

AGREEMENT FOR THE HIRING OF CONSULTANCY FIRM FOR THE PRE-CONSTRUCTION SERVICES FOR THE DFA RETROFITTING PROJECT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement for the procurement of HIRING OF CONSULTANCY FIRM FOR THE PRE-CONSTRUCTION SERVICES FOR THE DFA RETROFITTING PROJECT, entered into in Pasay City, Philippines, on 22 NOV 2023, between the:

DEPARTMENT OF FOREIGN AFFAIRS, (hereafter, the PROCURING ENTITY), with principal office address at 2330 Roxas Blvd., Pasay City, 1300 Metro Manila, represented by its Undersecretary for Administration and Head of the Procuring Entity (HOPE) **HONORABLE ANTONIO A. MORALES**,

and

PALAFIX ASSOCIATES (hereinafter, the CONTRACTOR), a company duly organized and existing under and by virtue of the laws of the Philippines, as evidenced by the submitted SEC Registration dated 19 December 1991 as ANNEX "A", with business address at 5/F PCCI Corporate, 118 L.P. Leviste St., Salcedo Village, Makati City 1227 represented by **ARCH. ENP. FELINO A. PALAFIX JR.**, who is duly authorized to enter into this Agreement pursuant to the Omnibus Sworn Statement dated 10 October 2023, copy of which is attached as ANNEX "B" and made an integral part of this AGREEMENT.

WITNESSETH:

WHEREAS, the PROCURING ENTITY invited bids for the procurement of the Department's HIRING OF CONSULTANCY FIRM FOR THE PRE-CONSTRUCTION SERVICES FOR THE DFA RETROFITTING PROJECT to be completed on or before 31 December 2023 and has accepted a bid by the CONTRACTOR to provide the said services in the amount of **Nine Million Five Hundred Thousand and Eight Pesos (Php 9,500,008.00) only**, (hereinafter, the Contract Price) inclusive of all applicable taxes and other lawful charges.

WHEREAS, this Agreement, undertaken pursuant to DFA Bids and Awards Committee BAC Resolution No. SMC-PB-32-2023-CS dated 14 NOV 2023, and Notice of Award (ANNEX "C"), complies with the applicable provisions of Republic Act No. 9184 and its Implementing Rules and Regulations;

NOW, THEREFORE, for and in consideration of the foregoing premises, the PARTIES agree as follows:

1. The relevant definitions and provisions in the Philippine Bidding Documents which are not otherwise provided herein or in any of the annexes to this Agreement shall form part of the contract;
2. The following Annexes are also attached and made integral parts of this
3. Agreement:
 - 3.1. Annex "D" - Eligibility Documents
 - 3.2. Annex "E" - Certificate of Availability of Fund/s



- 3.3. Annex "F" - Technical Specifications / Terms of Reference
- 3.4. Annex "G" - General Conditions of the Contract
- 3.5. Annex "H" - Special Conditions of the Contract
- 3.6. Annex "I" - Performance Security Certificate

In case of conflict or inconsistencies between or among the provisions of this Agreement and any of the documents annexed to this Agreement, the provisions of the Technical Specifications / Terms of Reference (ANNEX "F") shall be controlling.

- 4. The CONTRACTOR shall deliver the goods and services to the PROCURING ENTITY within the period prescribed in the Technical Specifications / Terms of Reference.
- 5. The CONTRACTOR shall ensure that each of its personnel/employees assigned to enter and perform work in the premises of the Procuring Entity and to partake in the execution and implementation of this Agreement shall execute and sign a Non-Disclosure Agreement to be submitted to the Procuring Entity prior to the commencement of their services. Both Parties hereby agree to keep confidential all information obtained in connection with this Agreement, including any technical drawings and plans, and will implement and maintain safeguards to further ensure and protect the confidentiality of such information. Such confidential information shall not, without the prior written consent of the Procuring Entity, be disclosed or used for purposes other than those necessary for implementing the objectives of this Agreement. This duty of confidentiality shall survive the duration of this Agreement.
- 6. For and in consideration of the performance of services, the PROCURING ENTITY shall pay the CONTRACTOR the above-mentioned Contract Price. The terms of payment shall be in accordance with the provisions stated in item "XIV" of the Technical Specifications, which is attached to and made an integral part of this Agreement.
- 7. This Agreement shall be effective upon compliance with the issued Notice to Proceed or upon the signing of this Agreement for a period of Six (6) months, or until compliance by both Parties of their respective undertakings including the expiration of the Warranties hereunder, whichever occurs last, unless earlier terminated.
- 8. This Agreement shall be binding on the parties' respective successors or assigns.
- 9. The general provisions of this Agreement are as follows:
 - a. **Dispute Resolution.** – The Parties shall exert their best effort/s to amicably resolve and settle in good faith any dispute arising out of or in relation to this Agreement through negotiations. In the event that an amicable settlement cannot be reached within sixty (60) days from the date on which either Party has served written notice thereof on the other party, the Parties agree to settle the matter with finality by submitting the same for arbitration in accordance with the Philippine Dispute Resolution Center, Inc.'s (PDRCI) rules and regulations, and shall be governed by Philippine law. The arbitration proceedings, including all records, documents, pleadings, orders



and judgments filed or rendered in pursuant thereto, shall be kept confidential and shall be in the English language. The seat and venue of arbitration shall be Pasay City, Metro Manila, Philippines to the exclusion of all other venues. Nothing in this Agreement shall prevent the Parties from applying to a Philippine court of a competent jurisdiction for provisional or interim measures or injunctive relief as may be necessary to safeguard the property or rights, as may be the subject matter of the dispute.

