

**TERMS OF REFERENCE  
FOR THE LONG-TERM LEASE OF THE THREE (3) LOGHOMES  
WITHIN THE JOHN HAY SPECIAL ECONOMIC ZONE, BAGUIO CITY, PHILIPPINES**

**ARTICLE I  
PROJECT RATIONALE**

- Section 1 Republic Act No. 7227 mandates the Bases Conversion and Development Authority (BCDA) to accelerate the sound and balanced conversion into alternative productive uses of the former Clark and Subic military reservations and their extensions, to raise funds through the sale or lease of portions of Metro Manila camps, and to apply said funds for the development and conversion to productive civilian use of said reverted military baselands.
- Section 2 The John Hay Management Corporation (JHMC), as BCDA's operating and implementing arm for the administration and development of the John Hay Special Economic Zone (JHSEZ) in Baguio City, Philippines, wishes to consider bids for the long-term lease and development of three (3) loghomes (hereinafter referred to, separately, as "Property", and collectively, as "Properties"), located within the JHSEZ, on an "*as-is, where-is*" basis.
- Section 3 The disposition is to be carried out pursuant to the provisions of Republic Act No. 7227 ("The Bases Conversion and Development Act of 1992"), as amended, Executive Order No. 62 prescribing the policies and guidelines to implement R.A. 7227, and other relevant laws, Executive Orders, and rules and regulations, to the extent applicable.
- Section 4 This bidding is being administered by the Asset Disposition Program Committee (ADP-Com) of JHMC whose decisions or actions shall be subject to the approval of the JHMC Board of Directors.

**ARTICLE II  
BACKGROUND OF THE PROPERTIES**

- Section 1 **Description of the Properties.** The Properties subjects of this bidding are three (3) Loghomes, each having a floor area of approximately 590-square-meters, located within the Voice of America (VOA) Estate in the JHSEZ. For each property, the leased area shall be limited to the actual area occupied by the Loghome only, with a provision for a 2-meter easement on all sides, starting from the outermost walls of each structure. The parking shall be limited to the 2-car garage within the Loghome.

The VOA Estate, within which the Loghomes are located, is bounded on the north by the John Hay Special Economic Zone, on the west by Loakan Road, and on the east by Barangay Happy Hallow. The entrance to the VOA Estate is located along Loakan Road in Baguio City. Currently, there are twelve (12) Loghomes within the VOA Estate: five (5) are owned by the BCDA and the rest by various private individuals/entities. These Loghomes are customarily used as vacation or retirement homes.

The three (3) loghomes being disposed : (i) **Loghome Unit No. 3**, (ii) **Loghome Unit No. 9**, and (iii) **Loghome Unit No. 20-A**. The Vicinity Map showing the location of these Loghomes is attached as [Annex "A"](#).

- Section 2 **Status of the Properties.** The Properties are all built on land owned by the BCDA within the JHSEZ. The JHSEZ, by virtue of Presidential Proclamation No. 1191 series of 2006, has been designated as a Special Tourism Economic Zone. Since the Properties are within the Special Tourism Economic Zone, the Winning Bidder, if found qualified, may be granted tax and other incentives under Republic Act 7916: The Special Economic Zone Act of 1995.

The Properties are free from any legal controversies or issues, adverse claims, lien or encumbrances.

Section 3 **Proposed Use for the Properties.** The Properties are intended to be for long-term lease and to be used exclusively for residential purposes only.

Section 4 **Restrictions on the Properties.**

The Winning Bidder must undertake all repair works on the property at his/her own cost, but should obtain BCDA's and JHMC's consent prior to commencing the said works. In no case can the Winning Bidder conduct development works beyond the boundaries of the property, as specified in Section 1 of this Article.

The use and development of the Properties shall be subject to and strictly comply with all rules and regulations imposed by John Hay Management Corporation, the administrator of the JHSEZ, and all pertinent government standards such as, but not limited to, the National Building Code, the Fire Code and other relevant laws, rules, regulations and issuances of the agencies of the National Government and of the Local Government, both existing and subsequent issuances.

