

BASES CONVERSION AND DEVELOPMENT AUTHORITY

and

THE NEW YORK TIMES COMPANY

ADVERTISING CONTRACT

THIS CONTRACT is made on the 5th day of August, 2019 **BETWEEN:**

1. **BASES CONVERSION AND DEVELOPMENT AUTHORITY**, with principal office address at the BCDA Corporate Center, 2/F Bonifacio Technology Center, 31st Street corner 2nd Avenue, Bonifacio Global City, Taguig City, (hereinafter referred to as "**BCDA**"); and
2. **THE NEW YORK TIMES COMPANY**, with registered office address is at 620 Eighth Avenue, New York, N.Y. (hereinafter referred to as the "**NYT**".)

WHEREAS:

- (A) BCDA is a government instrumentality vested with corporate powers under Republic Act (RA) 7227 (Bases Conversion and Development Act of 1992), in Republic of the Philippines, represented by its Executive Vice President, AILEEN ANUNCIACION R. ZOSA, duly authorized for this purpose pursuant to item 178 of the BCDA Revised Manual of Approval duly approved by the BCDA Board effective 22 November 2017, a copy of which is attached as Annex "A".
- (B) NYT: a corporation duly organized and existing under the laws of the State of New York, USA, represented by its Authorized Representative, Lisa Howard, Senior Vice President. A copy of Good Standing Certificate of the corporation is attached as Annex "B".
- (C) BCDA and NYT shall be referred individually as a Party or collectively as Parties.

ANTECEDENTS

RA 7227, as amended by RA 9400, of the Republic of the Philippines, mandates the BCDA to accelerate the sound and balanced conversion into alternative productive civilian uses of the former Clark and Subic military reservations and their extensions, and to enhance the benefits to be derived from said properties in order to promote the economic and social development of Central Luzon in particular and the country in general as well as to provide funds for the Modernization Program of the Armed Forces of the Philippines (AFP).



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Clark is being aggressively positioned as Asia's next investment, lifestyle and outdoor destination. Clark's strategic location and access to vital infrastructure which includes a freeport zone, a world-class airport, a rapidly developing financial district, a masterplanned smart, green and disaster-resilient city and commuter and cargo railway systems make it a total logistics center. Clark aims to meet the infrastructure requirements of foreign investors and residents alike.

On March 2019, BCDA conducted a market study for the development and publishing of a special digital feature about Clark and has determined the probable sources for the procurement. After the said market study, it was confirmed that NYT could undertake the project at the most advantageous terms.

The procurement of the special digital feature by BCDA was undertaken through Negotiated Procurement in accordance with Section 53.6 (Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services) of the 2016 Revised Implementing Rules and Regulations of RA 9184 of the Republic of the Philippines.

BCDA's Bids and Awards Committee for Goods issued Resolution No. BC-2019-010, dated 12th of April 2019, recommending the award of the Contract to NYT in the amount of Seventy-Five Thousand US Dollars (US\$75,000), after having been determined that it has the most advantageous offer to BCDA.

ACCORDINGLY, THE PARTIES HEREBY AGREED AS FOLLOWS:

SECTION 1. SPECIFIC UNDERTAKING AND RELATIONSHIP OF THE PARTIES

- 1.1 NYT is hereby contracted for the development and publishing of a special digital feature about Clark.

SECTION 2. OBLIGATIONS OF NYT

NYT shall produce the following for BCDA:

- 2.1 Production of 1 x Branded Content includes:
- One (1) originally reported article, including firsthand interviews, T&Es included
 - One (1) travel photography taken in the province of Pampanga, Philippines, T&Es included
 - One (1) uniquely designed page layout, optimized for engagement
 - One (1) branded footer on the branded content page
 - One (1) dedicated URL on NYTimes.com
 - One (1) custom display drivers, up to three Flex Frames (if applicable)
 - Design and development of native and social drivers for distribution on NYTimes.com and via T Brand Studio social
 - Specialized account management
 - Real-time campaign optimization to ensure maximum engagement with your content



- Bi-weekly reports with performance insights

2.2 Media Drivers:

- Display CPM Drivers: 799,361 guaranteed impressions
- Native CPV Drivers: 10,000 guaranteed page views (equivalent to 20 million promotional impressions)
- Bonus Display CPM Drivers: 100,000 guaranteed impressions

2.3 Total Reach:

- 20,899,361 estimated impressions
- 10,000 guaranteed page views

SECTION 3. OBLIGATIONS OF BCDA

- 3.1 BCDA shall provide NYT all the pertinent documents and technical information necessary in the execution and performance of the services. In addition, BCDA shall also assist NYT in the processing of permits for location set ups and additional transportation as needed, the cost/s to be shouldered by NYT. Each party must (except as expressly provided) bear its own costs and expenses in the execution of this Contract.

