

**B E L I Z E:**

**CONCESSION AGREEMENT**

THIS CONCESSION AGREEMENT is made the 05 day of DECEMBER Two Thousand and Eight.

BETWEEN

**THE GOVERNMENT OF BELIZE** (hereinafter called "GOB")

AND

**BELIZE HYDROELECTRIC DEVELOPMENT AND MANAGEMENT COMPANY LIMITED**, a company incorporated under the Companies Act, Chapter 250 of the Laws of Belize, with its registered office at #3 Ogaldez Street, Punta Gorda, Belize, CA, (hereinafter called "BHD").

WHEREAS:

- (1) BHD proposes to continue and intensify its ongoing studies and develop, to its fullest potential, the hydroelectric resources of the Rio Grande River and its tributaries including the Central River, all upstream of the Rio Grande Hydroelectric Project, in the most environmentally sound manner possible and to design, construct, own and operate hydroelectric generating facilities, all in the Toledo District, Belize, Central

America, together with all related facilities and developments such as transmission line and access road on Government provided right-of-way connecting the facilities with the main power grid in the Toledo District and the rest of the country (collectively the "Project"); and

- (2) GOB has found it in the best interests of the Toledo District in particular, and of Belize in general, to enter into this Agreement with BHD upon the terms and conditions set out herein.

NOW, THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the promises and covenants made herein by the parties hereto, it is AGREED and DECLARED as follows:

## ARTICLE I

### Definitions

In this Concession Agreement, unless the context otherwise stipulates or requires, the following terms shall have the meaning set forth below:

"Agreement" means this Concession Agreement in its entirety;

"Commercial Operation Date" means the date, established by the PUC and BHD, that a particular project becomes commercially operational;

"Construction Stage" means the period of time between the Development Stage and the Commercial Operation Date;

"Development Stage" means the period of time that it takes to develop and obtain all the necessary information needed to begin construction of a particular Project including but not limited to all studies, designs, licenses, leases, right of ways, permits, clearances, power purchase agreements, contracts, financing, insurances, etc.;

"Engineering Contractors" means any contractors engaged by BHD to engineer, procure and construct the power generating facilities comprising the Project;

"Project" means all hydroelectric projects studied, developed, constructed, operated and/or managed by BHD up stream of the existing Rio Grande Hydroelectric Project, including all related facilities and infrastructures including but not limited to diversion structures, intake structures, canals, penstock, powerhouses, transmission lines, access roads, etc.

including all equipment and supplies needed for the construction, operations and maintenance of the Projects;

"Project Entities" means collectively BHD and the Engineering Contractors;

"PUC" means the Public Utilities Commission.

## ARTICLE II

### Parties

#### 2.1 The Parties

The GOB is the party granting the CONCESSION and BHD is the party to whom the CONCESSION is granted as defined herein.

## ARTICLE III

### Grant of Concession

#### 3.1 The Grant

GOB hereby grants and conveys to BHD as follows:

- (i) The non-consumptive use of all water in the Rio Grande River and its tributaries upstream of the Project;

- (ii) The sole and exclusive rights to study and develop, design, finance, or arrange or obtain financing for, insure, construct, own, operate and control the Project.

### 3.2 Representations and Warranties

GOB represents and warrants to BHD as follows:

3.2.1 That GOB is duly authorized to enter into this Agreement and upon the execution and delivery thereof, it will be legal, valid and binding.

3.2.2 GOB has full legal right, power and authority to grant the CONCESSION to BHD as contemplated hereby and to perform its obligations hereunder.

3.2.3 The execution, delivery and performance of this Agreement will not conflict with, or constitute a default under any law, rule or regulation.

3.3 BHD represents and warrants to GOB as follows:

3.3.1 BHD shall within 2 (two) years of the execution of this Agreement have installed the necessary

hydrological gauging and metering stations for the gathering of hydrological data necessary for the developed and designed of the Project;

3.3.2 BHD shall within 5 (five) years of the execution of this Agreement have developed and designed hydroelectric projects capable of generating a minimum of 5 (five) megawatts of electric power;

3.3.3 BHD shall share with and give to the appropriate Government Ministries and/or Departments, in a timely manner, all hydrological, topographical, cadastral, environmental and other studies and surveys conducted by BHD in the course of studying and developing the hydroelectric potential.

#### 3.4 Covenants

GOB hereby covenants and agrees to take such action, or cause to be taken such administrative action, and execute such documents as may be necessary to convey to BHD all rights and interests in the CONCESSION. This provision shall not include interests in land.

GOB hereby covenants and agrees not to grant, or permit the granting of any consumptive, non-consumptive or other rights on the Rio Grande River or its tributaries, including the Central River, upstream of the Rio Grande Hydroelectric Project, or to take any action, or allow any third party to take any action, if the effect of such conveyance or action would be to impede, affect or direct in any manner the amount, quality, or flow of water in the rivers or tributaries upstream of the Rio Grande Hydroelectric Project.

