CONTRACT OF LEASE

*(FOR THE RECONSTRUCTION, OPERATION AND MAINTENANCE*

*OF THE CAMP JOHN HAY MINI-HYDRO POWER PLANT)*

**THE PUBLIC IS INFORMED:**

This **CONTRACT OF LEASE** (**CONTRACT”***for brevity)* executed by and between:

The **BASES CONVERSION AND DEVELOPMENT AUTHORITY**, a government instrumentality vested with corporate powers created by virtue of Republic Act No. 7227, as amended by Republic Act No. 7917, with principal office address BCDA Corporate Center, 2/F Bonifacio Technology Center, 31st Street Corner 2nd Avenue, Bonifacio Global City Taguig, Metro Manila, through its President & CEO, **ARNEL PACIANO D. CASANOVA, *Esq.***, who is duly authorized for this purpose under Board Resolution No. \_\_\_\_\_ Series of 2015, as evidenced by the Secretary’s Certificate dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_, a copy of which is hereto attached as ***Annex “\_\_”***, hereinafter referred to as **“BCDA”**;

**JOHN HAY MANAGEMENT CORPORATION**, Government- Owned and Controlled Corporation operating by virtue of the laws of the Republic of the Philippines and a member of the Bases Conversion and Development Authority (BCDA), with SEC Registration No. ASO **9304846**, with office and postal address at John Hay Special Economic Zone, Camp John Hay Special Economic Zone, Baguio City 2600, Philippines, represented herein by its President and Chief Executive Officer (PCEO), **JAIME ELOISE M. AGBAYANI, MD.**, who is hereby authorized for the purpose pursuant to BCDA AND JHMC Board Resolution No. 2011-0315-028 dated 15 March 2011, a copy of which is hereto attached as ***Annex “\_\_\_”*** to form an integral part hereof, and hereinafter referred to as the “**JHMC**”;

-and-

The ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*\_\_\_,** corporation/consortium duly created and existing under applicable laws, with office address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, through its \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, duly authorized for this purpose under Board Resolution No. \_\_\_\_\_ Series of 2015, as evidenced by the *Secretary’s Certificate* dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_, a copy of which is hereto attached as ***Annex “\_\_\_”***, hereinafter referred to as the **“LESSEE-DEVELOPER”.**

(Each a **“PARTY”,** and collectively, the **“PARTIES”**)

 - Antecedents -

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 base lands.

Executive Order No. 103 series of 1993 authorizes the creation of the John Hay Development Corporation (now the John Hay Management Corporation, hereinafter referred to as the **“JHMC”**) as the operating and implementing arm of the BCDA to manage the Camp John Hay.

The JHMC now undertakes the reconstruction, operation and maintenance of the Camp John Hay Mini-Hydro Power Plant (hereinafter referred to as **“MHPP”**) located at Barangays Camp 7, Baguio City and Barangay Camp 4, Tuba, Benguet, Philippines, through long-term lease and development on an ***“As-is, Where-Is”*** basis. The vicinity map of the MHPP is attached as ***Annex “\_\_\_”.***

The JHMC conducted public bidding to consider proposals and choose from the interested eligible private sector participants the **LESSEE-DEVELOPER** of the MHPP.

The **LESSEE-DEVELOPER** has submitted the Highest Ranked and Complying Bid.

In view thereof, the JHMC Board of Directors passed on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Resolution No. \_\_ Series of 2015 approving the award of this CONTRACT to the LESSEE-DEVELOPER.

**ACCORDINGLY**, in consideration of the foregoing premises, and for the stipulations and covenants hereinafter stipulated, the **PARTIES** hereby agree and bind themselves to the following:

**ARTICLE I**

**GENERAL AGREEMENTS**

**SECTION 1. THE PROPERTY**

1. **Description of the Land.** The MHPP structures and facilities are situated on two-contiguous parcels of land located at the southern portion of the Camp John Hay which are both accessible through the Kennon Road:

1. The first parcel (Lot 1) is situated within the City of Baguio.
2. The second parcel (Lot 2) is situated within the Municipality of Tuba, Province of Benguet.

|  |  |  |
| --- | --- | --- |
| **Lot No.** | **Area** | **Remarks** |
| **Square Meters** | **Hectares** |
| 1 | 246,424 | 24.6424 | Location of the Diversion Dam or Weir, Proposed location of the Headrace and Forebay. |
| 2 | 141,892 | 14.1892 | Location of the Penstock, Power House and Tailrace.  |
| **Total Area**  | **388,316** | **38.8316** |  |

