

**MEMORANDUM OF AGREEMENT  
Financial Advisory Services**

**BASES CONVERSION AND DEVELOPMENT AUTHORITY**

**and**

**DEVELOPMENT BANK OF THE PHILIPPINES**

**Dated SEP 08 2023**

## MEMORANDUM OF AGREEMENT

### THE PUBLIC IS INFORMED:

This Memorandum of Agreement ("Agreement") is executed by and between:

**BASES CONVERSION AND DEVELOPMENT AUTHORITY ("BCDA")**, a government instrumentality vested with corporate powers created and operating pursuant to the provisions of Republic Act 7227, as amended, with principal office at the BCDA Corporate Center, 2/F Bonifacio Technology Center, 31<sup>st</sup> St., Crescent Park West, Bonifacio Global City, Taguig City, Metro Manila, represented by its President and Chief Executive Officer, **JOSHUA M. BINGCANG**, who is duly authorized to represent BCDA and sign this Agreement, as provided in Item No. 159, Issue No. 002, Page 25 of the BCDA's Revised Manual of Approval dated 22 November 2017;

-and-

**DEVELOPMENT BANK OF THE PHILIPPINES ("DBP")**, a Philippine government financial institution created and operating pursuant to the provisions of Executive Order No. 81 dated December 3, 1986, as amended, otherwise known as the "1986 Revised Charter of the Development Bank of the Philippines", with principal office at the DBP Building, Sen. Gil J. Puyat Avenue, Makati City, Philippines represented by its President and Chief Executive Officer, **MICHAEL O. DE JESUS**, duly authorized for this purpose as evidenced by the attached Secretary's Certificate dated SEP 05 2023 marked as Annex A.

("BCDA and DBP" are hereinafter also referred to separately as the "Party" or collectively as the "Parties").

### ANTECEDENTS

BCDA is a government instrumentality organized and created by Republic Act No. 7227, otherwise known as the Bases Conversion and Development Act of 1992, purposely for the conversion and development of former US military bases in the Philippines into alternative productive uses, and to raise funds for the Armed Forces of the Philippines ("AFP") to finance the following: (1) transfer of the AFP military camps and construction of the new camps; (2) the self-reliance and modernization program of the AFP; (3) the concessional and long-term housing loan assistance and livelihood assistance to the AFP officers and enlisted men and their families; and (4) the rehabilitation and expansion of the AFP's medical facilities.

Pursuant to its mandate, BCDA, in partnership with the private sector, is actively pursuing the development of Fort Bonifacio in Taguig City, New Clark City, the former Clark Air Base in Pampanga, Newport City (former Villamor Air Base), Poro Point Free Port Zone in San Fernando, La Union, Bataan Technology Park in Morong, Bataan, as well as, other Metro Manila camps. The BCDA engages in public-private partnership to push forward with vital public infrastructure including tollways, airports, seaports, and major real estate developments, all for the upliftment of the quality of life of the Filipinos.

BCDA needs the services of a financial advisor to assist them in evaluating, negotiating, and executing transactions that will further its mandate.

DBP is a Philippine government financial institution, which has a universal banking license and is able, ready and willing to render the services of a financial advisor (the "Financial Advisor") required by BCDA.

BCDA has previously secured the services of the DBP as its Financial Advisor most recently from 29 September 2021 to 29 September 2022.

On 07 August 2023, the BCDA Bids and Awards Committee for Consultancy (BAC-C) issued a resolution recommending the use of Agency-to-Agency Procurement to the Head of Procuring Entity (HoPE) for the engagement of DBP as financial advisor on BCDA projects.

On 17 August 2023, the President and Chief Executive Officer, acting pursuant to Item No. 159, Issue No. 002, Page 25 of the BCDA's Revised Manual of Approval dated 22 November 2017, has approved the recommendation of the BAC-C.

**ACCORDINGLY**, the Parties have agreed to execute this Memorandum of Agreement for the engagement of DBP as BCDA's Financial Advisor ("Engagement"), under the following terms and conditions:

### **Section 1. Scope of Services**

#### **Section 1.A General Scope**

The major scope of services (the "Services") that DBP agrees to provide under the Engagement shall include the following:

1. Conduct valuation exercises for BCDA;
2. Assist BCDA in evaluating proposals and offers received for possible business opportunities, including the conduct of financial reviews;
3. Request the DBP's Property Appraisal and Credit Investigation Department ("PACID") to conduct appraisal services as requested by BCDA subject to payment of Appraisal Fee as provided in Section 5(3); and
4. Perform other services as may be mutually agreed between DBP and BCDA subject to Sections 7(1) and 7(2).

#### **Section 1.B Description of Services**

The Services under Section 1.A (1) and (2) are further described as follows:

##### **(1) Desktop Valuation Exercise**

The use of various valuation methods (e.g. adjusted book value, dividend discount, discounted cash flow, etc.) to derive the value of a subject asset. While primary information is provided by BCDA, supplemental information from available public sources through the conduct of additional research may also be incorporated to arrive at reasonable assumptions to be used in modeling. The output of such exercise will be a range of the share prices and/or values of the company.