### ARTICLE III MINIMUM BID PRICE AND MODE OF DISPOSITION

Section 1 The minimum acceptable annual Fixed Lease (minimum bid) for each Property shall be **One Million Five Hundred Thousand Pesos (PhP1,500,000.00)**, exclusive of twelve percent (12%) Value-added Tax (VAT), and subject to five percent (5%) annual escalation starting on the sixth (6<sup>th</sup>) year of the lease.

Upon signing of the *Contract of Lease* (draft attached as [Annex "C"](#)), which shall be the start of the effectivity of the lease, the Winning Bidder shall remit to BCDA the Advanced Fixed Lease Payment for the first three (3) years of the lease and a deposit equivalent to the lease payments for the 9<sup>th</sup> and 10<sup>th</sup> years of the lease.

Section 2 The disposition of the Properties, though simultaneous, should not, in any way, be construed as the disposition/lease of the Properties as "one lot", but a disposition/lease of each and every Property, which stands independent of each other. Therefore, interested proponents may submit bids for any or all of the Properties.

Section 3 JHMC is offering the Properties, on an "as-is, where-is" basis, for long-term lease and development for a period of ten (10) years, commencing on the signing of the *Contract of Lease*, and renewable for another ten (10) years upon mutual agreement of the parties. For this purpose, any negotiation for renewal may not start earlier than two (2) years prior to the expiration of the existing lease term, unless a strong reason justifies an early renewal, subject to the approval of JHMC.

Section 4 Upon the expiration of the lease period, the ownership of all permanent facilities/improvements introduced by the Lessee/Winning Bidder on the Property/ies shall automatically be transferred to JHMC/BCDA. Therefore, should the Lessee/Winning Bidder opt to renew their lease over the Property/ies, the new lease rate for the next ten (10)-year extension period shall cover the building/s and permanent facilities/improvements transferred to JHMC/ BCDA.

To determine the Annual Lease for the initial year of the lease extension period, JHMC and the Lessee/Winning Bidder shall have the Property/ies, including the permanent facilities/improvements introduced therein, appraised by two (2) independent appraisers mutually acceptable to both parties at the start of the last year of the initial lease period. The Annual Lease for the initial year of the lease extension period shall be the higher of:

- (i) five percent (5%) of the average fair market value of the Property as appraised; **or**
- (ii) the Annual Lease for the Property on the last year of the initial lease period, plus five percent (5%) escalation;

The annual escalation rate of five percent (5%) shall continue to apply on the Annual Lease for the lease extension period.

The costs of the appraisal shall be equally borne by JHMC and the Lessee/Winning Bidder.

**ARTICLE IV  
RIGHTS AND RESPONSIBILITIES OF THE PARTIES**

**Section 1      Rights and Responsibilities of the Winning Bidder and Penalties for Violation**

The Winning Bidder shall:

- 1.1      Strictly comply with the terms and conditions of the *Contract of Lease* to be executed between JHMC and the Winning Bidder and maintain all warranties and representations in good standing for the duration of the contract period.
- 1.2      Strictly comply with the allowable use and the development restrictions for the Property as set in these *Terms of Reference (TOR)*, specifically under Article II, Sections 3 and 4.
- 1.3      Not later than three (3) months before the 3<sup>rd</sup> anniversary of the signing of the *Contract of Lease* and every year thereafter, pay the lease rental payment to JHMC without need for demand. Should the Winning Bidder fail to pay the lease rental for the year after 15 days from its due date, BCDA or JHMC may exercise all available legal remedies to enforce payment, including the application of the deposit lease payment for the corresponding year.
- 1.4      Not later than two (2) months after the signing of the Contract of Lease, obtain, at its own cost, an all-risk insurance coverage for construction and improvements introduced during the term of the lease in an amount equivalent to its replacement value with JHMC as the beneficiary, and submit to JHMC the original insurance policy and the corresponding Official Receipt within five (5) days from the issuance of said insurance policy.
- 1.5      Pay, at its sole account, all applicable taxes, licenses, fees and charges due on the lease transaction, the Property and its improvements, and those that may be imposed by law during the entire term of the *Contract of Lease*. Where any taxes are required by law to be withheld from payment to JHMC, the Winning Bidder shall submit certification of taxes withheld at the time of payment to JHMC, otherwise any such taxes withheld will not be considered as authorized deductions.
- 1.6      Upon expiration or termination of the lease term, turn-over/transfer ownership of permanent facilities and other improvements introduced by the Lessee/Winning Bidder on the Property to JHMC/BCDA.
- 1.7      Abide by the conditions or encumbrances imposed or annotation on the title of the Property, if any.
- 1.8      Agree to pay the required maintenance or utility fees, which will be assessed by the JHMC.
- 1.9      In case of a consortium, each member shall be jointly and severally liable with all other members in the performance of the obligations of the Winning Bidder.