Parcel Maps of Lots1 and 2 are attached as ***Annex “\_\_\_”.***

1. **Existing Facilities.** The MHPP is an existing power plant facility comprising of the following immovable structures, namely:
2. Diversion Dam or Weir - a trench type overflow dam having a height of 3 meters and crest length of 12 meters.
3. Head Race – Reinforces concrete pipe with manholes having a diameter of 0.70 meters.
4. Penstock – A Two-Steel Pipe having a diameter of 0.30 meters.
5. Powerhouse – A 7-meter high reinforced concrete structure having a floor area of 150 square meters.
6. Tailrace – A combination of Steel and Concrete Pipe 12 meters in length.
7. **Property Owner.** Pursuant to R.A. 7227, 570 hectares of the John Hay Air Station was transferred to the Bases Conversion and Development Authority (BCDA). Part and parcel of the John Hay Air Station is the Camp John Hay Mini-Hydro Power Plant developed and utilized by the U.S. Government in the early 1900’s.
8. **Status of the MHPP.** The property is an unregistered land transferred to BCDA through R.A. 7227 series of 1993. BCDA has a pending application for a Special patent with the Department of Environment and Natural Resources (DENR).

**SECTION 2.** **LAND USES FOR THE PROPERTY**

a. The Property shall be developed for industrial use specifically for the operation and maintenance of a MHPP. Other areas within the Property unaffected by the operation and maintenance of the MHPP shall remain as is and any property found therein shall remain with the BCDA as Property Owner.

b. If the **LESSEE-DEVELOPER** wants to develop other areas of the Property unaffected by the operation and maintenance of the MHPP, the **LESSEE-DEVELOPER** shall first secure JHMC’s prior written consent. In any case, the allowed economic activities shall be limited to those relating to:

1. Eco-Tourism Park; and
2. Recreational Facilities.

**SECTION 3. RESTRICTIONS ON THE PROPERTY**

1. The MHPP shall conform to the land use prescribed in Section 3 of the TOR. Should the winning bidder opt to develop the unaffected areas into other productive uses, a prior written consent should be secured from BCDA/JHMC.
2. The development of the MHPP shall strictly comply with all pertinent government standards such as, but not limited to, the National Building Code, the Comprehensive Fire Code of the Philippines and other relevant laws, rules, regulations and issuances of the agencies of the National Government, both existing and subsequent issuances.
3. The demolition or clearing of the existing structures within the property shall only be conducted after securing the necessary permits or clearances from JHMC. In cases where developmental permits from other National Government Agencies need to be secured, JHMC will endorse such applications to the concerned Agencies.

**SECTION 4. LEASE AND DEVELOPMENT TERM**

The Lease and Development Term shall be for a period of twenty-five (25) years, starting from the execution of this **CONTRACT,** and renewable for another twenty-five (25) years upon mutual agreement of the Parties. For this purpose, the **LESSEE-DEVELOPER** shall inform JHMC of its desire to renew the **CONTRACT** not earlier than three (3) years or not later than one (1) year before the initial lease period expires, unless a strong reason justifies an early renewal, subject to the approval of BCDA AND JHMC.

Upon the expiration of the **CONTRACT**, the ownership of all buildings and permanent facilities/improvements introduced by the **LESSEE-DEVELOPER** on the Property shall automatically be transferred to JHMC. Therefore, should the **LESSEE-DEVELOPER** opt to renew its **CONTRACT,** negotiation on the Rental for the next twenty-five (25)-year extension period shall be mutually agreed upon by both Parties.

**SECTION 4. RATE OF LEASE RENTAL**

1. The Annual Lease Rental shall refer to \_\_\_\_ percent (\_\_\_ %) of the **LESSEE-DEVELOPER’s** Annual Gross Income generated from the economic life of the MHPP.

Gross Income is defined as the income derived by the **LESSEE-DEVELOPER** from the operation of the MHPP for a given taxable year as defined in Section 32 of the National Internal Revenue Code (NIRC) of the Republic of the Philippines.

1. Operations from other economic activities enumerated in Article I, Section 2 (b) of this **CONTRACT** shall be subject to additional Annual Lease Rental equivalent to five percent (5%) of the **LESSEE-DEVELOPER** annual gross income from such economic activities or as mutually agreed by both Parties.
2. The Annual Lease Rental shall be correspondingly adjusted if and when there is any change in the VAT rate since VAT is a pass-on tax. The **LESSEE-DEVELOPER** agrees to pay any other gross receipts tax and any other taxes that may be imposed on the Annual Lease Rental in the future.

