULTANT** shall submit to the **UNIVERSITY** the reports in the form and within the time periods specified in **Annex D, "Consultant's Reporting Obligation."**

2. TERM

The **CONSULTANT** shall complete the Services within Two Hundred Forty (240) calendar days from receipt of the Notice to Proceed ready for use of **UNIVERSITY** unless prevented by causes like strikes, accidents, typhoons, floods, lockdowns and other natural calamities, government-mandated restrictions or other unforeseen events, which render the work incapable of completion, in which case **UNIVERSITY** shall have the power to extend the time and shall certify accordingly.

No extension of contract time whatsoever shall be granted to the **CONSULTANT** due to ordinary/unfavorable conditions, non-availability of equipment or materials to be furnished by it, labor problems, and such causes for which the **UNIVERSITY** is not directly responsible, or when time-affected activities do not fall within the critical part of





the network. The Provisions of RA 9184 and its IRR shall apply in case of suspension of work.

3. PAYMENT

For Services rendered pursuant to the Terms of Reference (Annex B), The UNIVERSITY shall pay the CONSULTANT an amount not to exceed **Two Million Six Hundred Seventy Thousand Pesos (P2,670,000.00)**. This amount has been established based on the understanding that it includes all of the Consultant's costs and profits as well as any tax obligation that may be imposed on the CONSULTANT.

Any partial billing shall not exceed the allowable percentage set for the accomplished Design Phase based on the schedule specified in Section 7.1 of the Terms of Reference, Part 1, supported by the Notice to Proceed to the next Design Phase.

Upon completion of the Final Review Phase entailing among others submission and acceptance of the Final Detailed Architectural & Engineering Design Plans and Detailed Drawings, UNIVERSITY shall issue the Certificate of Completion and recommend the release of 80% of the contract amount which is the maximum allocated for the Design Phase. The remaining 20% shall be released near the end of the Construction Phase.

In addition, progress billings shall only be requested once a month as stipulated in the RIRR of RA 9184 of 2016.

Once the project construction is substantially complete at 95% accomplishment, UNIVERSITY may issue the Certificate of Acceptance for the CONSULTANT and recommend the release of the remaining 20% of the contract amount.

All progress payments are subject to a retention of ten percent (10%) based on the total amount due to the Consultant prior to any deduction.

The Retention Money may be released one (1) month after the issuance of the Certificate of Acceptance and signing by appropriate Design professionals of the Consultant on the As-built Plans and Occupancy Permit and upon submission of a Guarantee Bond callable on demand equivalent to 10% of the total project cost.

4. LIQUIDATED DAMAGES

The UNIVERSITY shall impose liquidated damages per Design Phase equivalent to one tenth of one percent (0.001) of the cost of the unperformed Design Phase in consideration per day of delay but not to exceed ten percent (10%) of the amount of the said Design Phase, chargeable to the next Billing of the Consultant.

5. PERFORMANCE STANDARDS

The CONSULTANT undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The CONSULTANT shall promptly replace any employees assigned under this Contract that the UNIVERSITY considers unsatisfactory.

6. CONFIDENTIALITY

During the term of the Contract, the CONSULTANT shall not: disclose any propriety or confidential information relating to the Services, the Contract or the UNIVERSITY's business or operations; at any time, communicate or disclose to any person or entity any propriety or confidential information acquired in the course of the Services; or, make public the recommendations formulated in the course of, or as a result of, the Services, without prior written consent from the UNIVERSITY.

For purposes of this clause, "confidential information" means any information or knowledge acquired by the CONSULTANT and/or its Personnel arising out of, or in connection with, the performance of the Services under this Contract that is not otherwise available to the public.

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[Signature]

7. OWNERSHIP OF PLANS, SPECIFICATION AND OTHER CONTRACT DOCUMENTS

Drawings and specifications and other contract documents duly signed, stamped or sealed, as instruments of service, are the intellectual property and documents of the architect, whether the object for which they are made is executed or not. It shall be unlawful for any person to duplicate or to make copies of said documents for use in the repetition of and for other projects or buildings, whether executed partly or in whole, without the written consent of architect or author of said documents.

8. CONSULTANT NOT TO BE ENGAGED IN CERTAIN ACTIVITIES

The CONSULTANT agrees that, during the term of the Contract and after its termination, the CONSULTANT and any entity affiliated with the CONSULTANT, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works, or consulting services for any project resulting from or closely related to this Contract other than the Services and any continuation thereof provided there is no current or future conflict.

The CONSULTANT shall not engage, and shall cause their Personnel as well as their Sub-Consultant and their Personnel not to engage, either directly or indirectly in any business or professional activities in the Government's country which would conflict with the activities assigned to them under this Contract, during the term, and after the termination of the Contract.

9. INSURANCE

The CONSULTANT, at its own cost, shall be responsible for taking out or maintaining any appropriate insurance policy against any risk related to the project.