Projects and transactions requiring evaluation/review can be categorized as either Complex or Simple, as differentiated below:

<b>Complex</b>	<ul style="list-style-type: none"><li>• Valuations involving development of a Discounted Cash Flow ("DCF") model with multiple assumptions.</li><li>• Substantial research/data gathering is required.</li></ul>
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<b>Simple</b>	<ul style="list-style-type: none"> <li>• Valuations involving simpler methods such as Relative/Multiples Valuation, Dividend Discount Method, and/or Adjusted Book Value Methods only.</li> <li>• Minimal research is required.</li> </ul>
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Specific details, scope, service fee and complexity of the valuation exercise shall be agreed upon later depending on BCDA's request, which shall be covered by a separate Letter of Agreement.

(2) Evaluation of Proposals/Financial Review

DBP shall use the information provided by BCDA and may conduct its own research as may be necessary in its evaluation and financial analysis of proposals, projects, and transactions. For this purpose and subject to the provisions of Sections 7(3) and 7(18) hereof, DBP may coordinate with external parties.

Projects and transactions requiring evaluation/review can be categorized as either Complex or Simple, as differentiated below:

<b>Complex</b>	<ul style="list-style-type: none"> <li>• Assessment/evaluation of proposals involving review and development of financial models/forecasts.</li> <li>• Recommendation from multiple options is required.</li> <li>• Involves significant coordinating work with one (1) or more external parties.</li> <li>• Substantial research/data gathering is required.</li> </ul>
<b>Simple</b>	<ul style="list-style-type: none"> <li>• Financial Model / Proposal review.</li> <li>• Review of only one (1) option is required.</li> <li>• No significant coordination work required.</li> <li>• Substantial information can be provided by BCDA.</li> <li>• Minimal research is required.</li> </ul>

The Parties shall agree on specific details, scope, service fee, and complexity of the valuation exercise upon the request of BCDA, which shall be covered and implemented through a Letter of Agreement.

**Section 1.C Exclusions**

For the avoidance of doubt, the Services do not include the following which will be subject to separate fee arrangements:

1. Actual transaction-related services such as tendering and disposition, among others;
2. Development of a business case or feasibility study; and
3. Significant increase in the scope of services such as underwriting services, sourcing of funds, among others, as provided for in Section 7(1).

DBP, upon request of BCDA and on a case-to-case basis, may agree that the abovementioned services and other services outside the scope of Section 1(A) and 1(B) be rendered, subject to mutual agreement of the Parties, which shall be covered and implemented through a Letter of Agreement.

## **Section 1.D Procedure for Availment of Services**

The following procedure shall be complied with to avail of the Services herein set forth:

1. BCDA shall send a letter request to DBP containing the details of the project and/or transaction;
2. The Parties shall negotiate and agree on the detailed scope of services, complexity, and corresponding service fee;
3. The Parties shall execute a Letter of Agreement containing the terms and conditions of the Service to be rendered."

In providing the Services, it is understood that DBP shall rely on information as may be supplied by or on behalf of BCDA pursuant to Section 2 hereof and data which DBP may gather but shall not be obliged to do so.

BCDA acknowledges that DBP is not in the business of providing legal, tax or accounting advice. Should there be legal, tax or accounting risks associated with the Engagement, the Parties hereto agree that BCDA shall seek and receive such advice from advisors with appropriate expertise to assess the relevant risks in this regard.

## **Section 2. Obligations of BCDA**

BCDA shall perform the following:

1. Provide available relevant data required by DBP in performing its Services to BCDA under Section 1;
2. Ensure that BCDA's management, staff, and advisors as may be appointed by BCDA shall extend full cooperation to DBP for the duration of the Engagement;
3. Assist DBP in arranging meetings with or obtaining information from relevant parties in connection with the transactions;
4. Assist DBP in ensuring that all relevant approvals from BCDA are obtained in a manner that will not hamper DBP's obligations under this Engagement; and
5. Pay the Service Fee, Out-of-Pocket Expenses, and Appraisal Fee to DBP in accordance with the provisions of Section 5 hereof.

## **Section 3. Term**

This Engagement shall be for a period of five (5) years (the "Term") from the date of the signing of this Agreement (the "Effective Date").

Notwithstanding the foregoing and subject to the provisions of Section 7 (13) hereof, the termination of the Agreement shall be without prejudice to the completion of the services set forth in the existing executed Letter of Agreement.

## **Section 4. Engagement and Cost of Professionals**

In the course of carrying out the Engagement, BCDA may authorize DBP to use its own Property Appraisal and Credit Investigation Department ("PACID"), provided that prior

written consent of BCDA shall be secured by DBP prior to the engagement of DBP's PACID for appraisal services.

The cost of the appraisal of PACID or the Appraisal Fee shall be covered in Section 5(3).