**SECTION 5. SCHEDULE OF PAYMENT**

1. The Annual Lease Rental shall be paid starting on the sixth (6th) anniversary of the **CONTRACT.** The Annual Lease Rental shall be exclusive of twelve percent (12%) VAT.
2. Additional Annual Lease Rental shall be paid starting on the second (2nd) year of operations of other economic activities on or before the anniversary of the execution of an addendum to this **CONTRACT** or as mutually agreed by both parties. The Annual Lease Rental shall be exclusive of twelve percent (12%) VAT.
3. A penalty of one-tenth (1/10) of one percent (1%) of the Annual Lease Rental for every calendar day of delay shall be charged to the **LESSEE-DEVELOPER** should the latter fail to pay JHMC the Annual Lease Rental as specified in Section 4 hereof.
4. For clarity, the PARTIES agree to the schedule provided below:

|  |  |  |
| --- | --- | --- |
| **PERIOD COVERED** | **RATE OF LEASE RENTAL** | **SCHEDULE OF PAYMENT** |
| Year 1 | PhP0 | Grace Period |
| Year 6 to 25 | Annual Lease Rental as mentioned in Section 4 | On the 6th anniversary of the Contract  |

SECTION 6. PLACE AND MODE OF PAYMENTS

The LESSEE-DEVELOPER shall pay the Annual Lease Rental together with all other amounts due under this CONTRACT, to BCDA AND JHMC at the address set forth in this CONTRACT without need of demand and without deduction, set-off or counterclaim unless a deduction or withholding is required by applicable law.

SECTION 7. SUBLEASE, TRANSFER OF RIGHTS, ASSIGNMENT, ETC.

The **LESSEE-DEVELOPER** shall not sublease, assign, transfer or convey its rights and responsibilities over the Property.

SECTION 8. CARE OF THE PROPERTY AND THE IMPROVEMENTS

1. The LESSEE-DEVELOPER shall, at its expense, keep and maintain the PROPERTY in a clean and sanitary condition, and dispose of all rubbish/garbage in coordination with JHMC for compliance with environmental standards.
2. The LESSEE-DEVELOPER shall further undertake at its exclusive expense, all maintenance and repairs on the developments, improvements and fixtures introduced during the term of the CONTRACT, as may be required to maintain such developments, improvements and fixtures in good and tenantable condition.
3. Upon the expiration/cancellation/termination of the CONTRACT, the LESSEE-DEVELOPER shall surrender and return the Property, improvements and facilities in good condition, ordinary wear and tear excepted.
4. The LESSEE-DEVELOPER shall be liable for any damage or deterioration caused by its personnel or subcontractors.

**SECTION 9. LIEN ON THE PROPERTY**

1. The **LESSEE-DEVELOPER** shall not create any liens on the land or any structure or improvement in securing project financing.
2. BCDA AND JHMC may terminate this **CONTRACT** by sending to the **LESSEE-DEVELOPER** a written notice without need for judicial action should the **LESSEE-DEVELOPER** cause the creation of any lien or encumbrance on the land or any structure or improvement during the effectivity of this **CONTRACT**.

**ARTICLE II**

**RIGHTS AND RESPONSIBILITIES OF THE PARTIES**

**SECTION 1. RIGHTS AND RESPONSIBILITIES OF THE LESSEE-DEVELOPER**

The **LESSEE-DEVELOPER** shall:

* 1. Strictly comply with the terms and conditions of the **CONTRACT** and maintain all warranties and representations in good standing for the duration of the contract period;
	2. Comply with all its work and financial commitment in carrying out its operations and provide all necessary services, technology, and financing in connection with the **CONTRACT**;
	3. Undertake the re-greening of the areas under its responsibility by planting of pine trees and /or other species recommended by JHMC within the MHPP, and the maintenance of the same;
	4. Observe applicable laws relating to labor, health, safety, environment, ecology and construction standards.
	5. Pay the government its share and taxes, as may be applicable;
	6. Give employment to qualified personnel in the area where the MHPP is located and give preference to Filipinos in all types of employment for which they are qualified;
	7. Give preference to local companies/agencies in entering into subcontracts on activities or services which the **LESSEE-DEVELOPER** may not carry out, upon approval by the JHMC, provided that these companies/agencies are competitive and the services required are locally available;
	8. Post a Performance Security, if applicable, within the prescribed period;
	9. Secure an All-Risk Insurance policy with JHMC as the named beneficiary;
	10. Undertake, at its sole cost, on-site development and provide utilities, access roads to the MHPP, and internal road networks. This includes clearing and properly disposing of the existing cottages/structures within the property, in accordance with law and environmental rules and regulations, at the **LESSEE-DEVELOPER’s** own cost;
	11. Maintain complete and accurate technical data and reports, and accounting records of all the costs and expenditures for the operations;
	12. Submit in timely manner the technical and financial reports in accordance with the format as prescribed by JHMC;
	13. Be responsible in the proper handling of data, samples, information, reports and other documents;
	14. Allow JHMC personnel, at all reasonable times, full access to the MHPP and to accounts, books, and other records related to the operation of the MHPP.
	15. Undertake, at its sole cost, on-site development and provide utilities, access to the MHPP, and internal road networks;
	16. All documents, information, data and reports generated during its operation under the **CONTRACT** shall be confidential, and shall not be disclosed to any third-party or to any affiliate not directly involved in the implementation of the **CONTRACT.** For this purpose, the **LESSEE-DEVELOPER** undertakes that its officers, employees and affiliates directly involved in the **CONTRACT** shall execute a Non-Disclosure Agreement;
	17. Be granted fiscal and non-fiscal incentives and privileges under Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008, and its Implementing Rules and Regulations (IRR), and all other existing laws that are not otherwise modified or repealed by the Act;
	18. Obtain assistance from DOE in endorsing the project to the national government, local government units (LGUs), Board of Investments (BOI) and other entities for the acquisition of permits, licenses, and clearances and availment of applicable fiscal and non-fiscal incentives;
	19. Allow, in accordance with the existing laws, entry into the Philippines and employment of expatriate employees who shall exercise their technical professions solely for the hydropower operations, provided that Filipino employees shall be given preference to positions for which they have adequate training;
	20. Have a free and unimpeded use of hydropower resources within the MHPP in view of the hydropower operations, additional and new investments;
	21. Be granted an exclusive easement to use, convert, maintain and capture the free and unobstructed flow of hydropower resources within the MHPP;
	22. Conduct preliminary hydropower resources data gathering activities during the pre-development stage and, if warranted by the results of such hydropower resources data gathering, conduct a full hydropower resources assessment;
	23. Submit a work plan for the first five (5) years from its declaration of commerciality and its corresponding budget thereof, and two (2) months prior to the end of the first five (5) years, submit a work plan and budget for the next five (5) years and shall do so every five years thereafter;
	24. Secure any necessary permits and clearances from all relevant government entities for the project;
	25. Allow officials and representatives authorized by the DOE access to the MHPP, and to the accounts, books, and records directly relating to the MHPP; and,
	26. Supply power to JHMC at preferred reasonable rates as agreed by JHMC and the Winning Bidder. This will be subject to DOE and Energy Regulatory Commission (ERC) guidelines and such other applicable laws, rules and regulations.