SECTION 4. TERMS OF PAYMENT

- 4.1 BCDA shall pay the amount of the actual Charges to within thirty (30) days from receipt of the invoice setting forth the actual Charges. The Charges shall be determined pursuant to the schedule of Charges, as follows:
- a. Twenty-Five Thousand US Dollars (US\$ 25,000) of the contract price upon approval of the concept/content by BCDA;
 - b. Twenty-Five Thousand US Dollars (US\$ 25,000) of the contract price upon publishing of the digital concept/content by NYT; and
 - c. Twenty-Five Thousand US Dollars (US\$ 25,000) of the contract price upon submission of the terminal report and issuance by BCDA of a Certificate of Completion of Services rendered.
- 4.2 All amounts payable by a party pursuant to this Contract, including without limitation to payments of actual Charges, shall be payable in US Dollars.

SECTION 5. TERM AND EFFECTIVITY

- 5.1 The CONTRACT shall take effect upon the issuance and actual receipt thereof by NYT of the Notice to Proceed (NTP) and shall remain in force and in effect for a period of one (1) month or as specified in the attached plan.



SECTION 6. NOTICE OF DELAY

- 6.1 In the event NYT encounters delays in obtaining the pertinent documents and technical information necessary in the execution and performance of its services, understood to be provided by BCDA under this Contract, it shall promptly notify BCDA in writing within five (5) working days of such delay and may request for an appropriate extension for completion of services. An extension may be granted if it could be established that the cause of the delay in the performance of work was due to the failure of BCDA to provide the pertinent documents and technical information necessary for the project. Any extension granted shall not entail additional fees over the consideration herein stipulated.

SECTION 7. PROPRIETARY RIGHTS AND CONFIDENTIALITY

- 7.1 All materials, processes, data, proprietary information and other related data and information prepared pursuant to this Contract shall be approved by BCDA. Upon completion of the development and publishing of a special digital feature about Clark, the same shall become the exclusive property of BCDA. NYT shall not retain for its records copies of the said materials, processes, data, proprietary information and other related data and information and the same shall not be disclosed to another party without BCDA's prior written consent. NYT shall not sell, transfer, publish, or otherwise make the work product available to third parties without BCDA's prior written consent.
- 7.2 NYT, its officers, employees, agents and assigns, agree that all proprietary and technical information and data, and related documentation, in whatever form provided, recorded or unrecorded (hereinafter collectively referred to as "Confidential Information"), which the Parties have furnished or may furnish each other in anticipation of, or in furtherance of, this Contract shall:
- i. Be used solely for the purpose for which it was furnished;
 - ii. Be treated in strictest confidence and protected;
 - iii. Not to be reproduced, except as necessary for its authorized use; and
 - iv. If in tangible form, shall be returned together with all copies thereof, including the promotional materials, when no longer needed.
- 7.3 The obligations and confidentiality and restricted use are not applicable to those portions of the Confidential Information that were previously known, or that fall into the public knowledge without the fault of either Party, or which the Parties have agreed in writing need not be kept confidential.
- 7.4 NYT shall indemnify and hold BCDA free and harmless from all costs, claims, damages, actions, suits or other proceedings and from any liabilities arising from disclosure or unauthorized use of Confidential Information.
- 7.5 The obligations of confidentiality and restricted use shall survive the termination of this Contract except when disclosure of the Confidential Information is made in order to comply with law, government regulations or court order.

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SECTION 8. SUCCESSORS AND ASSIGNEES

- 8.1 The covenants, terms, conditions, provisions and undertakings in this Contract or any modifications, revisions or supplements thereof shall extend to and be binding upon the successors and assigns of the Parties as if they were in every case, named and expressed therein. Neither Party shall assign or transfer its rights and obligations under this Contract without the prior written consent of the other.

SECTION 9. EMPLOYEES OF THE NEW YORK TIMES COMPANY

- 9.1 No employer-employee relationship shall exist between the employees, agents or representatives of NYT and BCDA. Hence, BCDA shall not in any way be liable or responsible for any personal injury or damage, including death, sustained or caused by or to any of the employee(s) of NYT during the performance of their work under this Contract. NYT shall, at all times, be solely liable and/or responsible for the compliance and enforcement of all existing laws, rules and regulations, particularly the Labor Code of the Philippines, that may affect its work under this Contract. NYT likewise binds itself to save and hold BCDA free and harmless from any liability or damages arising from the performance of the work of NYT under this Contract.

SECTION 10. INCORPORATION

- 10.1 This Contract shall be deemed subject to the provisions of the Terms of Reference (TOR), and the proposal submitted by NYT to BCDA pursuant to the TOR, all of which are deemed incorporated in this Contract and made integral parts hereof.

