

CONSULTANCY CONTRACT
(Design Consulting Services of the Construction of School of Management (SOM) Building
Phase 3 [PBM No. 2024-02])

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 ANNIE E. MURAO, Ph.D.**, hereinafter referred to as the "**UNIVERSITY**";

and

The **BMC ARCHITECT STUDIO**, an entity duly organized and existing under the laws of the Republic of the Philippines, with address at Unit 13 G/F Traveller's Inn Building, Km. 5, Guadalupe Village, Brgy. Matina, Davao City, represented herein by its Proprietor, **AR. BRIAN M. CABACTULAN, UAP, PIA** hereinafter referred to as the "**CONSULTANT**".

(Attached as **Annex "A"** is the DTI Certificate of BMC Architect Studio.)

WHEREAS, the **UNIVERSITY** is desirous that the **CONSULTANT** execute **Design Consulting Services of the Construction of School of Management (SOM) Building Phase 3 (PBM No. 2024-02)**, hereafter called "the Services" and the **UNIVERSITY** has accepted the Bid for **Four Million One Hundred Twenty Thousand Nine Hundred Forty-Nine Pesos 72/100 (P4,120,949.72)** by the **CONSULTANT** for the execution and completion of such Works and the remedying of any defects therein.

WHEREAS, the Design Consulting Services of the Construction of School of Management (SOM) Building Phase 3 (PBM No. 2024-02) referred to in the Title ("*the Services*") actually refers to the **Detailed Architectural and Engineering Design (DAED) Consulting Services for the Construction of School of Management (SOM) Building Phase 3** as provided in the Project Manual Volume 1 Terms of Reference for Detailed Architectural and Engineering Design (DAED) Services issued by the Campus Planning and Development Office of the Vice Chancellor for Administration - University of the Philippines Mindanao.

WHEREAS, the abovementioned Services cover **THE DESIGN** of the UP Mindanao Two-storey School of Management Building Phase 3, located on an approximately 7,700 square meters lot area situated north of the Campus Core, which is within the designated Academic Zone in the ExeCom-approved UP Mindanao Campus Land Use Plan of 2016.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. SERVICES

- i. The **CONSULTANT** (Attached as Annex "B" is the Omnibus Sworn Statement Affidavit of Ar. Brian M. Cabactulan) shall perform the services specified in **Annex C**, "Terms of Reference", which is made an integral part of this Contract ("the Services").
- ii. The **CONSULTANT** shall provide the personnel listed in **Annex D**, "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 Part 1 General Project Information,

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 RECEIVED: SEP 23 2024
 TIME: _____

Item 7.1 of the Terms of Reference and TPF.4 Technical proposal submitted by the bidder; "Annex E".

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 **Four Million One Hundred Twenty Thousand Nine Hundred Forty-Nine Pesos 72/100 (P4,120,949.72)**. 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, subject to a retention money of 10% of the amount due to the CONSULTANT prior to any deduction.

On the other hand, the remaining 20% intended for the periodic visits shall be released after 75% completion of the Construction Phase of the Project (part 1, Item 7.1 of the TOR).

- a. However, if deemed expedient, CPDO may issue the Certificate of Acceptance at an earlier time as a requirement for the release of the remaining 20% intended for the periodic visits¹ of the CONSULTANT upon the posting of a Guarantee Bond equivalent to 20% of the project cost and the execution of an Affidavit of Undertaking, committing themselves to performing these responsibilities at a later date and at no additional costs to

¹ Please Refer to the 2010 Standards of Professional Practice (SPP) under 2.6 Construction Phase, Item 2.6.3 and 2.6.5, stating to wit:

Item 2.6.3: xxx The Architect makes periodic visits to the project site to familiarize himself with the general progress and quality of work and to ascertain that the work is proceeding in accordance with the Contract Documents. The Architects shall not be required to make exhaustive or continuous 8-hour on-site supervision to check on the quality of the work involved and shall not be held responsible for the Contractor's failure to carry out the Construction work in accordance with the Contract Documents. During such project site visits and on the basis of his observations, he shall report to the Client defects and deficiencies noted in the work of Contractors, and shall condemn work found to conform to the Contract Documents.

Item 2.6.5: xxx Should more extensive inspection or full-time (8-hours) construction supervision be required by the Client, a separate full-time supervisor shall be hired and agreed upon by the Owner and the Architect subject to the Conditions provided in the Standards of Professional Practice (SPP) Document.

the University (TOR Part V, Item 2.0 Completion, Final Acceptance and Payment).