**SECTION 2. RIGHTS AND RESPONSIBILITIES OF BCDA AND JHMC**

The BCDA and JHMC shall:

1. Give the **LESSEE-DEVELOPER** the sole right to reconstruct, operate and manage the MHPP during the effectivity of the **CONTRACT,** subject to the restrictions, terms and conditions stated herein.
2. Deliver possession of the MHPP including all existing structures within the MHPP to the **LESSEE-DEVELOPER**, on an “***As-Is, Where-Is***” basis, upon the execution of the **CONTRACT.**
3. The **LESSEE-DEVELOPER** shall have the option to demolish said structures subject to a written clearance from JHMC and all materials resulting from such demolition should be turned-over/returned to JHMC.

**SECTION 3. TAKE-OVER OF THE PROPERTY**

1. The **LESSEE-DEVELOPER** shall authorize JHMC to enter the Property as the agent or attorney-in-fact of the **LESSEE-DEVELOPER** in the following instances:
2. The MHPP is abandoned, deserted or vacated before the expiration of the **CONTRACT;**
3. Violation of any terms thereof by the **LESSEE-DEVELOPER**; or
4. Non-payment of JHMC Rental in full by **LESSEE-DEVELOPER**.
5. JHMC shall further have the option to contract-out the same to other Parties as the agent of the **LESSEE-DEVELOPER**, to receive the Annual Lease Rental thereof, and to apply the same to the payment of the Annual Lease Rental due under the **CONTRACT,**holding the **LESSEE-DEVELOPER** liable for any deficiency, without prejudice to any right of action against the **LESSEE-DEVELOPER**.
6. For purposes of this Section, the Property is considered to be abandoned, deserted or vacated if the **LESSEE-DEVELOPER** or its authorized representatives or beneficiaries has not commenced the construction of the MHPP seven (7) calendar days from the issuance by JHMC to the **LESSEE-DEVELOPER** of a Notice to Proceed (NTP).
7. 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 Contractfor the MHPP.

ARTICLE III

PERFORMANCE SECURITY AND INSURANCE

SECTION 1. PURPOSE OF PERFORMANCE SECURITY

A Performance Security shall be posted by the LESSEE-DEVELOPER to guarantee that it will fulfill its obligations under this CONTRACT.

SECTION 2. PERFORMANCE SECURITY ON THE ANNUAL LEASE FOR THE PROPERTY AND THE ANNUAL SHARE FOR THE PROJECT

1. The LESSEE-DEVELOPER shall submit to JHMC, not later than seven (7) from the receipt of the Notice of Award (NTA), a bank guaranty or irrevocable letter of credit issued by a Universal Bank or Commercial Bank or a continuing Surety Bond issued by the GSIS with a face value equivalent to the Annual Lease Rental for the fourth (4th year to fully secure its payment.
2. Such Surety Bond shall contain provisions for automatic renewal and replenishment of the face value as the case may be.