Should the Winning Bidder fail to perform any of its responsibilities as stipulated above, JHMC shall have the option to terminate the *Contract of Lease* as well as the option to re-bid the Property. In such instance, the Winning Bidder shall forfeit any and all monies so far remitted to JHMC in relation to the lease of the Property.

This section shall not preclude JHMC from exercising its rights/remedies set out anywhere else in this *TOR* or in the *Contract of Lease* for the Property.

**Section 2      Rights and Responsibilities of JHMC**

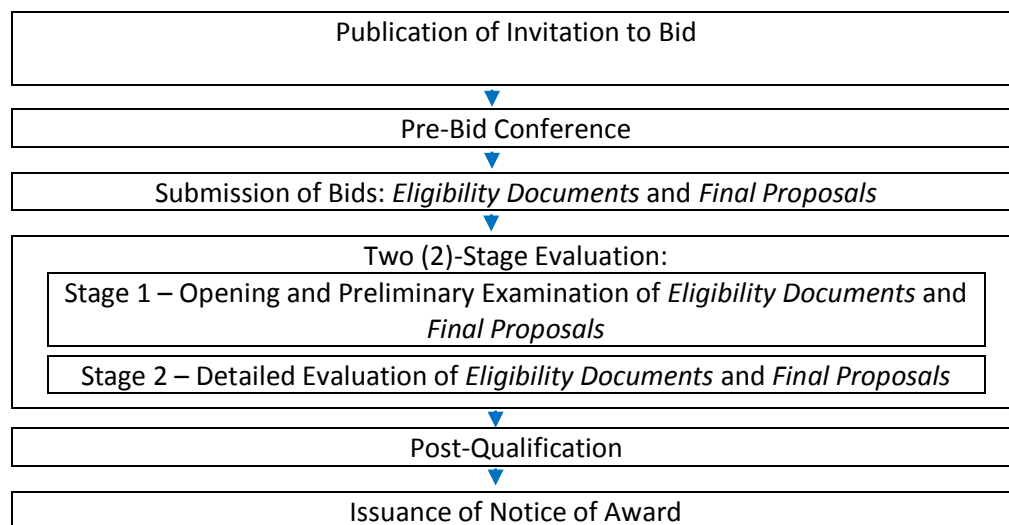
The JHMC shall:

- 2.1 Give the Winning Bidder the sole right to lease and maintain the Property/ies, subject to the restrictions and terms and conditions of the agreements entered into between JHMC and the Winning Bidder.
- 2.2 Deliver possession of the Property/ies to the Winning Bidder, on an “as-is, where-is” basis, upon the execution of the *Contract of Lease*.

Section 3 The rights and responsibilities of JHMC and the Winning Bidder shall be governed by the provisions of this *TOR* and the *Contract of Lease* to be signed between the Parties. In case of conflict or inconsistency between the two documents, this *TOR* shall prevail over the *Contract of Lease*.