The Parties recognize that the 2016 Implementing Rules and Regulations of Republic Act No. 9184 prohibit sub-engagements in Agency-to-Agency Agreements. In this regard, the Parties agree that BCDA shall be responsible in engaging separately its external appraisal, consultants, and advisors needed for its projects.

**Section 5. Fee Structure**

In consideration of the performance by DBP of the Services, BCDA shall pay to DBP the following fees: (i) Service Fee, (ii) Out-of-Pocket Expenses, and (iii) Appraisal Fee. All payments shall be made within ten (10) banking days from receipt by BCDA of an invoice from DBP.

1. Service Fee. DBP shall charge a Service Fee, which shall be payable as follows:

a) The Service Fee per project/transaction shall be payable based on the following terms:

<b>Complexity</b>	<b>Estimated No. of Transactions</b>	<b>Fees</b>
<b>Complex</b>	15 (Maximum of 2 Complex Transactions handled at a time)	<b>Complex A – Php1,000,000</b> Duration of works: 121-160 hours
		<b>Complex B – Php1,500,000</b> Duration of works: 161-200 hours
		<b>Complex C – Php2,000,000</b> Duration of works: 201 hours or more
<b>Simple</b>	10 (Maximum of 3 Simple Transactions handled at a time)	<b>Simple A – Php250,000</b> Duration of works: 40 hours and below
		<b>Simple B – Php400,000</b> Duration of works: 41-80 hours
		<b>Simple C – Php500,000</b> Duration of works: 81-120 hours

b) The engagement terms shall consist of the following:

<b>Year</b>	<b>Service Fee</b>	<b>Taxes</b>	<b>Estimated Out of Pocket Expenses</b>	<b>Total</b>
2023	Php4,000,000	Php280,000	Php30,000	Php4,310,000
2024	4,000,000	280,000	30,000	4,310,000
2025	4,000,000	280,000	30,000	4,310,000
2026	4,000,000	280,000	30,000	4,310,000
2027	4,000,000	280,000	30,000	4,310,000
<b>Total</b>	<b>Php20,000,000</b>	<b>Php1,400,000</b>	<b>Php150,000</b>	<b>Php21,550,000</b>

- c) The total Service Fee during the term of the contract shall not exceed the amount of Php21,550,000.00, including the applicable taxes and fees, and out of pocket expenses.

The obligation to pay the Service Fees that are due and outstanding shall outlive the Term of this Engagement. Specific milestones, deliverables and billing schedule shall be detailed in the Letter of Agreement.

2. Out-of-Pocket Expenses. Subject to auditing rules and regulations, all reasonable and documented expenses including but not limited to travel, lodging, appraisal and other out-of-pocket expenses ("OPEs") incurred by DBP shall be reimbursable by and for the account of BCDA.

BCDA shall reimburse DBP's OPEs associated with the performance of its Services, as well as applicable Appraisal Fee per Paragraph 3 of this Section, provided that such OPEs shall not exceed the amount of One Hundred Fifty Thousand Pesos (Php150,000.00), and provided further, that OPEs in excess of the said amount should not be incurred without the prior written consent of BCDA.

Upon BCDA's determination of the occurrence of any event beyond the control of DBP, which is reported to adversely affect the success of the Engagement, BCDA shall reimburse all actual and reasonable expenses incurred by DBP, including but not limited to, documented OPEs.

3. Appraisal Fee. The Appraisal Fee due to the DBP PACID shall form part of DBP's OPEs should the cost be lower than the total OPEs. If the remaining balance of the OPEs is insufficient to cover the Appraisal Fee, or if total OPEs have been used up, the corresponding Appraisal Fee shall be billed separately to BCDA.
4. Taxes, Levies, Duties. For the avoidance of doubt, all taxes including Gross Receipts Tax shall be for the account of BCDA. No set-off or withholding (other than for creditable withholding taxes) shall be made on the Service Fee or Appraisal Fee payable. In relation to creditable withholding taxes, BCDA shall provide the applicable Bureau of Internal Revenue form/s such that the total payment to DBP (inclusive of such creditable withholding taxes) is equal to the Service Fee or Appraisal Fee, as applicable.

BCDA agrees to indemnify DBP for future assessments on taxes withheld by BCDA on any payment received hereunder when such assessment is brought about or is the result of BCDA's misinterpretation of the applicable tax law.

## **Section 6. Engagement Team**

DBP undertakes to mobilize resources available to it to carry out this Engagement in a timely manner.

The Head of the Treasury and Corporate Finance Sector of DBP shall have executive oversight of the Engagement through the Head of the Corporate Finance Group, or through such other officer to whom said authority may be delegated by DBP's relevant approving authority.

The Head of the Investment Banking Department of DBP shall oversee this Engagement and shall assign members of the Investment Banking team to manage the tasks required of DBP as Financial Advisor. DBP-IBD may be supported by personnel from other

departments of DBP to provide specific expertise and experience as required, subject to strict confidentiality requirements.

