

**Bids and Awards Committee for Consulting Services**

**Bidding for the Construction Management and Supervision (CMS) of the Construction of the NCC-SCTEX Access Road Project**

**Bid Bulletin No. 2**

13 June 2018

Please be informed of the following clarifications on questions/queries that were raised during the Pre-Bid Conference on subject bidding held on 07 June 2018. This Bid Bulletin shall form an integral part of the Bid Documents.

<b>Issues/Queries</b>	<b>Clarifications</b>
Clarification on the Technical Proposal Forms.	Replace the Technical Proposal Forms (TPF1 to TPF8) with <b>Annex A</b> .
Clarification on the Financial Proposal Forms.	Replace the Financial Proposal Forms (FPF1 to FPF4 and FPF6) with <b>Annex B</b> .
Clarification on the Form of Contract Agreement.	Insert Form of Contract Agreement in the Bidding Documents. ( <b>Annex C</b> )
Clarification on the duration of the Project.	The duration of the consulting services shall be 21 months, inclusive of post construction phase.
Clarification on the Technical Proposal Form 6 (TPF6).	Technical Proposal Form 6 (TPF6) should be duly notarized.  Required Professional Regulation Commission (PRC) Licenses and Department of Public Works and Highways (DPWH) Accreditation should be valid.
Clarification on the Financial Proposal Form 6 (FPF6).	The bidders are not allowed to add or delete items on the Financial Proposal Form 6 (FPF6).
Clarification on what are the applicable taxes and fees stated on the bidding documents.	The Approved Budget for the Contract (ABC) amounting to One Hundred Million Five Hundred Fifty Five Thousand (P100,555,000) is inclusive of the 12% VAT and other applicable taxes and fees.
Clarification regarding Facilities of the Engineer to be provided by the Constructor.	The CMS Consultant will not be provided facilities by the Constructor.
Clarification on the Objectives on the TOR regarding the enforcement of the Environmental Management and Monitoring of the Environmental Compliance Certificate (ECC) requirements.	There is no need to employ an Environmentalist. However, the consultant shall make sure that the requirement in the TOR must be complied with in the supervision works.
Clarification on the scope of services on the TOR regarding safety.	The consultant shall render the required scope of services. There is no need to employ a Safety Officer.
Clarification regarding required testing of materials.	A third party duly accredited by DPWH shall conduct the necessary testing of materials for the account of the constructor.
Clarification on the Performance Security.	The Performance Security shall be limited to the following:

	5% of the contract price – if in the form of Cash or cashier’s/manager’s check issued by a Universal or Commercial bank.  5% of the contract price – if in the form of Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.
Clarification on the Bid Security.	Submission of a duly notarized Bid Securing Declaration is enough to satisfy the requirement for Bid Security ( <b>Annex D</b> ).
Clarification on the Proposed Professional Key Staff.	The bidders can still replace key staff previously nominated during the eligibility stage.
Clarification on the required signature of the nominated key staff on its Curriculum Vitae (CV).	BCDA will allow electronic signature.
Can the bidders be provided with the construction schedule of the constructor so that they can align their manning schedule with it?	Yes. Please see <b>Annex E</b> .
Can BCDA move the deadline for the submission of Bidding Documents?	The deadline for submission of bid documents is on June 19, 2018 at 8:30 AM. The opening of bid documents shall be at 9:00 AM of the same day.
Can the bidders be provided with the location map of the project?	Yes. Please see <b>Annex F</b> .
Clarification on the Mode of Payment.	Progress payments of the Consultant shall be made on a quarterly progress billing, which shall be proportionate to the value of actual work accomplished by the constructor and acceptable to BCDA.

Please refer also to the revised checklist of requirements (**Annex G**).

The clarifications herein issued effectively amend, modify or revise provisions of the TOR/Bid Documents, which are inconsistent or contradictory thereto.

For the information of all concerned.

**BIDS AND AWARDS COMMITTEE FOR CONSULTING SERVICES**

By:

(original signed)  
**JOSHUA M. BINGCANG**  
Chairperson

## ANNEX A

## TPF 1. TECHNICAL PROPOSAL SUBMISSION FORM

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*[Letterhead]*

*[Date]*

The Bids and Awards Committee for Consulting Services  
Bases Conversion and Development Authority  
2/F Bonifacio Technology Center  
31<sup>st</sup> Street, corner 2<sup>nd</sup> Avenue, Bonifacio Global City

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for Construction Management and Supervision of the New Clark City (NCC) to Subic Clark Tarlac Expressway (SCTEx) Access Road in accordance with your Bidding Documents dated *[insert date]* and our Bid. We are hereby submitting our Bid, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope.

In accordance with **ITB** Clause 21.1, we confirm that the information contained in the eligibility documents submitted earlier together with the Expression of Interest remain correct as of the date of bid submission.

If negotiations are held during the period of bid validity, *i.e.*, before *[insert date]*, we undertake to negotiate on the basis of the proposed staff. Our Bid is binding upon us and subject to the modifications resulting from contract negotiations.

In accordance with **GCC** Clause 51, we acknowledge and accept the Procuring Entity's right to inspect and audit all records relating to our Bid irrespective of whether we enter into a contract with the Procuring Entity as a result of this Bid or not.

We understand you are not bound to accept any Bid received for the selection of a consultant for the Project.

We acknowledge that failure to sign this Technical Proposal Submission Form and the abovementioned Financial Proposal Submission Form shall be a ground for the rejection of our Bid.

We remain,

Yours sincerely,

Authorized Signature:  
Name and Title of Signatory:  
Name of Firm:  
Address:

## TPF 2. CONSULTANT'S REFERENCES

### Relevant Services Carried Out in the Last Ten Years That Best Illustrate Qualifications

*[Using the format below, provide information on each project for which your firm/entity, either individually, as a corporate entity, or as one of the major companies within an association, was legally contracted.]*

Project Name:		Country:
Location within Country:		Professional Staff Provided by Your Firm/Entity(profiles):
Name of Client:		Nº of Staff:
Address:		Nº of Staff-Months; Duration of Project:
Start Date (Month/Year):	Completion Date (Month/Year):	Approx. Value of Services (in Current Php):
Name of Associated Consultants, if any:		Nº of Months of Professional Staff Provided by Associated Consultants:
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:		
Narrative Description of Project:		
Description of Actual Services Provided by Your Staff:		

Consultant's Name: \_\_\_\_\_

Important Note: Provide applicable supporting documents to substantiate undertaking (i.e. Certificate of Satisfactory Completion or Acceptance or valid proof of Final Payment issued by the Client). Only those contracts with supporting documents shall be considered for evaluation.

**TPF 3. COMMENTS AND SUGGESTIONS OF CONSULTANT ON THE TERMS  
OF REFERENCE AND ON DATA, SERVICES, AND FACILITIES TO BE  
PROVIDED BY THE PROCURING ENTITY**

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On the Terms of Reference:

- 1.
- 2.
- 3.
- 4.
- 5.

On the data, services, and facilities to be provided by the Procuring Entity:

- 1.
- 2.
- 3.
- 4.
- 5.

