

# CONTRACT FOR COMPREHENSIVE MASTER DEVELOPMENT PLAN OF THE FREEPORT AREA OF BATAAN

KNOW ALL MEN BY THESE PRESENTS:

SEP 08 2017      SEP 13 2017

This Contract is executed this \_\_\_\_ day of \_\_\_\_\_ 2017, in the Freeport Area of Bataan, Mariveles, Bataan, by and between:

The **AUTHORITY OF THE FREEPORT AREA OF BATAAN**, a body corporate created and existing under Republic Act No. 9728, with office address at the Second Floor, Administration Building, Freeport Area of Bataan, Mariveles, Bataan, represented herein by its Chairman and Administrator, **EMMANUEL D. PINEDA**, hereinafter referred to as the "AFAB";

- and -

**UP PLANNING AND DEVELOPMENT RESEARCH FOUNDATION, INC.**, a corporation duly organized and existing under Philippine laws, with business address at SURP Building E. Jacinto St., UP Diliman, Quezon City, Philippines, represented herein by its President, **MARIO R. DELOS REYES**, hereinafter referred to as the "CONSULTANT";

**WITNESSETH:**

**WHEREAS**, the AFAB requires the **CONSULTING SERVICES FOR THE PREPARATION OF COMPREHENSIVE MASTER DEVELOPMENT PLAN OF THE FREEPORT AREA OF BATAAN**, hereinafter referred to as the "PROJECT";

**WHEREAS**, a competitive bidding process was conducted by the AFAB in accordance with Republic Act No. 9184 and its Implementing Rules and Regulations, and the CONSULTANT was selected as the most qualified and competent to undertake the PROJECT;

**WHEREAS**, the CONSULTANT has expressed willingness to undertake and successfully complete the works to the satisfaction of the AFAB;




NOW THEREFORE, in view of the foregoing premises and the mutual covenants and undertakings hereinafter provided, the AFAB and the CONSULTANT, hereinafter collectively referred to as the "PARTIES", agree as follows:

## ARTICLE I SCOPE OF WORK

1.1 The CONSULTANT shall undertake the PROJECT for the AFAB in accordance with the following documents, which shall be deemed integral parts of this Agreement, and the terms and conditions embodied therein shall be deemed reproduced herein by reference and/or incorporation:

- a. The Bid Form, the Price Schedule, the Schedule of Requirements, and the Technical Specifications submitted by the CONSULTANT;
- b. The other documents or the statements contained in the bidding envelopes submitted by the CONSULTANT;
- c. The additional Post-Qualification Documents submitted by the CONSULTANT;
- d. The Invitation to Bid and all Bidding Documents issued by the AFAB, including the General Conditions and Specifications, Terms of Reference, Plans, Bid Bulletin/s (if any) and Minutes of Pre-Bid Conference;
- e. The Resolution of the Bids and Awards Committee declaring the Lowest Complying Responsive Bidder and Recommendation for Award;
- f. The AFAB's Notice of Award with the CONSULTANT's conforme thereto;
- g. The CONSULTANT's Performance Bond;
- h. Scope of Work and Specification, as stated in the Bidding Documents;
- i. Special Conditions of the Contract, attached herewith as Annexes "A"; and,

- j. Other requirements of prevailing laws, rules and regulations and executive orders applicable thereto.

1.2 The works to be done under this Agreement shall include, but not necessarily limited to the following, as described in detail in the Terms of Reference and Specification provided by the AFAB:

- a. Formulation of Area Profile and Situation Analysis (APSA);
- b. Formulation of Conceptual Master Development Plan (CnMDP);
- c. Formulation of Preliminary Comprehensive Master Development Plan (pCmMDP);
- d. Final Comprehensive Master Development Plan (fCmMDP); and,
- e. Financial Analysis.

1.3 The CONSULTANT shall furnish all labor, materials, equipment and supplies, and the performance of all operations necessary for the complete implementation of the PROJECT, all in strict compliance with the terms and conditions of this Agreement, as well as all the applicable terms and conditions of the documents listed in Section 1.1 above.

## ARTICLE II CONTRACT PRICE

2.1 As consideration for the full and faithful performance and accomplishment of all the obligations specified in Article I above which the CONSULTANT agrees to undertake, perform and accomplish, the AFAB shall pay the CONSULTANT the total contract price of **NINE MILLION SEVEN HUNDRED THREE THOUSAND SEVEN HUNDRED THIRTY SIX PESOS (PHP 9,703,736.00)**, in accordance with Article XIV of this Agreement.

## ARTICLE III TERMS OF PAYMENT

3.1 **Advance Payment:** Within fifteen (15) days from the effectivity of this Agreement, upon the written request of the CONSULTANT, the AFAB shall advance the amount of **ONE MILLION FOUR HUNDRED FIFTY FIVE THOUSAND FIVE HUNDRED SIXTY PESOS AND FORTY CENTAVOS (Php 1,455,560.40)**, which is equivalent to fifteen percent (15%) of the total contract price, to cover the CONSULTANT's mobilization expenses. This advance payment shall be made only upon the submission to and acceptance by the AFAB of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank



guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and accredited by the AFAB.

The advance payment shall be repaid by the CONSULTANT by an amount equal to the percentage of the total contract price used for the advance payment.

