FREE AND PRIOR INFORMED CONSENT-MEMORANDUM OF AGREEMENT

KNOW ALL PERSONS BY THESE PRESENTS:

This Free and Prior Informed Consent- Memorandum of Agreement (FPIC- MOA) is executed by and among:

INDIGENOUS CULTURAL COMMUNITIES/ INDIGENOUS PEOPLES (ICCs/IPs) of barangays Amgaleyguey, Baculongan Sur, Lengaoan, Poblacion, and Sebang, all within the Ancestral Domain and Municipality of Buguias, Benguet Province, represented by their duly validated and authorized elders/leaders who are numerous but for purposes of this act, the signatories by virtue of community resolutions hereto attached as Annexes "A", "B", "C", "D", and "E" are those whose names appear in this MOA who are all of legal ages, Filipino citizens and with residences and postal addresses in the said barangays, hereinafter referred to as the HOST ICCs/IPs;

BUGUIAS ANCESTRAL DOMAIN ALTERNATIVE FOR NATIVE GOVERNANCE (BADANG), the domain wide Indigenous Peoples Organization (IPO) in the Ancestral Domain of Buguias, represented in this act by virtue of a resolution hereto attached as Annex "F", by its Chairman, ENGR. JOHNNY M. CARLOS, hereinafter referred to as the BADANG;

BENGUET ELECTRIC COOPERATIVE (BENECO), a non-stock, non-profit electric cooperative, duly organized and existing under the laws of the Republic of the Philippines, with office address at Alapang, La Trinidad, Benguet, represented in this act by virtue of a board resolution hereto attached as Annex "G", by its Board President, PETER B. BUSAING, hereinafter referred to as the BENECO;

and

NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP), a government agency established under Republic Act No. 8371 or the Indigenous Peoples Rights Act (IPRA) of 1997 with central office at the 2nd Floor, N. dela Merced Bldg., Corner West and Quezon Avenues, Quezon City, represented in this act by its Chairperson, ATTY. LEONOR T. ORALDE- QUINTAYO, hereinafter referred to as the NCIP.

WITNESSETH:

WHEREAS, BENECO has a proposed three (3)- megawatt power generation project known as the Man-asok Mini Hydroelectric Power Plant (referred to herein as the power plant for brevity) to be constructed within the Buguias Ancestral Domain with the above-named barangays as the directly affected areas;

WHEREAS, one of the requirements for the construction of the said power plant is the Cértification Precondition (CP) from the NCIP pursuant to Section 59 of the IPRA of 1997 and condition precedent to the issuance of the same is the Free and Prior Informed Consent (FPIC) of the affected ICCs/IPs;

WHEREAS, the FPIC process for the subject power plant was undertaken in accordance with the FPIC Guidelines of 2006 (NCIP Administrative Order No. 1, Series of 2006) and the Host ICCs/IPs were able to arrive at a consensus to give their FPIC to the project under certain terms

and conditions stated herein; and



NOW, THEREFORE, for and in consideration of the foregoing premises, the parties now enter into this FPIC- MOA (referred to herein as the MOA for brevity) and stipulate as follows, to wit:

Article I DURATION OF MOA

1.1 The duration of this MOA shall start on the date of issuance of the Certification Precondition by the NCIP up to the date of the expiration of the Hydropower Operating Contract of BENECO with the Department of Energy (DOE) signed in 2009.

Article II BENEFITS FOR THE HOST ICCs/IPs AND THE BADANG

2.1 Other than what has already been granted by law, the Host ICCs/IPs in the said 5 barangays and the BADANG shall receive shares from the power generation income of BENECO as follows:

- 2.1.1 Host ICCs/IPs in the 5 barangays- Philippine Peso (Php) 0.0667 per kiloWatt-hour (kWhr) produced in every year of power generation for the first 10 years of the power plant's operation and Php 0.2667 per kWhr likewise in every year of power generation for the remaining years of its operation. This monetary benefit shall be divided equally by the 5 barangays.
- 2.1.2 BADANG- Php 0.0175 per kWhr produced in every year of power generation for the first 5 years of the power plant's operation; Php 0.0250 per kWhr in every year of power generation for the next second 5 years of operation; Php 0.0325 per kWhr in every year of power generation for the next third 5 years of operation; and Php 0.0400 per kWhr in every year of power generation for the remaining years of operation.
- 2.2 The respective monetary shares of the Host ICCs/IPs in the 5 barangays and the BADANG-shall be paid by BENECO beginning on the first anniversary date of the power plant's operation and every anniversary date thereafter. However, the Host ICCs/IPs and BADANG, subject to availability of funds, may get in advance their respective shares during the power plant construction in the form of projects to be identified by them but whatever amount spent for such projects shall be deducted from their future shares when the power plant is already operating.
- 2.3 For safekeeping purposes, the Host ICCs/IPs in each barangay and BADANG shall open their respective bank accounts by which their respective monetary shares are to be deposited.

ARTICLE III USE OF FUNDS

3.1 The monetary share of the Host ICCs/IPs in the 5 barangays shall be used for programs or projects determined through consensus by their elders/leaders that will redound to their general well-being most especially those near the components of the power plant provided that not less than thirty (30) percent thereof shall be allocated for livelihood or social services.

3.2 The monetary share of the BADANG shall be used for programs or projects as may have been listed in the Buguias Ancestral Domain Sustainable Development and Protection Plan

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(ADSDPP) that redound to the general well-being of the IPs in the other barangays of Buguias provided likewise that not less than thirty (30) percent thereof shall be allocated for livelihood or social services.

ARTICLE IV MEASURES TO PROTECT IP RIGHTS AND VALUE SYSTEMS

4. 1 BENECO shall respect the rights of the Host ICCs/IPs and the IPs of Buguias as a whole to their ancestral domain and ancestral land, right to self-governance and empowerment, social justice and human rights, and their cultural integrity as provided under the IPRA. It shall refrain from committing acts that would violate or diminish the said rights.

4.2 BENECO shall be sensitive to the beliefs, customs and traditions of the Host ICCs/IPs and willing to abide by whatever reasonable cultural obligations that may be imposed by the elders/leaders of the latter such as but not limited to shouldering the expenses for the performance of the necessary native rituals prior to the construction of the power plant and before it will operate.

4.3 BENECO shall establish an Indigenous Peoples Desk at its Northern Benguet Sub-office in Bekes, Buyacaoan, Buguias, Benguet to serve as liaison for issues and concerns that may be raised by the Host ICCs/IPs related to the construction and operation of the power plant.

ARTICLE V

MEASURES TO CONSERVE/PROTECT AFFECTED PORTION OF THE ANCESTRAL DOMAIN

5. 1 BENECO shall ensure that the construction of the power plant and its succeeding operation shall have a minimum impact on the environment and adopt the necessary mitigating measures to lessen whatever negative effects of the same to the environment.

5.2 During the lifetime of this MOA, it shall initiate measures to protect the forests and watershed areas found not only in the host barangays but also in the other barangays within the Buguias Ancestral Domain which are vital to the power plant's operation such as the formulation and implementation of forest and watershed management program in partnership and coordination with the Host ICCs/IPs, BADANG and other concerned parties or stakeholders. BENECO shall provide the fund for this program in an amount to be mutually agreed upon by it and all others concerned.

5.3 It shall strictly follow the terms and conditions of the Environmental Impact Statement (EIS) and the Environmental Compliance Certificate (ECC) issued for the power plant.

5.4 Likewise, it shall strictly follow the terms and conditions of the water permit to be issued by the National Water Resources Board (NWRB) in relation to the utilization of water for the operation of the power plant. It is hereby understood that the consent of the concerned ICCs/IPs for the construction and operation of the power plant carries with it the utilization of water to make the same operational. BENECO makes it clear that it is the one that will apply for the necessary water permit and it is not acquiring the water permit of anyone else for its own water needs.