**TPF 4. DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR  
PERFORMING THE PROJECT**

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**TPF 5. Team Composition and Task**

<b>A. Technical/Managerial/Key Staff</b>		Position	Task
Name			
1	Team Leader/Project Manager		
2	Deputy Project Manager		
3	Sr. Highway Engineer		
4	Sr. Bridge Engineer		
5	Sr. Materials Engineer II (DPWH Accredited)		
6	Sr. Drainage/Hydraulic Engineer		
7	Sr. Structural Engineer		
8	Sr. QA/QC Engineer		
9	Sr. Quantity Surveyor		
10	Sr. Geodetic Engineer		
11	Professional Electrical Engineer		
12	Sr. Landscape Architect		

<b>B. Technical Support Staff</b>		Position	Task
Name			
1	Jr. Bridge Engineer		
2	Jr. Structural Engineer		
3	Jr. Drainage Engineer		
4	Jr. Highway		
5	Jr. Electrical Engineer		
6	Jr. Geodetic Engineer		
7	Jr. QA/QC Engineer		
8	Jr. Quantity Surveyor		
9	Site Engineer		
10	Jr. Architect		
11	CAD Operator		

<b>C. Administrative Support Staff</b>		Position	Task
Name			
1	Administrative Officer		
2	Secretary		
3	Encoder		
4	I.T. Specialist		
5	Document Specialist		
6	Messenger		
7	Utility Personnel		

Where applicable, indicate relationships among the Consultant and any partner and/or subcontractor, the Procuring Entity, the Funding Source and other parties or stakeholders.



**TPF 6. FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED  
PROFESSIONAL STAFF**

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Proposed Position: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Name of Staff: \_\_\_\_\_

Profession: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Years with Firm/Entity: \_\_\_\_\_ Nationality: \_\_\_\_\_

Membership in Professional Societies: \_\_\_\_\_

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Detailed Tasks Assigned: \_\_\_\_\_

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**Key Qualifications:**

*[Give an outline of staff member's experience and training most pertinent to tasks on project. Describe degree of responsibility held by staff member on relevant previous projects and give dates and locations. Use about half a page.]*

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**Education:**

*[Summarize college/university and other specialized education of staff members, giving names of schools, dates attended, and degrees obtained. Use about one quarter of a page.]*

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**Employment Record:**

[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of projects. For experience in last ten years, also give types of activities performed and client references, where appropriate. Use about two pages.]

**Languages:**

[For each language, indicate proficiency: excellent, good, fair, or poor in speaking, reading, and writing.]

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**Certification:**

I, the undersigned, certify that to the best of my knowledge and belief, these data correctly describe me, my qualifications, and my experience.

**Commitment:**

I also commit to work for the **Construction Management and Supervision of the New Clark City (NCC) to Subic Clark Tarlac Expressway (SCTEx) Access Road** in accordance with the time schedule as indicated in the contract once the firm is awarded the Project.

\_\_\_\_\_  
[Signature of staff member and authorized representative of the firm] Date: \_\_\_\_\_  
Day/Month/Year

Full name of staff member:  
Full name of authorized representative:

**SUBSCRIBED AND SWORN** to before me this \_\_\_ day of [month] [year] at [place of execution], Philippines. Affiant/s is/are personally known to me and was/were identified by me through competent evidence of identity as defined in the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC). Affiant/s exhibited to me his/her [insert type of government identification card used], with his/her photograph and signature appearing thereon, with no. \_\_\_\_\_.

Witness my hand and seal this \_\_\_ day of [month] [year].

**NAME OF NOTARY PUBLIC**

**Serial No. of Commission** \_\_\_\_\_

**Notary Public for** \_\_\_\_\_ **until** \_\_\_\_\_

**Roll of Attorneys No.** \_\_\_\_\_

**PTR No.** \_\_, *[date issued]*, *[place issued]*

**IBP No.** \_\_, *[date issued]*, *[place issued]*

**Doc. No.** \_\_\_\_\_

**Page No.** \_\_\_\_\_

**Book No.** \_\_\_\_\_

**Series of** \_\_\_\_\_.

Important Note: Provide applicable documents to substantiate professional registration, educational attainment and trainings undertaken. Only those attainments and undertakings with supporting documents will be considered for evaluation

**APP-7. Time Schedule for Professional Personnel**

Total Number of Months

Months

A. Key Staff	Position	Report/Due Activities	Months																								Total Number of Months
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
1	Team Leader/Project Manager																										
2	Deputy Project Manager																										
3	Sr. Highway Engineer																										
4	Sr. Bridge Engineer																										
5	Sr. Materials Engineer II (DPWH Accredited)																										
6	Sr. Drainage/Hydraulic Engineer																										
7	Sr. Structural Engineer																										
8	Sr. QA/QC Engineer																										
9	Sr. Quantity Surveyor																										
10	Sr. Geodetic Engineer																										
11	Professional Electrical Engineer																										
12	Sr. Landscape Architect																										

B. Technical Support Staff	Position	Report/Due Activities	Months																								Man-Months	
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24		
1	Jr. Bridge Engineer																											
2	Jr. Structural Engineer																											
3	Jr. Drainage Engineer																											
4	Jr. Highway Engineer																											
5	Jr. Electrical Engineer																											
6	Jr. Geodetic Engineer																											
7	Jr. QA/QC Engineer																											
8	Jr. Quantity Surveyor																											
9	Site Engineer																											
10	Jr. Architect																											
11	CAD Operator																											

C. Administrative Support Staff	Position	Report/Due Activities	Months																								Man-Months	
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24		
1	Administrative Officer																											
2	Secretary																											
3	Encoder																											
4	I.T. Specialist																											
5	Document Specialist																											
6	Messenger																											
7	Utility Personnel																											

Full Time: \_\_\_\_\_  
 Reports Due: \_\_\_\_\_  
 Activities Duration: \_\_\_\_\_  
 Location: \_\_\_\_\_

Part Time: \_\_\_\_\_

Signature: \_\_\_\_\_  
 (Authorized representative)  
 Full Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_

## TPF 8. ACTIVITY (WORK) SCHEDULE

### A. Field Investigation and Study Items

	<i>[1st, 2nd, etc. are months from the start of consultancy.]</i>					
	1st	2nd	3rd	...	23rd	24th
Activity (Work)						
1. _____						
2. _____						
... _____						
n. _____						

### B. Completion and Submission of Reports

Reports	Date
1. Weekly Accomplishment Reports	
2. Monthly Accomplishment Reports	
3. Final Report/Approved As-Built Plans	
4. Other Report that may be required by BCDA	As needed.