**3.2 Progress Billing:** Payment for progress billing shall be paid through in accordance with the following schedule:

Twenty Five Percent (25%) of the Contract Price	Upon submission to AFAB of the Area Profile and Situation Analysis (APSA) of the FAB
Twenty Percent (20%) of the Contract Price	Upon submission to the AFAB of the CnMDP of the FAB
Fifteen Percent (15%) of the Contract Price	Upon submission to the AFAB of the pCmMDP of the FAB
Fifteen Percent (15%) of the Contract Price	Upon submission to the AFAB of the fCmMDP of the FAB

A month after project start and after preliminary field visit/s, the CONSULTANT shall submit to AFAB an Inception Report (IR) detailing refinements in the overall project proposal to possibly include changes in the overall approach and methodology, and work program. The IR shall include details on the approach and methodology of each consultant, results of preliminary field visits, list of data requirements to be supplied by AFAB through the Technical Working Group (TWG) it shall be creating to oversee the project, and preliminary issues and concerns that may affect future work on the project.

The CONSULTANT shall, from time to time, also submit to AFAB a brief progress report highlighting project updates and status of accomplishment including project issues and concerns, agreements made between the AFAB and the CONSULTANT, among other important aspects of project monitoring.

**3.3 Final Payment:** Final Payment of the remaining ten percent (10%) of the Contract price to the CONSULTANT shall be subject to the approval of the fCmMDP as evidenced by the issuance of a Certificate of Acceptance of the contract work by the AFAB. Nothing herein contained shall be construed as a waiver of the right of the AFAB, which is hereby reserved, to reject the whole or any portion of the work should the same be found to have been constructed in violation of the plans and specifications or any conditions or covenants of this Agreement.

3.4 **Retention Money:** The amount equivalent to ten percent (10%) of each monthly progress payment shall be retained by the AFAB until the works have been completed.

Progress payments are subject to retention of ten percent (10%), referred to as the "retention money." Such retention shall be based on the total amount due to the CONSULTANT prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of Works, as determined by the AFAB are completed. If, after fifty percent (50%) completion, the Work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall again be imposed using the rate specified therefor.

The total retention money shall be released upon the issuance of the Certificate of Acceptance of the contract work by the AFAB.

3.5. The Contract Price stipulated above shall not be altered or adjusted due to any fluctuations in the prices of materials and equipment, or for any cause or reason whatsoever aside from possible adjustments in labor cost due to mandatory wage hike promulgated by the National Government and only with respect to the unfinished portion of the PROJECT.

3.6. No certificate given or payment made under this Agreement, except the Certificate of Acceptance or final payment, shall be conclusive evidence of the performance by the CONSULTANT of its covenants and obligations under this Agreement, either wholly or in part, and no payment shall be construed to be an acceptance of defective work or improper materials.

#### ARTICLE IV COMMENCEMENT AND COMPLETION OF WORK

4.1 The CONSULTANT shall commence execution of the PROJECT within seven (7) calendar days from receipt of the Notice to Proceed. The CONSULTANT shall finish and complete the PROJECT within **FIVE (5) MONTHS** from the said date, unless the CONSULTANT requests an extension in writing, stating the reasons therefor, and the AFAB approves the request for extension. However, this total project duration excludes the time it shall take for the AFAB to complete its review of every deliverable submitted by the CONSULTANT as itemized in Section 3.2 of this Contract. The review is vital for the CONSULTANT to proceed to the next phase of the project as per approved Work Program included in the Inception Report (IR).

4.2 The CONSULTANT may ask for an extension of the period for completion by a written request to the AFAB due to force majeure or fortuitous event and/or



additional work approved by the AFAB, or any other special circumstances as may be determined by the AFAB. The request for extension shall be filed and submitted in writing within ten (10) days from the occurrence of one or more of the events mentioned above. The AFAB shall, within fifteen (15) days from receipt of such written request, with due regard to the facts and circumstances and of the merits or lack of merits of the request, grant or deny the request for extension, as the case may be. The decision of the AFAB on this matter shall be binding upon the CONSULTANT which shall proceed strictly in accordance with such determination.

4.3 For the purpose of Article IV of this Agreement, the term "force majeure" means:

- a) war and other hostilities, (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo;
- b) rebellion, revolution, insurrection, terrorist act, military or usurped power or civil war occurring in the Republic of the Philippines;
- c) earthquakes, typhoons or other natural disasters of overwhelming proportions and which an experienced CONSULTANT could not have foreseen and taken protection against. For the avoidance of doubt, a storm signal two or above shall be considered to be force majeure;
- d) labor disputes or strikes except those specifically directed at the CONSULTANT; and
- e) fire or explosion other than at the premises of the CONSULTANT or at the location was caused by the negligence of the CONSULTANT.

4.4 Notwithstanding the foregoing, no extension of the period for completion of the PROJECT shall be granted in any of the following instances: (a) ordinary unfavorable weather conditions; (b) non-availability of equipment or materials to be furnished by the CONSULTANT; (c) labor problem or dispute involving the CONSULTANT'S employees, workers, or personnel or those of its sub-CONSULTANTS, agents, or suppliers; (d) when the reason given for the request for extension had already been considered in the determination of the original completion.

4.5 Upon the completion of the PROJECT, the CONSULTANT shall immediately thereafter remove all surplus materials, waste and rubbish from the premises, unless prevented by any unavoidable cause or causes in which case the AFAB shall give the CONSULTANT a reasonable period within which to do so. The CONSULTANT

shall indemnify the AFAB for any damages or losses incurred by the latter by reason of the failure of the CONSULTANT to remove such rubbish and materials.

