

SITE DEVELOPMENT AGREEMENT

This Agreement is made by and between:

SOCIAL HOUSING FINANCE CORPORATION, a government-owned and controlled corporation duly created under E.O. 272, Series of 2004, with office address at Banco de Oro Plaza, 8737 Paseo de Roxas Avenue, Makati City, represented by its President, **ARNOLFO RICARDO B. CABLING**, hereinafter referred as the "SHFC";

AND

FIAT CONSTRUCTION SERVICES, a private construction company, operating under the laws of the Philippines, with address at Ambol Compound Highway, Brgy. Saber, Marawi City, represented herein by its owner, **FAROUK M. MACARAMBON, SR.**, hereinafter referred to as the "CONTRACTOR";

WITNESSETH: That

WHEREAS, SHFC has decided to undertake the project for the "SITE PLANNING AND DEVELOPMENT FOR THE AMPUA PROPERTY LOCATED IN BRGY. DULAY WEST, MARAWI CITY UNDER THE REBUILDING MARAWI THROUGH COMMUNITY-DRIVEN SHELTER AND LIVELIHOOD SUPPORT IN MARAWI CITY", hereinafter referred to as the "PROJECT";

WHEREAS, SHFC Board of Director approved the conduct of the procurement of contractors for the development of the two (2) properties, thru Negotiated Procurement for Emergency Cases (Board Resolution No. 734, series of 2019);

WHEREAS, SHFC Bids and Awards Committee (BAC) approved the conduct of the procurement of contractors for the development of the two (2) properties, through Negotiated Procurement for Emergency Cases per 2016 revised IRR of the Government Procurement Act or RA 9184, section 53;

WHEREAS, the BAC Secretariat for Infrastructure sent out letters of invitation to bid to two (2) contractors, to wit:

1. KOUZBARY BUILDERS
2. FIAT CONSTRUCTION SERVICES

Of the two (2) contractors, only FIAT CONSTRUCTION SERVICES submitted its bid and emerged as the single calculated and-responsive bid for the project.

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

ARTICLE I SCOPE OF WORK

1.1 The CONTRACTOR shall:

a. In consideration of the payment to be made by SHFC, agrees to review the basic design parameters and detailed scope of works. The contractor shall ensure that it has all the data and information they need, which will be used to define project design criteria and will serve as basis for any changed conditions and establish project cost estimates. Should there be data or information which is unavailable with the SHFC and landowners, the contractor shall carry out

the needed testing / investigation to complete the needed design data;

b. Conduct the appropriate site survey including staking, establishment of horizontal and vertical control points, benchmarks and topographic surveys, should the contractor deem necessary.

- c. Inspect the site and its surroundings and orient themselves on the following;
- c.1. Location and nature of work;
 - c.2. Climatic conditions;
 - c.3. Nature and condition of the terrain;
 - c.4. Geologic conditions at the site;
 - c.5. Transportation and communication facilities;
 - c.6. Availability of construction materials, labor, water services, electric and power supply
 - c.7. Location and extent of aggregate sources; and
 - c.8. Other factors/risks that may affect the cost, duration and execution of work.

d. Provision of complete set of Site development plans, architectural/structural detail/landscape design concept and details/design of box culvert or equivalent structure in accordance with Project Principles and General Codes and Standards as stated in the Terms of Reference;

e. Process and secure all necessary permits as required by authorities for the preparation, execution and upon completion of the contract. Further, they shall coordinate with other agencies and pay the corresponding fees incidental to the acquisition of the required permits.

f. Shall perform the following site development and construction activities but is not limited to the following:

f.1. Mobilize and bring out into work all personnel, plant and equipment, in accordance with the approved construction program, equipment moving and utilization schedule and manpower schedule, from its regular place of business into the site to undertake the project. Mobilization shall include obtaining and transporting to the jobsite the equipment, materials, tools, personnel and construction plant and all necessary items for the execution and completion of the work and shall also include the setting up and verification of all equipment and instruments until it is rendered operable.

f.2. General site clearing operations include the removal of demolished materials and objectionable matter, protection of existing structures / facilities left functional and clearing to allow for new construction.

f.3. The design for on-site and off-site (box culvert) works and quality of structural materials to be used shall be in conformity to the governing laws and to the acceptable engineering practices.