**SECTION 3. COMPREHENSIVE ALL-RISK INSURANCE**

1. The **LESSEE-DEVELOPER** shall obtain, at its own cost, an all-risk insurance coverage from the Government Service Insurance System (GSIS) for construction and improvements introduced during the term of the Re Contract in an amount equivalent to their replacement value with JHMCas the beneficiary of the required insurance.
2. The **LESSEE-DEVELOPER** shall obtain the insurance coverage herein stipulated not later than two (2) months after completion of construction and update the insurable amount based on the foregoing provision.
3. The **LESSEE-DEVELOPER** shall submit to JHMC the original insurance policy and the Official Receipt of payments within five (5) days from obtaining the insurance coverage.
4. Should the insurable risk occur and the insurance proceeds be insufficient for purposes of construction of the MHPP as herein required, the **LESSEE-DEVELOPER** shall assume the additional cost of replacement of the structures without reimbursement from BCDA and JHMC. Alternatively, both the **LESSEE-DEVELOPER** andBCDA and JHMC may agree on termination of the **CONTRACT**, in which case, JHMC shall retain the insurance proceeds.

**SECTION 4. UTILIZATION OF INSURANCE PROCEEDS**

In the event of a claim on the insurance policy obtained in the immediately preceding Section, the proceeds of the insurance policy must be utilized by JHMC or its authorized agent to reconstruct/rehabilitate the damaged structure or improvements.

**ARTICLE IV**

**FORCE MAJEURE AND SUSPENSION**

**SECTION 1. DEFINITION**

*Force Majeure* or fortuitous events shall mean events which could not have been foreseen, or if foreseen were inevitable and beyond the control of a **PARTY**, without any accompanying fault or negligence of the **PARTY** invoking it as an excuse for the non-performance of its obligations as specified hereunder, which prevent or materially affect the ability of said **PARTY** to comply with any of its obligations under this **CONTRACT**, and shall include:

(a) fires, earthquakes, lightning, flood, conflagration, volcanic eruption, storm and other similar natural calamities and occurrence;

(b) acts of war or acts of the public enemy, whether war be declared or not;

(c) public disorders, insurrection, rebellion, sabotage or violent demonstrations; and

(d) government acts which shall render the facility inoperable.

**SECTION 2. APPLICABILITY**

1. A **PARTY** shall be excused from the performance of any of its obligations under this **CONTRACT** and shall not be considered in delay or in default in respect of any obligation hereunder by reason of *force majeure* if both of the following conditions are met:
2. there is no accompanying fault or negligence of the **PARTY** invoking it; and
3. the **PARTY** invoking *force majeure* shall have, within seven (7) days from the occurrence of *force majeure*, notified the other **PARTY** in writing of the occurrence of *force majeure,* the extent to which such *force majeure* suspends the affected **PARTY**’s obligations under this **CONTRACT**.
4. The other **PARTY** has a period of fourteen (14) days from receipt of such notice within which to verify the existence, nature and extent of the *force majeure* being invoked by the **PARTY** giving notice of such *force majeure*. The **PARTY** invoking *force majeure* shall resume performance of its obligations as soon as the effects of *force majeure* cease to exist.

**SECTION 3. NON-APPLICABILITY**

The following shall not, by themselves, constitute *force majeure*, unless the cause which gave rise to them constitutes *force majeure* under Section 1 hereof:

(a) late payment of money;

(b) delays resulting from reasonably foreseeable unfavorable weather; and,

(c) failure of a **PARTY** to exercise due diligence or undertake reasonable measures to contain the effect of *force majeure*.

**SECTION 4. MITIGATION MEASURES**

Upon the occurrence of *force majeure*, the PARTY invoking it to excuse performance of its obligations hereunder shall endeavor to continue to perform its obligations under this CONTRACT as far as practicable, and shall notify the other PARTY of the steps the PARTY invoking the *force majeure* proposes to take, including reasonable measures to mitigate the effects of the *force majeure*.

**ARTICLE V**

**REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS**

**SECTION 1.** **REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS OF THE RE DEVELOPER**

The **LESSEE-DEVELOPER** hereby represents, warrants and covenants to the BCDA and JHMC that:

(a) It is corporation duly organized, validly existing, and in good standing under the laws of the Republic of the Philippines. It has all necessary power and authority to carry on its business as presently conducted, to hold under lease the **PROPERTY** and enter into and perform its obligations under the agreements to which it is or is to be a party; **(AS APPLICABLE)**

(b) The execution, delivery and performance by **LESSEE-DEVELOPER** under this **CONTRACT** have been duly authorized by all necessary corporate action, and do not require any other approval from the holder of any of its indebtedness or other obligation, and do not contravene or constitute a default under its organizational documents or, to the best of its knowledge, any provision of applicable law or any agreement, judgment, injunction, order, decree or other instrument binding upon it, or subject the performance of its obligations in this **CONTRACT** to any lien. It is in compliance with all applicable laws and government approvals which govern its ability to perform its obligations under the **CONTRACT**;

(c) It has duly and validly executed and delivered this **CONTRACT** which constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms;

(d) It has all the required skills and capacity necessary to perform or cause to be performed all its obligations under this **CONTRACT** in a proper, timely and professional manner;