## ARTICLE V LIQUIDATED DAMAGES

5.1 Time is of the essence in this Agreement. Should the CONSULTANT fail to complete the PROJECT or fails to satisfactorily complete the work within the period herein stipulated or within the period of extension granted by the AFAB, and the AFAB has certified in writing that the work could reasonably have been completed within the period specified herein or within the extended time, the CONSULTANT agrees:

- a. To pay liquidated damages, and not by way of penalty, in the amount equivalent to one tenth (1/10) of one percent (1%) of the cost of the unperformed portion of the PROJECT for each calendar day of delay, including Sundays and Holidays, but not more than ten percent (10%) of the contract amount, until the work is completed and accepted by the AFAB, in accordance with the formula and conditions set forth in the existing rules and prevailing rules and regulations; *Provided*, that the payment of liquidated damages shall not in any manner relieve the CONSULTANT from its obligations and responsibilities under this Agreement;
- b. To allow the AFAB to engage the services of another third party CONSULTANT to accomplish and finish the PROJECT. All expenses incurred by the AFAB shall be charged to the CONSULTANT, and any additional cost incurred in finishing the PROJECT in excess of the contract price shall be at the expense and for the account of the CONSULTANT. The right of the AFAB to take over the PROJECT under herein condition shall be without prejudice to its other rights provided elsewhere in this Agreement to proceed against the CONSULTANT or to which it may be entitled in law or equity.

5.2 It is further agreed and understood that the right of the AFAB to collect or receive the penalty charge and liquidated damages as compensation for delay in the circumstances herein stated, is in recognition by the parties of the expense and inconvenience likely to be incurred from any need to prove the loss and damage that will be suffered by the AFAB in the event of any such delay on the part of the CONSULTANT. The collection and/or payment of such sums as penalty charges or liquidated damages shall be without prejudice to its rights and remedies against the CONSULTANT provided elsewhere in this Agreement or to which the AFAB may be entitled in law or equity.



5.3 To give full force and effect to the foregoing, the CONSULTANT hereby, without the necessity of any further act and deed, has authorized the AFAB to deduct any amount that may be due under Section 5.1 (a) above, from any and all moneys or amounts due or which will become due to the CONSULTANT by virtue of this Agreement and/or to collect such amounts from the performance bond filed by the CONSULTANT in accordance with this Agreement.

## ARTICLE VI CHANGE ORDER AND/OR ADDITIONAL WORK

6.1 The AFAB may, at any time, by a written order to the CONSULTANT, make changes in the schedule and work required under this Agreement, subject to existing laws and prevailing rules and regulations. If any such change causes an increase or decrease in the work or the time required for performing the work, an equitable adjustment shall be made of the contract price and completion date upon mutual agreement of the PARTIES reflecting such adjustments by way of a written variation order.

6.2 Should the AFAB find it necessary to have any additional work carried out for purposes of the PROJECT in addition to the contracted work, such additional work will be carried immediately by the CONSULTANT upon receiving a written instruction from the AFAB. Adjustment in terms of additional cost or completion date, or both, will be reflected by written extra work order or through a supplemental contract, as agreed by the AFAB. Any work done without such written order shall be for the sole account of the CONSULTANT.

## ARTICLE VII PERFORMANCE SECURITY

7.1 Upon signing this Agreement, the CONSULTANT shall furnish the AFAB a performance security in the form of cash, bank guarantee or letter of credit, or surety bond, or any combination of the foregoing, as a guarantee for the performance of the contract work and to cover payments and obligations arising from this Agreement, subject to Section 32.2 of the Instruction to Bidders as well as existing laws and prevailing rules and regulations. Such performance security shall remain and continue to be full in force and effect until final completion of the PROJECT, and until the CONSULTANT has submitted to the AFAB the warranty bond under Article VIII of this Agreement.



7.2 Any changes in this Agreement (whether such changes increase or decrease the amount thereof) or any change in time or payment to the CONSULTANT or any changes, extensions, alterations, modifications or innovations mutually agreed upon in writing, shall in no way annul, release or effect the liability of the CONSULTANT and the surety or sureties on the bonds given by the CONSULTANT.

7.3 Any alteration, modification of changes in this Contract, or any of the documents attached and made integral part hereto, do not have to have the approval of the surety to bind the surety or the company issuing the surety and/or performance bond.

## ARTICLE VIII OWNERSHIP

8.1 The reports, drawings, documents and materials compiled or prepared in the course of the performance of the Services shall be absolute properties of AFAB and shall not be used by the CONSULTANT for other purposes without the prior written approval of AFAB.

8.2 Any equipment supplied by AFAB or for which payments were made or reimbursed shall become and remain the property of AFAB.

8.3 AFAB agrees to use reasonable means to protect Project Outputs from unauthorized use, reproduction or publication.

## ARTICLE IX REPRESENTATIONS AND WARRANTIES

9.1 The CONSULTANT warrants that it is a competent, qualified and experienced CONSULTANT, equipped, organized, insured and financed to perform the works and complete the PROJECT in an efficient and professional manner and meeting all of the requirements of this AGREEMENT.

9.2 The CONSULTANT represents and warrants to the AFAB that:

- a) It is a company duly organized, validly existing and is current on all payments to maintain such existence under the laws of the Republic of the Philippines.
- b) It has all necessary power and authority to carry on its business as presently conducted and to enter into and perform its obligations under this Agreement to which it is a party and each of the executions, delivery



and performance by it of this Agreement has been duly authorized by all necessary actions on its part, does not require any approval from any trustee, lessor or holder of any indebtedness or other obligation of it.

- c) There is no action, suit or proceeding, at law or in equity, or official investigation before or by any government authority, arbitration tribunal or other body pending or, to the best of its knowledge, threatened against or affecting it or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on its ability to perform its obligations under the Agreement or on the validity or enforceability of the Agreement.

