



# BAGUIO WATER DISTRICT

*"Serving Mankind is Serving God"*



## MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENT:

This Agreement is made and entered this 13 APR 2023, Baguio City, Philippines, by and between:

**BAGUIO WATER DISTRICT**, a government instrumentality exercising corporate powers, existing and duly organized in accordance to Presidential Decree (PD) No. 198, as amended, with principal office address at No. 3 Utility Road, Marcoville, Baguio City, herein represented by its General Manager, **ENGR. SALVADOR M. ROYECA**, of legal age, married, Filipino citizen, and a resident of Baguio City, herein referred to as **BWD**;

- and -

**JASHV CONSTRUCTION AND SUPPLY**, an entity duly organized and existing under the laws of the Republic of the Philippines, herein represented by its General Manager, **MS. ADELAIDA J. BAG-AYAN**, of legal age, Filipino citizen and with principal business address at No. 31 Paramount Village, Bumaspao Road, Sto. Tomas Proper, Baguio City, herein referred to as the **CONTRACTOR**;

WITNESSETH that:

WHEREAS, BWD conducted a public bidding in accordance to the provisions of Republic Act (RA) No. 9184, otherwise known as the Government Procurement Reform Act for the implementation of the Contract particularly for the project: "Construction of Injection Well at Burnham Park, Baguio City";

WHEREAS, in response to BWD's invitation to bid, the CONTRACTOR submitted its bid to implement this Contract;

WHEREAS, upon post-qualification, the bid of the CONTRACTOR was declared as the lone calculated responsive bid;

WHEREAS, BWD has awarded the Contract to the CONTRACTOR at the price stipulated in its Bid and Bill of Quantities;

WHEREAS, the CONTRACTOR has agreed to provide all labor, materials, and equipment which may be required to complete the Contract in consideration of the total amount of **TWO MILLION FOUR HUNDRED EIGHTY-SEVEN THOUSAND NINE HUNDRED TWENTY-TWO AND 38/100 PESOS (Php2,487,922.38)** under the following terms and conditions:

### ARTICLE I. Contractor's Obligations

1. The CONTRACTOR agrees and binds itself to fully and faithfully provide all labor, materials, and equipment which may be required to finish and complete the work in accordance with the standards set forth in the Work Order and Materials Specifications, which is hereto attached as ANNEX "A".
2. The work called for this Contract shall be completed within SIXTY-EIGHT (68) calendar days including procurement of materials and permits, commencing within five (5) calendar days from receipt of the CONTRACTOR of the formal "Notice To Proceed"



- to be issued by BWD. BWD shall grant extension/s for justifiable reason/s only upon written notice by the CONTRACTOR of the reasons for the delay in the implementation of the Contract.
3. The CONTRACTOR shall provide and do everything necessary to conform to its obligations under the Contract to the true intent and meaning of the other Contract Documents taken together, whether the same may or may not be shown or described particularly in the Drawings, Plans, Technical Specifications and Special Provisions; provided, that the same shall be inferred therefrom. Should the CONTRACTOR find any discrepancy in the Drawings, Plans, Technical Specifications and Special Provisions, he shall immediately refer the same to BWD whose decision shall be executory.
  4. The parties agree that the Technical Specifications, General Conditions of Contract, Special Conditions of Contract, Bill of Quantities and Notice of Award shall form integral parts of this Contract.
  5. The CONTRACTOR guarantees all the materials and/or equipment it will supply, deliver and use in the construction and workmanship of all its work under this Contract and shall make good any defect/s which may be discovered on its own account.
  6. The type of materials and/or equipment proposed to be supplied and used by the CONTRACTOR shall be approved by BWD and shall not be substituted anytime during the entire duration of the Contract except only in meritorious cases as may be permitted and duly approved by BWD.
  7. The CONTRACTOR shall submit the Construction Methodology and Project Implementing Bar Chart & S-Curve before the signing of the Contract.
  8. Barricades and warning lights satisfactory to the BWD Project Engineer shall be provided and maintained for all trenches.
  9. Unless otherwise provided for in the Contract, the CONTRACTOR shall turn over to BWD all excess, used, unused and/or reusable tools, materials and equipment paid for in the Contract and shall be in good condition when turned over.