The UNIVERSITY undertakes no responsibility in respect of life, health, accident, travel or any other insurance coverage for the CONSULTANT, Sub-Consultant, and each of their Personnel or for the dependents of the CONSULTANT, Sub-Consultant or any such Personnel.

10. ASSIGNMENT

The CONSULTANT shall not assign this Contract or sub-contract any portion of it without the UNIVERSITY's prior written consent.

11. LAW GOVERNING CONTRACT AND LANGUAGE


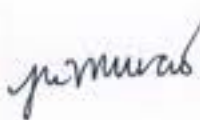
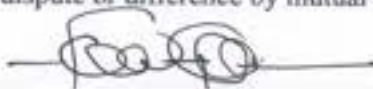
The CONSULTANT shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Sub-Consultant, as well as the Personnel of the Consultant and any Sub-Consultant, complies with the Applicable Law. The UNIVERSITY shall notify the CONSULTANT in writing of relevant local customs, and the CONSULTANT shall, after such notification, respect such customs.

If, after the date of the CONSULTANT, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the CONSULTANT in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the CONSULTANT under the Contract shall be increased or decrease on a no loss-no gain basis.

The Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

12. DISPUTE RESOLUTION

If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with the implementation of the Contract, the Parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

Any and all disputes arising out of the Contract which cannot be amicably settled between the parties shall be referred to adjudication/arbitration in accordance with the rules of procedure of Philippine laws.

13. PRE-TERMINATION

This contract shall be pre-terminated based on the grounds and procedure as specified under the Republic Act No. 9184 and its Implementing Rules and Procedure.

14. LIQUIDATED DAMAGES

If the CONSULTANT fails to submit the required deliverable or output in the form and within the time-periods specified in the TOR, the UNIVERSITY shall, without prejudice to its other remedies under the Contract and under Philippine laws, deduct from the contract price, as liquidated damages, a sum equivalent to one-tenth (1/10) of one percent (1%) of the cost of the unperformed portion of the Services for each day of delay based on the approved contract schedule.

In case the sum liquidated damages reaches ten percent (10%) of the contract amount, the UNIVERSITY shall automatically rescind the contract, without prejudice to other courses of action and remedies open to it.

15. LIABILITY CLAUSE

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

16. AMENDMENTS AND REVISIONS

All amendments or revision of any provision of this contract shall be upon the prior written consent of both parties subject to the execution of an appropriate instrument for the purpose.

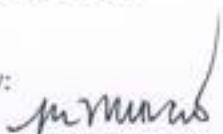
17. APPLICABLE LAWS

Provisions in the Republic Act 9184 and its Implementing Rules and Regulations shall be deemed applicable. Other relevant laws and jurisprudence are supplementary in nature. In case of inconsistency in the provisions in this contract, RA 9184 and its IRR shall prevail.

IN WITNESS whereof the parties thereto have caused this Agreement to be executed this 25 JAN 2024 (date).


**UNIVERSITY OF THE PHILIPPINES
MINDANAO**

By:



LYRE ANNI E. MURAO, Ph.D.
Chancellor

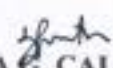
**ASYANA CONSTRUCTION
CONSULTANCY AND TRADING**

By:


FERNANDO L. BALLASIO
General Manager

Signed in the presence of:


LEO MANUEL B. ESTAÑA, Ph.D.
Vice Chancellor for Administration
UP Mindanao


ZENAIDA G. CALATRAVA, CPA
Chief, Accounting Office
UP Mindanao

Republic of the Philippines)
City of Davao ss.
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ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in the City of QUEZON, personally appeared the following persons, to wit:

| Name | Gov't Issued ID | Date Issued |
|-------------------------|----------------------|-----------------------------|
| 1. Lyre Anni E. Murao | <u>L02-06-003064</u> | <u>07/03/2018</u> |
| 2. Fernando L. Ballasio | <u>0069463</u> | <u> </u> |

known to me and to me known to be the same persons who executed the foregoing instrument and acknowledged to me that the same is their free and voluntary act and deed and that it is within the authority of the entities they respectively represent in this instance.

This instrument consisting of five (5) pages including this page where the Acknowledgment is written, refers to a Contract Agreement between the **UNIVERSITY OF THE PHILIPPINES MINDANAO** and **ASYANA CONSTRUCTION CONSULTANCY AND TRADING**. It has been signed by the parties and their instrumental witnesses at every page.

WITNESS MY HAND AND NOTARIAL SEAL this 26 day of JAN 2024 at QUEZON CITY Philippines.

Doc. No.: 279
Page No.: 56
Book No.: 01
Series of 2024.

[Signature]
ATTY. FELIZARDO M. IBARRA
NOTARY PUBLIC FOR QUEZON CITY
Valid until December 31, 2024
Adm Matter No. NP-223 / Roll No. 80835
PTR No. 5452394 / 01-02-2024 / Q.C.
IBP No. 233592 / 5-23-22
MCLE No. VIII-0000973
TIN: 203-053-968-000

[Signature]

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