> **ARTICLE VI** RESPONSIBILITIES OF BENECO

BENECO shall:

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6.1 Ensure that the construction of the power plant is in accordance with the prescribed design and standard;

6.2 Ensure that the entities, contractors, persons or technical people whom it will engage their services in the power plant construction and operation are made aware of the contents of this MOA and be guided accordingly;

6.3 Operate its power plant professionally and responsibly guided by best practice principles;

6.4 Extend preference in employment to job applicants who are bona fide IPs and residents of the 5 affected barangays in case of employment vacancies and said applicants are qualified, competent and physically fit for the positions applied for. Preference shall also be accorded to them to undertake works related to the power plant construction provided that they have the capability to do so;

6.5 Give preference to the use of local materials for the power plant construction that pass quality standards;

6.6 Negotiate and enter into appropriate contracts with individuals whose properties will be traversed by the construction of the power plant and its components;

6.7 Enter into agreement with concerned community residents on irrigation matters;

6.8 Provide free trainings and skills development programs to bona fide IP residents of the host barangays through its Technical Vocational (TECHVOC) School;

6.9 Conduct annual medical/dental mission in the host barangays;

6.10 Collaborate with the Buguias municipal local government unit and the 5 host barangay local government units in the implementation of its corporate social responsibility projects;

6.11 Discharge/perform other responsibilities as may have been incorporated in the other parts of this MOA; and

6.11 Faithfully comply with all the terms and conditions of this MOA.

ARTICLE VII RESPONSIBILITIES OF THE HOST ICCs/IPs

The Host ICCs/IPs shall:

7.1 Allow the construction of the power plant and its smooth operation;

7.2 Protect and preserve the existing communal forests or watersheds in their respective barangays found to be critical to the power plant operation;

7.3 Refrain from committing acts detrimental to the construction of the power plant and its operation;

7.4 Undertake measures within their control to safeguard the personnel, equipment, power plant and other properties of BENECO within their areas of responsibility from undue harm;

7.5 Grant full and unimpeded access to BENECO employees, contractors, and consultants to their lands insofar as the power plant activities require entry or passage thereto;





7.6 Cooperate with BENECO in the implementation of its corporate social responsibility projects and other community development programs that it may extend;

7.7 Account all funds received from BENECO ensuring that the same shall be judiciously spent for the intended purposes;

7.8 Commit to amicably settle disputes related to the construction and operation of the power plant using good customs and tradition;

7.9 Discharge/perform other responsibilities as may have been incorporated in the other parts of this MOA; and

7.10 Faithfully comply with all the terms and conditions of this MOA.

ARTICLE VIII RESPONSIBILITIES OF BADANG

The BADANG shall:

- 8.1 Promote the social acceptability of the power plant among the ICCs/IPs of the whole Buguias Ancestral Domain and encourage or remind them to do their responsibilities to their domain of protecting environmentally critical areas such as the forests and the watersheds and the restoring of denuded areas;
- 8.2 Help mediate in the amicable settlement of disputes related to the construction and operation of the power plant;
- 8.3 Account all funds received from BENECO ensuring that the same shall be judiciously spent for the intended purposes;
- 8.4 Discharge/perform other responsibilities as may have been incorporated in the other parts of this MOA; and
- 8.5 Faithfully comply with all the terms and conditions of this MOA.

ARTICLE IX **RESPONSIBILITY OF NCIP**

9.1 The NCIP shall independently monitor compliance by BENECO, the Host ICCs/IPs and BADANG with the terms and conditions stated herein including the utilization of funds received by the Host ICCs/IPs and BADANG from BENECO.

ARTICLE X MONITORING AND EVALUATION SYSTEM

10.1 Submission of Reports and Creation of NCIP Monitoring Team-Within fifteen (15) days from the release of every financial benefit to the Host ICCs/IPs and BADANG, BENECO shall submit to the NCIP-Benguet Provincial Office a report detailing the power generated by the power plant in terms of kiloWatt- hour for the preceding year of operation and the computation of the said financial benefit.

On the other hand, the Host ICCs/IPs and the BADANG shall submit semi-annual (every 6 months) reports on how the funds received from BENECO are being utilized stating the leave the



projects or programs, cost of implementation, period of implementation, status of implementation and other relevant facts. Said reports shall be prepared and signed by the elders/leaders on the part of the Host ICCs/IPs and the officers of the organization on the part of BADANG. The 6-month period shall be reckoned from the date of every fund release. If for example, the fund release is made on January 8, 2015, the first semi-annual report shall be submitted 6 months thereafter or on July 8, 2015 while the second semi-annual report shall be submitted after the lapse of another 6 months or on January 8, 2016.