## ANNEX B

## FPF 1. FINANCIAL PROPOSAL SUBMISSION FORM

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*[Letterhead]*

*[Date]*

The Bids and Awards Committee for Consulting Services  
Bases Conversion and Development Authority  
2/F Bonifacio Technology Center  
31<sup>st</sup> Street, corner 2<sup>nd</sup> Avenue, Bonifacio Global City

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for New Clark City (NCC) to Subic-Clark-Tarlac Expressway (SCTEx) Access Road in accordance with your Bidding Documents in accordance with your Bidding Documents dated *[insert date]* and our Bid (Technical and Financial Proposals). Our attached Financial Proposal is for the sum of *[amount in words and figures]*. This amount is exclusive of the local taxes, which we have estimated at *[amount(s) in words and figures]*.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the bid validity period, *i.e.*, *[Date]*.

In accordance with GCC Clause 51, we acknowledge and accept the Procuring Entity's right to inspect and audit all records relating to our Bid irrespective of whether we enter into a contract with the Procuring Entity as a result of this Bid.

We confirm that we have read, understood and accept the contents of the Instructions to Bidders (ITB), the Bid Data Sheet (BDS), General Conditions of Contract (GCC), Special Conditions of Contract (SCC), Terms of Reference (TOR), the provisions relating to the eligibility of Consultant and the applicable guidelines for the procurement rules of the Funding Source, any and all Bid bulletins issued and other attachments and inclusions included in the Bidding Documents sent to us.

We understand you are not bound to accept any Bid you receive.

We remain,

Yours sincerely,

Authorized Signature:

Name and Title of Signatory:

Name of Firm:

Address:



**FPF 2. SUMMARY OF COSTS**

Costs	Currency(ies) <sup>1</sup>	Amount in Philippine Peso
Total Local Taxes Total Amount of Financial Proposal		

Signature over printed name of Authorized Representative] \_\_\_\_\_  
 ]  
 e of

\_\_\_\_\_ *uses of contracts involving foreign consultants, indicate the exchange rate used.*

**FPF 3. Breakdown of Price per Activity**

<b>Activity No.: 1</b> <b>Activity Name: Construction Activities</b>	<b>Description:</b> Perform overall monitoring and supervision of the implementation of the Project in accordance with the approved safety and quality standards, plans, specifications, schedule and budget.
<b>Price Component</b>  Remuneration  Miscellaneous Expenses  <b>Subtotal</b>	<b>Amount in Philippine Peso</b>
<b>Activity No.: 2</b> <b>Activity Name: Post Construction Activities</b>	<b>Description:</b> Conduct of preliminary inspections, rectification works and final inspection of the Project. Prepare the Final Project report and certify satisfactory completion of the Project.
<b>Price Component</b>  Remuneration  Miscellaneous Expenses  <b>Subtotal</b>	<b>Amount in Philippine Peso</b>
<b>Total</b>	

[Signature over printed name of Authorized Representative]  
 [Title]  
 [Name of Firm]

**FPF4. BREAKDOWN OF REMUNERATION PER ACTIVITY**

Activity No.1 Name:Construction Activities			
Names	Position	Input <sup>1</sup>	Remuneration Currency(ies) Rate Amount
Regular staff			
Local staff			
Consultants			
Grand Total			

Activity No.2 Name: Post Construction Activities			
Names	Position	Input <sup>2</sup>	Remuneration Currency(ies) Rate Amount
Regular staff			
Local staff			
Consultants			
Grand Total			

<sup>1</sup> Staff months, days, or hours as appropriate.

<sup>2</sup> Staff months, days, or hours as appropriate.

**FFR 6. Miscellaneous Expenses**

Activity No.: \_\_\_\_\_ Activity Name: \_\_\_\_\_

Description	Unit	Quantity	Unit Price	Cost
1. Local Transportation	vehicle-mo.	24		
2. Office Operating Expenses	month	24		
3. Communication Cost	month	24		
4. Drafting, Printing and Office Supplies	month	24		
5. Office Equipment and Furnitures	month	24		
<b>Grand Total</b>				

[Signature over printed name of Authorized Representative]  
 [Title]  
 [Name of Firm]

## ANNEX C

**CONTRACT FOR THE CONSTRUCTION MANAGEMENT AND  
SUPERVISION FOR THE CONSTRUCTION OF NEW CLARK CITY TO  
SCTEX ACCESS ROAD**

**THE PUBLIC IS INFORMED:**

This Contract made and executed by and between:

**BASES CONVERSION AND DEVELOPMENT AUTHORITY**, a government instrumentality vested with corporate powers created and existing under Republic Act No. 7227, as amended, with principal office and place of business at BCDA Corporate Center, 2/F Bonifacio Technology Center, 31<sup>st</sup> Street corner 2<sup>nd</sup> Avenue, Bonifacio Global City, Taguig City, Metro Manila, represented herein by its President and CEO, **VIVENCIO B. DIZON**, who is duly authorized for this purpose, as evidenced by the Secretary's Certificate dated \_\_\_\_\_, a certified true copy of which is hereto attached as **Annex "A"** and made an integral part hereof, hereinafter referred to as "**BCDA**";

- and -

\_\_\_\_\_, a private corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at \_\_\_\_\_, represented herein by its \_\_\_\_\_(Position and Name)\_\_\_\_, who is duly authorized for this purpose, as evidenced by the Secretary's Certificate dated \_\_\_\_\_, a certified true copy of which is hereto attached as **Annex "B"** and made an integral part hereof, hereinafter referred to as "**CONSTRUCTION MANAGER**".

Each referred to as "PARTY" and collectively as "PARTIES".

**ANTECEDENTS**

**WHEREAS**, BCDA is mandated under Republic Act No. 7227, as amended by Republic Act No. 7917, to accelerate the sound and balanced conversion into alternative productive civilian uses of the military reservations and their extensions, including the former Clark Air Base in Angeles, Pampanga; to raise funds by the sale of portions of Metro Manila Military Camps; and to apply said funds for the development and conversion into alternative productive civilian uses of these properties;

**WHEREAS**, in 1993, the Clark Special Economic Zone (CSEZ) was established by virtue of Proclamation No. 163 covering a total area of 33,653 hectares, more or less, in which 4,400 hectares is the former U.S. Clark Air Base proper (Main Zone) and the remaining areas are the Subzones A, B, D and the Sacobia Resettlement Area which became part of CSEZ by virtue of Proclamation No. 805;

**WHEREAS**, on 29 May 2014, the National Economic and Development Authority (NEDA) Board approved the Master Plan for the development of 9,450 hectares of idle

land within the CSEZ – the “Clark Green City” Project now “New Clark City.” Subsequently, the House of Representatives passed Resolution No. 116 on 28 July 2014 expressing support to the New Clark City Project;

**WHEREAS**, in line with its mandate, **BCDA** is implementing the New Clark City (NCC) Project – a flagship project of the Government of the Republic of the Philippines – which is a modern metropolis with a mix of residential, commercial, agro-industrial, institutional and information technology development as well as a community of residents, workers, and business establishments within a balanced, healthy and safe environment.