9.3 The CONSULTANT represents that it had and shall maintain throughout the period of this Agreement the adequate capitalization, financial capability, technical know-how and manpower to undertake and complete the PROJECT.

9.4 The CONSULTANT warrants that, on or before the date of completion of the work, it shall have obtained any and all permits, clearances and approvals from the proper authorities in accordance with its undertaking.

9.5 The CONSULTANT shall perform the work necessary to complete the PROJECT and give all notices and comply with all other obligations under this Agreement and the Contract Documents promptly and with due diligence.

9.6 The CONSULTANT shall commence, perform and complete the PROJECT in an expeditious and diligent manner in accordance with this Agreement and the Contract Documents including any amendments thereto.

9.7 The CONSULTANT shall be fully responsible for the safety, protection, security and convenience of its personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by its project.

9.12 Should the CONSULTANT fail to comply with the preceding paragraph, it shall be perpetually disqualified from participating in any public bidding conducted by the AFAB, without prejudice to any available and necessary actions.

## ARTICLE X RIGHTS OF THE AFAB

10.1 The PARTIES agree that certain rights shall be accorded to the AFAB, including but not limited to the right to inspect the Project and discuss matters about the contract work, and the right to approve the contract, payments to the





CONSULTANT, change order or additional work, supplemental contracts, time extension and work suspension and resumption of suspended works.

10.2 The PARTIES agree that any breach of the provisions of this Agreement shall entitle the AFAB to suspend funding of the PROJECT or otherwise withhold release of any payments hereof, until such breach shall have been settled or remedied by the CONSULTANT to the AFAB's satisfaction.

## ARTICLE XI ACCEPTANCE OF WORK

11.1 No act of the AFAB nor any of its representatives supervising or directing the work, nor any extension of time for the completion of the PROJECT, shall be regarded as an acceptance of such work or any part therein, either wholly or in part. Acceptance of the work shall be evidenced only by the Certificate of Acceptance issued by the AFAB. Before any final payment and settlement for any claims on account of work done and materials furnished under this Agreement.

11.2 The CONSULTANT, upon completion of the project and as per requirement, shall submit the following:

- a. Five (5) copies of the reports on A4 paper. Electronic files of the reports shall also be submitted to AFAB. All production drawings and plans shall be done in CADD and/or GIS formats to be submitted to AFAB;
- b. 3-D architectural renderings of selected key sites, key buildings and landscape elements;
- c. Sworn affidavit stating that all wages and salaries of its staff and employees and all indebtedness connected with the PROJECT (including but not limited to claims of or credits to suppliers, sub-CONSULTANTS and other creditors of the CONSULTANT) have been fully settled; *Provided*, that in case of any unpaid claim or credit, the quit-claim or release and waiver duly executed by the concerned suppliers, sub-CONSULTANTS or creditors in favor of the AFAB; and,
- d. The warranty security under Article VIII of this Agreement.

## ARTICLE XII TERMINATION OF AGREEMENT

12.1 Termination by the AFAB or by the CONSULTANT, or mutual termination shall be based on the guidelines and conditions set forth in the existing laws and

prevailing rules and regulations. Over and above the said conditions, the AFAB has the right to terminate the Agreement on any of the following grounds:

- a. Delay in the completion of the work exceeding a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted by the AFAB in writing to the CONSULTANT. In such case the AFAB may forfeit the CONSULTANT's performance security and take-over the prosecution of the PROJECT or award the same to qualified entity through negotiated contract;
- b. Any change in ownership or control, whether arising from sale, assignment, transfer or other disposition of the capital stock of the CONSULTANT;
- c. If the CONSULTANT becomes insolvent, or a party to any voluntary or involuntary proceeding to seek relief from creditors or form bankruptcy, receivership, liquidation or the winding – up of its business; and
- d. Any other act or omission by the CONSULTANT that constitutes a material breach of the Agreement including the PROJECT/contract documents enumerated in Section 1.1 hereof, or unless otherwise terminated for failure of the CONSULTANT to perform its obligations under this Contract, in line with the Guidelines on Termination of Contracts issued by the Government Procurement Policy Board (GPPB Resolution No. 018-2004 dated December 2004).

12.2 The CONSULTANT shall promptly notify the AFAB in writing of any situation or occurrence beyond its reasonable control which makes it impossible to carry out its obligations under this Agreement. Upon confirmation in writing by the AFAB of the existence of any such event, the CONSULTANT shall be relieved from the liabilities for failure to carry out such obligation and it may thereupon terminate the Agreement by giving not less than thirty (30) days written notice to the AFAB.

### ARTICLE XIII REMEDIES AND WAIVER

13.1 All remedies herein given to the AFAB, and all the rights and remedies available to the AFAB by law shall be cumulative and concurrent. No termination of this Agreement shall deprive the AFAB of any of its remedies or action against the CONSULTANT for retention of payments or damages, for breach of any covenant of this Agreement; this right of action shall be in addition to any other remedies granted to the AFAB under existing laws, prevailing rules and regulations.



13.2 No inspection made by the AFAB or any of its representatives; nor any order by the AFAB for the payment of money; nor the payment after acceptance of the whole or part of the PROJECT, nor any extension of the contract time granted by the AFAB, nor any possession taken by the AFAB or its employees or representatives shall be construed as a waiver by the AFAB of any provision of this Agreement. Nor shall the bringing of any actions for the damages or breach of contract, or the resort to any other remedy, be construed as a waiver of the right of the AFAB to take over the PROJECT.