(e) It has the knowledge of all the legal requirements and good business practices that must be followed in performing its obligations under this **CONTRACT**, and the same will be in conformity with such requirements and practices and in compliance with all applicable laws and Governmental Approvals;

(f) It is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this **CONTRACT**;

(g) To the best of its knowledge, there is no action, suit or proceeding, at law or in equity, or official investigation before or by any government authority, arbitral tribunal or other body pending, threatened against, or affecting, it or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on its ability to perform its obligations under this **CONTRACT** or on the validity or enforceability of this **CONTRACT**;

(h) The **LESSEE-DEVELOPER**, its parent company, or its subsidiaries or affiliates with common controlling shareholdings, if any, is not declared in default of its financial or other obligations by BCDA and JHMC or any of its subsidiaries at the time of the execution of this **CONTRACT**;

1. The **LESSEE-DEVELOPER**, its parent company, or its subsidiaries or affiliates with common controlling shareholdings, if any, is not included in the negative list of BCDA and JHMC or any of its subsidiaries at the time of the execution of this **CONTRACT**;

(j) It has not committed, directly or indirectly, any of the acts prohibited under Republic Act Nos. 3019 (Anti-Graft and Corrupt Practices Act) and 6713 (Code of Conduct and Ethical Standards of Public Officials and Employees). Any violation of this warranty shall be sufficient ground for the revocation or termination of this **CONTRACT** without prejudice to the criminal, civil and/or administrative liabilities of those involved;

(k) It has neither applied nor filed any insolvency, bankruptcy, rehabilitation, or suspension of payments and liquidation proceeding against or on behalf of the **LESSEE-DEVELOPER** before any Governmental Authority; and

(l) It is not involved in any money laundering activity as defined by the Anti-Money Laundering Act of 2001 (RA 9160).

**SECTION 2.** **REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS OF BCDA AND JHMC**

The BCDA AND JHMC represents, warrants and covenants in favor of the **LESSEE-DEVELOPER** that:

(a) WITH RESPECT TO ITS CORPORATE AUTHORITY:

(i) It is a government instrumentality vested with corporate powers by Republic Act No 7227, as amended by Republic Act No. 7917, and has all necessary power and authority under its Charter to award the disposition and privatization of the **PROPERTY** to the **LESSEE-DEVELOPER** under the Terms of Reference;

(ii) To the best of its knowledge, it has all the necessary power and authority to execute, deliver and perform its obligations under this **CONTRACT**. Should there be any other requirement of law, rules or regulation, BCDA AND JHMC commits to comply therewith; and

(iii) No application has been filed with any Governmental Authority for the commencement of any insolvency or bankruptcy proceeding against or on behalf of BCDA AND JHMC.

(b) WITH RESPECT TO THE PROPERTY:

 (i) There are no leases, subleases, licenses, concessions, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the **PROPERTY**. There are no parties in possession of the **PROPERTY** or any portion thereof, except the BCDA AND JHMC and as otherwise disclosed in the Terms of Reference. There are no outstanding options or rights of first refusal to purchase the **PROPERTY**.

**ARTICLE VI**

**DEFAULT AND ITS CONSEQUENCES**

**SECTION 1. EVENTS OF DEFAULT**

The occurrence of any of the following events shall constitute an Event of Default:

1. Failure of any **PARTY** to comply with any of its covenants and undertakings as provided in the General Agreements *(Article I)*, Rights and Responsibilities of the Parties *(Article II)* andPerformance Security and Insurance *(Article III)* of this **CONTRACT**;
2. Any representation or warranty of any **PARTY** contained in this **CONTRACT** is shown to have been untrue, incorrect, inaccurate or misleading in any material respect as of the time that it was made or deemed to have been made and such breach is not remediable or, if capable of being remedied, shall remain after the lapse of the Curing Period mentioned in Section 2 (b) hereof, as provided for in this Article;
3. Failure of the **LESSEE-DEVELOPER** to comply with its financial commitments under this **CONTRACT** on the due dates after the lapse of the applicable grace period specified in this **CONTRACT**;
4. Insolvency of a **PARTY**, or the application by a **PARTY** for insolvency, rehabilitation or suspension of payments, or a **PARTY** is adjudged bankrupt, disposes or assigns all or substantially all of its assets for the benefit of creditors, or where a **PARTY** is subjected to voluntary or involuntary dissolution;
5. Merger, consolidation or change of ownership of the **LESSEE-DEVELOPER** without the prior written consent of BCDA AND JHMC, which consent shall not be unreasonably withheld; and,
6. Any other cause, due to the fault or negligence of either **PARTY** that prevents it from fully exercising its rights under this **CONTRACT**.