SECTION 11. CONFLICT OF INTEREST

- 11.1 NYT, who may be directly associated with entities that may have an interest in or bias against any BCDA project, shall divulge the extent of its conflict with BCDA. NYT agrees that the conflict of interest may be a ground for BCDA to terminate the Contract.

SECTION 12. TERMINATION

12.1 Termination by BCDA.

In case of termination, BCDA must serve a written notice to NYT of its intention to terminate this Contract at least thirty (30) calendar days before the intended date of termination.

BCDA shall terminate this Contract when any of the following conditions attends its implementation:

- (a) In the event of force majeure, NYT is unable to deliver a material portion of the outputs and deliverables for a period of at least sixty (60) calendar days after NYT's receipt of a written Notice from BCDA stating that the circumstance/s of force majeure has/have ceased;

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- (b) As a result of force majeure, NYT is unable to deliver a material portion of the outputs and deliverables for a period of not less than sixty (60) calendar days after NYT's receipt of the notice from BCDA stating that the circumstance of force majeure is deemed to have caused;

The failure of NYT to fulfill any of its obligations under this Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of force majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

- (c) If NYT is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction; in which event, termination will be without compensation to NYT, provided that such termination will not prejudice or effect any right of action or remedy which has accrued or will accrue thereafter to BCDA and / or NYT;
- (d) In case it is determined *prima facie* that NYT has engaged, before or during the implementation of this Contract, in unlawful deeds and behavior relative to contract acquisition and implementation, such as, but not limited to, the following: corrupt fraudulent, collusive coercive, and obstructive practices; drawing up or using forged documents; using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and any other act analogous to the foregoing. For purposes of this clause, corrupt, fraudulent, collusive, coercive, and obstructive practices shall have the same meaning as that provided in the Bidding Documents;
- (e) NYT fails to remedy a failure in the performance of their obligations within thirty (30) calendar days from receipt of such notice of suspension or within such further period as the BCDA may have subsequently approved in writing;

12.2 Termination by NYT

NYT must serve a written notice to BCDA of its intention to terminate this Contract at least thirty (30) calendar days before its intended termination. This Contract is deemed terminated if no action has been taken by BCDA with regard to such written notice within thirty (30) calendar days after the receipt thereof by BCDA.

NYT may terminate this Contract through any of the following events:

- (a) BCDA is in material breach of its obligations pursuant to this Contract and has not remedied the same within sixty (60) calendar days following its receipt of NYT's notice specifying such breach;
- (c) As the direct and proximate result of force majeure, NYT is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

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- (d) BCDA fails to pay any money due to NYT pursuant to this Contract and not subject to dispute within eighty-four (84) calendar days after receiving written notice from NYT that such payment is overdue.

For purposes of this Contract, *force majeure* shall be interpreted to mean as those events which could not be foreseen, or which, though foreseen, were inevitable, such as war, hostilities (whether declared or not), invasions, strikes, epidemics, quarantine, and acts of God, such as but not limited, to floods, volcanic eruptions, and earthquakes.

SECTION 13. LIQUIDATED DAMAGES

- 13.1 NYT obligates itself to deliver all the goods or perform all its obligations within the period specified in this Contract, beginning from the starting date exclusive of such extensions of time as may be mutually agreed upon in writing. Should the NYT fail to complete the Services within the stipulated time, liquidated damages, not by way of penalty, shall be paid to BCDA by the NYT in an amount equal to one-tenth of one percent (1/10 of 1%) of the total CONTRACT price minus the value of the completed portions of the CONTRACT certified by BCDA for each calendar day of delay until the Services are completed. The maximum deduction shall be ten percent (10%) of the amount of contract. Once the maximum is reached, BCDA shall rescind or terminate the Contract, without prejudice to other courses of action and remedies available under the circumstances.

SECTION 14. SETTLEMENT OF DISPUTES

- 14.1 The Parties agree to resolve any dispute that may arise between them with respect to this CONTRACT through good faith and amicable negotiation. If at any time during such negotiation, one Party determines in good faith that the Parties cannot resolve the dispute through negotiations, that Party will deliver a notice to the other Party that the dispute will be settled by arbitration in accordance with Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004", as amended, failing which, the Parties may resort to the filing of the appropriate case in the proper courts of Taguig City to the exclusion of the other courts. The arbitration will be conducted in Manila, Philippines. The language to be used in the event of arbitration shall be English.

SECTION 15. NON-WAIVER OF RIGHTS

- 15.1 The failure of one Party 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 right/remedy that said party may have, nor shall it be construed as a waiver of any subsequent breach of the same or other terms, conditions or covenants. No waiver by any one Party or any of its rights under this Contract shall be deemed to have been made unless expressed in writing and signed by that Party.



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SECTION 16. REPRESENTATION AND WARRANTIES

- 16.1 The Parties warrant that they have not offered nor given, and shall not offer or give to any employee, agent, or representative of either Party, any gratuity, with a view toward securing any business from one another, or influencing such persons with respect to terms, conditions or performance of any contract with each other.