**WHEREAS**, to encourage prospective locators to start investing, **BCDA** will undertake the construction of major road network within the NCC to promote better accessibility, herein referred to as the “**Project.**”

**WHEREAS**, **BCDA** needs the services of a Construction Management and Supervision (CMS) firm to oversee, supervise, monitor and control the day-to-day operations of the Project and to see to it that the Project is completed on schedule, in accordance with plans and specifications and within the approved budget;

**WHEREAS**, on \_\_\_\_\_, the **BCDA** received and opened the bids of participating consulting firms for the Project. After careful evaluation and review of the technical and financial proposals, the **BCDA - Bids and Award Committee for Consultancy Services (BAC-C)** found the proposal of the **CONSTRUCTION MANAGER** to be the Highest Rated and Responsive Bid (HRRB);

**WHEREAS**, the **CONSTRUCTION MANAGER** represents that it has the necessary training, experience, capability, technology, manpower, equipment and financial resources required to provide construction management services strictly in accordance with the requirements of **BCDA**;

**WHEREAS**, pursuant to Resolution No. \_\_\_\_\_, the **BCDA** Board, during its meeting on \_\_\_\_\_, approved the award of the Contract to the **CONSTRUCTION MANAGER** for the Construction Management and Supervision of the Project, in the amount of **Pesos: \_\_\_\_\_ (P\_\_\_\_\_)**, inclusive of all applicable taxes and fees;

**ACCORDINGLY**, the parties agree as follows:

## **ARTICLE I DEFINITION OF TERMS**

Unless the context otherwise indicates, the following terms shall have the meanings provided in this Article:

- 1.1 **BCDA** refers to Bases Conversion and Development Authority.
- 1.2 **Construction Manager** refers to \_\_\_\_\_, which has been contracted by **BCDA** to undertake the Construction Management and Supervision (CMS) of the Project.

- 1.3 **Contract** means this contract including the Annexes pertinent to the Construction Management and Supervision of the Project.
- 1.4 **Constructor** is the duly licensed general engineering and building Contractor contracted by **BCDA** to undertake the works of the Project.
- 1.5 **Government** refers to the Government of the Republic of the Philippines.
- 1.6 **Parties** refer to **BCDA** and the **CONSTRUCTION MANAGER**.
- 1.7 **Project** refers to the Construction of New Clark City Roads.

## **ARTICLE II THE SERVICES**

- 2.1 **Scope of Work.** The **CONSTRUCTION MANAGER** shall perform the services described in the Terms of Reference (TOR) for Construction Management and Supervision (CMS) for the Project, hereto attached as **Annex "C"** and made an integral part hereof.
- 2.2 **Completion of the Services.** Upon completion of the Project and issuance of the Certificate of Completion and Preliminary Acceptance by **BCDA** to the Constructor, **BCDA** shall issue to the **CONSTRUCTION MANAGER** a Certificate of Completion upon submission of the following:
- a) Project Final Report;
  - b) Clearance from the **BCDA** Project Manager that it has turned-over all equipment, furniture and appliances used for the performance of its Services;
  - c) All pertinent project documents; and
  - d) Such other documents as **BCDA** may reasonably require.

## **ARTICLE III CONSIDERATION**

- 3.1 **Construction Manager's Service Fee.** For and in consideration of the full, satisfactory and faithful performance of the Services by the **CONSTRUCTION MANAGER**, **BCDA** shall pay the **CONSTRUCTION MANAGER** Service Fee in the Fixed Contract Amount of Pesos: \_\_\_\_\_ (P \_\_\_\_\_), inclusive of all applicable taxes and fees, subject to the provision of paragraph 3.2 and 3.3 hereof.
- 3.2 **Manner of Payment.** **BCDA** shall pay the **CONSTRUCTION MANAGER** for the Services as specified in this Clause and as set forth in the TOR, to wit:
- 3.2.1 **Advance Payment**
- 3.2.1.1 **BCDA**, if it considers fair and reasonable, upon written request by the **CONSTRUCTION MANAGER**, may allow advance



payment to the latter in the amount which shall not exceed fifteen percent (15%) of the Service Fee to cover mobilization expenses.

3.2.1.2 In case **BCDA** deems it fair and reasonable to make the advance payment, the same shall be made only after the execution of the Contract between **BCDA** and the **CONSTRUCTION MANAGER** and upon submission by the **CONSTRUCTION MANAGER** to, and the acceptance of **BCDA**, of an irrevocable standby letter of credit of equivalent value from a commercial bank.

3.2.1.3 The advance payment shall be recouped by **BCDA** by deducting an amount equal to twenty percent (20%) of the value of invoice issued from the monthly progress payments until the aforementioned advance payment shall have been fully recouped or recovered.

### 3.2.2 Progress Payment

3.2.2.1 Progress payment shall be made to the **CONSTRUCTION MANAGER** as follows:

3.2.2.1.1 Payment shall be made on a monthly progress billing, which shall be proportionate to the value of actual work accomplished by the Constructor and acceptable to **BCDA**. The **CONSTRUCTION MANAGER**'s billing shall be accompanied by a certification issued by an authorized officer of **BCDA** certifying to the percentage of actual and acceptable works accomplished by the Constructor and that the amount being claimed based on the percentage of accomplishment of the Constructor for the period by the **CONSTRUCTION MANAGER** is due and payable under the terms of this Contract.

3.2.2.1.2 All billings including request for the release of retention monies shall be accompanied by an affidavit of the **CONSTRUCTION MANAGER** that it has paid all the costs of labor, equipment or equipment rentals, materials, tools and supplies which are hired or used in the Services as well as all claims related thereto. Billing for Services rendered shall be consistent with and supported by a Manpower Deployment Schedule duly approved by **BCDA** for the pertinent period to ensure that the **CONSTRUCTION MANAGER** has complied with the minimum requirements of the Services.

3.2.2.1.3 All applicable taxes and fees shall be for the account of the **CONSTRUCTION MANAGER**.

3.2.2.1.4 Should additional supporting information be required and/or an error in the computation be found in the submitted invoices after processing and the same can no longer be corrected without processing or canceling the whole billing, said invoices may still be submitted for payment but **BCDA** shall advise the **CONSTRUCTION MANAGER** of the matter, whereupon the latter will undertake to take appropriate adjustments and/or provide the necessary additional documentation in the subsequent invoices. Actual payment shall only be made after **BCDA** has determined to its satisfaction that the same is due the **CONSTRUCTION MANAGER**.

3.2.2.1.5 Payment for Services billed shall not be construed as an admission by **BCDA** that the **CONSTRUCTION MANAGER** has satisfactorily performed the Services in accordance with what is incumbent upon it or with the instruction of **BCDA**, or that such Services are free from defects of any kind, hidden or otherwise, are complying or have complied with provisions, terms and conditions of the Contract or any of the **CONSTRUCTION MANAGER**'s obligations thereunder.

### 3.2.3 Final Payment

3.2.3.1 The Final Payment shall be made to the **CONSTRUCTION MANAGER** upon its submission of the Final Billing together with the following documents:

- a) Certificate of Completion issued by **BCDA** to the **CONSTRUCTION MANAGER**;
- b) Sworn statement that all liabilities incurred by the **CONSTRUCTION MANAGER** have been paid and that there are no outstanding liens, garnishments, attachments or claims relative to the Project;
- c) Quitclaim and release by the **CONSTRUCTION MANAGER**, in a form satisfactory to **BCDA**, releasing **BCDA** from any further claim relating to the Contract; and
- d) Such other documents as **BCDA** may reasonably require.