ARTICLE II CONTRACT DOCUMENTS

2.1 The following Contract Documents are incorporated hereto and made integral part of this Agreement:

- a. Request for Proposal (Annex "A");
- b. Submitted Proposal (Annex "B");
- c. Terms of Reference (Annex "C")

2.2 The terms, conditions, stipulations, and warranties under the foregoing Contract Documents are deemed part of this Agreement. In case of doubt or conflict between and among items or provisions of the Contract Documents, and/or between and among any of the Contract

Documents and this Agreement, the CONTRACTOR shall refer the same in writing to SHFC for clarification and guidance. The clarification or determination made by SHFC shall be binding and conclusive upon the parties.

2.3 The CONTRACTOR shall, under no circumstances, make any change or alteration in the plans, conditions, and specifications of the PROJECT without prior written approval of SHFC.

2.4 The parties may, in writing, agree to any revision, alteration or addition to the terms and conditions of this Agreement or the Contract Documents.

ARTICLE III CONTRACT PRICE

3.1 In consideration of the performance and accomplishment of the PROJECT, SHFC shall pay the CONTRACTOR the total amount of **THIRTY FOUR MILLION ONE HUNDRED NINETY ONE THOUSAND FOUR HUNDRED SEVENTY NINE PESOS AND EIGHTY CENTAVOS** (Php 34,191,479.80), inclusive of all duties and taxes which may accrue by virtue of the PROJECT.

3.2 No changes shall be made on the Contract Price by reason of escalation in currency, the price of materials, tools, equipment, or labor supervening during the course of the PROJECT, except in accordance with guidelines provided by law.

3.3 Should there be a variation order (either change order or extra work order); the provisions of the "Contract Implementation Guidelines for the procurement of Infrastructure Projects" shall be applied.

3.4 The payment for the project shall be released in tranches, to wit:

3.4.1. 1st tranche: Fifteen percent (15%) of the total contract price representing mobilization fund. The contractor shall submit written request after the Notice to Proceed is released to the contractor.

3.4.2. 2nd tranche: Percentage accomplishment must at least be 20%. The contractor shall submit the following; a.) Statement of work accomplishment (SWA) indicating the percentage of work progress signed by the contractor, b.) pictures of the project together with color coded plans showing actual progress, c.) Billing Cost, and d.) updated work schedule (target vs. accomplishment)

3.4.3. 3rd tranche: Percentage accomplishment must be at least 60%. The contractor shall submit the following; a.) Statement of work accomplishment (SWA) indicating the percentage of work progress signed by the contractor, b.) pictures of the project together with color coded plans showing actual progress, c.) Billing Cost, and d.) updated work schedule (target vs. accomplishment)

3.4.4. 4th tranche: Percentage accomplishment must be 100%. The contractor shall submit the following; a.) Statement of work accomplishment (SWA) indicating the percentage of work progress signed by the contractor, b.) pictures of the project together with color coded plans showing actual progress, c.) Billing Cost, d.) updated work schedule (target vs. accomplishment), and e.) Certification issued by the contractor stating that the Project has been completed in accordance with the LGU approved site development and box culvert plans.

ARTICLE IV
TIME OF COMPLETION, DAMAGES AND RETENTION FEE

4.1 The CONTRACTOR shall undertake the services set out in this contract for a duration of ten (10) calendar days for the Detailed Architectural and Engineering Design Phase and project implementation for a period of ninety (90) calendar days covering a total aggregate contract period of one hundred (100) calendar days reckoned from the issuance of Notice to Proceed and Mobilization fee.

4.2 In case of failure to perform and complete the project within the time specified above, a penalty specified in Section 10.4 shall be imposed.

4.3 Time being of the essence of the PROJECT, delay in the completion of the PROJECT may be excusable only if the same is due to force majeure, additional work approved by SHFC, or for any other special circumstance as may be determined by SHFC.

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

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

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

4.6 The retention fee equivalent to ten percent (10%) of the project cost shall be retained by SHFC from every progress billing and to be released upon issuance of Certificate of Completion and Acceptance by SHFC and the designated Homeowner's Association (HOA).

ARTICLE V
PERFORMANCE SECURITY

5.1 To guarantee the faithful performance by the winning CONTRACTOR of its obligations under the contract, it shall post a performance security within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the SHFC and in no case later than the signing of the contract.

5.2 The performance security posted in favor of the SHFC shall be forfeited in the event it is established that the Contractor is in default in any of its obligations under the Contract.