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

The Retention Money may be released, subject to the following, to wit:

- i. As an additional requirement, the CONSULTANT as the Designer shall provide the signed **Building Permit Forms** as Architect of Record for the project together with the appropriate design professionals. In the event that the permits require updates for signature and/or licenses of the design professionals during the implementation of the Project, the CONSULTANT/designer shall provide the same with no additional charge.
- ii. Likewise, the CONSULTANT as designer and Architect on Record and the appropriate Design Professionals shall also sign the Occupancy Permit Forms, *Provided that*, their plans and designs have been followed accordingly and *Provided further, that*, the Contractor does no change nor modifications during the Project Implementation.
- iii. Any changes from the plans or works performed by the Contractor or the UNIVERSITY during the Project Implementation which does not conform to the Contract Documents submitted by the CONSULTANT as its Designer and Architect of record shall RELIEVE the latter and the Design Professionals from signing the Occupancy Permit.
- iv. Should the abovementioned circumstance apply, all the cost implications for the preparation of the "as-built" plans and fees for the CONSULTANT and the Designer Professionals shall be borne by the CONTRACTOR.

Payments for other "Services" apart from those referred to under Part 1 General Project Information, Item 7.1 of the Terms of Reference (Annex F) does not form part of the Contract Bid. Any fees incurred outside of the "as-built" plans which will be required by the UNIVERSITY after the Design Phase but within the Construction Phase shall be borne jointly and severally by the UNIVERSITY and the CONTRACTOR.

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 proprietary 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 proprietary 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.

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 CONSULTANT as Designer and Architect of record, 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 the CONSULTANT as Designer and Architect of record.

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.

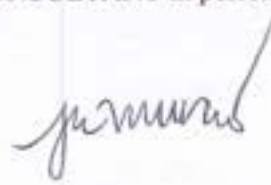
10. ASSIGNMENT

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 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 decreased 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. LIABILITY CLAUSE

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

15. AMENDMENTS AND REVISIONS

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

16. APPLICABLE LAWS

Provisions in the republic Act 9184 and its Implementing Rules and Regulations shall be deemed applicable. Other relevant laws and jurisprudence are suppletory in nature. In case of inconsistency in the provisions in this contract, RA No. 9184 and its IRR shall prevail.

IN WITNESS whereof, the parties hereto have caused this Agreement to be executed this

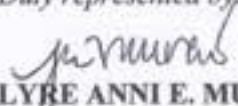
16 SEP 2024

**UNIVERSITY OF THE PHILIPPINES
MINDANAO**

BMC ARCHITECT STUDIO

Duly represented by

Duly Represented by


LYRE ANNI E. MURAO, Ph.D.
Chancellor


AR. BRIAN M. CABACTULAN, UAP, PIA
Proprietor

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)s.s.
X.....X

ACKNOWLEDGMENT

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

Name	Gov't Issued ID	Date Issued
1. Lyre Anni E. Murao	L02-06-003064	07/03/2018
2. Brian M. Cabactulan	PRC 0030734	02/08/2013

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.

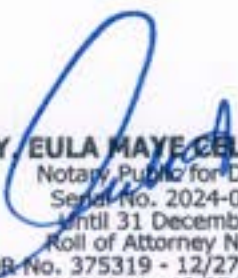
This instrument consisting of six (6) pages including this page where the Acknowledgment is written, refers to a Contract Agreement between the UNIVERSITY OF THE PHILIPPINES MINDANAO and BMC ARCHITECT STUDIO. It has been signed by the parties and their instrumental witnesses on each and every page.

WITNESS MY HAND AND NOTARIAL SEAL this 8 SEP 2024 at

DAVAO CITY

Doc. No. 12 Page
No. 4; Book No. VM
; Series of 2024.

ATTY. EULA MAYE CELAINE P. ARIAS


Notary Public for Davao City
Serial No. 2024-089-2025
Until 31 December 2025
Roll of Attorney No. 76125
IBPOB No. 375319 - 12/27/2023 - Davao City
PTR No. 9288804 - 12/27/2023 - Davao City
MCLE Compliance (New Lawyer, Admitted 04 May 2022)
Room 6 Marco Building, Pichon St., Brgy. 39-D (Fob.), Davao City