13.3 The CONSULTANT shall be responsible for, and shall indemnify and hold the hold the AFAB free and harmless from, any and all losses, costs, expenses and damages arising out of or in connection with any claim or cause of action in respect of any injury, sickness, disease, death or accident which may happen to any person or persons or any loss of or any damage to property on account of the prosecution of the works covered by this Contract. In this connection, the CONSULTANT shall provide all the necessary safeguards, warning signs and all safety precautions for all workers and third parties during the progress of the work.

#### ARTICLE XIV TAXES

14.1 In relation to this Agreement, the CONSULTANT shall pay taxes in full and on time. Failure to do so will entitle the AFAB to suspend the payment on the services delivered by the CONSULTANT.

14.2 For the duration of this Agreement, the CONSULTANT shall also present to the AFAB, on a quarterly basis, a tax clearance from the Bureau of Internal Revenue (BIR), as well as a copy of its income and business tax returns duly stamped and received by the BIR and duly validated with the tax payments made thereon.

#### ARTICLE XV EFFECTIVITY AND VALIDITY

15.1 This Agreement shall take effect upon the date of receipt by the CONSULTANT of the Notice to Proceed from the AFAB.

15.2 Republic Act No. 9184, also known as "The Government Procurement Reform Act", and its Implementing Rules and Regulations, as well as issuances of the Government Procurement Policy Board (GPPB) and the Conditions stated in the Bidding Documents, shall apply to this Agreement.



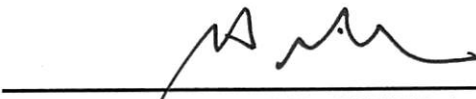
15.3 All notices called for by the terms of this Agreement shall be effective only at the time of written acknowledgment of receipt thereof, and only when received by the Parties to whom they are addressed.

15.4 This Agreement is executed and delivered in five (5) original copies.

**IN WITNESS WHEREOF**, the Parties have set their hands on the date and at the place first written above.

**AUTHORITY OF THE FREEPORT  
AREA OF BATAAN**

BY:

  
\_\_\_\_\_  
**EMMANUEL D. PINEDA**  
Chairman and Administrator

**UP PLANNING AND  
DEVELOPMENT RESEARCH  
FOUNDATION, INC.**

BY:

  
\_\_\_\_\_  
**MARIO R. DELOS REYES**  
President

**SIGNED IN THE PRESENCE OF:**

  
\_\_\_\_\_

  
\_\_\_\_\_





## ACKNOWLEDGMENT

Republic of the Philippines)

Mariveles, Bataan ) S.S.

BEFORE ME, this SEP 08 2017 of 2017 in Mariveles, Bataan, personally appeared:

NAME	COMPETENT EVIDENCE OF IDENTITY	DATE & PLACE OF ISSUE/EXPIRY
EMMANUEL D. PINEDA	Passport No. EC4011784	22 Apr 2015/DFA Manila/ 21 Apr. 2020
MARIO R. DELOS REYES	Passport No. EC 5115173	28 August 2015/ DFA Manila/ 27 August 2020

both known to me to be the same persons who executed the foregoing instrument and who acknowledged to me that the same is their free and voluntary act and deed, as well as the entities represented herein.

This instrument refers to a "Contract for Comprehensive Master Development Plan of the Freeport Area of Bataan" consisting of fourteen (14) pages, including the page whereon this acknowledgement is written, and signed by the Parties and their instrumental witnesses on each and every page thereof and sealed with my notarial seal.

IN WITNESS WHEREOF, I have hereunto set my hand on the date and at the place first written above.

Notary Public

Doc. No. 128 ;  
Page No. 27 ;  
Book No. XIV ;  
Series of 2017.

ATTY. ROSELIO J. SOLIVAR  
NOTARY PUBLIC IN QUEZON CITY  
AM Adm. Not. Com. No. NP-060 1-12-17 until 12-31-2018  
IBP O.R. No. 1038374 Jan. 2017 up to Dec. 2018  
PTR O.R. No. 3881630 C 01-12-17  
Roll No. 33832 / TIN #129-871-009  
MCLE No. V-0019296 valid from 04/15/2016 until 04/14/2019/PASIG CITY,  
Address: 31-F Harvard St. Cubao, Q.C.

## ACKNOWLEDGMENT

Republic of the Philippines)

Mariveles, Bataan ) S.S.

BEFORE ME, this \_\_\_\_\_ of SEP 13 2017 2017 in Mariveles, Bataan, personally appeared:

NAME	COMPETENT EVIDENCE OF IDENTITY	DATE & PLACE OF ISSUE/EXPIRY
EMMANUEL D. PINEDA	Passport No.EC4011784	22 Apr 2015/DFA Manila/ 21 Apr. 2020


both known to me to be the same persons who executed the foregoing instrument and who acknowledged to me that the same is their free and voluntary act and deed, as well as the entities represented herein.

This instrument refers to a "Contract for Comprehensive Master Development Plan of the Freeport Area of Bataan" consisting of fifteen (15) pages, including the page whereon this acknowledgement is written, and signed by the Parties and their instrumental witnesses on each and every page thereof and sealed with my notarial seal.

IN WITNESS WHEREOF, I have hereunto set my hand on the date and at the place first written above.

Notary Public

Doc. No. 456;  
Page No. 93;  
Book No. XXVI;  
Series of 2017.