3.2.3.2 In no case shall the remaining billable amount for Final Billing be less than five percent (5%) of the **CONSTRUCTION MANAGER**'s Service Fee.

### 3.2.4 Time Extension

Any time extension granted by **BCDA** to the Constructor of the Project and/or **CONSTRUCTION MANAGER** during the implementation of the Project shall not entitle the **CONSTRUCTION MANAGER** to any

claim for additional payment of Services rendered during such extended period.

### 3.2.5 Retention

3.2.5.1 **BCDA** shall retain ten percent (10%) of the gross amount billed (quarterly) by the **CONSTRUCTION MANAGER** to answer for any and all defect/s and/or deficiency/ies in the performance of the **CONSTRUCTION MANAGER**'s undertaking herein. All accumulated retention monies shall be released within thirty (30) days from the date of issuance of the Certificate of Completion by **BCDA** to the **CONSTRUCTION MANAGER** and upon submission by the **CONSTRUCTION MANAGER** of its request for release of the retention monies.

3.2.5.2 **BCDA** shall have the right to withhold within one (1) year, as the **CONSTRUCTION MANAGER** hereby vests **BCDA** with authority to withhold, all amounts or portion/s thereof including the retention money due and payable by **BCDA** to the **CONSTRUCTION MANAGER** under this Contract, to answer for claims of labor, services, materials, supplies, equipment or rental for equipment, fuel and others, which are hired, used and/or incorporated in the Project as well as expenses for reparation/remedial measures, cost of defective materials or faulty Services; liquidated damages, duties, fees, levies and such other amounts required to be paid and assessed under, by reason of, pursuant to or in connection with this Contract.

## ARTICLE IV PERFORMANCE BOND

4.1 Within ten (10) days from its receipt of the Notice of Award from **BCDA**, the **CONSTRUCTION MANAGER** shall secure at its own cost and expense a Performance Security in favor of **BCDA** in the amount and form specified below, callable on demand, to guarantee and answer for the faithful performance of the **CONSTRUCTION MANAGER** of its Services as well as the other obligations under this Contract:

4.1.1 Five percent (5%) of the Contract Amount, if in the form of an irrevocable letter of credit issued by a universal or commercial bank.

4.1.2 Five percent (5%) of the Contract Amount, if in the form of cash, cashier's/manager's check, bank draft/guarantee confirmed by a universal or commercial bank.

4.2 The following provisions shall form part of the Performance Bond: "**The right to institute action on the bond of any individual, firm, partnership, corporation and association supplying the CONSTRUCTION MANAGER with labor and materials for the prosecution of the work is hereby acknowledged and confirmed.**"

- 4.3 The Performance Security may be released only after submission of the documents required under Item 3.2.3.1 and only if there are no claims for labor and materials filed against the **CONSTRUCTION MANAGER**.
- 4.4 The Performance Bond shall be valid and effective for the duration of this Contract including the time extension granted, if any. The **CONSTRUCTION MANAGER** shall renew the Performance Bond to ensure the continuity of its coverage when necessary.
- 4.5 Subject to the provision of Section 5.4 of Article V hereof, should the **CONSTRUCTION MANAGER** fail to complete the Services or any portion thereof within the period prescribed, including any time extension that may be allowed, the **CONSTRUCTION MANAGER** shall pay **BCDA** by way of liquidated damages for every day of delay for the whole or any part of the Services, an amount equal to one-tenth of one percent (1/10 of 1%) of the total Service Fee until the Services are satisfactorily completed. Said amount may be charged against the Performance Bond.

To be entitled to such liquidated damages, **BCDA** does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due to the **CONSTRUCTION MANAGER** under the contract and/or collect such liquidated damages from the retention money or securities posted by **CONSTRUCTION MANAGER** whichever is convenient to **BCDA**.

#### **ARTICLE V OBLIGATIONS AND UNDERTAKING OF THE CONSTRUCTION MANAGER**

- 5.1 **Services of the CONSTRUCTION MANAGER.** The **CONSTRUCTION MANAGER** shall secure the prior written approval of **BCDA** on the employment of all key personnel and members of the technical staff to be assigned to the Project, as well as all facilities needed; carry out the Services with due diligence and efficiency in conformity with best accepted engineering, administrative and financial practices; always work for and in the best interest of **BCDA** and the Government; and take all reasonable steps to keep expenses to the minimum, consistent with sound engineering practices. The **CONSTRUCTION MANAGER** shall perform all the activities stipulated in the **CONSTRUCTION MANAGER**'s Scope of Work as shown in Annex "C" hereof.

Except as **BCDA** may otherwise agree, no changes shall be made in the Personnel. If for any reason it becomes necessary to replace any of the Personnel, the **CONSTRUCTION MANAGER** shall forthwith provide as replacement, a person of equivalent or better qualifications subject to the prior written approval of **BCDA**; Provided no replacement shall be allowed until after 50% of the personnel's man-months has been served. Violators shall be fined with the refund of the replaced personnel's basic rate for the duration of the engagement. Failure to seek the written approval of **BCDA** for replacement shall not entitle the **CONSTRUCTION MANAGER** to any remuneration for such personnel. The remuneration to be paid to such personnel, when

replacement is duly authorized, shall not exceed the remuneration which would have been payable to the person replaced.

- 5.2 **Assignment and Sub-Contracting.** Except with the prior written approval of **BCDA**, the **CONSTRUCTION MANAGER** shall neither assign nor sub-contract any part of the Services herein contracted. Notwithstanding the approval by **BCDA** of the assignment or sub-contracting of any part of the Services, the same shall not relieve the **CONSTRUCTION MANAGER** who remains the principal obligor under this Contract.

The **CONSTRUCTION MANAGER** may subcontract work relating to the project to an extent and with such specialist and entities as may be approved in advance by **BCDA**, provided that it submits to the **BCDA** for prior approval the text of any proposed subcontract and any amendments thereto which may subsequently be proposed. Furthermore, the work to subcontracted should not be a material or significant portion of the project, or should not exceed twenty percent (20%) of the Service fee. Notwithstanding the approval of the subcontract, the **CONSTRUCTION MANAGER** shall retain full responsibility for the project and for the content of all reports required therefore.

In the event that any subcontractor is found by **BCDA** to be incompetent or incapable of discharging his assigned duties, **BCDA** may request the **CONSTRUCTION MANAGER** to provide a replacement, with qualifications and experience acceptable to **BCDA**, or to resume performance of the work itself.

