

**CONTRACT NO. 2019-03-3021**

**KNOW ALL MEN BY THESE PRESENTS:**

This Contract (the "Contract"), made and entered into this DEC 26 2019 day of November 2019 in Pasay City, Philippines, by and between:

**THE SECURITIES AND EXCHANGE COMMISSION**, herein referred to as "**SEC**", a government agency duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with its principal address at Secretariat Building, PICC Complex, Pasay City, represented herein by its Human Resource and Administrative Department Director, **ROMUALD C. PADILLA**, duly authorized to sign the contract per SEC Office Order No. 270, s. of 2019 (Annex "A");

**FROEHLICH TOURS INC.**, herein referred to as "**FROEHLICH**", a duly registered corporation existing under the laws of the Philippines, with its principal office address at Palanyag Road, Leonardo Compound, Brgy. San Dionisio, Parañaque City, Metro Manila, herein represented by its authorized representative, **SAGINA DANNIEL A. ORAÑO**, duly authorized to sign this contract per Secretary's Certificate (Annex "B");

**WITNESSETH, that**

**WHEREAS**, the Securities and Exchange Commission (SEC) requires Transportation Services for the Conduct of the 2019 SEC Commission-Wide Performance Assessment on November 27-29, 2019 at Club Balai Isabel, Talisay, Batangas;

**WHEREAS**, the SEC, through its Bids and Awards Committee (BAC), conducted the procurement for the lease project in compliance with Section 53.9 (Negotiated Procurement-Small Value Procurement) of the 2016 Revised Implementing Rules and Regulations of RA 9184;

**Whereas**, on November 13, 2019, the Request for Quotation (RFQ) No. 2019-SVP-48 was posted in the SEC and PhilGEPS websites, as well as in the SEC Bulletin Boards continuously for three (3) days starting on November 13, 2019;

**Whereas**, said RFQ was sent to the following prospective bidders, namely: (1) Froehlich Tours, Inc., (2) Jacliner, Inc., (3) G.Liner Bus Company, and (4) Victory Liner, Inc.;

**Whereas**, on November 18, 2019, the deadline for submission and opening of quotations, only **FROEHLICH** submitted its quotation;

**Whereas**, in the preliminary examination of bid, the price proposal of **FROEHLICH** in the amount of Php340,800.00 was found to be within the ABC of SEC and was declared the **Single Calculated Quotation**;

**Whereas**, on November 20, 2019, the BAC forwarded the eligibility, technical and financial proposals of **FROEHLICH** to the Technical Working Group (TWG) for Post-Qualification and Evaluation;

**Whereas**, on November 21, 2019, based on the TWG Post-Qualification and Evaluation Report submitted to the BAC, **FROEHLICH** was found to be compliant with the eligibility, technical and financial requirements and was declared as the **Single Lowest Calculated and Responsive Quotation**;

**WHEREAS**, the BAC, through BAC Resolution No. 2019-072 dated November 25, 2019, resolved to recommend to the HRAD Director the award of the Contract to **FROEHLICH**, which the latter approved;

**WHEREAS**, the HRAD Director approved and signed BAC Resolution No. 2019-072 and issued the corresponding Notice of Award (NOA) to FROEHLICH;

**NOW THEREFORE**, for and in consideration of the foregoing premises and the mutual covenants and stipulations herein set forth, the parties hereby agree as follows:

## **I. SCOPE OF WORK**

For and in consideration of the payment of the agreed contract price by the SEC, FROEHLICH shall provide the following services and/or activities, *thus*:

1. Provide vehicles described below (collectively the “Shuttle Buses”):
  - a. Ten (10) buses with at least 49 seaters each
  - b. Air-conditioned
  - c. Clean, comfortable, presentable and in good running condition
  - d. Maintained in accordance with the approved LTFRB Technical Safety Certificate for Vehicles
2. FROEHLICH shall be fully responsible for the following:
  - a. All maintenance cost, fuel, lubricant, other consumable cost and any other related expenses relating to the provision of the services agreed herein and the operation of the Shuttle Buses;
  - b. All the operational costs will be covered by FROEHLICH, SEC will not be responsible for any cost incurred during and/or after the provision of the shuttle service;
  - c. Provide and make available the Shuttle Buses during the contract period. Should any of the Shuttle Buses run into mechanical damage/failure while in transit, FROEHLICH shall promptly provide a replacement within/less than an hour to ensure that the passengers arrive at the venue on time;
  - d. In case of failure on the part of FROEHLICH to provide the services set forth herein, SEC shall secure the services of another transportation company to perform and provide the services. Any and all costs incurred by SEC shall be charged against FROEHLICH. The foregoing shall be without prejudice to other remedies available to SEC under existing laws;
  - e. The Contract Price, as defined herein, is inclusive of any allowance/insurance for FROEHLICH’s drivers and other personnel which will be utilized in the performance of its obligations herein. SEC shall not in any way be responsible for any payments to FROEHLICH’s workers;
  - f. The Shuttle Buses must be covered by comprehensive insurance including passenger’s liabilities insurance; and
  - g. All cost for gasoline and drivers’ sleeping quarters, drivers overtime pays, and toll fees shall be for the account of FROEHLICH.

## **II. TRIP SCHEDULE**

1. November 27, 2019  
Pick-up Point: SEC, PICC Complex, Pasay City | 9:00AM  
Drop off Point: Club Balai Isabel, Talisay Batangas
2. November 29, 2019  
Pick-up Point: Club Balai Isabel, Talisay Batangas | 12:00NN  
Drop off Point: SEC, PICC Complex, Pasay City

## **III. TRAVEL AND SAFETY ON-BOARD**

1. Observance of Extraordinary Diligence. FROEHLICH shall observe extraordinary diligence in the carriage of SEC employees to the venue and shall AT ALL TIME

ensure their safety. The SEC employees who are taking the Shuttle Buses shall observe the diligence of a good father of a family or ordinary diligence to avoid injury to their persons while on board the Shuttle Buses. SEC employees shall exercise safety precautions prior, during, and after embarkation and while on transit.

FROEHLICH assumes no responsibility for any accident, injury, and/or death of passengers for causes totally attributable to their carelessness and/or negligence.

FROEHLICH reserves the right to refuse carriage of any SEC Employee who is proven to be under the influence of alcohol or drugs and/or whose behavior is considered to pose a threat to the safety of other passengers. The passengers who likewise refuse to abide by the safety and security instructions of the assigned driver and/or bus personnel may likewise be denied boarding.

FROEHLICH shall make every reasonable effort to accommodate all passengers' needs. It is understood however that the Shuttle Buses of FROEHLICH are not equipped with first aid kits, wheelchairs and other emergency facilities for which reason, FROEHLICH and its personnel assumes no responsibility for injury or any inconvenience in this regard. However, FROEHLICH undertakes to do it best to make the necessary arrangements to address possible situations that would need assistance for the disabled passengers.

SEC is enjoined to inform and provide FROEHLICH with the names and health details of the passengers with disabilities and/or any other health issues by e-mail or in writing at the time of making the reservation. FROEHLICH reserves the right to decline a booking should it be determined that it is unable to properly accommodate or meet its obligations towards the passengers and/or for safety considerations.

2. Diligence on Luggage. The passengers with valuable and/or perishable luggage or goods must inform FROEHLICH personnel prior to and upon embarkation of such fact in order to be assisted on where to provisionally store them while the Shuttle Bus is in transit. FROEHLICH and its personnel shall be excused from any liability from the improper storage and/or handling by the passengers of their luggage or for failure on their part to properly advise FROEHLICH personnel of such possession.
3. Bus Warranty. SEC was informed by FROEHLICH and acknowledges that the Shuttle Buses are 2015 (onwards) year models, equipped with the latest safety and security features in compliance with existing rules and regulations. SEC is further advised that only front row seats, middle entry seats, and rear center seats have safety belts in accordance with international regulations, while other rows do not have safety belts due to evacuation risks in case of a rollover.

SEC shall be charged for the costs incurred by FROEHLICH to repair any damages to the Shuttle Bus, any of its complements or accessories, or for the necessary cleaning expenses made by a third-party service provider as a result of the SEC's misuse or breach of the terms and conditions herein provide.