**ARTICLE V  
BIDDING PROCEDURE**

Section 1 **Process Flow.** The bidding follows the following process flow:



Section 2 **Publication of Invitation to Bid.** JHMC shall publish the “*Invitation to Bid*” in three (3) newspapers or publications of general circulation, once every week for three (3) consecutive weeks, as well as in the JHMC website ([www.jhmc.com.ph](http://www.jhmc.com.ph)). This shall serve to inform and invite prospective Bidders to the subject bidding.

Section 3 **Submission of Bids.** Bidders shall submit their bids comprising of their *Eligibility Documents* and *Final Proposals* no later than the deadline specified in Article VII *Timetable of Activities*. The *Eligibility Documents* and *Final Proposals* shall be submitted simultaneously, in two (2) separate sealed envelopes:

- **First Envelope** containing two (2) sets of the **Eligibility Documents**, as listed in Article VI, Section 2.2, appropriately marked as: “*First Set: Eligibility Documents*” and “*Second Set: Eligibility Documents*”; and
- **Second Envelope** containing two (2) sets of the **Final Proposal**, as described in Article VI, Section 3, appropriately marked as: “*First Set: Final Proposal*”, and “*Second Set: Final Proposal*”.

**ARTICLE VI  
ELIGIBILITY CHECK, EVALUATION OF BIDS AND SELECTION OF WINNING BIDDER**

Section 1 JHMC shall adopt a two (2)-stage evaluation process.

**Stage 1** involves the opening and preliminary examination of the *Eligibility Documents* and the *Final Proposal* to determine completeness of documents submitted and sufficiency of data/information provided therein.

**Stage 2** involves the detailed evaluation of the *Eligibility Documents* and the *Final Proposal* to determine compliance with all the requirements specified under this *TOR*.

## Section 2

### Eligibility

2.1 **Eligibility Criteria.** A Bidder shall be considered eligible if it satisfies all of the following requirements:

- a. **Legal Capacity.** The Bidder may be an individual or a corporation duly-registered with the Philippine Securities and Exchange Commission (SEC) or its equivalent in the country of incorporation and allowed to lease and develop lands in the Philippines. A consortium may also apply for eligibility, provided that the lead member of the consortium is duly registered with the Philippine SEC and the members of the consortium shall undertake to execute a *Memorandum of Agreement* which shall be required as part of the post-qualification process.
- b. **Compliance Commitment.** The Bidder (or all its consortium members) must commit to comply, in the development of the Property/ies, with: (1) the allowable land use, and the development restrictions for the Property/ies; and (2) all other pertinent government standards such as, but not limited to, the National Building Code, the Fire Code, and other relevant laws, rules, regulations and issuances of the agencies of the National Government and of the Local Government, for the entire duration of the lease.
- c. **Financial Capacity.** The Bidder (or a member, if a consortium) must have adequate capability to meet all of its financial obligations to BCDA and JHMC, which shall be measured in terms of the audited cash bank balance or credit line facility. The Bidder (or a member, if a consortium) should have an available cash balance or credit line of at least **Five Million Pesos (PhP5,000,000.00)**, for every Loghome that the Bidder intends to bid for and lease.
- d. **No Default.** The Bidder (and all its consortium members), its parent company, or its subsidiaries, or affiliates with common controlling shareholdings, if any, is not considered in default of its financial or other obligations, in any past or current project being undertaken with BCDA or JHMC at the day of submission of bids, as determined by the JHMC Board.
- e. **Timely and Complete Payment of Taxes.** The Bidder (and all its consortium members) should have no tax liabilities in the Philippines. A Tax Clearance Certificate issued by the Bureau of Internal Revenue (BIR) shall be required as part of post-qualification process.
- g. **Bid Documents.** The Bidder must have purchased the *TOR* (including bid forms and pertinent documents) for a non-refundable fee of **Twenty Thousand Pesos (PhP20,000.00)**. Only those who have purchased the *TOR* (including bid forms and pertinent documents) shall be entitled to participate in this bidding and receive Bid Bulletins or official responses from the ADP-Com.