- 5.3 **Confidentiality.** Except with the prior written consent of the **BCDA**, neither the **CONSTRUCTION MANAGER** nor its Personnel shall at any time communicate to any person or entity other than **BCDA**, any information which has been disclosed for the purpose of the Services, nor shall the **CONSTRUCTION MANAGER** or its Personnel make public any information as to the recommendations and decisions formulated in the course of, or as a result of the Services.
- 5.4 **Notice of Delays.** In the event that the **CONSTRUCTION MANAGER** encounters delay in performing the Services, the **CONSTRUCTION MANAGER** shall promptly notify **BCDA** of such delay in writing, giving the reasons thereof, and may request for appropriate time extension for completion of the Services. **BCDA** may, by written notice, grant the extension, provided that it is established that the cause of the delay was beyond the control of the **CONSTRUCTION MANAGER**, and provided further that **BCDA** shall not be liable for additional Service Fee.
- 5.5 **Indemnification.** The **CONSTRUCTION MANAGER** agrees to indemnify, protect and defend, at its own expense, **BCDA** and its agents from and against any and all actions, claims and liabilities arising from the actions of the **CONSTRUCTION MANAGER** or its Personnel in the performance of the Services, including the use of, or violation of the provisions of the Intellectual Property Laws.
- 5.6 **Records.** The **CONSTRUCTION MANAGER** shall keep accurate and systematic record and accounts of the Services in such form and details as is

customary and sufficient to establish accurately that the costs and expenditures have been duly incurred. The **CONSTRUCTION MANAGER** shall allow the duly authorized representative of **BCDA** from time to time to inspect its record and accounts as well as to audit the same.

- 5.7 **Information and Progress Reports.** The **CONSTRUCTION MANAGER** shall furnish **BCDA** monthly progress reports and any such information relative to the Services and the Project as **BCDA** may reasonably request from time to time.
- 5.8 **Preparation and Submission of all Forms.** The **CONSTRUCTION MANAGER** shall be responsible for the preparation and submission of all forms and supporting documents required by the Commission on Audit (COA) and other government agencies.

## **ARTICLE VI OBLIGATIONS OF BCDA**

- 6.1 **Available Reports, Data and Materials.** **BCDA** shall provide the **CONSTRUCTION MANAGER**, free of charge, such data, materials, documents and reports available to **BCDA** as may be related and necessary for the execution of its Services.
- 6.2 **Access to Land and Property.** **BCDA** shall arrange with the agencies concerned with the Project for the free and unimpeded access by the **CONSTRUCTION MANAGER**'s Personnel to all lands and properties in respect of which access is required for the performance of the Services.
- 6.3 **BCDA** shall furnish the **CONSTRUCTION MANAGER** at least two (2) complete sets of approved final construction drawings and specifications, free of charge, which the **CONSTRUCTION MANAGER** shall use as reference in the performance of its daily construction management activities. The **CONSTRUCTION MANAGER** may request for additional copies, chargeable to its account, subject to the approval of **BCDA**.

## **ARTICLE VII GENERAL CONDITIONS**

- 7.1 **BCDA** shall be the sole owner of all reports, drawings, documents and materials prepared or submitted in the course of the performance of the Services, and the same shall not be used by the **CONSTRUCTION MANAGER** for purposes unrelated to this Contract, without the prior written approval of **BCDA**. Copies of any such documents prepared in connection with the performance of the Services shall be turned over to **BCDA** upon completion of the Project, except that the **CONSTRUCTION MANAGER** shall retain one (1) copy of the same for its record/file. Any equipment supplied by **BCDA**, or for which payment is made or reimbursed under this Contract shall be properly identified upon mobilization and shall become and remain the property of **BCDA**. Such equipment and appliances shall be transferred to **BCDA** in good working condition upon the completion of the Project, or as soon as the same is no longer needed to perform the Services, whichever is earlier.

- 7.2 **BCDA** may, at any time, by written notice to the **CONSTRUCTION MANAGER**, issue additional instructions, make changes or alterations in the Scope of Services as may be requested in the completion of the Project without additional cost to **BCDA**.
- 7.3 It is agreed that this Contract expresses all the agreements and covenants of the Parties, and supersedes all prior negotiations. All bidding documents shall be read and construed as an integral part of this Contract.
- 7.4 This Contract shall be governed by the laws of the Republic of the Philippines. The **CONSTRUCTION MANAGER** and its Personnel shall conform to all applicable laws of the same and shall take prompt corrective action with regard to any violation which has come to its knowledge.
- 7.5 The documentation, notarial fees and documentary stamps in connection with this Contract shall be for the account of the **CONSTRUCTION MANAGER**.
- 7.6 If any of the terms and condition or any part or clause of this Contract be declared void or unenforceable by competent authority, the same shall not invalidate the other terms and conditions, parts or clauses of this Contract, which shall continue to be in full force and effect.
- 7.7 The **CONSTRUCTION MANAGER** hereby warrants that it has not given, nor promised to give any money or gift to any official or employee of **BCDA** or the Government in consideration of this Contract. Any violation of this warranty shall be sufficient ground for the revocation or cancellation of this Contract.

## **ARTICLE VIII DISPUTE SETTLEMENT**

- 8.1 If any dispute or difference of any kind whatsoever shall arise between the parties in connection with the implementation of this Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 8.2 During the pendency of any such dispute, the **CONSTRUCTION MANAGER** shall proceed diligently with the performance of its obligations and undertakings under this Contract as directed by **BCDA**.
- 8.3 Any and all disputes arising from the implementation of this Contract shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law" and Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004": Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto.

**ARTICLE IX  
SUSPENSION AND TERMINATION**

**9.1 Suspension of Work**

9.1.1 If any of the following events shall happen and be continuing, **BCDA** may, by written notice to the **CONSTRUCTION MANAGER**, suspend the whole, or any part of the work under the Contract:

9.1.1.1 A default, failure or refusal on the part of the **CONSTRUCTION MANAGER** to perform the Services which is tantamount to a violation of its obligations under this Contract, or its non-compliance with the provisions hereof;

9.1.1.2 Reasons not attributable to **BCDA** including but not limited to labor problems, shortage of construction materials and squatter problem in the construction area; and

9.1.1.3 Any other condition which in the reasonable opinion of **BCDA** interferes, or threatens to interfere with the proper execution of the Project.

9.1.2 If the Suspension of Work Order is lifted or expires, the **CONSTRUCTION MANAGER** shall resume work.

9.1.3 In case of suspension of work which is not due to any fault of the **CONSTRUCTION MANAGER**, **BCDA** upon its written consent/approval may allow the **CONSTRUCTION MANAGER** to extend the completion time of the Contract for a period equivalent to the times the work was suspended.

**9.2 Termination by BCDA**

9.2.1 The performance of work under the Contract may be terminated by **BCDA** in whole or in part in accordance with this clause. Termination will be resorted to when the same will serve the best interest of **BCDA** or when the **CONSTRUCTION MANAGER** defaults in the performance of this Contract or part thereof and shall fail to cure such default within a period of thirty (30) days after receipt from **BCDA** of a written notice specifying the default. For the purpose of this clause, "default" means:

9.2.1.1 Failure to perform the work within the time specified or any extension thereof without just cause as may be determined by **BCDA**;

9.2.1.2 Failure to comply with any of the provisions of this Contract without just cause as may be determined by **BCDA**; or

9.2.1.3 Failure to prosecute the work as to endanger performance of the Services under this Contract in accordance with its terms.