All the above-mentioned reports shall be the bases of the monitoring team to be created by the NCIP in conducting its monitoring and evaluation. The team shall not be precluded from scrutinizing the report submitted by BENECO if only to ensure that the Host ICCs/IPs and the BADANG are receiving what is due them. In the same manner, it shall not be precluded from scrutinizing the reports submitted by the Host ICCs/IPs and the BADANG if only to ensure that the funds are being utilized for the common good.

10.2 Transparency- Copies of the reports of BENECO, the Host ICCs/IPs, and the BADANG referred to in Item 10.1 shall be posted by them in the respective bulletin boards of the BENECO office in Bekes, Buyacaoan, Buguias, Benguet, barangay halls of the 5 host barangays, the municipal hall of Buguias, and the BADANG office.

10.3 Ocular Inspection- The NCIP shall conduct periodic ocular inspections of the power plant at the time of its construction to ensure that the same is being done in accordance with the prescribed design and standard. Ocular inspections of the power plant when it is already operating may also be conducted by the NCIP as the need arises. For purposes of these inspections, NCIP may enlist the help and assistance of experts or technical people from the Department of Energy (DOE) or other agencies/entities. BENECO shall cooperate in these inspections and provide full assistance to the NCIP including the experts or technical people conducting the same.

10.4 Expenses in the conduct of monitoring and inspection shall be shouldered by BENECO.

11.1 Another FPIC process shall be required for the renewal of the hydropower operating contract of BENECO with the DOE.

11.2 Another FPIC process shall likewise be required in case of merger, reorganization, transfer of rights, or acquisition by another entity when the transferee or new entity DOES NOT assume the obligations or responsibilities of BENECO embodied in this MOA.

ARTICLE XII PENALTIES FOR NON-COMPLIANCE/REDRESS MECHANISM

12.1 A complaint for non-compliance or violation of any of the terms and conditions of this MOA must be in writing and signed by the complainant. The same shall be submitted to the NCIP monitoring team which after due process shall recommend appropriate remedial actions or measures to be undertaken by the respondent or erring party.

However, the team if warranted by circumstances shall not be precluded from referring the dispute to the elders/leaders of the Host ICCs/IPs for mediation using customary laws and Amicable settlement or compromise agreement arrived at by the disputants shall

ARTICLE XI REQUIREMENT FOR ANOTHER FPIC PROCESS



be reduced in writing and signed by them and the mediators as witnesses and the same becomes final and binding immediately.

- 12.2 Reasonable penalties in accordance with the customary laws and tradition of the aggrieved ICCs/IPs as determined by their elders/leaders shall be imposed against the respondent or party who deliberately or unjustifiably fails:
- 12.2.1 To comply with any of the terms and conditions of this MOA;
- 12.2.2 To heed the recommendation of the monitoring team; or
- 12.2.3 To comply with any amicable settlement or compromise agreement entered into.

12.3 It is hereby understood that the dispute shall only be brought to the NCIP Regional Hearing Office or the proper court when all attempts for amicable settlement as referred to in Item 12.1 failed. A certification to this effect shall be issued by the group composed of elders/leaders and BADANG officers that mediated the conflict or helped in the mediation.

ARTICLE XIII UNDERTAKING TO ANSWER FOR DAMAGES

13.1 BENECO undertakes to answer for damages which the Host ICCs/IPs may suffer as a result of the construction and operation of the power plant. Posting of bond for this purpose was the subject of exhaustive discussion during the negotiation and at the end of the day, it was agreed upon that a mere undertaking is enough.

13.2 Any member of the host ICCs/IPs found to have committed acts causing damages to the power plant construction and operation or any act to impede the smooth operation of the plant shall be held liable after due process.