#### ARTICLE IV

##### Permits and Licenses

4.1 GOB hereby covenants and agrees that it will assist BHD and its Contractors in obtaining any and all necessary licenses, permits, clearances, consents and regulatory approvals as required in connection with the design, construction, and operation of the Project by BHD and its Contractors pursuant to any law, rule or regulation of Belize. It is understood that the onus of applying for any such license, permit or consent rests upon BHD or its Contractors.

**ARTICLE V**

**Construction and Operation**

5.1 BHD shall be responsible for all studies, designs, construction, and operation of the Projects. BHD, any of its partners or stockholders, or any of such partners' or stockholders' affiliates may be the contractor or subcontractor to study, design, construct, and operate the Projects, or may contract with third-party contractors or subcontractors to perform such duties, provided that such appointment shall not relieve BHD of any of its obligations regarding the studies, design, construction, operation and maintenance.

**ARTICLE VI**

**Immigration**

6.1 Subject to the Immigration Act and other relevant laws of Belize, GOB covenants and agrees that it will expeditiously grant BHD and its contractors work permits, employment passes, visas etc for individuals and their families who will serve in senior management or technical positions to live and reside in Belize.



## ARTICLE VII

### Security Protection

7.1 BHD shall provide security personnel for the protection and security of the Projects. From time to time BHD may request and GOB may, within a reasonable time under the prevailing circumstances, provide additional adequate security forces to meet unusual security requirements. All such additional forces shall remain under the exclusive control and direction of GOB. All expenses incurred by GOB for providing such additional forces shall be paid within a reasonable time by BHD.

## ARTICLE VIII

### Import, Export, Taxes and Duties

#### 8.1 Import Rights

BHD and its Engineering Contractors shall be allowed to import free of any taxes levied on imports, including customs duties and sales taxes with the exception of Environmental Tax, all items necessary and useful for the design, construction, completion, operation and maintenance, and repair, of the Project and related facilities, to include but not limited to, turbines, generators, penstock,

switchgear, construction machinery, spare and replacement parts, lubricants, fuels, diesel or other, cement, steel, etc. Prior to exercising its rights pursuant to this article, BHD shall provide to the GOB a detailed list for GOB approval, specifying the items which are necessary and useful for the design, construction, operation, maintenance and repair of the Project and GOB reserves the right to charge the relevant duties and assessments on those items which it deems not necessary or in excess of what is necessary for the construction and maintenance of the Project.

## 8.2 Export Rights

BHD and its Engineering Contractors shall be entitled to export without restriction all items of plant and machinery imported by it under clause 8.1 for the purpose of repair or refurbishment outside Belize and to re-import the same without payment of tax, import fee or customs duty. In addition, any items of plant or machinery so imported but not consumed or incorporated into the Project may be sold freely in Belize or exported provided that BHD shall ensure that the buyer of any such items in Belize pays all the relevant duties, taxes or imposts leviable under the laws of Belize.

8.3 Exemption from Business Tax

Subject to the Constitution and the laws of Belize, GOB agrees that it will take necessary action to exempt BHD and its non-resident Engineering Contractors from business tax as follows:-

- (a) Total exemption for the first five years commencing from the Commercial Operation Date;
- (b) Partial exemption to the extent of **66% of business tax** for the next five years;
- (c) Partial exemption to the extent of **33% of business tax** for the remaining five years of this Agreement;

after which both BHD and its Engineering Contractors shall be liable to pay all business tax as provided in the Income and Business Tax Act, as amended from time to time.

8.4 The exemptions from taxes and duties granted by section 8.1 to 8.3 above shall apply only to such activities of the Project Entities as relate directly to the Project.

**ARTICLE IX**

**Foreign Exchange Matters**

9.1 Subject to the Exchange Control Regulations, GOB shall permit and not hinder the transfer of all funds and financial settlements necessary or useful for the Project or for the implementation of this Agreement, or any other agreement relating to BHD's obligations or rights or payments with respect to the Project.

**ARTICLE X**

**Sale and Assignment**

10.1 **Assignment**

Except as otherwise provided herein, neither GOB nor BHD may assign or transfer this CONCESSION Agreement or its rights or obligations hereunder without the prior written consent of the other party. Notwithstanding the foregoing, this Agreement shall not prohibit or limit the rights of the partners or stockholders of BHD to transfer, sell, assign or pledge their ownership interest in BHD.

10.2 **Transfer and Creation of Security**

Notwithstanding the first sentence of Clause 10.1 above, for the purpose of developing, designing, financing, insuring,

constructing, owning and operating a particular Project BHD may transfer its rights under this agreement, to a third party, for a particular project provided that such transfer shall not relieve BHD from any of its obligations under this agreement and prior to any transfer of any rights under this agreement BHD must notify the GOB in advance of any transfer. Furthermore, in obtaining financing for the Projects, BHD and any transferee, to whom BHD has transferred its rights under this agreement for a particular project, may assign or create security over its rights and interests in, under or pursuant to (a) this Agreement, (b) the Projects, (c) the Projects Sites, (d) the movable property and intellectual property of BHD and any transferee and the revenues, profits, losses or any of the rights or assets of BHD and any transferee. Where, however, BHD and any transferee propose to assign, charge or dispose of any Leasehold interest, the prior written consent of GOB must be obtained.