9.2.2 Termination shall be effected by **BCDA** through a Notice of Termination to the **CONSTRUCTION MANAGER**, specifying the



reason for the termination, the extent to which performance of the Services under the Contract is terminated; and the date upon which such termination becomes effective.

9.2.2.1 Reasons for termination due to the default of the **CONSTRUCTION MANAGER** include, but are not limited to the following:

- a) Refusal by the **CONSTRUCTION MANAGER** to comply with the instructions of **BCDA** concerning the proper execution of the Services or works;
- b) Breach of the **CONSTRUCTION MANAGER** of any of the representations and warranties made or violation of any of the provisions of this Contract as determined by **BCDA**;
- c) Abandonment of the contract works, or failure to deliver to the work site the needed equipment, materials or personnel required in the performance of the Services;
- d) When the **CONSTRUCTION MANAGER** becomes insolvent, applies for a suspension of payments, is adjudged bankrupt, disposes all or substantially all of its assets for the benefit of creditors, or when the **CONSTRUCTION MANAGER** is subjected to voluntary or involuntary dissolution; and
- e) Other causes analogous to the foregoing.

9.2.2.2 **BCDA** may terminate this Contract should, in its opinion, the continued operation and existence thereof or the performance of the Services unduly prejudice the interest of **BCDA**. This right to terminate shall be subject to the following conditions:

- a. If the ground(s) for termination shall be any of those enumerated under 9.2.1 and 9.2.2, **BCDA** shall immediately take over the works, take possession of all materials, tools and appliances in connection with the Services and finish the same by whatever method it may deem expedient. In such a case, **BCDA** shall pay the **CONSTRUCTION MANAGER** for Services actually rendered as of the time of termination as may be determined by the **BCDA** pursuant to paragraph 3.2.2.1.1. If the unpaid balance of the Service Fee shall exceed the expense of finishing the work, such excess shall be paid to the **CONSTRUCTION MANAGER**. If such expenses shall exceed such unpaid balance, the **CONSTRUCTION MANAGER** shall pay the difference to **BCDA**.
- b. If the grounds for termination is not directly attributable to the **CONSTRUCTION MANAGER**, the latter shall be paid what **BCDA** reasonably determines as fair

compensation, taking into account Services actually rendered.

- c. In any case, it is understood that the **CONSTRUCTION MANAGER** shall exercise due diligence to protect the property and interest of **BCDA** and shall, after final accounting, reimburse **BCDA** of any excess payment it received under this Contract.

9.2.3 Upon receipt of the Suspension of Work Order or Notice of Termination, the **CONSTRUCTION MANAGER** shall stop, suspend or do as directed, and shall have no claim whatsoever for damages by reason thereof, but shall receive payment for work done in full discharge and satisfaction of all demands of **BCDA**. Any notice given by **BCDA** under this paragraph shall be in writing, signed by the proper **BCDA** representative, and shall be delivered to the **CONSTRUCTION MANAGER** or its representative at least three (3) days prior to the intended suspension, stoppage or reduction.

9.2.4 After the receipt of a Suspension of Work Order or Notice of Termination and except as otherwise directed by **BCDA**, the **CONSTRUCTION MANAGER** shall:

9.2.4.1 Stop or suspend work under the Contract on the date and up to the extent specified in the Notice of Termination or Work Suspension Order. Such stoppage or suspension shall cover works or orders arising from subcontracts, if any;

9.2.4.2 Assign to **BCDA** as it may direct, all the rights, title and interest of the **CONSTRUCTION MANAGER** under the Contract and subcontracts, if any, in which case, **BCDA** shall have the right and discretion to settle, pay or deny any claim arising out of the termination or suspension of work, unless the same are outstanding liabilities and claims for which **BCDA** has previously given its written approval;

9.2.4.3 Transfer and deliver to **BCDA** all completed or partially completed plans, drawings, information and other property required to be furnished and turned over to **BCDA** under the Contract, except that this requirement shall not apply to property and goods for which the **CONSTRUCTION MANAGER** has not been reimbursed;

9.2.4.4 Complete the part of the work that has not been terminated by the Notice of Termination; and

9.2.4.5 Take such actions as may be necessary for the protection of the property involved in this Contract that is in the possession of the **CONSTRUCTION MANAGER**.

9.2.5 Unless otherwise agreed upon in writing, the **CONSTRUCTION MANAGER** shall submit to **BCDA** its written claim promptly but not later than three (3) months from the effective date of termination.

9.2.6 The **CONSTRUCTION MANAGER** shall consult **BCDA** within thirty (30) days from submission of the claim concerning the whole or any part of the amount to be paid to the **CONSTRUCTION MANAGER** by reason of termination of the Services.

9.2.7 If the Parties fail to agree on the amounts to be paid to the **CONSTRUCTION MANAGER** pursuant to this clause, **BCDA** shall pay the amount, if any, which it determines to be due the **CONSTRUCTION MANAGER** considering the following:

9.2.7.1 The costs in accordance with this Contract, not previously paid to the **CONSTRUCTION MANAGER**, prior to the effective date of the Notice of Termination, and such costs as may continue for a reasonable time thereafter with the approval of, or as directed by **BCDA**; and

9.2.7.2 The cost incurred by the **CONSTRUCTION MANAGER** in settling and paying claims arising out of the termination of work under subcontracts or orders which are to be performed/delivered covering the terminated portion of the Contract; provided that such order/subcontract was granted prior approval by **BCDA**.

9.2.8 In deciding the amount due the **CONSTRUCTION MANAGER**, the following shall be deducted: 1) all unliquidated advances and other payments made to the **CONSTRUCTION MANAGER** applicable to the terminated portion of this Contract; 2) all unsettled claims which **BCDA** may have against the **CONSTRUCTION MANAGER** in connection with this Contract; 3) forfeited surety bond to guaranty the completion of the Services under this Contract.

9.2.9 If the total payment for the terminated portion of this Contract exceeds the amount determined to be due under this clause, such excess shall be payable by the **CONSTRUCTION MANAGER** to **BCDA** upon demand.

9.2.10 It shall be understood that the total amount paid to the **CONSTRUCTION MANAGER** shall not exceed the service fee stated in Section 3.1.

9.2.11 In case of conflict between the above provisions and Annex I (Guidelines on Termination of Contracts) of the Revised Implementing Rules and Regulations of RA 9184, the latter shall prevail.

### 9.3 **Termination by the CONSTRUCTION MANAGER**

9.3.1 The **CONSTRUCTION MANAGER** shall promptly notify **BCDA** in writing of any situation or occurrence beyond its reasonable control which makes it impossible to carry out its obligations under this Contract. Upon confirmation by **BCDA** in writing of the existence of such an event, the **CONSTRUCTION MANAGER** shall be relieved of all the liabilities for its failure to carry out such obligations and the **CONSTRUCTION MANAGER** may, thereupon, terminate the Contract by giving not less than thirty (30)-day prior written notice to **BCDA**.