ARTICLE XIV OTHER PROVISIONS

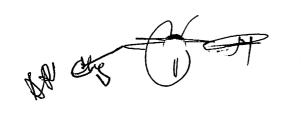
14.1 Non-transferability of FPIC- The consent of the Host ICCs/IPs for the construction and operation of the power plant shall not be transferable to any other party except in case of merger, reorganization, transfer of rights, acquisition by another entity, or joint venture; provided, that the transferee or the new entity shall assume the responsibilities or obligations of BENECO embodied herein, otherwise, another FPIC process will be required.

14.2 Non-diminution/Non-limitation of Rights and Obligations- Nothing in this MOA shall be construed to diminish the rights of the Host ICCs/IPs as provided in the IPRA and other laws or issuances. Moreover, nothing herein shall prevent the institution or grant of other projects or genefits to the Host ICCs/IPs and BADANG by BENECO or other entities.

14.3 Grounds for Cancellation of MOA- This MOA may be cancelled and the consent given by the Host ICCs/IPs is considered recalled in any of the following grounds or instances:

14.3.1 The construction or operation of the power plant shall have been found by competent authorities to cause grave environmental destruction, serious illness among the community residents, or has adversely affected to a large extent the sources of livelihood in the community;

14.3.2 BENECO has deliberately or unjustifiably failed to comply, after written demand, with any of the terms and conditions embodied herein;



14.3.3 BENECO's successor-in-interest, in case of merger or transfer of rights, is not willing to assume the responsibilities or obligations of its predecessor stated herein;

14.3.4 Failure to start the power plant construction within three (3) years from issuance of the Certification Precondition by the NCIP; or

14.3.5 Failure to commence power plant operation within three (3) years from the date of its completion.

14.4 Official Version- The English version of this MOA shall be the official version. The Host ICCs/IPs and BADANG acknowledge that every provision hereof was explained or translated in the Kankana-ey dialect understood by them.

14.5 Warranty- The parties hereof hereby warrant that their respective signatories are duly authorized to execute this MOA in accordance with their corporate and customary processes, as the case maybe.

14.6 Amendments and Periodic Review- Any provision hereof may be amended upon mutual agreement of the parties herein and such amendments shall take effect only if the same is made in writing and signed by them. Any of the parties may propose amendment/s and in this connection, this MOA shall be subject to periodic review under the supervision of the NCIP every five (5) years from the start of the power plant construction to address developmental issues and concerns that may arise.

14.7 Change of Representatives/Addresses- In case of change of representatives or addresses after the execution of this MOA, the concerned party shall immediately give written notice of such fact to the other parties.

14.8 Termination of MOA- In case BENECO decides to permanently stop the operation of the power plant, it shall give written notice to the other parties to terminate this MOA likewise stating the reason and such termination shall take effect after the full rehabilitation of the power plant area and payment of any outstanding obligation it has to the Host ICCs/IPs or BADANG. The same procedure shall apply in case the power plant construction has started but in the course of construction, BENECO permanently decides not to push through anymore with its hydro project. In the latter case, whatever benefits it has given in advance to the Host a ICCs/IPs or BADANG are deemed waived.

14.9 Separability Clause. In case any provision of this MOA is declared invalid by a competent authority, other provisions shall not be affected thereby.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 2nd day of May, 2014 at Bekes, Buyacaoan, Buguias, Benguet.

> **HOST ICCs/IPs** Represented by their Elders/Leaders

AMGALEYGUEY ELDERS/LEADERS

JOHNNY TAM-ING

FEBRERO BAYACSAN

BEN MARTINI

Bush outino

BARMacting R

AMULGA ROSALYA BALEGAN

NUEL ABUAN

TO SABELO

ROSA CASINTO

LEONARDO CALABIAS

BACULONGAN SUR ELDERS/LEADERS

Polajo DIONISIO PILAYO

ALPONSO CALABIAS

ALFREDO ABAWA

ATEONICENTE

LENGAOAN ELDERS/LEADERS

EUGENE SAMLING SR.