  
**ABIGAIL F. ALMARIO**  
NOTARY PUBLIC for Bataan  
N.C. No. 2016-003-ML until 12/31/17  
FAB Post Office Bldg., Mariveles, Bataan  
PTR No. 617851; Mar. Bat. 01/03/2017  
IBP No. 1030333; Mar. Bat. 01/03/17  
Roll No. 51614



## ANNEX "A"

### SPECIAL CONDITIONS OF THE CONTRACT COMPREHENSIVE MASTER DEVELOPMENT PLAN OF THE FREEPORT AREA OF BATAAN (FAB)

#### 10 PROJECT OBJECTIVES

To formulate a new Comprehensive Master Development Plan for the 1,686.90- hectare FAB that is marketable, effective, viable, and in harmony with recent, current and planned developments within the region, including the Municipality of Mariveles and the Province of Bataan.

The specific objectives are as follows:

1. To **conduct** market study to determine land demand for specific future land using activities.
2. To **conduct** resource inventory and assessment to define the current situation.
3. To **analyze** physical constraints and opportunities and identify key development issues and concerns as bases for planning.
4. To **re-visit** and **update** the vision of the future development of FAB.
5. To **identify** future physical development scenarios based on assumed driving concepts.
6. To **identify** user and facility needs based on market trends/demands.
7. To **identify** spatial strategies including transport concepts as basis in formulating alternative Concept/Structure Plans.
8. To **engage** the client in the selection of the "preferred" Concept/Structure Plan as basis for detailed land use planning.
9. To **formulate** detailed land use plan showing mix of proposed and existing activity areas and infrastructure developments based on market demand study, land demand-land supply balancing, population projection, among other considerations.
10. To **recommend** land use policies and, subsequently, to formulate zoning and development guidelines and standards (DGS).
11. To **conduct** focused assessment of transport needs and plans, population projections, utility demand projections, and related activities.
12. To **prepare** Project Briefs with preliminary costings, Implementation Schedule and Phasing Plan across a fifteen (15) year time horizon.
13. To **formulate** a Business Plan to include changes or improvements in product offerings; marketing strategies, targets and projections; product

- positioning and pricing; and organizational requirements and support.
14. To formulate financial plans and projections.

## 20 THE PLANNING AREA (PA)

The Freeport Area of Bataan (FAB) covers an aggregate area of approximately 1,686.90 hectares. The map showing the geo-referenced boundaries of the Freeport Zone is provided in Annex "A" of the Terms of Reference (TOR), which document is also considered an integral part of the Contract.

## 30 SCOPE OF SERVICES

The scope of services of the Consultancy shall cover the following:

### A. Situational Analysis (SA)

The first phase of the project is intended to define and assess the current situation of the planning area (PA) across key development sectors. Also included in the situation analysis is a review of the current policy environment related to the Freeport Zone and its development. The objective is identification of key opportunities and constraints to the future development of FAB. These could be physical or spatial in nature, as well as non-physical/non-spatial. Also to be highlighted are key development-related issues and concerns, problems and challenges that the Authority of the Freeport Area of Bataan (AFAB) faces as it steers the growth and expansion of FAB. These problems and challenges may be existing or prospective, that is, likely to happen at a future date, especially if nothing is done to address determining or causal factors or elements. The existing land uses will also be mapped to reflect real time land usage and be characterized. Land use problems will also be identified as they may influence land use change or future land restructuring of FAB. The major activities to be performed are as follows:

- a. Conduct market study to determine future land uses including income generating component.
- b. Conduct of site surveys and assessment of current situation of the planning area to identify issues and concerns across key development sectors of FAB; and physical and non-physical constraints and opportunities.
- c. Compute land supply for expansion and redevelopment; delineate environmentally-constrained and developmentally-constrained areas through map overlay analysis using Geographic Information System



(GIS) software.

- d. Review of existing policy environment to identify applicable policies and guidelines that could influence future physical development and expansion.
- e. Formulation of the vision of the future development of the planning area including development goals and objectives, targets and strategies (GOTS).
- f. Determine current land supply available for future expansion; and land demand for specific future uses.
- g. Identify driving concepts and corresponding spatial strategies as basis for formulating alternative Concept/Structure plans.

## **B. Formulation of Conceptual Master Development Plan (CnMDP)**

Based on the situational analysis (SA), a development framework (DF) for FAB will be drawn up as basis for spatial planning. The DF will be presented during the visioning-planning workshops and will be validated by participating community stakeholders. The DF will include the approved Vision Statement on FAB's future development. The DF will be formulated through consensus-building activities. The vision of the future development of FAB, among other outputs, will be crafted at the outset of the planning process. In identified high growth locations within the planning area, there may be a need to determine feasibility of proposed future land using activities.

Activities in formulating at least two (2) Concept/Structure Plans include, among others: (i) matching land demand forecast with available land supply; (ii) spatial strategy formulation to determine relative location, size, and allocation of land for various proposed uses; (iii) selection of the preferred Concept/Structure Plan based on client review and evaluation. The selected option shall serve as reference or basis for detailed plans and studies. The output at this phase is called the Development Framework, which highlights two (2) Concept/Structure Plans. In the formulation of the CnMDP, the following major activities shall be performed:

- a. Crafting of Development Framework which sets the direction of development within the planning area and serves as basis for the formulation of driving concepts which translates abstract ideas into spatial terminology.
- b. Formulation of relevant spatial strategies as basis for the formulation of at least two (2) Concept/Structure Plans.
- c. Formulation of at least two (2) Concept/Structure Plans showing relative location of proposed land uses or new development areas, existing land uses, circulation network, ingress and egress, and other



relevant components of the built and un-built environments.

- d. Consultant facilitation of the selection of the preferred Concept/Structure Plan by concerned project stakeholders as basis for detailed planning and other special studies.
- e. Preparation and iteration of draft detailed land use plan; formulation of land use policies after approval of detailed land use plan.