2.2 **Eligibility Documents.** To be eligible, Bidders are required to submit the following documents described in the attached Checklist ([Annex "D"](#)):

- a. Duly notarized Eligibility Statement or Joint Eligibility Statement (format attached as [Annex "E-1"](#) or [Annex "E-2"](#), as applicable) which shall include the following information in support of the Bidder's eligibility:
  - (i) Bidder's Profile (format attached as [Annex "F"](#)), which, if the bidder is a corporation, should also contain the general organization and financial information about the Bidder. This should be accomplished by all members, in case of consortium;

- (ii) A statement of Commitment to comply with: (1) the allowable land use, and the development restrictions for the Property; and (2) all other pertinent government standards;
  - (iii) A statement of “no-default” on its financial or other obligations to BCDA or JHMC;
  - (iv) A statement of no pending or unpaid tax liabilities in the Philippines;
  - (v) A statement of acceptance of the qualification criteria established by BCDA or JHMC, commitment to abide by the decision of the BCDA or JHMC Board, and waiver of its right to seek legal remedies against BCDA or JHMC, its Board of Directors, Officers, staff, consultants and authorized representatives/ personnel in connection with this selection process;
  - (vi) A statement attesting to the veracity of all information presented and authenticity of all documents submitted;
  - (vii) A statement of affirmation of BCDA and JHMC’s anti-corruption policy; and
- b. Certification from the bank/s reflecting the Bidder’s cash balance or available credit facilities of the Bidder as of the month prior to the deadline set for the submission of bids (if bidding as a consortium, any member of the consortium who meets the Financial Capacity requirement).
  - c. If the bidder is a corporation, SEC Registration together with the General Information Sheet (GIS) of the Bidder for the latest applicable calendar or fiscal year (or all members in case of consortium), or for foreign corporations, the equivalent document duly authenticated by the Philippine Consulate based in the foreign company’s domicile.
  - d. Articles of Incorporation and By-Laws of the Bidder (or all members in case of consortium), and any amendments.
  - e. If the Bidder is a corporation, a Board Resolution or Secretary’s Certificate of the Bidder (or all members in case of consortium) expressly authorizing its participation in the bidding process, and appointing its authorized representative/s for this purpose.

BCDA and JHMC requires that each and every consortium member shall, as may be applicable, submit all of the above Eligibility Documents and shall be subject to the Eligibility Requirements.

### Section 3

**Final Proposal.** The *Final Proposal* shall consist of the following:

- 3.1 **Final Bid Letter.** The Bidder should submit a letter in the form of Annex “H”, duly signed by its authorized representative, expressly indicating the starting Annual Fixed Lease for the Property/ies; and
- 3.2 **Bid Security** in the amount equivalent to ten percent (10%) of the Bid Price for the Property , which shall be in the form of bank manager’s check or cashier’s check. The Bid Security of the Winning Bidder will be treated as earnest money for its required payment at the time of signing of the *Contract of Lease*. The Bid Security of all other Bidders shall be returned without interest upon signing of the *Contract of Lease* between BCDA and the Winning Bidder, unless otherwise forfeited under Article IX, Section 9.

### Section 4

**Evaluation of Bids**

- 4.1 **Preliminary Examination of Bids.** On the date and time specified in the *Timetable of Activities*, the sealed envelopes containing the *Eligibility Documents* shall be opened by the ADP-Com to determine completeness of documents and sufficiency of data/information provided therein.

Only those Bidders determined by the ADP-Com during the preliminary examination to have submitted complete Eligibility Documents under this *TOR* shall be qualified for the opening of their *Final Proposals*. Those Bidders determined by the ADP-Com to have failed to submit complete Eligibility Requirements shall automatically have their *Final Proposals* returned to them unopened.