To ensure the best possible delivery of the Services, DBP may, at its sole option, reassign personnel working on the Engagement based on the evaluation and prerogative of the senior management of DBP.

## **Section 7. Other Conditions**

The commitment of DBP to render the Services shall also be subject to the following conditions:

1. Change in Scope of Services. Should BCDA require a change or amendment in the Services enumerated in Section 1 hereof, DBP and BCDA shall immediately meet and agree on any adjustment of fees and payment terms, if warranted, under this Agreement. The Parties shall also agree to a revised work program and timetable. In case the Parties are unable to reach an agreement, then each party shall have the right to suspend and/or terminate the Engagement in accordance with paragraphs 13.a and 13.b below.
2. Change in Work Program. If there is a substantial change in the agreed work program and timetable due to a request from BCDA for the acceleration of certain deliverables or due to the occurrence of any unforeseen circumstances which may cause or have caused delays, the Parties shall immediately meet and agree on the revised work program and timetable including any adjustment of fees and payment terms, if warranted, under this Agreement. In case the Parties are unable to reach an agreement, then each Party shall have the right to suspend and/or terminate the Engagement in accordance with paragraphs 13.a and 13.b below.
3. Confidentiality. This Agreement and any subsequent amendments thereto, written communication, reports and all other information or advice provided to BCDA and/or any of its affiliates, whether verbal or written, related to the Services performed in this Agreement, including BCDA's evaluation, analysis and data generated in connection therewith are proprietary in nature and shall be deemed confidential information, to be held in strict confidence and are intended to be used solely by BCDA.

Accordingly, the terms of this Agreement are and must remain confidential. BCDA must not at any time, disclose to any third party the provisions of this Agreement and/or related discussions without the prior written consent of DBP, except to the extent that such disclosure may be required by the provisions of this Agreement, or as may be required by law or any authority which is legally entitled to request the information.

In like manner, DBP undertakes to keep confidential any and all information provided by BCDA and/or its advisors unless BCDA consents in writing prior to the distribution or disclosure of the information, or the information is already public, subsequently becomes public, or is required to be made public by law or any authority which is legally entitled to do so. However, DBP shall be allowed to provide confidential information to the sub-engaged appraiser for the purpose of rendering services for which they had been consulted and/or engaged provided they shall also sign the Confidentiality Agreement. In case of disclosure required by law or any relevant authority, BCDA and DBP will use their best efforts to consult each other, if possible, prior to any such disclosure of information. The obligation to observe confidentiality and non-disclosure shall survive termination of this Agreement.



DBP shall maintain adequate administrative, technical and physical safeguards against unauthorized access, use, disclosure or distribution of confidential information.

After the completion or termination of the Engagement, all materials, processes, data, propriety information and other related data and information provided to DBP and which have been derived in relation to, and as a consequence of, the implementation of this Agreement, shall be immediately disposed of by DBP or, turn over to BCDA within five (5) business days upon completion or termination of the Engagement, if so requested by BCDA.

Notwithstanding anything to the contrary in this Agreement, DBP shall not be obligated to erase the aforementioned data and information that is contained in an archived computer system backup made in accordance with DBP's security and/or disaster recovery procedures provided that such archived copy will (i) eventually be erased or destroyed in the ordinary course of DBP's data processing procedures, and (ii) such copy shall remain fully subject to the obligations of confidentiality stated herein, until the earlier of the erasure or destruction of such copy, or the expiration of the confidentiality obligations.

Any violation of this Article by DBP shall be a ground for termination of this Agreement at the instance of the aggrieved Party who will be entitled to seek equitable relief equal to ten percent (10%) of the total consideration stipulated herein (including injunction and specific performance) in addition to all other rights and remedies available to it at law or in equity. The breaching Party shall be liable to the aggrieved Party for costs and expenses (including reasonable legal fees and expenses) incurred in connection with the litigation, together with actual damages that the latter may have suffered as a result of the violation.

4. Commitments and Guarantees. It is understood and agreed by BCDA that under no circumstances will the provisions of this Agreement require DBP to provide any service which is not set out in Section 1 above, or is not directly within the scope of the Engagement, or to assume any obligation or liability to BCDA or to any other person or entity which is not specifically set forth in this Agreement, or to make or imply commitments which are impossible to perform or which may be contrary to DBP's policies or to applicable laws, rules and regulations. DBP shall not be deemed to have made any representation or warranty as to future market conditions, the ultimate success of this undertaking, the final terms and conditions of this Engagement, and the obtainment of any requisite regulatory approvals.
5. Conflict of Interest. BCDA understands and agrees that other parties with conflicting interests may also be clients of DBP or any of its affiliates, and that DBP may be providing financing or other services to them. For projects and/or transactions of DBP-IBD where conflict of interest may arise, DBP-IBD shall disclose to BCDA and request for its written consent, which consent shall not be unreasonably withheld. DBP hereby assures BCDA that, consistent with DBP's long-standing policies to hold in confidence the affairs of its clients, it will neither use confidential information obtained from BCDA on behalf of any other client nor make the same available to any of its other clients. By the same token, DBP shall neither use on behalf of BCDA nor make available to BCDA confidential information obtained from any other client of DBP.