In addition, NYT warrants the following:

- a. It is duly incorporated, validly existing and in good standing under the laws of the United States of America and has its principal office at the address first written above.
- b. It has full legal right, power and authority to carry on its present business, to own its properties and assets, to incur the obligations provided for in this Contract, to execute and deliver this Contract, and to perform and observe the terms and conditions hereof.
- c. It has taken all appropriate and necessary corporate and legal actions to authorize the execution, delivery and performance of this Contract.

SECTION 17. AMENDMENTS

- 19.1 No amendment and/or modification of this Contract shall be valid unless made in writing; duly executed by both BCDA and NYT; and has observed the same formalities in the execution of this Contract.

SECTION 20. SEVERABILITY

- 20.1 If any provision of this Contract becomes invalid, illegal or unenforceable, the Parties will endeavor, acting in good faith, to agree on the terms of a provision that may be substituted for the invalid, illegal or unenforceable provision. The invalidity, illegality or unenforceability of any provision will not affect the remaining portions of this Contract.

SECTION 21. OGCC REVIEW

- 21.1 This Contract has been reviewed and approved by the Office of the Government Corporate Counsel (OGCC) of Republic of the Philippines, in its OGCC Contract Review No. 248, Series 2019 dated 15 May 2019, and all its comments and suggestions have been incorporated in this Contract.

SIGNED on _____ in Taguig City, Philippines

IN WITNESS whereof the parties have duly executed this Contract the day and year first above written.



NYT KSB

For and on behalf of
**BASES CONVERSION AND
DEVELOPMENT AUTHORITY**
By:



AILEEN ANUNCIACION R. ZOSA
Executive Vice President



For and on behalf of
**THE NEW YORK TIMES
COMPANY**
By:

LISA HOWARD
Senior Vice-President

Signed in the Presence of:

ACKNOWLEDGEMENT

State of New York
County of New York

On ____ day of _____, before me came:

Name	Identification Document	Date and Place of Issue
LISA HOWARD		

to me known to be the individual described in and who executed the foregoing instrument and acknowledged that she executed the same.

STAMP/SEAL

NOTARY PUBLIC

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ACKNOWLEDGEMENT

Republic of the Philippines)
Taguig City) SS.

BEFORE ME, a Notary Public for and in Taguig City, personally appeared the following:

Name	Identification Document	Date and Place of Issue
AILEEN ANUNCIACION R. ZOSA		

known to me to be the same persons who executed the foregoing instrument and they acknowledge to me that the signature they affixed confirm their own free acts and the entity they represent.

SIGNED AND SEALED on AUG 14 2019 in Taguig City, Philippines.

Doc No. 501
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Book No. 01
Series of 2019

Ms
ATTY. MARICEL C. CORONACION-SANTOS
NOTARY PUBLIC FOR AND IN TAGUIG CITY
NOTARIAL COMMISSION UNTIL DECEMBER 31 2019
ROLL OF ATTORNEYS NO 63834
IBP NO 060909 / 1-04-19 / RIZAL
PTR NO A-4207996 / 1-04-19 / TAGUIG CITY
MCLE COMPLIANCE NO VI-0014157 / 05 NOV 2018

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State of New York
Department of State } ss:

I hereby certify, that the Certificate of Incorporation of THE NEW YORK TIMES COMPANY was filed on 08/26/1896, fixing the duration as perpetual, and that a diligent examination has been made of the Corporate index for documents filed with this Department for a certificate, order, or record of a dissolution, and upon such examination, no such certificate, order or record has been found, and that so far as indicated by the records of this Department, such corporation is an existing corporation.



*Witness my hand and the official seal
of the Department of State at the City
of Albany, this 24th day of July
two thousand and nineteen.*

Brendan C. Hughes

Brendan C. Hughes
Deputy Secretary of State

For and on behalf of
**BASES CONVERSION AND
DEVELOPMENT AUTHORITY**
By:

AILEEN ANUNCIACION R. ZOSA
Executive Vice President

For and on behalf of
**THE NEW YORK TIMES
COMPANY**
By:

LISA HOWARD
Senior Vice-President

Signed in the Presence of:

James W. Sapp
James W. Sapp
Senior Paralegal
The New York Times Company

ACKNOWLEDGEMENT

State of New York
County of New York

On 8 day of August 2019, before me came:

Name	Identification Document	Date and Place of Issue
LISA HOWARD		

to me known to be the individual described in and who executed the foregoing instrument and acknowledged that she executed the same.

James W. Sapp
NOTARY PUBLIC

STAMP/SEAL

JAMES W. SAPP
Notary Public, State of New York
No. 01SA6190150
Qualified in New York County
Term Expires July 14, 2020

nyft