5.3 The performance security shall remain valid until issuance by the SHFC of the Certificate of Final Acceptance.

5.4 The performance security may be released by the SHFC and returned to the Contractor after the issuance of the Certificate of Final Acceptance subject to the following conditions:

- 5.4.1 There are no pending claims against the Contractor or the surety company filed by the SHFC;

5.4.2 The Contractor has no pending claims for labor and materials filed against it; and

5.4.3. Other terms as may specified by SHFC.

5.5 The Contractor shall post an additional performance security to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of amendments to order or change orders, extra work orders and supplemental agreements, as the case may be. The Contractor shall cause the extension of the validity of the performance security to cover approved contract time extensions.

5.6 The Performance Security shall be denominated in Philippine Pesos and posted in favor of the SHFC in an amount not less than the percentage of the total contract price in accordance with the following schedule:

Form of Performance Security	Amount of Performance Security (Not less than the Percentage of the Total Contract Price)
(a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank. <i>For biddings conducted by the LGUs, the Cashier's/Manager's Check may be issued by other banks certified by the BSP as authorized to issue such financial instrument.</i>	Ten percent (10%)
(b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. <i>For biddings conducted by the LGUs, Bank Draft/Guarantee, or Irrevocable Letter of Credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument.</i>	
(c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Thirty percent (30%)

5.7 Failure of the CONTRACTOR to comply with the above-mentioned requirement shall constitute sufficient ground for the annulment of the award and forfeiture of the bid security, in which event the SHFC shall have a fresh period to initiate and complete the post qualification of the second Lowest Calculated Bid. The procedure shall be repeated until LCRB is identified and selected for recommendation of contract award. However if no CONTRACTOR passed post-qualification, the BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement, if necessary.

ARTICLE VI
WARRANTIES AND RESPONSIBILITIES OF THE CONTRACTOR

6.1 The CONTRACTOR shall take all precautionary measures to ensure the safety and convenience of the workers and the general public, and to take all appropriate steps to prevent damage or injury to persons or property in or about or adjacent to the premises where the work is being performed.

6.2 The CONTRACTOR warrants and guarantees that all materials to be used for the PROJECT is new, free from hidden defects, and fully complies in every respect with the specifications, and other requirements of the Contract Documents.

6.3 The CONTRACTOR warrants that the materials, supplied under this agreement are new, unused, and further warrants that the materials, tools, equipment and other facilities supplied under this agreement shall have no defect, arising from design, materials, or workmanship or from any act or omission of the CONTRACTOR that may develop under normal use of the supplied Goods in the conditions prevailing in the country.

6.4 The CONTRACTOR shall assume full responsibility for the contract work from the time of the commencement up to the final acceptance on the following:

- a. any damage or destruction of the works except those occasioned by force majeure; and
- b. safety, protection, security, and convenience of their personnel, third parties and the public at large, as well as the works, equipment, installation and the like to be affected by its construction work.

6.5 The CONTRACT shall undertake the repairs and the shoulder the cost thereof due to defective workmanship or use of sub-standard materials within ninety (90) days from the time SHFC has issued an order to undertake the repairs. In case the CONTRACTOR fails or refuses to undertake the repairs, SHFC may do such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand. This notwithstanding, SHFC may opt to exercise other remedies stated in section 6.8 of this Agreement.

6.6 The CONTRACTOR shall likewise put up a warranty security in any of the forms and schedule stated hereunder to answer for structural defects/failures arising from faults attributable to improper construction, use of inferior quality/ substandard materials, and any violation of the contract plans and specifications.

Sec. 62.2.3 of IRR of RA 9184

Form of Warranty	Amount of Warranty
a. Cash or Letter of Credit issued by a Universal or Commercial Bank Provided, however that the Letter of Credit shall be confirmed or authenticated by a Universal or Commercial Bank , if issued by a foreign bank.	Five percent (5%)
b. Bank guarantee confirmed by a Universal or Commercial Bank.	Ten percent (10%)
c. Surety bond callable upon demand issued by GSIS or a surety or insurance company duly certified by the Insurance	Thirty percent (30%)

Commission as authorized to issue such security.	
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6.7 The warranty security shall be denominated in Philippine Pesos and shall remain effective for one (1) year from the date of issuance of the Certificate of Final Acceptance by SHFC. It shall be returned only after the lapse of the said one (1) year period.

6.8 In case of Structural Defects/Failure occurring during the applicable warranty period, the CONTRACTOR shall undertake the necessary restoration and reconstruction works of the defects. In the event that the CONTRACTOR fails to do so in the soonest possible time, SHFC shall undertake the necessary restoration or reconstruction works and shall be entitled to full reimbursement from the warranty security or upon demand from the CONTRACTOR in case the restoration costs exceeds the warranty security put-up by the CONTRACTOR.