SENARIO TODA

MARZAN-SIMEON>

EDWIN BAY-AN

MARCELINO DATI

POBLACION ELDERS/LEADERS

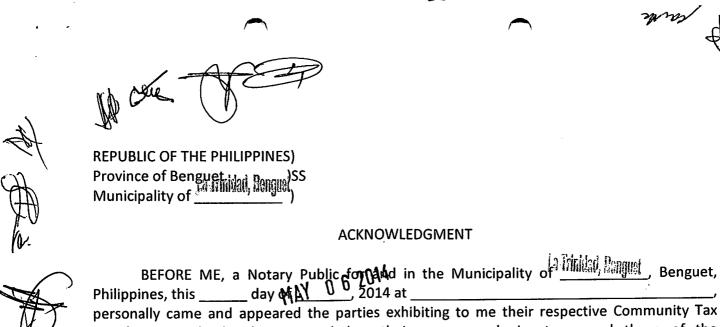
JERONIE MENZI

ALEX SIMEON

BENJAMIN OLSIM

EVANGELINE PALBUSA

SEBANG ELDERS/LEADERS GARCIO TÂMO-OY VIOLETA CARLOS **IRENDO SANTIBAN** CORNELIO GOLINGOY **BADANG** By: ENGR. JOHNNY M. CARLOS Chairman CTE No. 13398803 Issued on January 3, 2014 Issued at Buguias, Benguet **BENECO** By: Mø. A09-Ø9-001642 Professional Driver **NCIP** By: ATTY. LEONOR T. ORALDE- QUINTAYO Chairperson CTC No. Issued on _ issued at SIGNED IN THE PRESENCE OF: ATTY. SEVERINO MANUEL G. LUMIQUED BENECO General Manager Legal Officer, NCIP- Benguet MAK



NAME OF ELDER/LEADER

Magno Calimodag Leonardo Calabias

Certificates with details written below their names and signatures and those of the elders/leaders stated below, to wit:

COMPETENT EVIDENCE OF IDENTITY/CTC/DATE/PLACE

ACKNOWLEDGMENT

AMGALEYGUEY: CTC No. 13398396/ 01-17-14/ Buguias Johnny Tam-ing Voter's ID No. 1105-0023A/ Buguias Febrero Bayacsan VIN 1105 0023B-A2349BSM10000 **Ben Martinez** BENECO ID No. 76588 **Epe Lipawen** VIN 1105-0026A-12365EBA10000 Emmanuel Abuan Senior Citizen's ID No. 2161/Buguias Rosa Casinto CTC No. 13484385/ 05-02-14/ Buguias Rosalia Balegan Pablito Sabelo

BACULONGAN SUR: CTC No. 13397198/01-16-14/ Buguias Mario Oplas CTC No. 13398845/01-17-14/Buguias Dionisio Pilayo BENECO ID No. 56083 Alfredo Abawa **POSTAL ID 1400923 Daniel Lupingay** CTC No. 06459738/ 01-17-14/ Buguias Romy Akyapat CTC No. 13397631/01-08-14/Buguias **Mathew Gatab** CTC No. 13397637/01-09-14/ Buguias ired Oplas

Prof. Driver's License No. A01-85-003592/ Expires 2014-09-10 **Edmon Pawil**

Voter's ID No. 1105-00484/ Buguias Mateo Vicente Voter's ID No. 1105-0042A/ Buguias **Alfonso Calabias** LENGAOAN:

CTC No. 13397353/01-10-14/ Buguias Eugene Samling, Sr. License No. A01-04-092549 Joaquin Depalog, Jr.

VIN 1105-0083A-11661MST10000 Modesto Teliagen CTC No. 13445033/01-02-13/ Buguias **Terio Caloy** Voter's ID No. 1105-0086A/ Buguias Cornelio Altiyen

SENIOR CITIZEN'S ID 2399

Driver's License No. A01-89-027381 CTC No. 13397363/01-10-14/Buguias CTC No. 13397404/01-10-14/ Buguias VIN 1105-0087A-10761PPG10000

TIN: 144-149-538/05-13-92 CTC No. 06460538/01-06-14/ Buguias CTC No. 13470982/04-03-14/ Buguias CTC No. 06460542/01-06-14/ Buguias

TIN: 284-848-964/11-17-09

Dene Igualdo Marzan Simeon Glenn Bigo

Marcelino Dati

Senario Toda

Darwin Sali

POBLACION:

Fidel Langbis

Jerome Menzi

John Togay-an

Prudencio Gullingoy