#### ARTICLE II. Liquidation of Damages

The CONTRACTOR shall pay liquidated damages to BWD for each day that the Completion Date is later than the Intended Completion Date. The applicable liquidated damages is at least one-tenth (1/10) of a percent of the cost of the unperformed portion for every day of delay. The total amount of liquidated damages shall not exceed ten percent (10%) of the amount of the contract. BWD may deduct liquidated damages from payments due to the Contractor. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of this Contract, BWD shall rescind or terminate this Contract, without prejudice to other courses of action and remedies available under the circumstances. Likewise, the Contract shall automatically be taken over by BWD or award the same to a qualified contractor through negotiation and the erring Contractor's performance security shall be forfeited.

#### ARTICLE III. Performance Security

1. The CONTRACTOR shall post a performance security in any of the acceptable forms prior to the signing of the Contract.
2. The performance security shall remain valid until the issuance by BWD of the Certificate of Final Acceptance. In the event the Contractor fails, refuses or is unable to submit the documents required under Section 37.1 of the IRR of RA





No. 9184, enter into a contract with BWD and/or post the required performance security, the effects as provided by Section 40 of the IRR of RA No. 9184 would apply.

3. It is expressly agreed and understood that any change to be made in Drawings, Plans, Technical Specifications and Special Provisions of this Contract (whether such changes increase or decrease the amount thereof) or any change in the manner or time of payment made by BWD shall in no way annul, release or effect the liability and surety of the security given by the CONTRACTOR.

#### ARTICLE IV. Contract Price

The Contract Price shall be **TWO MILLION FOUR HUNDRED EIGHTY-SEVEN THOUSAND NINE HUNDRED TWENTY-TWO AND 38/100 PESOS (Php2,487,922.38)** broken down as shown in the Bill of Quantities, provided that any of the work items in the Bill of Quantities may be deleted if found not necessary by BWD and provided further, that no change in the unit price as shown in the Bill of Quantities shall be made for any reason whatsoever except as may be provided in the Contract Documents.

#### ARTICLE V. Progress Payments

BWD will pay the CONTRACTOR through progress billing depending on the value of work completed. Progress payments are subject to retention of ten percent (10%) referred to as the "retention money". Such retention shall be based on the total amount due to the Contractor prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of works, as determined by BWD, are completed. If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall be imposed.

In the event that factors beyond the control of BWD shall force BWD to defer with the implementation of the Contract, the CONTRACTOR shall be paid based on the latest progress billing submitted.

#### ARTICLE VI. Advance Payment

BWD shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount not to exceed fifteen percent (15%) of the total contract price, to be made in lump sum or, at the most two, installments the schedule of which shall be indicated in the contract.

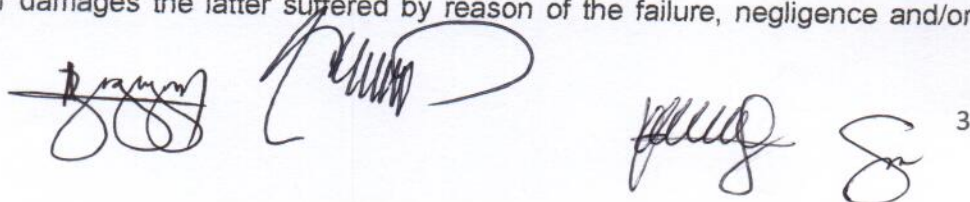
The advance payment shall be made only upon the submission to and acceptance by BWD of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by BWD.

The advance payment shall be repaid by the Contractor by deducting a percentage from his periodic progress payments a percentage equal to the percentage of the total contract price used for the advance payment.