**ARTICLE VII
RETENTION MONEY**

7.1 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 Contractor 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 SHFC, 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.

7.2 The total “retention money” shall be due for release upon final acceptance of the Works.

**ARTICLE VIII
ASSIGNMENT AND SUB-CONTRACTING**

8.1 The CONTRACTOR shall not assign, transfer, pledge, sub-contract, or otherwise dispose of this Agreement or any part or interest herein. Any violation of this provision shall entitle SHFC to automatically terminate the Agreement, forfeit the performance guaranty and blacklist the CONTRACTOR from all government infrastructure projects.

**ARTICLE IX
NO EMPLOYER-EMPLOYEE RELATIONSHIP**

9.1 The relationship of SHFC to the CONTRACTOR is that of an independent contractor. Nothing in this Agreement shall be construed as creating an employer-employee relationship between SHFC and the CONTRACTOR, its employees or workers. The Contractor is responsible for informing all his employees or workers deployed to do the works, of SHFC’s rules and regulation which they are expected to observe at all times.

**ARTICLE X
INDEMNIFICATION AND DAMAGES**

10.1 The CONTRACTOR shall indemnify, hold free and harmless, and defend at its own expense SHFC and its officials, agents, employees, (regular, direct and contractual) , from and against all suits, claims, demands and liabilities of any nature or kind, including costs and expenses associated therewith, arising out of acts or omissions of the CONTRACTOR, its employees, workers in the performance of any activity in connection with the PROJECT, including those that may be initiated by its employees, workers or by any other entity or person against SHFC, by reason of or in connection to the PROJECT.

10.2 SHFC shall in no manner be answerable or accountable for any incident, injury or death which may occur to any worker, employee or personnel of the CONTRACTOR during the time and consequent upon the performance of the work and services under this Contract, nor for any injury, death, loss or damage arising from fault, negligence or carelessness of the CONTRACTOR or anyone of its personnel to any person or persons or to his or their property; and the CONTRACTOR covenants and agrees to assume, as it does hereby assume, all liabilities for any such injury, loss or damage and to make SHFC free and blameless therefrom. In case the SHFC should be sued by any employee, person or any government office or agency as an alleged employer of said employee(s), this paragraph notwithstanding, the CONTRACTOR shall assist SHFC in defending itself and hereby holds SHFC free and harmless against any judgment which may be rendered against SHFC.

10.3 The CONTRACTOR shall ensure that its employees, assigned to perform the services under this Contract, shall conduct themselves in an orderly and respectful manner and shall not cause any injury or harm to any person within the SHFC's premises or cause damage or loss to property of the SHFC or of persons within the SHFC's premises. The SHFC shall have the right to demand replacement of offensive workers and the CONTRACTOR shall immediately remove and replace such offending employee of employees.

10.4 **Liquidated Damages.** The Contractor shall pay liquidated damages to the SHFC for each day that the Completion Date is later than the Intended Completion Date. The applicable liquidated damages is at least one-tenth (1/10) of a percent of the cost of the unperformed portion for every day of delay. The total amount of liquidated damages shall not exceed ten percent (10%) of the amount of the contract. The SHFC may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of this Contract, the SHFC may rescind or terminate this Contract, without prejudice to other courses of action and remedies available under the circumstances.

10.5 If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer of the SHFC shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate.

ARTICLE XI PRE-TERMINATION AND TERMINATION OF THE CONTRACT

11.1 The SHFC may pre-terminate this contract upon notice of any violation of the terms of the contract. In case of pre-termination, the CONTRACTOR shall be informed by SHFC thirty (30) calendar days prior to such termination.

11.2 In case of pre-termination, the CONTRACTOR shall be liable to an additional liquidated damages equivalent to five percent (5%) of the contract price as provided by the Government Accounting and Auditing Manual (GAAM) and forfeiture of the Performance Security.

