



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 with Presidential Decree (PD) No. 198, as amended, with principal office address at 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 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 project titled: "*Drilling of Happy Glen Parallel Production Well*";

WHEREAS, in response to BWD's invitation to bid, the **CONTRACTOR** submitted its bid to implement the above-mentioned project;

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

WHEREAS, BWD has awarded the project 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 project in consideration of **NINE MILLION SIX HUNDRED NINETY-NINE THOUSAND AND ONE HUNDRED TWENTY-SEVEN PESOS AND 37/100 (Php9,699,127.37)**, inclusive of all applicable government taxes and other charges imposed under applicable laws;

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

I. OBLIGATIONS OF THE PARTIES

a. Obligations of the Contractor:

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 undertake everything necessary to conform to its obligations under this Agreement 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, the CONTRACTOR 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 Agreement and shall make good any defect/s which may be discovered to be charged to 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. Obligations of BWD:

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 to make 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 its periodic progress payments a percentage equal to the percentage of the total contract price used for the advance payment.

The Contractor may reduce its 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 project shall be completed within **ONE HUNDRED (100) 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 **Nine Million Six Hundred Ninety-Nine Thousand And One Hundred Twenty-Seven Pesos And 37/100 (Php9,699,127.37)** 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 Agreement, BWD shall rescind or terminate this Agreement, without prejudice to other courses of action and remedies available under the circumstances. Likewise, the Agreement 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. If the Contractor fails, refuses, or is unable to submit the documents required under Section 37.1 of the IRR of RA No. 9184, enter 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 itself 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. **Confidentiality:** All confidential information provided by a party shall be used by any other parties hereto solely for the purposes of rendering services pursuant to this Agreement and, except as may be required in carrying out the terms of this Agreement, shall not be disclosed to any third party without the prior consent of such providing party.
6. **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.
7. **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.
8. **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 Agreement.

9. **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.
10. 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
JUL 02 2024 in the City of Baguio, Philippines.

BAGUIO WATER DISTRICT

Represented by:

-signed-

ENGR. SALVADOR M. ROYECA
General Manager

JASHV CONSTRUCTION AND SUPPLY

Represented by:

-signed-

MS. ADELAIDA J. BAG-AYAN
General Manager

Signed in the presence of:

-signed-

ENGR. DANIELE K. ESLAY
BWD SWUMDO

-signed-

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
JUL 02 2024 personally appeared the following:

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. 384;
Page No. 77;
Book No. VII;
Series of 2024.

ROBLES G. CALABIAS
No. 24 Martinez Street, Upper Engineer's Hill, Baguio City
Notary Public
Until December 31, 2025
IBP Lifetime OR No. 580499 May 14, 2003
Roll No. 43275 May 7, 1998, Manila
N.A. 05-NC-24-R/MCLE VI-0013082 until Apr. 15, 2025
PTR No. 0473555 Jan. 3, 2024, Baguio City