The ADP-Com shall open the *Final Proposals* to determine compliance with the requirements under Article VI, Section 3 of this *TOR*. *Final Proposals* that are found to be non-complying shall be automatically rejected, and the Bid Security shall be immediately returned to the concerned Bidder. *Final Proposals shall be presented for mere comparison only as all submitted documents shall, still, be subject to further evaluation and verification by the ADP-Com.*

- 4.2 **Detailed Evaluation of Bids.** Within the period specified in the *Timetable of Activities*, the ADP-Com shall conduct a detailed evaluation of the *Eligibility Documents* and *Final Proposals* submitted. Bids that have satisfied all the requirements of this *TOR* shall be ranked based on the proposed starting Annual Fixed Lease for the subject Property/ies. The highest proposed starting Annual Fixed Lease for each of the Properties shall be declared the **Highest Ranked Bid**. The results of the ADP-Com's detailed evaluation of bids shall be subject to the approval of the JHMC Board.

## Section 5 **Post-qualification**

- 5.1 The Bidder with the Highest Ranked Bid must pass a post-qualification process to verify accuracy and authenticity of all submitted documents and information, including submission of a Tax Clearance Certificate issued by the BIR in accordance with Executive Order No. 398 Series of 2005 and if a consortium, the corresponding *Memorandum of Agreement*. The *Memorandum of Agreement* must include the following information:
- brief description of the consortium, the individual members of the consortium and the nature and extent of the participation (capital of each member in relation to the whole capital);
  - the lead member of the consortium who is authorized by all the members to represent and sign any and all documents related to this bidding including the *Contract of Lease* with JHMC; and
  - agreement of all members to be jointly and severally liable for the obligations of the consortium under the award/contract.

Any material insufficiency in the information required, inconsistencies, errors or misrepresentations in the submitted documents shall be ground for disqualification and forfeiture of its Bid Security.

- 5.2 If the Bidder with the Highest Ranked Bid passes post-qualification, its proposal shall be declared as the **Highest Ranked and Complying Bid**. The ADP-Com shall recommend to the JHMC Board the award of the contract to said Bidder (Winning Bidder).
- 5.3 If the Bidder with the Highest Ranked Bid fails post-qualification, the ADP-Com shall notify the Bidder of the results thereof. The ADP-Com shall subject the Bidder with the Second Highest Ranked Bid to post-qualification.
- 5.4 If the Bidder with the Second Highest Ranked Bid passes post-qualification, it shall be declared as the Winning Bidder. If, however, the bidder with the Second Highest Ranked Bid fails post-qualification, the post-qualification process shall be repeated for the bidder with the next highest ranked bid, and so on until a Winning Bidder is determined.

## Section 6 **Award.** A Notice of Award (NOA) shall be issued to the Winning Bidder, inviting the Winning Bidder to execute the *Contract of Lease* within thirty (30) calendar days from receipt thereof.

**ARTICLE VII  
TIMETABLE OF ACTIVITIES**

Activities	Timetable
Publication of Invitation to Bid	
Issuance of TOR	
Pre-bid Conference	
Deadline for Submission of Requests for Clarification	
Last day of Issuance of Bid Bulletin	
Deadline for Submission of the Eligibility Documents and the Final Proposals	
Opening and Preliminary Examination of Bids	
Detailed Evaluation of Bids	
Board approval of the Results of Evaluation of Bids	
Announcement of Results of Evaluation of Bids	
Post-qualification	
Estimated Board Approval of Results of Post-qualification and ADP-Com Recommendation to declare the Winning Bidder	
Announcement of the Winning Bidder and Issuance of Notice of Award	
Board approval of Contract	
Signing of Contract	

The above is an indicative timetable which may change at the discretion of the ADP-Com.

**ARTICLE VIII  
TAKE-OVER OF THE PROPERTY**

Section 1 The Winning Bidder shall authorize JHMC to enter the Property as the agent or attorney-in-fact of the Winning Bidder, without need of any judicial action, in the following instances:

- 1.1 The Property is abandoned, deserted or vacated within the duration of the *Contract of Lease*;
- 1.2 Violation of any terms thereof by the Winning Bidder; or
- 1.3 Non-payment of lease in full by the Winning Bidder.

JHMC shall further have the option to dispose the same to other parties as the agent of the Winning Bidder, to receive the payments thereof, and to apply the same to the emoluments due under the *Contract of Lease*, holding the Winning Bidder liable for any deficiency, without prejudice to any right of action against the Winning Bidder.