- b. **Governing Law and Jurisdiction.** – This Agreement shall be governed, construed, and enforced in accordance with Philippine law, rules, and regulations.
- c. **Liability of the Contractor** - The Contractor's liability under this Contract shall be as provided by the laws of the Republic of the Philippines.
- d. **No Employer-Employee Relationship** - This Contract does not establish any employer-employee relationship between the DFA, the Contractor, being an independent contractor, and the latter's employees, agents, representatives, or subcontractors.
- e. **Indemnity** - The Contractor shall hold the DFA free and harmless from, and hereby binds and obligates itself to indemnify the DFA for, any and all liabilities, losses, damages, injuries including death, claims, demands, suits, proceedings, judgments, awards, fines, penalties, and all expenses, legal or otherwise, of whatever kind and nature arising from and by reason of this Contract, due to the fault, negligence, act, omission, delays, conduct, breach of trust, or non-observance or violation of any provision of this Contract by the Contractor and/or of its employees, agents, representatives, or sub-contractor.
- f. **Force Majeure** - The DFA and the Contractor shall not be liable in any way whatsoever for delays or failure in the performance resulting from acts beyond their reasonable control, which may not be overcome by due diligence. Such acts shall include but not be limited to acts of God, strikes, lock outs, labor disputes, material shortages, riots, war, governmental regulation imposed after the fact, flood, fire, earthquake, power outages or other such natural disasters. The obligation of the DFA and the Contractor in so far as they are affected by such occurrence, shall be suspended during the continuance of any inability so caused, and such inability shall not be a breach of this Contract.
- g. **Waiver of Rights** - No failure, omission or delay of any of the Parties in exercising any of its right, privileges and remedies hereunder shall operate as a waiver thereof. No waiver or departure from the terms of this Contract shall be valid unless made in writing and signed by the Party's authorized representative. Such waiver shall be effective only in the specific instance and for the purpose for which it is given.
- h. Neither party nor any of its officers, directors, managers, employees, agents, and representatives shall be liable to the other party or any of its officers, directors, managers, employees, agents, and representatives for

any loss, liability, damage or expense arising out of or in connection with the performance of any services contemplated in this Agreement, unless such loss, liability, damage or expense shall be proven to result directly from the willful misconduct or negligence of such officer, director, manager, employee, agent, or representative.

- i. Any other contract or agreement entered into by the Contractor and a third party for the implementation of this Agreement, shall be exclusively between such parties, to the exclusion of the Procuring Entity. The Contractor warrants that it shall hold free and harmless the Procuring Entity from any and all such suits, and in no event shall it be held liable to such third parties for any special, incidental, indirect, consequential or punitive damages relating to the conduct or completion of the project.
 - j. Both parties warrant that they have not assigned and will not assign to any third party any cause of action, obligation, or demand of any nature whatsoever relating to any matter covered by this Agreement without the prior written consent of the other party.
 - k. This Agreement, the GCC, Special Conditions of the Contract (SCC) and the Technical Specifications encapsulate the full agreement between the Parties and any subsequent alteration, modification or amendment of the aforementioned documents or any of their provisions shall be subject to mutual consent of both Parties and shall be made in writing.
10. Any amendment of the Contract shall be mutually agreed upon by the Parties in writing.
11. The invalidity in whole or in part of any clause in these terms and conditions shall not affect the validity of the remainder of such clause of these terms and conditions.

If any term or condition of this Contract is declared invalid or contrary to law, the other terms or conditions that are not covered by such declaration shall remain valid and binding. The Parties shall amend the term or condition declared invalid or contrary to law, to conform to the subject and objective thereof.

IN WITNESS WHEREOF, the Parties through their authorized representatives hereto have signed this AGREEMENT on 22 NOV 2023, in Pasay City, Metro Manila.

For the Procuring Entity:

DEPARTMENT OF FOREIGN AFFAIRS


By: **HON. ANTONIO A. MORALES**
Undersecretary for Administration and
Head of the Procuring Entity

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For the Contractor:

PALAFIX ASSOCIATES


By: **FELINO A. PALAFOX JR.**
Authorized Representative

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WITNESSES


MINDARADAT R. MAMAD
CHIEF ACCOUNTANT

DFA Chief Accountant


PALAFOX ASSOCIATES

ACKNOWLEDGEMENT
Republic of the Philippines

BEFORE ME, a NOTARY PUBLIC for and in the City of Pasay, Philippines, on 22 NOV 2023, personally appeared HONORABLE ANTONIO A. MORALES, Undersecretary for Administration of the Department of Foreign Affairs and ARCHITECT FELINO A. PALAFOX JR., Authorized Representative of PALAFOX ASSOCIATES, known to me to be the same persons who executed the foregoing HIRING OF CONSULTANCY FIRM FOR THE PRE-CONSTRUCTION SERVICES FOR THE DFA RETROFITTING PROJECT which instrument consists of _____ pages including the page on which this acknowledgment is written and the Annexes attached thereto, all pages of which have been signed by said PARTIES and their witnesses, and who acknowledged to me that the same is their free and voluntary act and deed and of the entities they represent.

The Philippine Government-Issued ID of the Parties were exhibited to me, the same bearing:

NAME	ID No.	PLACE OF ISSUE	DATE OF ISSUE
ANTONIO A. MORALES	P0009237A	DFA MANILA	07 DEC 2021
FELINO A. PALAFOX JR.	0003725		09 NOV 1972

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day, year and in the place above written.

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ATTY. IMELDA A. PANIS
NOTARY PUBLIC Valid Until Dec. 31, 2023
PTR NO. 0097589 Jan. 3, 2023
IBP Lifetime Member No. 08305 Roll No. 52814
MCLE No. VI-0029369 Nov. 11, 2022 Until 2025
Commission No. 2019-082
1091 N. Lopez St. Ermita, Manila
09776885386