**C. Formulation of preliminary/final Comprehensive Master Development Plan  
(p/f CmMDP)**

- a. Preparation of the pCmMDP will contain, among others, draft Land Use Plan including land use policies; draft Transport Infrastructure and Utilities Plans; draft Environmental Management Plan; draft Business Plan and Development Phasing; Investment Plan containing preliminary project briefs of priority infrastructure projects, and to include preliminary cost estimates to implement the pCmMDP.
- b. To bring the project from planning stage to implementation stage, necessary work items shall be included to secure the project's feasibility. Based on the pCmMDP, the following activities shall be performed: (i) Preliminary Cost Estimation; (ii) Economical and Financial Analysis; (iii) Project Development Phasing and (iv) Business Plan Formulation.
- c. Preparation of the fCmMDP shall include all approved plans and special studies contained in items (a) and (b) of this section of this Annex as well as that of the TOR including visual translations such as GIS-generated thematic, analytical and decision maps; and 3-D architectural renderings of selected key sites, key buildings and landscape elements.
- d. The fCmMDP shall include a block subdivision lay-out of new development areas within FAB, a landscape plan, conceptual engineering lay-out of new roads and drainage system; and architectural design of key buildings and landscape components.
- e. Design Standards and Guidelines (DSG) for existing and proposed development areas within FAB.
- f. The Transport Plan shall include parking requirements, vehicular access, signage, loading and unloading requirements, pedestrian system, and other relevant components.

**D. Financial Analysis**

The CONSULTANT shall perform Financial Analysis to assess the viability, stability and profitability of the CMDP. Financial Analysis of the project shall include:



- a. **Development Cost.** The CONSULTANT will determine the total cost of the development with respect to the plan. The CONSULTANT will take into consideration the replication cost of structures and facilities that may need to be relocated, development cost of utilities, infrastructures/roads, transport networks, and other significant outlays.
- b. **Development Phasing.** The CONSULTANT will suggest a Development Phasing Plan (if applicable) in which an anchor development will be identified and prioritize without compromising the development of the whole area. This is to maximize also the use of existing utilities and road networks, so that significant infrastructure investment can be properly phased over a longer period of time.
- c. **Financial Viability and Revenue Projections.** If applicable, the CONSULTANT will assess the financial viability of the plan and indicative financial returns and cash flow to AFAB. The CONSULTANT shall also project revenues that will be generated from the development.

#### 40 APPROVAL PROCESS

The fCmMDP shall be subject to the approval of AFAB's Administrator or his duly authorized representative. The CONSULTANT shall be involved throughout the following approval process:

- a. Preparation and submission of initial reports/plans;
- b. Large group consultations and focused group discussions;
- c. Revisions based on comments and/or inputs during the consultations and focused group discussions;
- d. Presentation of the final plans to AFAB Management and its pool of stakeholders;
- e. Revisions, if any, based on the comments and/or inputs of AFAB through the Technical Working Group (TWG) it set up to oversee implementation of this project;
- f. Presentation of all major reports to the AFAB Management or its duly authorized representative for approval; and,
- g. Revisions, if any, based on the comments and/or inputs of the AFAB Management and TWG.

#### 50 CONTRACT DURATION AND PROJECT DELIVERABLE OUTPUTS

The Project duration will be for **FIVE (5) MONTHS**, from the receipt by

the CONSULTANT of the Notice to Proceed, excluding the period within which the AFAB or its duly authorized representative reviews all major deliverable outputs. The following project outputs shall be generated by the CONSULTANT:

- a. Inception Report (IR);
- b. Market Study, and Area Profile and Existing Situation (APES) including relevant digital Thematic and Analytical Maps;
- c. CnMDP showing at least two (2) Concept/Structure Plans as basis for selection or the preferred option, detailing of the land use plan based on the preferred option, and basis of the formulation of special studies and detailed plans;
- d. pCmMDP and fCmMDP to include detailed plans and studies such as, among others: land use plan, circulation plan, block subdivision lay-out, landscape plan, conceptual engineering lay-out of roads and drainage system, phasing plan, architectural design of key building components and landscape elements;
- e. Regular consultation meetings between Consultant Project Team and the Technical Working Group (TWG) set up by AFAB Top Management as its duly authorized representative in this project. Phased presentation of outputs to the Client; and,
- f. Regular Progress Report shall be submitted after submission of Inception Report that shall include, among others, project monitoring updates, identification of issues and challenges encountered by the CONSULTANT, and the solutions provided.

## 60 PROFESSIONAL STAFF TO BE ASSIGNED TO THE PROJECT

The AFAB requires the CONSULTANT to create a project team to be composed of the following required key technical personnel with the following minimum qualifications. Additional technical personnel may be added at no cost to AFAB. But their inclusion will have NO bearing on the evaluation of the Technical Proposal.