**SECTION 2. CONSEQUENCES OF DEFAULT**

Upon the occurrence of an Event of Default, the non-defaulting **PARTY** shall, in addition to such other rights and remedies available under other provisions of this **CONTRACT** and pertinent laws, have the following rights which may be exercised cumulatively or alternatively:

1. The non-defaulting **PARTY** shall have the alternative right to (1) compel the performance of the defaulting **PARTY**, or (2) upon prior written notice to the Defaulting **PARTY**, rescind or terminate this **CONTRACT** without the necessity of judicial action if the event giving rise to the default is incurable;
2. Should the event giving rise to the right of a **PARTY** to terminate this **CONTRACT** be curable, the defaulting **PARTY** shall have the right to cure the same within a period of sixty (60) days from receipt of written demand by the non-defaulting **PARTY** (the “Curing Period”) and the non-defaulting **PARTY** shall only be entitled to rescind or terminate this **CONTRACT** without judicial intervention if such default shall have not been cured within the Curing Period;
3. In case the non-defaulting **PARTY** chooses to continue with the transaction despite the default of the defaulting **PARTY**, the non-defaulting Party may, by written notice, compel the defaulting **PARTY** to perform its obligations under this **CONTRACT** within such period of time as may be required by the non-defaulting **PARTY**, failing which, the non-defaulting **PARTY** may by written notice to the defaulting **PARTY** and without the necessity of judicial action (1) terminate this **CONTRACT** or (2) elect to continue the transaction in both cases reserving its right to claim damages for such non-compliance and/or seek such other legal remedies as may be available to it under the law; and,
4. BCDA AND JHMC may, in addition to the rights of a non-defaulting party, call on the Performance Security pursuant to Article III hereof.

**SECTION 3. COMMITMENT TO NEGOTIATE IN GOOD FAITH**

The **PARTIES** agree that upon the occurrence of an Event of Default, both **PARTIES** shall cooperate and conduct in good faith such discussions and negotiations as may be necessary to cure or resolve the Event of Default and address the impact of the Event of Default on the rights of the **PARTIES**, and exhaust all reasonable options or remedies, prior to availing of the remedies afforded under Section 2 hereof.

**ARTICLE VII**

**MISCELLANEOUS PROVISIONS**

**SECTION 1. PRIORITY OF DOCUMENTS**

1. This **CONTRACT** constitutes the entire agreement of the **PARTIES**. For matters not provided in the Terms of Reference (TOR) for the reconstruction, operation and maintenance of the MHPP, this **CONTRACT** supplements the same. However, in case of conflict between the provisions of this **CONTRACT** and those of the TOR, the provisions of the TOR shall prevail, it being imperative that this **CONTRACT** should comply with the TOR.
2. In case of conflict between this **CONTRACT** on one hand and/or the TOR on the other hand, the **PARTIES** agree to execute the necessary amendment of this **CONTRACT** to conform with the TOR.

**SECTION 2. DISPUTE RESOLUTION**

1. The **PARTIES** agree to resolve any dispute, controversy or claim that may arise between them with respect to this **CONTRACT** through amicable negotiation in good faith. Any dispute, claim or controversy arising out of, or relating to, this **CONTRACT** shall be settled by arbitration in accordance with the Alternative Dispute Resolution (ADR) Law effective at the time of the dispute.
2. However, should the **PARTIES** be constrained to litigate, the appropriate case shall be filed in the competent courts of law of Taguig City, to the exclusion of other courts of equal jurisdiction.

**SECTION 3. BINDING EFFECT**

This **CONTRACT** and all of the provisions hereof shall be binding upon and inure to the benefit of the **PARTIES** hereto and their respective lawful successors and assigns.

**SECTION 4. NON-WAIVER OF RIGHTS**

The failure of one **PARTY** to insist upon a strict performance of any of the terms, conditions and covenants hereof, shall not be deemed a relinquishment or waiver of any right/remedy that said **PARTY** may have, nor shall it be construed as a waiver of any subsequent breach of the same or other terms, conditions or covenants. Any waiver, extension or forbearance of any of the terms, conditions and covenants of this **CONTRACT** by any **PARTY** hereto shall not in any manner whatsoever be construed as a waiver, extension or forbearance of any other terms, conditions and/or covenants of this **CONTRACT**.

**SECTION 5. AMENDMENTS**

Any amendment, modification or additional terms and conditions to this **CONTRACT** must be in writing and mutually agreed by the **PARTIES**.

**SECTION 6. GOVERNING LAW**

This **CONTRACT** shall be governed by, and construed according to, Philippine laws.

**SECTION 7. NOTICE**

Any notice required or permitted in this **CONTRACT** or otherwise, in connection herewith shall be in writing and delivered personally, or sent by facsimile transmission or by certified or registered mail, postage prepaid to a **Party** at its address as specified below. Any such notice shall be deemed given when so delivered personally (including by a reputable courier), or if sent by facsimile transmission, when so transmitted, or if mailed, upon receipt by the other **PARTY**, as follows:

For **BCDA**:

**ARNEL PACIANO D. CASANOVA**

*President and CEO*

Bases Conversion and Development Authority

2/F Bonifacio Technology Center

31st St. Crescent Park West

Bonifacio Global City, Taguig City 1634

For **BCDA AND JHMC**:

**JAMIE ELOISE M. AGBAYANI**

*President and CEO*

John Hay Management Corporation

Camp John Hay, Baguio City

For the **LESSEE-DEVELOPER**:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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or such other address or facsimile number as the **PARTY** to whom notice is to be given has furnished in writing to the other **PARTY**. A notice of change of address shall not be deemed to have been given until received by the addressee.