Further, BCDA understands and agrees that DBP may provide debt arrangement and other financial services to BCDA and said services shall be handled by a separate team within DBP as part of the DBP's Code of Ethics.

6. Exclusivity. BCDA agrees that during the effectivity of this Engagement, it will not engage any financial advisor other than DBP for projects being handled by DBP without obtaining prior written consent of the latter which consent may not be unreasonably withheld.
7. Indemnification.
- a. While DBP will make diligent efforts in performing the Services under this Agreement, DBP makes no express or implied representation or warranty as to the accuracy, completeness, or sufficiency of any reports, documents, analyses, memoranda or prospectuses, including any projections or estimates contained therein, prepared by or with the assistance of DBP or the sub-engaged appraiser, nor as to the extent of success that may be achieved in the implementation of any recommendation contained therein, or in soliciting the participation of potential investors or the provision of any financing.
  - b. DBP shall not be liable for any loss, cost, damage, or liability that the BCDA or any other third party may suffer or incur as a result of the performance by DBP of the Services or from using or relying on any such Services or on any reports, documents, analyses, or memoranda prepared or distributed by, or with the assistance of DBP, unless a court of competent jurisdiction determines by a final judgment, that such loss, cost, damage, or liability was the result of gross negligence or willful misconduct on the part of DBP.
  - c. DBP shall not be liable for any breach of obligations on the part of any investor, lender, or other party with whom BCDA, or any party designated by BCDA enters into a transaction with, or any agreement connected with the Services.
  - d. BCDA shall (i) indemnify and hold DBP harmless from and against any losses, claims, damages, and/or liabilities or actions related to or arising out of DBP's engagement hereunder or its role in connection herewith, and will reimburse DBP for all reasonable expenses (including reasonable counsel fees) as they are incurred by DBP in connection with investigating, preparing for or defending any such action or claim; provided, however, that BCDA shall not be liable under the foregoing indemnity to the extent that a court of competent jurisdiction determines in a final judgment that any such loss, claim, damage, and/or liability resulted from the willful misconduct or gross negligence of DBP.
  - e. By accepting to perform the Services hereunder, DBP does not make any express or implied offer or commitment to invest in, or provide financial resources (whether for its own account or otherwise) to BCDA or any party designated by BCDA in connection with the Services.
8. Assignment. Neither Party may assign nor delegate any of their respective undertakings and obligations hereunder without the prior written consent of the other Party.
9. Information. BCDA shall provide, and/or assist in obtaining information that may be reasonably requested by DBP to assist it in performing its tasks under this Agreement. BCDA shall use reasonable efforts to ensure that DBP has access to and is provided with complete, updated, relevant, and accurate information on a timely basis, including information to be provided by BCDA's affiliates. DBP shall consider as true and correct in all material aspects all information provided to it which is prepared by or on behalf

of BCDA on matters related to the Engagement unless DBP is timely and judiciously notified to the contrary by BCDA.

10. Representations and Warranties. BCDA represents and warrants that, to the best of its knowledge, all information generated by BCDA, that has been or will hereafter be made available to DBP by BCDA or any of its representatives in connection with the Engagement is and will be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a necessary material fact in order to make the statements contained therein misleading in light of the circumstances under which such statements were, are, or will be made. BCDA further agrees to supplement the information from time to time so that the representations and warranties contained in this paragraph remain true and accurate. In entering into this Agreement, DBP will be relying on the accuracy of the information furnished to it by BCDA or any of its affiliates without independent verification thereof.

The BCDA further represents and warrants that it has the full legal right, power and authority to carry on its present business, to execute and deliver this Agreement, and such other related documents and agreements, and to perform and observe the terms and conditions hereof and thereof.

Any valuation study that will be prepared by DBP in relation to the Engagement is meant to be used for illustrative purposes only and is prepared using estimates based on data provided by BCDA and/or obtained from BCDA to date as well as reasonable assumptions made by DBP and do not constitute accurate forecasts. The projections prepared in relation to the Engagement involve known and unknown risks, changes in economic and other circumstances, and other factors that may cause the actual outcome to be materially different from said projections in the model. No representation, warranty or undertaking (whether expressed or implied) is made that any circumstances, opinions, projections, forecasts, assumptions or estimates contained and used in the financial models are accurate or will be achieved.