Key Personnel	Minimum Qualifications
<b>Team Leader / Urban Planner</b>	Licensed Environmental Planner (EP); Master's Degree holder in Urban and Regional Planning, Environmental Planning or related fields; Minimum of 15 years work experience as an EP; Involvement in at least five (5) MDP projects, past and ongoing.
<b>Deputy Team Leader / Financial-Economic Analyst</b>	Licensed Environmental Planner (EP); Minimum of 15 years of work experience as an EP; Minimum 10

<b>cum Investment Programming Specialist</b>	years experience in financial-economic analysis in EP related work; Experience in Investment Programming in EP related work, past and ongoing.
<b>Market Specialist cum Business Planner</b>	Minimum of 20 years of work experience in banking or related fields; Minimum 10 year experience in performing market studies or similar work including business planning; Involvement in five (5) past projects as a Market Specialist
<b>Land Use Planner</b>	Licensed Environmental Planner (EP); Master's Degree holder in Urban and Regional Planning, Environmental Planning or related field of planning; Minimum of 10 years of work experience as an EP; Involvement in at least five (5) MDP projects, past and ongoing.
<b>Institutional Development Specialist</b>	Licensed Environmental Planner (EP); Master's Degree holder in Urban and Regional Planning, Environmental Planning or related field of planning; Minimum of 10 years of work experience as an EP; Minimum five (5) years experience as an Institutional Development Planner and or Legal Specialist in similar projects.
<b>Social Development Planner</b>	Licensed Environmental Planner (EP); Master's Degree holder in Urban and Regional Planning, Environmental Planning or related field of planning; Minimum of 10 years of work experience as an EP; Minimum five (5) years experience as a Social Development Planner in similar projects
<b>Transport Planner</b>	Licensed Environmental Planner (EP); Master's Degree holder in Transport Planning or related fields; Minimum of 10 years work experience as a Transport Planner; Involvement in at least five (5) similar projects, past and ongoing.
<b>Infrastructure Planner (Roads and Drainage)</b>	Licensed Civil Engineer (CE); Master's Degree holder; Minimum of 10 years work experience as a Civil Engineer; Involvement in at least five (5) similar projects, past and ongoing.
<b>Infrastructure Planner (Other Utility Systems)</b>	Licensed Engineer; Master's Degree holder; Minimum of 10 years work experience as an Engineer; Involvement in at least five (5) similar projects, past and ongoing.



<b>Environmental Management Specialist</b>	Licensed Environmental Planner (EP); Master's Degree holder in Urban and Regional Planning, Environmental Planning or related field of planning; Minimum of 15 years of work experience as an EP; Involvement in at least five (5) MDP projects, past and ongoing; Minimum of 10 experience in EIA Preparation, Environmental Scoping, Environmental Scanning and similar activities.
<b>Architect</b>	Licensed Architect (Ar); Master's Degree holder in Architecture, Urban and Regional Planning or related fields; Minimum of 15 years of work experience as an Ar; Involvement in at least five (5) MDP projects, past and ongoing; Minimum of 10 experience in architectural design, site development planning and similar activities.
<b>Landscape Architect</b>	Licensed Landscape Architect (LA); Master's Degree holder in Landscape Architecture, or related fields; Minimum of 15 years of work experience as an LA.
<b>Geographic Information System (GIS) Mapping Specialist</b>	Minimum of 15 years of work experience in GIS Mapping; Involvement in at least five (5) projects of similar nature

## 70 PRODUCTION REQUIREMENTS

The CONSULTANT shall submit to AFAB the following:

- a. Five (5) copies of the reports on A4 paper. Electronic files of the reports shall also be submitted to AFAB. All production drawings and plans shall be done in CAD and/or GIS formats to be submitted to AFAB;
- b. 3-D architectural renderings of selected key sites, key buildings and landscape elements.

## 80 PROGRESS REPORT AND PROJECT ACTIVITIES STATUS REPORT

The CONSULTANT shall submit to AFAB a regular progress report highlighting project updates and status of accomplishment including project issues and concerns, agreements made between Client and Consultant, among other important aspects of project monitoring.

The CONSULTANT shall also submit to AFAB a work program presented through a Gantt Chart showing detailed activities and status of accomplishment.

## 90 ADDITIONAL TERMS AND CONDITIONS

### a. Independent Contractor

The Contract of the CONSULTANT with AFAB is strictly and solely that of an independent contractor and no employer-employee relationship is hereby created or shall arise between the CONSULTANT or his employees or agents and AFAB by reason or as consequence hereof. As such, AFAB shall not be liable for any damage, injury or death caused to the CONSULTANT's employees and agents or third persons.

The CONSULTANT may employ other consultants in the performance of its work; *Provided that*, the CONSULTANT shall be responsible for and shall warrant the quality of the work performed by the employed consultants as well as on its own account, provide their corresponding compensation.

Subcontracting is not allowed

### b. Alteration and Additional Works

Revisions or additional works that become necessary due to the errors or fault of the CONSULTANT or those which are necessary to comply with the requirements of the project shall be done by the CONSULTANT at no additional cost to AFAB.

### c. Delay: Extension of Time: Force Majeure

Any delay on the agreed completion date from failure of performance by either of the party shall not constitute a default hereunder nor shall give rise to any claim if such delay or failure is wholly attributable to acts of God, any act of sabotage, war, armed invasion, revolution, insurrection, blockade, riot, declaration of national emergency, industry-wide strike, or any other cause beyond the control of either Party, or which cannot be avoided by the CONSULTANT or AFAB despite the exercise of due diligence.

Within ten (10) days from the occurrence of such event, the Party affected shall notify in writing the other Party of such event of force majeure and of the obligations or part of the works which was not

performed due to directly to the occurrence of such force majeure. Immediately after such notification, the parties shall meet to discuss and agree on the appropriate steps/measures to be taken to minimize the effect(s) of the force majeure: provided that the party affected shall be entitled to an extension of the contract time for the number of days of the delay incurred by reason of the causes above mentioned.

**d. Ownership of Reports and Documents**

The reports, drawings, documents and materials compiled or prepared in the course of the performance of the Services shall be absolute properties of AFAB and shall not be used by the CONSULTANT for other purposes without the prior written approval of AFAB. Any equipment supplied by AFAB or for which payments were made or reimbursed shall become and remain the property of AFAB.