4. Assistance and Maintenance. FROEHLICH reserves the right to choose which remedy to provide SEC in cases of, but not limited to, mechanical problems and tire blowout, and where any or all of the Shuttle Buses can no longer be utilized for purposes of this contract. For purposes of the foregoing, FROEHLICH may either offer immediate repairs and assistance to SEC from its Maintenance Department in cases where the assigned Shuttle Bus is damaged and requires immediate repair, or to arrange the replacement of the Shuttle Bus within such reasonable time depending on the time and location.

5. Navigation. The assigned driver/s reserve/s the right to refuse to navigate narrow and risky pavements that would compromise and/or place the Shuttle Bus and passengers in dangerous situation.

#### IV. PAYMENT TERMS

For and in consideration of the performance by FROEHLICH of the services set forth herein, SEC shall pay FROEHLICH the amount of **THREE HUNDRED FORTY THOUSAND PESOS (Php340,000.00) [the “Contract Price”]**.

#### V. MISCELLANEOUS PROVISIONS

1. Force Majeure. FROEHLICH shall not incur any liability whatsoever for any delay and/or failure to perform its obligations pursuant to this Agreement, if such delay and/or failure is due to force majeure or causes beyond the reasonable control of FROEHLICH, which frustrates the performance of this Agreement including, but are not limited to, acts of God, inclement weather, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, heavy traffic, road closures, third-party accidents, civil unrest, riots, sabotage, industrial unrest and strikes, general outbreak of disease and epidemic. Any claims and/or causes of action of the SEC based on force majeure shall be decided on a case to case basis.
2. Limitation of liability. FROEHLICH’s liability for damages under this Agreement shall in no event exceed the total amount paid or to be paid by FROEHLICH to the SEC under this Agreement. In no event shall FROEHLICH be liable to the SEC (whether based on an action or claim in contract, negligence, tort or otherwise) from any of the following, even if informed (whether expressly or otherwise) of the possibility of such costs, claims, expenses, loss and damage:
  - A. any indirect, incidental, consequential, special or exemplary costs, claims, expenses, loss or damages; and
  - B. down-time costs, lost revenues, profits, business opportunities, anticipated savings or goodwill
3. Non-waiver. No waiver by a Party of any provision/s of this Agreement shall be binding unless agreed upon between the Parties in writing. No waiver shall be construed as a waiver of any other provision/s of this Agreement, nor shall such waiver be construed as waiver of such provision/s or provision/s concerning any future event or circumstance. No waiver by FROEHLICH of breach of this Agreement by the SEC for any subsequent breach of any provision/s thereof, or of this Agreement.
4. Notices. Any notice or other communication under this Agreement must be given in writing and must be delivered by hand, sent by registered post, by facsimile or by email to the signatories of this Agreement. Notices and communications shall be deemed received by the addressee: (a) if delivered by hand, on the date of delivery to the addressee’s place of business last notified by the addressee in advance of dispatch; (b) if by registered post, the date of registered posting (by airmail where the SEC is not located in the Philippines) to the addressee’s place of business last notified by the addressee in advance of posting; (c) if by facsimile, contemporaneously with facsimile transmission to the facsimile number last notified by the addressee in advance of transmission, provided that the notifying Party receives a successful transmission report; or (d) if by email, contemporaneously with the email transmission.

All information found on the website and social media platforms of FROEHLICH is subject to change and the company reserves the right to correct any mistakes that may appear on its website and social media platforms. These terms and conditions are subject to change and the company reserves the right to update these provisions without notice.

5. Complaints. If the SEC, for any reason, is not satisfied with the transport services provided by FROEHLICH, all concerns must be put in writing through a letter of complaint signed by the Client or its duly authorized representative within ten (10) days or within such reasonable period of time after the completion of the contracted travel or series of travels. Otherwise, any possible remuneration entitlement shall not be valid.

While FROEHLICH highly appreciate immediate phone calls to address any incidents as they happen, the SEC shall formally refer and coordinate such concerns in writing or thru the company's official email address.