11. Change in Market Conditions. If in the opinion of one Party, upon consultation with the other Party, there occurs any change in the national or international financial, political, or economic conditions which may make it impracticable or inadvisable to proceed with the Engagement on the terms and in the manner contemplated in the transaction documents, then each Party shall have the right to suspend and/or terminate the Engagement or this Agreement in accordance with Paragraphs 13.a and 13.b of this Section. This shall include any changes or effects that may be caused by the current COVID-19 crisis, notwithstanding agreement hereto to proceed with the Engagement under said conditions.
12. Force Majeure. No failure or omission to carry out or observe any terms, provisions or conditions of this Agreement shall give rise to any claim by any Party against another Party or be deemed to be a breach or default of this Agreement if the same shall be caused or arise out of an Event of Force Majeure, as defined below:
- a. An "Event of Force Majeure" refers to an event or a circumstance which cannot be foreseen, or even if foreseen is beyond the reasonable control of the parties hereof, or is unavoidable despite the exercise of due diligence, including but not limited to, acts of God, acts of local or national government or any instrumentality thereof, strikes, civil commotion or the like, the cause of which event is not due to the fault of a Party, and which wholly or partially prevents or delays such Party from performing and fulfilling its obligations under this Agreement

- b. Notice requirement during Event of Force Majeure. Within sixty (60) calendar days from the commencement of an event of Force Majeure, the Party desiring to invoke the Force Majeure event as a cause for delay in its performance of, or failure to perform, any obligation hereunder, shall provide the other Party with Notice in the form of a letter identifying the event of Force Majeure and describing in detail the particulars of the occurrence giving rise to the Force Majeure event including the expected duration, when known, and the effect of such Force Majeure event. Failure to provide timely Notice constitutes a waiver of a claim of Force Majeure.

The other Party has a period of sixty (60) calendar 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 affected by force majeure shall make reasonable efforts to reduce the consequences caused by the force majeure and resume the performance of all relevant obligations as soon as possible after the termination of force majeure.

If the affected party fails to resume the performance of all relevant obligations after the disappearance or cessation of the reason for temporarily exempting the performance due to the force majeure, the party shall be liable to the other party.

- c. Mitigation and Continuous Performance.
- i. The Parties shall consult with each other and take all reasonable steps to mitigate the effects, and minimize the losses, if any, of either Party, resulting from an Event of Force Majeure.
  - ii. The Parties shall continue performance of all obligations not directly affected by the Event of Force Majeure. If the affected Party is completely prevented from performing its obligations under this Agreement during an Event of Force Majeure, the affected Party shall commence the performance of the obligations upon the conclusion of the Event of Force Majeure.

13. Termination.

a. Termination by BCDA

BCDA may at any time in its discretion terminate this Engagement by giving DBP at least thirty (30) days prior written notice whereupon the obligations of the Parties hereto shall forthwith terminate, and BCDA shall, not later than fifteen (15) days from such notice:

- i. Pay any unpaid Service fee that has accrued to date, provided any partial implementation of a Service shall be paid in full; and
- ii. reimburse DBP for all OPEs accrued up to the date of notice of termination

provided, however, that item i) shall not be due if the termination by BCDA is occasioned by any substantiated failure by DBP to carry out its duties as provided in this Agreement other than as a result of: (a) *Force Majeure* that continue for a period of three (3) months or such longer period as the parties may mutually agree, or (b) a corresponding substantial failure by BCDA to perform any of its obligations hereunder.

Any Output Fee or OPEs already paid prior to any Termination not due to DBP's fault as contemplated in this Section 12 (a) shall not be reimbursed or refunded.

b. Termination by DBP

DBP may, upon at least thirty (30) days prior written notice to BCDA, terminate this Agreement if, at any time:

- i. BCDA fails to perform any of its obligations hereunder, including, without limitation: (a) failure to make (or cause) payments in a timely manner; or (b) failure to provide (or procure) full and accurate information in a timely manner, except for delays beyond the control of BCDA; or (c) providing information that is incorrect in any material respect, provided that BCDA has knowledge that the information is inaccurate or incorrect; or (d) failure by BCDA to make decisions or take action on any of the matters within a reasonable amount of time as not to unduly delay the Engagement;
- ii. DBP determines that it is unable to carry out its obligations for reasons beyond its direct control or due to Change in Market Conditions pursuant to Paragraph 11 of this Section; or
- iii. any relevant regulatory or policy issues have not been settled satisfactorily;

whereupon the obligations of the Parties hereto shall forthwith terminate and BCDA shall be obliged to:

- i. Pay any unpaid Service Fee that has accrued to date, provided any partial implementation of a Service shall be paid in full; and
- ii. reimburse DBP for all OPEs accrued up to the date of notice of termination.

For the avoidance of doubt, any Service Fee paid due under Section 5 hereof, shall be treated as a separate and distinct payment and shall not be deducted from any payment under this Section. Any OPEs already paid shall not be reimbursed.