For purposes of this Section, the Property is considered to be abandoned, deserted or vacated if the Winning Bidder or its authorized representatives or beneficiaries has not within the lease period used or entered the Property for three (3) consecutive months without prior due notification to JHMC.

This section shall also not preclude JHMC from exercising its right/remedies that shall be set out anywhere else in this *TOR* or in the *Contract of Lease* for the Property.

**ARTICLE IX  
OTHER MATTERS**

Section 1 **Amendments.** The information and/or procedures contained in this *TOR* may be amended or replaced at any time, at the discretion of the ADP-Com, subject to the approval of the JHMC Board, without giving prior notice or providing any reasons therefor. Should any of the information and/or



procedures contained in this *TOR* be amended or replaced, the ADP-Com shall inform all Bidders of such amendments by way of a Bid Bulletin. To ensure that all Bidders are informed of any amendments to this *TOR*, all Bidders are requested to inform JHMC of their contact persons as well as contact telephone numbers and e-mail addresses. In addition, receipt of all Bid Bulletins shall be duly acknowledged by each Bidder prior to the submission of bids and shall be so indicated therein.

Section 2 **Pre-Bid Conference.** Interested bidders are invited to attend a Pre-Bid Conference to discuss the Property, this *TOR* and other possible questions. The Conference shall be held on the date and time specified in the *Timetable of Activities* at Cottage 624, JHMC Office, Baguio City, Philippines. Succeeding conferences with the prospective Bidders shall be scheduled by the ADP-Com prior to the submission of bids. Any change in the *Timetable of Activities*, as well as resolutions and actions on the issues raised by the Bidders shall be embodied in a Bid Bulletin.

Section 3 **Requests for Clarifications.** Bidders are enjoined not to contact any employee or officer of JHMC, whether personally or through phone calls. All relevant inquiries and concerns shall be raised in writing and addressed only to the ADP-Com Chairperson as follows:

THE CHAIRPERSON  
Asset Disposition Program Committee  
John Hay Management Corporation  
John Hay Special Economic Zone, Baguio City, Philippines

All clarifications and inquiries on the submission of Bids should be received by the ADP-Com on or before the date specified in this *TOR*.

Section 4 **Due Diligence.** JHMC is disposing the Property strictly on an “*as-is, where-is*” basis. Each prospective Bidder shall be solely responsible for its own due diligence of all matters relating to this *TOR* and the Property which may affect its valuation of the Property or the nature of its proposal. JHMC shall not be responsible for any erroneous interpretation or conclusion of the Bidder out of data furnished or indicated in this *TOR* and official eligibility and proposal forms, including any addenda, amendments or Bid Bulletins issued by the ADP-Com.

No verbal agreement or conversation with, nor any verbal clarification from, any officer or employee of JHMC, the ADP-Com or any of their advisers shall affect or modify any of the terms and conditions contained in this *TOR*. Only amendments, supplements or clarifications to this *TOR* that are set down in writing and circulated to proponents by the ADP-Com shall be relied upon as authorized. Neither the JHMC, its Directors, Officers, staff, consultants and authorized representatives/ personnel may make any representation or warranty concerning any matter affecting this bidding except for the representations and warranties of JHMC that shall be set out in the *Contract of Lease* for the Property.

Section 5 **Failure of Bidding.** JHMC shall declare a failure of bidding in any of the following instances:

- 5.1 No bid is received;
- 5.2 No Bidder passed the preliminary examination of bids;
- 5.3 No Bidder qualified during detailed evaluation of bids;
- 5.4 No Bidder passed post-qualification;
- 5.5 The Winning Bidder refused to accept the award or enter into contract with JHMC; and
- 5.6 The happening of a fortuitous event or any reason beyond the control of JHMC, including but not limited to change in government policy, which prevents the completion of the contract or unduly delays its conclusion.

