



BAGUIO WATER DISTRICT

"Serving Mankind is Serving God"



MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENT

This Agreement is made and entered into 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. 003 Utility Road, Marcoville, Baguio City, herein represented by its General Manager, **ENGR.SALVADOR M. ROYECA**, hereafter 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**, with principal business address at No. 31 Paramount Village, Bumagao Road, Sto. Tomas Proper, Baguio City, hereafter referred to as the "**CONTRACTOR**";

WITNESSETH that:

WHEREAS, BWD conducted a public bidding in accordance with the provisions of Republic Act (RA) No. 9184, otherwise known as the Government Procurement Reform Act for the implementation of the Contract titled: "*Proposed Drilling of South Drive II Production Well at South Drive, 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 and 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 that may be required to complete the Contract in consideration of the total amount of Six Million Three Hundred Eighty-Two Thousand Seven Hundred Forty-Five and 68/100 Pesos (Php6,382,745.68).

NOW THEREFORE, in consideration of the foregoing, BWD and CONTRACTOR agree under the following terms and stipulations:

I. OBLIGATIONS OF THE PARTIES

a. The CONTRACTOR shall:

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 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.
3. 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.
4. The CONTRACTOR shall submit the Construction Methodology and Project Implementing Bar Chart & S-Curve before the signing of the Contract.
5. Barricades and warning lights satisfactory to the BWD Project Engineer shall be provided and maintained for all trenches.
6. 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.

b. The BWD shall:

1. BWD shall assign field personnel to the project site.
2. BWD shall provide the CONTRACTOR with necessary data/details of its facilities and service connections at the project site to enable the CONTRACTOR in making the necessary adjustments to the project's plan so as not to affect and/or damage BWD facilities and service connections.
3. BWD shall approve the type of materials and/or equipment proposed to be supplied and used by the CONTRACTOR, which the latter cannot substitute during the entire duration of the Contract except only in meritorious cases as may be permitted and duly approved by BWD.

II. PAYMENTS

1. 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.

2. 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.

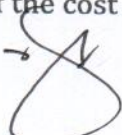
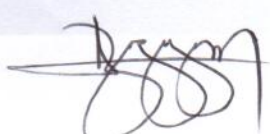
III. CONTRACT DURATION

The work called for this Contract shall be completed within SEVENTY-TWO (72) 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 reason/s for the delay in the implementation of the 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.

IV. MISCELLANEOUS PROVISIONS

1. **Contract price:** The Contract Price shall be **Six Million Three Hundred Eighty-Two Thousand Seven Hundred Forty-Five and 68/100 Pesos (Php6,382,745.68)** 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.
2. **Liquidation of Damages:** The CONTRACTOR shall pay liquidated damages to BWD for each day of delay. 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.

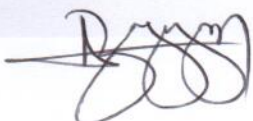
3. **Performance Security:** The CONTRACTOR shall post a performance security which shall remain valid until the issuance by BWD of the Certificate of Final Acceptance. In the event the Contractor fails, refuses or is unable to submit the documents required under Section 37.1 of the IRR of RA No. 9184, enter into a contract with BWD and/or post the required performance security, the effects as provided by Section 40 of RA No. 9184 would apply.
4. **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.

5. **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.
6. **Governing Laws:** The Agreement shall be governed by and construed in accordance with 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 applicable to this Agreement.
7. **Compliance with Existing Laws:** The PARTIES must comply with all existing laws, executive and administrative orders, rules and regulations issued or to be issued by competent authorities.

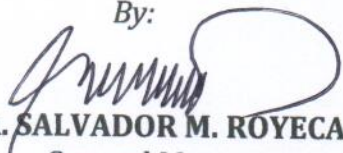
The PARTIES agree that the Technical Specifications, General Conditions of Contract, Special Conditions of Contract, Bill of Quantities, and Notice of Award shall form integral parts of this Contract.

8. **Separability:** If, for any reason, any provision of this Agreement is declared unconstitutional or contrary to law, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.
9. No amendment, modification, or alteration of this Agreement shall be valid or binding on either party unless the same is made in writing and executed with the same formalities observed in this Agreement.

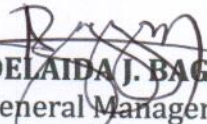


IN WITNESS WHEREOF, the parties have set their hands this 22 AUG 2023 day of _____ in the City of Baguio, Philippines.

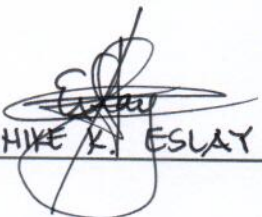
BAGUIO WATER DISTRICT

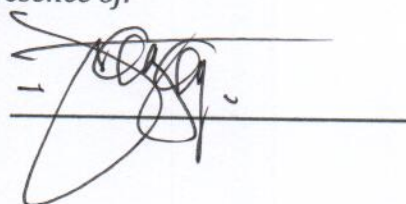
By:

ENGR. SALVADOR M. ROYECA
General Manager

JASHV CONSTRUCTION AND SUPPLY

By:

MS. ADELAIDA J. BAG-AYAN
General Manager

Signed in the presence of:


DAHIKE K. ESLAY



REPUBLIC OF THE PHILIPPINES)
Done in the City of Baguio] S.S.

ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in the City of Baguio this 22 AUG 2023 day of _____ personally appeared:

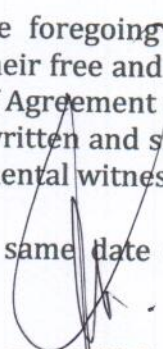
ENGR. SALVADOR M. ROYECA
MS. ADELAIDA J. BAG-AYAN

BAGUIO WATER DISTRICT ID NO. 155

known to me to be 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 acknowledgment is written and 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. 52;
Page No. 11;
Book No. XX;
Series of 2023.


ATTY. ROBLES G. CALABIAS
No. 24 Martinez Street, Upper Engineer's Hill, Baguio City
Notary Public
Until December 31, 2023
IRP 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. 1375062 Jan. 3, 2023, Baguio City