#### **ARTICLE XI**

##### **Restriction on Acquisition of Projects Without Compensation**

11.1 GOB hereby covenants and agrees that it will not expropriate, compulsorily acquire, nationalize or otherwise procure any interest in or securities issued by BHD without reasonable compensation as provided in section 17 of the Belize Constitution.

ARTICLE XII

Commencement and Duration

12.1 Term

This CONCESSION shall commence and be effective on the date hereof and shall, unless terminated earlier in accordance with the terms hereof, continue in full force and effect for a period of fifteen (15) years. The term may be extended for a further period of ten (10) years by mutual agreement of the Parties.

ARTICLE XIII

Termination

13.1 Termination by Government

GOB may, in its discretion, and after giving three months notice, terminate the Agreement on any of the following grounds:

- (a) Where BHD fails to comply with clauses 3.3.1, 3.3.2 or 3.3.3 of this Agreement;
- (b) Where BHD is in violation of any other provisions of this Agreement and after given written notice by GOB of such violation, BHD has not cured such violation within

60 days of such notice or is not diligently pursuing, in the GOB discretion, the cure for such violation.

### 13.2 Termination by BHD

BHD may, after giving three months' written notice to GOB, terminate this Agreement if GOB is in violation of any of the terms hereof and has not rectified the same within the notice period.

## ARTICLE XIV

### Resolution of Disputes

14.1 It is the intention of the parties to make a good faith effort to resolve, without resort to arbitration or litigation, any dispute arising out of or related to this Agreement. In the event of a dispute arising out of this Agreement, each party shall promptly designate a senior executive or official with authority to resolve the dispute. The designated senior executives or officials shall promptly begin discussions and shall use all reasonable efforts to reach a mutually satisfactory resolution of the dispute. If the senior executives cannot reach an agreement within thirty days after the referral to them, either may refer the matter to arbitration pursuant to the provisions of the Arbitration

Act (Chapter 125) of the laws of Belize or any modification or reinstatement thereof.

No arbitrator appointed pursuant to this Article shall be an employee or agent of any such person.

## **ARTICLE XV**

### **Notices**

#### **15.1 Address for Notices**

All notices or other communications (together "Notices") to be given or made hereunder shall be in writing, shall be addressed for the attention of the person indicated below and shall either be delivered personally or sent by prepaid post or by telecopy. All notices given by telecopy shall be confirmed in writing delivered or sent as aforesaid but once so confirmed the notice shall be effective from the date of original notice. The addresses for service of parties and their respective telecopy number shall be:

(a) In the case of the GOB:

Ministry of Finance  
Belmopan, Belize, C.A.  
Telecopy No.:  
Attention: Mr Joseph Waight



(b) In the case of BHD

P.O. Box 89

Punta Gorda, Belize C.A.

Telecopy No.: 501-722-2875

Attention: Mark J. Tippetts

or such other addresses and telecopy number as any party may previously have notified to the other party.

15.2 Effectiveness of Service

All notices under this Agreement shall be effective only upon actual delivery thereof.

ARTICLE XVI

Miscellaneous Provisions

16.1 Survivability

To ensure the continuation of the hydroelectric projects developed under this Concession, the GOB and BHD agree that upon expiration of this agreement or termination by either party for any reason whatsoever, the following shall survive such expiration or termination: Article III 3.1 and paragraph two of 3.4, Article V, Article VIII, Article XI and this Article XV 15.1.

16.2 Variations in Writing

All additions, amendments and variations to this Agreement shall be binding only if in writing and signed by duly authorized representatives of the parties.

16.3 Entire Agreement

This Agreement represents the entire understanding between the parties in relation to the subject matter thereof and supersedes any and all previous oral and written agreements or arrangements between the parties.

16.4 Successors and Assigns

This Agreement shall insure to the benefit of, and be binding upon, the successors and permitted assigns of the parties.

16.5 Severability

The invalidity, in whole or in part, of any of the foregoing articles, sections or paragraphs of this Agreement will not affect the validity of the remainder of such articles, sections or paragraphs.

16.6 Governing Law

This Agreement shall be governed by construed and be subject to the laws of Belize.

IN WITNESS WHEREOF the parties hereto have entered into this Agreement on the date first above written.

GOVERNMENT OF BELIZE

By: *Dean O. Barrow*

(DEAN O. BARROW)  
Prime Minister and Minister of Finance,

In the presence of

*A. J. Illitt*

WITNESS



BELIZE HYDROELECTRIC DEVELOPMENT AND MANAGEMENT COMPANY LIMITED

By: *Mark Jay Tippetts*

Mark Jay Tippetts, President

By: *Jeffery A. Hanson*

Jeffery A. Hanson, Secretary

*Antoinette King*

WITNESS