6. Assignment. Neither this Agreement nor any of the rights and obligations hereunder shall be assignable or transferable by the SEC without the prior written consent of FROEHLICH.
7. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the Philippines. In the event of any dispute or difference arising out of or in connection to this Agreement or any breach thereof including any question regarding its existence, validity or termination, the Parties shall use their best endeavors to settle such disputes or differences through amicable discussions. To this effect, they shall consult and negotiate with each other in good faith and understanding of their mutual interests, to reach an equitable solution satisfactory to the Parties. If the Parties are unable to reach any solution within a period of thirty (30) days after the commencement of the negotiation then the disputes or differences shall be settled in the Courts of the Philippines, and the Parties hereby submit to the exclusive jurisdiction of the proper courts in Parañaque City, Philippines.
8. Entire Agreement. This Agreement, together with any and all contracts, constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all other agreements, contracts and communications between the Parties relating to that subject matter. No representations, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to this Agreement except as expressly stated in this Agreement. Neither Party shall have any remedy in respect of any untrue statement made by the other upon which that Party relied in entering into this Agreement (unless such untrue statement was made fraudulently or was as to a fundamental matter including as to a matter fundamental to the other Party's ability to perform its obligations under this Agreement) and that Party's only remedies shall be for breach of this Agreement.
9. Variation. Unless provided otherwise in this Agreement, no variation whether oral or otherwise in the terms of this Agreement shall apply thereto unless such variation shall first have been expressly accepted in writing by the Parties.
10. Severability. If any provision/s of this Agreement is found to be illegal, void or unenforceable under any law that is applicable hereto or if any court of competent jurisdiction in a final decision so determines, this Agreement shall continue in force save that such provision/s shall be deemed to be exercised here from with effect from the date of such agreement or decision or such earlier date as the Parties may agree upon in writing.
11. Survival. The provisions of any clauses of this Agreement that by their nature may reasonably be presumed to survive any termination or expiration of this Agreement, shall survive any termination or expiration hereof.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed in accordance with laws of the Republic of the Philippines on the day and year first above written.


**SECURITIES AND EXCHANGE  
COMMISSION**  
TIN: 000-190-308-000

**FROEHLICH TOURS, INC.**  
TIN: 008-284-403-000

By:


  
**ROMUALD C. PADILLA**  
HRAD Director  
TIN: 170-266-059

By:


  
**SAGINA DANNIEL A. ORAÑO**  
Authorized Representative  
TIN: 340 110 372

SIGNED IN THE PRESENCE OF:

By:

  
**MARLON LESTER N. CANTOL**  
\_\_\_\_\_  
Witness

By:

  
\_\_\_\_\_  
Witness

CERTIFIED FUNDS AVAILABLE:

  
**ADELAIDA C. NAVARRO-BANARIA**  
FMD Director

**ACKNOWLEDGEMENT**

Republic of the Philippines    )  
Pasay City                            ) S. S.

BEFORE ME, a Notary Public for and in the City of Pasay on this DEC 26 2019 day of \_\_\_\_\_  
2019, personally came and appeared the following and presenting competent evidence of identity,  
as follows:

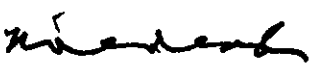
| Name                    | Evidence of Identity |
|-------------------------|----------------------|
| ROMUALD C. PADILLA      | TIN: 170-266-059     |
| SAGINA DANNIEL A. ORAÑO | TIN: _____           |

all known to me and to me known to be the same persons who executed this Contract, consisting  
of seven (7) pages, including this page, where the acknowledgement is written, and they  
acknowledged to me that the same is their free and voluntary act and deed as well as the  
entity/corporation they represent.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the  
date and at the place first hereinabove written,

Notary Public

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Series of 2019

  
ATTY. VICTOR C. ESTRADA  
Notary Public for and in the City of Pasay  
Commission No. 19-03  
Until December 31, 2020  
Roll of Attorneys No. 27218  
PTR No. 6398145 01/04/19 Pasay City  
IBP 065721 01/10/19 Q.C.  
MCLE No. VI-0008296 until 04/14/2022