11.3 The SHFC may terminate this Contract by serving the CONTRACTOR a written notice indicating its intention to terminate the Contract for any of the following causes (as provided under Annex "I" Section III.2 of the RA9184 2016 Revised IRR:

- a. Due to the Contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with Presidential decree 1870;
- b. Due to Contractor's fault and after the contract time has expired, it has incurred a negative slippage of ten percent (10%) or more in the completion of the work; or
- c. The Contractor:
 - i. Abandons the contract works, refuses or fails to comply with valid instruction of the SHFC or fails to proceed expeditiously and without delay despite a written notice by the SHFC;
 - ii. Does not actually have on the project site the minimum essential equipment

- listed on the Bid necessary to prosecute the Works in accordance with the approved work plan and equipment deployment schedule as required for the project;
- iii. Does not execute the Works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations under the contract;
 - iv. Neglects or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable; or
 - v. Sub-lets any part of the contract works without approval by the SHFC.
- d. Violation of the CONTRACTOR of any of the terms and conditions of this Contract;
 - e. Non-completion of the Project within the time stipulated period herein or upon expiration of the extensions agreed upon in accordance with this Contract;
 - f. Other causes provided by law applicable to the Contract of this nature.

11.4 SHFC shall have the right to blacklist the CONTRACTOR in case of pre-termination / termination.

ARTICLE XII INSPECTION BEFORE COMPLETION

12.1 Once the project reaches an accomplishment of ninety five (95%) of the total contract amount, the SHFC may create an inspectorate team to make preliminary inspection and submit a punch-list to the Contractor in preparation for the final turnover of the project. Said punch-list will contain, among others, the remaining Works, Work deficiencies for necessary corrections, and the specific duration/time to fully complete the project considering the approved remaining contract time. This, however, shall not preclude the claim of the SHFC for liquidated damages.

ARTICLE XIII SUSPENSION OF WORK

13.1 The SHFC shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, due to *force majeure* or any fortuitous events or for failure on the part of the Contractor to correct bad conditions which are unsafe for workers or for the general public, to carry out valid orders given by the SHFC or to perform any provisions of the contract, or due to adjustment of plans to suit field conditions as found necessary during construction. The Contractor shall immediately comply with such order to suspend the work wholly or partly.

ARTICLE XIV ACCEPTANCE

14.1 SHFC shall issue to the CONTRACTOR a Certificate of Final Acceptance upon satisfactory completion of the PROJECT.

14.2 Minor defects discovered in the final inspection must be corrected by the CONTRACTOR within seven (7) calendar days from the date of Certificate of Final Acceptance.

14.3 The issuance of a Certificate of Final Acceptance by SHFC shall not relieve the CONTRACTOR of any liability for any defect in the work.

14.4 The SHFC shall take over the Site and the Works within seven (7) days from the date the SHFC's Representative issues a certificate of Completion.

ARTICLE XV
INCORPORATION OF APPLICABLE LAWS AND RULES

15.1 The applicable provisions of the RA No.9184 of the "Government Procurement Reform Act", the 2016 Revised Implementing Rules and Regulations, including Annex E on Procurement of Infrastructure Project thereof shall be deemed to form part of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures this Marawi City in OCT 09 2019.

FIAT CONSTRUCTION SERVICES
CONTRACTOR

By.

FAROUK M. MACARAMBON, SR.
General Manager & Contractor

SOCIAL HOUSING FINANCE CORPORATION
SHFC

By.

ATTY. ARNOLFO RICARDO B. CABLING
President *mn*

Certified Funds Available

DANTE M. ANABE

Signed in the presence of:

Annicia D. Villafuerte
Annicia D. Villafuerte

Atty. Junete G. Payot
Atty. Junete G. Payot

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)

Marawi City

)S.S.

BEFORE ME, a Notary Public for and in the OCT 09 2019 this Marawi City, day of _____ personally appeared:

NAME	TIN-NO	Date and Place Issued
Atty. Arnolfo Ricardo B. Cabling	136-720-464	
Farouk M. Macarambon, Sr.	113-877-688	10/10/2000 Marawi City

known to me and to me known to be the same persons who executed the foregoing Agreement consisting of ten (10) pages including this page on which the acknowledgement is written and signed by the parties and their witnesses, and they acknowledged to me that the same is their free and voluntary act and deed and of entities they represent.

WITNESS MY HAND AND SEAL, this OCT 09 2019 in Marawi City, Philippines.

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Book No. XXXVI
Series of 2019

ATTY. DIMAPUNO RAMOS DATU
NOTARY PUBLIC
UNTIL DECEMBER 31, 2019
IBP No. 070258-Jan. 18, 2019-Marawi City
PTR No. 0273324Q-Jan. 8, 2019-Marawi City
Balindong Lanao Del Sur
ATTY. ROLL No. 23420 of 10
MCLE COMPLIANCE No. (V-0010486)
12-26-2012-Manila