**SECTION 8. SEVERABILITY**

The invalidity or unenforceability of any portion or provision of this **CONTRACT** shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this **CONTRACT**. The **PARTIES** shall negotiate an equitable adjustment in the remaining portions or provisions of this **CONTRACT** to effect the underlying purposes of this **CONTRACT**.

**SECTION 9. CONFIDENTIALITY**

The **PARTIES** agree that any exchange of information or documents between the Parties in connection with this **CONTRACT** shall be treated with strict confidentiality and no such information or documents shall be released to third parties without the prior written consent of the other **PARTY** unless such information is required to be divulged or produced by any law, court order, or other competent authority.

**SECTION 10. ENVIRONMENTAL COMPLIANCE**

The **LESSEE-DEVELOPER** shall by itself, and cause all assignees, transferees, licensees, contractors, subcontractors, suppliers and invitees to use and maintain the Leased Property in compliance with all existing national environmental laws, rules and regulations, including the specific environmental rules and regulations being implemented by the appropriate authority. Accordingly, the **LESSEE-DEVELOPER** shall file the necessary application for Environmental Compliance Certificate (ECC) which should be issued in favor of both the **LESSEE-DEVELOPER** as proponent/developer, and BCDA as landowner. The **LESSEE-DEVELOPER** shall submit to BCDA AND JHMC a copy of such ECC prior to commencement of the construction works.

**SECTION 11. FIRE SAFETY CODE AND STANDARDS**

The **LESSEE-DEVELOPER** shall comply with the fire code and standards imposed by the appropriate authority. The **LESSEE-DEVELOPER** also warrants that it shall hold fire drills and exercises among its employees and locators within the Property once every year. It shall also promote fire protection awareness among its employees and locators.

**Section 12. SECURITY**

The **LESSEE-DEVELOPER** shall comply with all applicable laws, rules and regulations relating to the security of the Propertyincluding those which from time to time imposed by the appropriate authority. It shall cooperate in securing the Property so as to prevent or deter unauthorized access to, and criminal or other disruptive activity on the Property. The **LESSEE-DEVELOPER** shall employ, at its own expense, security personnel for the Property.

Except as may be necessary to secure the operations of the **LESSEE-DEVELOPER**, no one is allowed to keep or carry firearms and/or other deadly weapons within the Property. However, the **LESSEE-DEVELOPER** shall take all the necessary precautions to insure the security of the Property.

**SECTION 13. OGCC REVIEW**

This **CONTRACT** is subject to the review of the Office of the Government Corporate Counsel (OGCC) which review shall be made part of this **CONTRACT**.

**SIGNED BY** the **PARTIES** through their duly authorized representatives on\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

|  |  |
| --- | --- |
| **BASES CONVERSION AND DEVELOPMENT AUTHORITY**  | **JOHN HAY MANAGEMENT**  **CORPORATION** |
| By:**ARNEL PACIANO D. CASANOVA, *Esq.*** *President & Chief Executive Officer*  | **By:****JAMIE ELOISE M. AGBAYANI, M.D.***President & Chief Executive Officer* |

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed in the presence of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ACKNOWLEDGEMENT**

**Republic of the Philippines** )

) S.S.

BEFORE ME, a Notary Public in and for the above jurisdiction, this \_\_\_ day of \_\_\_\_\_\_\_\_, \_\_\_\_, personally appeared the following:

|  |  |  |
| --- | --- | --- |
| NAME | COMPETENT EVIDENCE OF IDENTITY\* | DATE/PLACE ISSUED |
| BCDA, by:**ARNEL PACIANO D. CASANOVA, Esq.** |  |  |
| JHMC, by:**JAMIE ELOISE M. AGBAYANI, M.D.** |  |  |
|  |  |  |

\*Passport/SSS ID/TIN ID/Driver’s License/Voter’s ID

known to me and to me known and who have been identified by me through their competent evidence of identity mentioned above to be the same persons who executed the foregoing **CONTRACT** and acknowledged to me that the same is their free act and deed and of the entities they represent, for the uses and purposes herein stated.

I further certify that the foregoing **CONTRACT** consists of \_\_\_\_ pages, including this page and that each and every page thereof has been signed by the Parties and by their witnesses, and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on the date and place first herein above written.

Doc. No.\_\_\_\_\_\_

Page No.\_\_\_\_\_\_

Book No. \_\_\_\_\_

Series of 2015.