The Contractor may reduce his standby letter of credit or guarantee instrument by the amounts refunded by the Monthly Certificates in the advance payment.

#### ARTICLE VII. Indemnity

The CONTRACTOR agrees and binds himself to indemnify BWD for whatever injuries and/or damages the latter suffered by reason of the failure, negligence and/or





delay on the part of the CONTRACTOR and/or its employee/s in the performance of their obligations.

BWD shall be free from any liability for whatever injuries and/or damages suffered by any party due to the fault or negligence of the CONTRACTOR.

#### ARTICLE VIII. **Dispute Resolution**

Any dispute arising from the execution of or in connection with this Agreement shall be resolved through ad hoc arbitration, which shall be administered by one (1) arbitrator. The sole arbitrator shall be identified by raffle from a list of three (3) arbitrators that shall be submitted by each party.

#### ARTICLE IX. **Compliance With Existing Laws**

The CONTRACTOR obligated itself to comply with all existing laws, executive and administrative orders, rules and regulations issued or to be issued by competent authorities.

#### ARTICLE X. **Termination of Contract**

BWD shall terminate the Contract for default when any of the conditions provided under Section III. 2 of Annex "I" of the IRR of RA No. 9184 attend the implementation of the Contract vis-à-vis the Project schedule as indicated by the approved Bar Chart/S-Curve, critical path of the PERT/CPM network for the Project.

#### ARTICLE XI. **Governing Laws**

The Agreement shall be governed by and construed in accordance to the provisions of RA No. 9184 and its Implementing Rules and Regulations, PD No. 198, as amended, and all other general and other special laws of the Republic of the Philippines so long as applicable to this Agreement.

#### ARTICLE XII. **Separability**

If any part of parts of this Agreement shall be declared invalid by competent courts, the other parts hereof shall not thereby be affected or impaired.

IN WITNESS WHEREOF, the parties have set their hands this \_\_\_\_\_ day of \_\_\_\_\_ at the City of Baguio, Philippines.

#### BAGUIO WATER DISTRICT

By:

ENGR. SALVADOR M. ROYECA  
General Manager

#### JASHV CONSTRUCTION AND SUPPLY

By:

MS. ADELAI DA J. BAG-AYAN  
General Manager



Witnesses:

  
ENGR. FERNANDO A. PERIA  
BWD NRW Division Manager

  
Anna Victoria

REPUBLIC OF THE PHILIPPINES )  
Done: In the City of Baguio ) S.S.

ACNOWLEDGEMENT

13 APR 2023

BEFORE ME, a Notary Public for and in the City of Baguio this \_\_\_\_\_ day of \_\_\_\_\_ personally appeared:

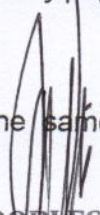
ENGR. SALVADOR M. ROYECA  
MS. ADELAIDA J. BAG-AYAN

BAGUIO WATER DISTRICT ID NO. 155

known to me the same persons who executed the foregoing Memorandum of Agreement and they acknowledged to me that the same is their free and voluntary act and deed and of the entities they represent. This Memorandum of Agreement consists of five (5) pages including this page wherein this acknowledgement is written, signed on each and every page hereof by the concerned parties and their instrumental witness.

WITNESS MY HAND AND NOTARIAL SEAL on the same date and place above-mentioned.

Doc No. 126  
Page No. 26  
Book No. XIV  
Series of 2023.

  
ATTY. ROBLES G. CALABIAS  
No. 24 Martinez Street, Upper Engineer's Hill, Baguio City  
Notary Public  
Until December 31, 2023  
IBP Lifetime OR No. 580499 May 14, 2003  
Roll No. 43275 May 7, 1998, Manila  
N.A. 115-NC-21-R/MCLE VII-0013082 until Apr 15, 2025  
PTR No. 1379062 Jan. 3, 2023, Baguio City