Section 6 **Appeal.** A Bidder determined as disqualified and/or whose bid has been found non-complying may file an appeal in writing (Notice of Appeal) to the JHMC Board of Directors. The appeal must be filed within seven (7) calendar days from receipt of the bid bulletin containing the questioned resolution. The Notice of Appeal shall be accompanied by a sworn statement and corresponding

payment of a non-refundable appeal fee in the amount of **Five Hundred Thousand Pesos (PhP500,000.00)**, in the form of a bank manager's check.

The bidding process will be suspended for a maximum period of thirty (30) calendar days while the appeal is being evaluated. The decision of the JHMC Board on the appeal shall be final and immediately executory. If the appeal is not resolved within the said period, the appeal is deemed denied, and the bidding process will proceed.

Section 7 **Confidentiality of Bids.** All bids and accompanying documents shall be treated as confidential. Both parties shall hold any and all confidential information in strict adherence and will not disclose or use any confidential information or any part of it except for the proper performance of the party's obligations under the *TOR*.

Section 8 **Waiver of Right to Seek Legal Remedies.** JHMC, its Board of Directors, Officers, staff, consultants, and authorized representatives/personnel shall be held free and harmless from any liability, costs and expenses arising from the participation by the Bidders in this bidding process. All Bidders, in participating in the bidding, waive all rights to seek legal action (e.g. Temporary Restraining Order, lawsuits, etc.) to prevent JHMC from awarding and executing a contract with the Winning Bidder or against any decision of the JHMC in connection with the evaluation, award, suspension or termination of the bidding process.

Section 9 **Forfeiture of Bid Security.** Any of the following shall be ground for the forfeiture of the Bid Security in favor of JHMC upon certification by the ADP-Com:

- 9.1 Any material misrepresentation, error and/or fraudulent declaration made by the Bidder in the bid documents or any of the required attachments discovered at any time after the preliminary examination of bids;
- 9.2 Withdrawal or modification, whether conditional or otherwise, of the proposal after the deadline for the submission of bids;
- 9.3 Failure or refusal of a Winning Bidder to enter into a *Contract of Lease* with JHMC within the prescribed period;
- 9.4 Any judicial or extrajudicial action by the Winning Bidder that shall delay the execution of the *Contract of Lease* and/or its compliance with its obligations as set out in this *TOR*; and
- 9.5 Any circumstance or reason that provides JHMC reasonable and valid basis to believe that the Bidder is or has been rendered incapable of completing its obligation, as proposed.

The decision of the JHMC Board shall be final.

Section 10 **Integrity Initiative.** The Bidders, their Directors and Officers are prohibited from communicating with or contacting, directly or indirectly, any of JHMC's Directors, Officers, staff, consultants and authorized representatives/personnel on matters concerning the bidding for the entire duration of the bidding process except for queries and clarifications of proposal which must be in writing and addressed to the ADP-Com Chairperson.

The Bidders shall not offer or give, directly or indirectly, any amount, benefit or advantage to any Director, Officer, employee, consultant or authorized representative/personnel of JHMC. Violation of this policy shall be a ground for disqualification or revocation of the award, if any, without prejudice to damages that JHMC may recover for any loss or damage that may result therefrom.

Section 11 **Qualifications and Waivers.** JHMC reserves the right to reject any or all bids and its decision shall be final. JHMC reserves the right to review all relevant information affecting the Bidder or the proposal before the execution of the *Contract of Lease*. JHMC may disqualify the Bidder or suspend/terminate the bidding process or declare a failure of bidding should such review uncover any misrepresentation, error, mistake or fraud in any of the submitted documents or information or evaluation which affects the substance of its proposal.

JHMC further reserves the right to call off the bidding at any stage prior to the signing of the *Contract of Lease* and call for a new bidding under amended rules, without any liability whatsoever to any and all the Bidders. In such a case, the Bid Security shall be returned to the Bidder.

Section 12

**Interpretation of Documents.** The *TOR* and all its Annexes have been crafted with a view toward fair, transparent and competitive bidding of the subject Property. Any ambiguity in, or conflict between, the *TOR* and its Annexes shall be resolved toward fulfilling the intent of this privatization, as determined by JHMC.