14. Suspension. DBP and BCDA may, by mutual written consent, decide to suspend the performance of the Services for such period of time and upon such terms and conditions as they shall determine; provided, however, that unless the parties otherwise agree, all deadlines set out in this Agreement that fall on or after the date of suspension shall be extended by the actual duration of the suspension.
15. Dispute Resolution. All actions and controversies that may arise from this Agreement involving but not limited to demands for the specific performance of the obligations as specified herein and/or in the interpretation of any provisions or clauses contained herein, shall, in the first instance, be settled within thirty (30) calendar days through amicable means, such as, but not limited to mutual discussion. Should the dispute remain unresolved by the end of the aforementioned period, the dispute shall be submitted to the Office of the Secretary of Justice pursuant to the provisions of Sections 66, 67, 68, 69, 70 and 71, Chapter 14, Book IV, Title III of the Administrative Code of 1987 (Executive Order No. 292), in relation to Presidential Decree No. 242 (Prescribing the Procedure for the Administrative Settlement of Claims and Controversies Between or Among Government Offices, Agencies and Instrumentalities, including Government-Owned and Controlled Corporations, and for Other Purposes).

16. Amendments. Any amendment to, or waiver of, or any consent given under, any provision of this Agreement shall be in writing and signed by the parties. The provisions of this Agreement shall override any and all contrary and conflicting provisions contained in any past or present oral or written agreements.
17. Non-Waiver of Rights. The failure of any of the parties 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 of its rights or remedies, or shall it be construed as a waiver of any subsequent breach or default of its terms, conditions and covenants which shall continue to be in full force and effect. No waiver by any of the parties of its rights under this Agreement shall be deemed to have been made unless expressed in writing and signed by such party.
18. Data Privacy. The Parties shall comply with Republic Act No. 10173, otherwise known as the "Data Privacy Act of 2012", and all other related laws in ensuring the protection of data and information obtained under this Engagement.
19. Governing Law. This Agreement is governed by, and shall be construed in accordance with the laws of the Republic of the Philippines.
20. Acknowledgment of Transparency of Transaction. BCDA acknowledges that under existing DBP policy, no gift, fee, commission or benefit in favor of any of DBP's officers and/or employees and/or any other persons is required as a condition to, or as an additional consideration for this Engagement. BCDA further acknowledges that under the DBP's Code of Ethics, DBP's personnel have the duty to report to superior officers any possible violation of the policy.

BCDA is aware that the DBP is a government-owned corporation and that the receipt by any of DBP's officers and/or employees and/or other persons, as well as the giving by BCDA, unless opportunely disclosed pursuant to the provisions of Presidential Decree No. 749) of such gift, fee or commission, are crimes punishable under the provision of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019), Title VII of the Revised Penal Code on Crimes Committed by Public Officers, the Code of Conduct and Ethical Standards for Public Officers and Employees (R.A. No. 6713), the Plunder Law(R.A. No. 7080), as well as under other applicable laws and governing presidential decrees.

21. OGCC Review. This MOA was submitted for review and comment by the Office of the Government Corporate Counsel, whose comments and recommendations have been incorporated into this MOA prior to execution by the Parties.
22. Notices. Any notice required or permitted to be given pursuant to the Agreement shall be in writing and shall be deemed to have been properly given when (i) personally delivered, (ii) sent by registered mail, postage prepaid to the parties in their respective addresses appearing herein, or (iii) sent by email. The date of any notice shall be deemed to be (i) the date of receipt if delivered personally, (ii) the date five (5) days after posting if sent by registered mail, or (iii) the date the email was sent by the party giving notice. All notices hereunder and all documents or instruments delivered shall be in the English language.

The parties commit and undertake that they can be reached, and are readily accessible, through the following contact particulars:



**ACKNOWLEDGMENT**

Republic of the Philippines)  
City of **TAGUIG CITY**S.

BEFORE ME, A Notary Public, for and in the City of **TAGUIG CITY** day of **SEP 08 2023** 2023, personally appeared the following:

NAME	Identification Documents	Date/Place of Issue
JOSHUA M. BINGCANG	Passport No. [REDACTED]	[REDACTED]

They are known to me to be the same person who executed the foregoing agreement.

POSITION

COMPANY

PRESIDENT AND CEO

BCDA

and they acknowledge to me that the signature she affixed confirm her own free act and entity she represents.

SIGNED AND SEALED at the place and on the date stated above.

NOTARY PUBLIC

[REDACTED]

**ATTY. EDUARDO P. BAROT**

Notary Public for Taguig, Roll No. 36248

Commission No. 4 Until December 31, 2024

PTR No. A-5725307/01.03.23/Taguig City

IBP Lifetime Member No. 013895/06.02.15/RSM

MCLE Compliance No. VI-0007875/04.14.22

Unit 2A The Grand Hamptons Tower 2, 1st Ave.  
cor. 31st St., BGC, Taguig City, Philippines

Doc. No. 170;  
Page No. 21;  
Book No. 33;  
Series of 707

[REDACTED]

[REDACTED]



**ACKNOWLEDGMENT**

Republic of the Philippines)  
City of MAKATI CITY ) SS.

BEFORE ME, A Notary Public, for and in the City of MAKATI CITY, this 08 day of SEP 2023, personally appeared the following:

NAME	Identification Documents	Date/Place of Issue
MICHAEL O. DE JESUS	[REDACTED]	[REDACTED] Manila

They are known to me to be the same person/s who executed the foregoing agreement.

POSITION

COMPANY

PRESIDENT AND CEO

DBP

And they acknowledge to me that the signature/s he/she affixed confirms his/her own free act/s and entity/ies he/she represents.

SIGNED AND SEALED at the place and on the date stated above.

NOTARY PUBLIC

Doc. No. 141  
Page No. 30  
Book No. II  
Series of 2023

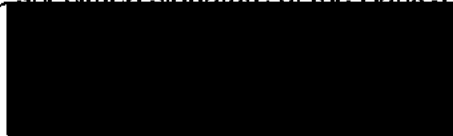


*Matthew R. Mina*  
ATTY. MATTHEW RYAN R. MINA  
Notary Public  
Appointment No. M-251 (N) (2022-2023)  
Makati City, Until December 31, 2023  
10<sup>th</sup> Fl., 25<sup>th</sup> St., Sen. Gil Puyat Ave., Makati City  
Roll No. 60084, IBP No. 2491746  
P. No. Exempt Under RA 7130

*[Handwritten mark]*

## SECRETARY'S CERTIFICATE

I, **MARIA KATRINA L. INFANTE**, Officer-In-Charge, Office of the Corporate Secretary of the Development Bank of the Philippines ("DBP", for brevity), a government-owned financial institution established and operating pursuant to Executive Order No. 81 dated December 3, 1986, as amended by Republic Act No. 8523 effective March 9, 1998, otherwise known as "The Revised Charter of the Development Bank of the Philippines", with principal office at Makati City, Philippines, do hereby certify, based on the records of this Office, that pursuant to Section 10 of the 1986 Revised Charter of DBP, **Honorable Michael O. de Jesus**, President and Chief Executive Officer and Vice Chairman of DBP, per Board Resolution No. 0022 dated January 18, 2023, is authorized to sign the Memorandum of Agreement on Financial Advisory Services to be executed by and between the DBP and the Bases Conversion and Development Authority (BCDA), represented by its President and Chief Executive Officer, Joshua M. Bingcang. Likewise, appearing below is the specimen signature of the Bank's authorized signatory:



**MICHAEL O. DE JESUS**  
President and Chief Executive Officer

IN WITNESS WHEREOF, I have hereunto affixed my signature and the seal of DBP this \_\_\_\_\_ day of SEP 05 2023 in Makati City, Philippines.



**ATTY. MARIA KATRINA L. INFANTE**  
Officer-In-Charge, Office of the Corporate Secretary  
Development Bank of the Philippines

REPUBLIC OF THE PHILIPPINES >  
MAKATI CITY > S.S.

SUBSCRIBED AND SWORN to before me on 05 SEP 2023, the Officer-In-Charge, Office of the Corporate Secretary of DBP exhibiting to me her Philippine Passport No. P2270085B issued in DFA NCR Northeast on May 20, 2019.

Doc. No. 207  
Page No. 43  
Book No. XIV  
Series of 2023.  
/s/



*Patricia C. Velarde*  
**ATTY. PATRICIA C. VELARDE**  
Notary Public for the City of Makati  
10F DBP Bldg., Sen. Gil J. Puyat Ave., Makati City  
Appointment No. 11-244 until December 31, 2023  
Roll of Attorneys No. 63138  
IBP Lifetime No. 012809/05/07/2014  
PTR Exempt Under R.A. No. 7160  
MCLE Compliance No. VII-0000919/09/23/2019



Maka-Diyos,  
Maka-Tao,  
Makakalikasan  
at Makabansa.

ABONAS  
(PANGALANG)

3

Ang mga artikulo sa itaas ay hindi dapat magamit sa mga artikulo sa ibaba.





REPUBLIC OF THE PHILIPPINES  
PASAPORTE

PILIPINAS  
PASAPORTE

3

Maka-Diyos,  
Maka-Tao,  
Makakalikasan  
at Makabansa.

(Signed)

UP



PHILIPPINE PASSPORT

## CERTIFICATION

This is to certify that the Memorandum of Agreement (MOA) between the Bases Conversion and Development Authority (BCDA) and the Development Bank of the Philippines (DBP) for the Engagement of DBP as Financial Advisor for BCDA's projects was submitted for review and comment by the Office of the Government Corporate Counsel (OGCC), whose comments and recommendations have been incorporated into the MOA prior to execution by the Parties.

This certification is being issued in compliance with OGCC Contract Review No. 917 series of 2023 dated 18 April 2023.

[Redacted Signature]

GISELA Z. KALALO

Executive Vice President

[Redacted]

*Certification: Engagement of DBP as Financial Advisor for BCDA's projects*  
May 2023 / Version 1

[Redacted]

[Redacted]



Budget & Revenue Allocation Department



CB2023 - 0748

Tel: +632 [Redacted] Telefax: +632 8816 0996  
Website: www.bcdagov.ph

BCDA Corporate Center  
2/F Bonifacio Technology Center  
31st St. cor 2nd Ave. Bonifacio Global City,  
Taguig City 1634 Philippines