9.3.2 Within sixty (60) days after the effective date of the Notice of Termination, the **CONSTRUCTION MANAGER** shall submit to **BCDA** its termination claim which shall be processed and settled in the same manner as provided for under Section 9.2 hereof.

## **ARTICLE X FORCE MAJEURE**

10.1 **Definition.** As used herein, the term “force majeure” shall mean events attributable to the following:

10.1.1 Human causes, such as war, armed invasion, revolution, insurrection, blockades, riots, civil disturbances, strikes, new governmental regulations or issuances and other analogous or similar causes affecting the project, to the extent that any of the same makes it impossible or impracticable for either party to carry out, in whole or in part, its obligations under this Contract; and

10.1.2 Natural causes, such as earthquakes, storms, epidemics, landslides, lightning, floods and other similar phenomena affecting the Project, to the extent that any of the same makes it impossible or impracticable for either Party to carry out, in whole or in part, its obligations under this Contract.

10.2 **Notices.** If either Party is temporarily unable by reason of force majeure to meet any of its obligations under this Contract, and if such Party gives to the other Party written notice of any of the foregoing event within fourteen (14) days after its occurrence, such obligations of the Party shall be suspended for as long as the inability continues. Neither Party shall be liable to the other for loss or damage sustained by reason of force majeure or delays arising from such event; provided that said Party has taken reasonable steps or exercised due diligence to prevent such losses or damages; provided further that the required written notice has been complied with.

10.3 **Extension of Period.** In the event of force majeure resulting in a suspension of work, this Contract shall be extended for a period equal to that during which the **CONSTRUCTION MANAGER** was prevented from performing; provided that the Services are still necessary to **BCDA**.

10.4 **Termination.** If such event shall continue for a period of more than thirty (30) days after notice thereof has been given to **BCDA** as herein provided, and after its existence, duration and extent have been verified, either Party may terminate this Contract by giving a notice in writing to the other of at least fifteen (15) days before the effective date of termination. Upon receipt of such notice of termination, the **CONSTRUCTION MANAGER** shall take immediate steps to bring the work to a close in a prompt and orderly manner and, as far as practicable, to reduce expenditures to a minimum.

10.5 **Payment Upon Termination.** Upon termination of this Contract pursuant to the foregoing provisions under this Article, **BCDA** shall not be liable to make any payment to the **CONSTRUCTION MANAGER** except for the work or

Services performed, or expenditures incurred prior to the date of such termination and for those incidents leading to the orderly liquidation of its work and the settlement of its obligations incurred hereunder. The payment shall include actual costs and expenses incurred in the event of a force majeure as are reasonably necessary to prevent loss, damage, or deterioration of the property. The **CONSTRUCTION MANAGER** shall give **BCDA** all data compiled, drawings and preliminary conclusions made up to the date of the termination.

## **ARTICLE XI LIABILITY OF THE CONSTRUCTION MANAGER**

- 11.1 **Professional Quality and Technical Accuracy.** The **CONSTRUCTION MANAGER** shall be responsible for the professional quality, technical accuracy, and coordination of all Services performed under this Contract. The **CONSTRUCTION MANAGER** shall, without additional compensation, correct or revise any defect, error or deficiency in its Services.
- 11.2 **Rights and Remedies.** The rights and remedies of **BCDA** provided for under this Contract are in addition to any other right and remedy provided by pertinent laws and other issuances.

## **ARTICLE XII NO EMPLOYER-EMPLOYEE RELATIONSHIP**

- 12.1 There is no employer-employee relationship between **BCDA** and the **CONSTRUCTION MANAGER**, its employees, agents, suppliers, and consultants. Consequently, **BCDA** shall not in any way be liable and/or responsible for any personal injury including death or damage to property sustained or caused by or attributed to any of the employees of the **CONSTRUCTION MANAGER** whether or not occurring during the performance of their duties. The **CONSTRUCTION MANAGER** agrees and binds itself to indemnify **BCDA** for whatever injuries or damages directly or indirectly caused or occasioned or attributed to the fault, negligence or conduct of the **CONSTRUCTION MANAGER** and/or its employees, agents, suppliers or consultants arising out of, or in connection with, or on the occasion of the performance of their duties and to be liable and/or responsible for the enforcement of, and compliance with all existing laws, including the Labor Code of the Philippines, executive or administrative orders, rules and regulations, and binds itself to save and hold **BCDA** free and harmless from any and all liabilities in respect thereof and/or arising therefrom and/or by reason of this Contract and its implementation.

## **ARTICLE XIII MISCELLANEOUS**

- 13.1 **Government Accounting and Auditing Rules and Regulations.** All payments under this Contract shall be subjected to the usual government accounting and auditing rules and regulations, including COA Circular No. 2009-001, dated 12 February 2009, which requires all government agencies and instrumentalities to

submit to the Auditor for review, all contracts, purchase orders and the like, within five (5) working days from execution thereof.

- 13.2 **Compliance to Executive Order No. 398.** The **CONSTRUCTION MANAGER** shall pay taxes in full and on time and that failure to do so shall entitle **BCDA** to suspend payment for Services delivered. In this regard, the **CONSTRUCTION MANAGER** shall regularly submit to **BCDA** a valid tax clearance from the BIR as well as a copy of its income and business tax returns duly stamped and received by the BIR and duly validated with the tax payments made thereon.
- 13.3 **Effectivity.** The Contract shall remain in force until the completion of all necessary documents required for payments and turnover of the completed Project in accordance with government accounting and auditing rules and regulations from the date reflected in the Notice to Proceed.
- 13.4 **Notices and Addresses.** All notices called for by the terms of this Contract shall be effective only at the time of receipt thereof and only when received by the Parties to whom they are addressed at the following addresses:

Notice to **BCDA:**

Bases Conversion and Development Authority  
2/F Bonifacio Technology Center  
31<sup>st</sup> Street corner 2<sup>nd</sup> Avenue  
Fort Bonifacio, Taguig, M.M.

Attention:

**VIVENCIO B. DIZON**  
President and CEO

Notice to **CONSTRUCTION MANAGER:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention:

\_\_\_\_\_  
\_\_\_\_\_

It shall be the obligation of the **CONSTRUCTION MANAGER** to inform **BCDA** in writing of any change of address within three (3) calendar days from such change. In the absence of valid notice of change of address, all such correspondence and papers shall be legally considered to have been received by the **CONSTRUCTION MANAGER** when sent to such address even if not actually received by it.

- 13.5 **Amendments.** No amendments, modifications or alterations to this Contract shall be valid or binding on either Party unless stipulated and agreed upon by the Parties in writing and executed with the same formality as this Contract.
- 13.6 **Counterparts.** This Contract shall be executed and delivered in five (5) copies, four (4) copies to be retained by **BCDA** and one (1) for the **CONSTRUCTION MANAGER**, each of which shall be deemed an original.

**IN WITNESS WHEREOF**, the Parties have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2018 at Taguig City, Metro Manila, Philippines.

**BASES CONVERSION AND  
DEVELOPMENT AUTHORITY**

\_\_\_\_\_  
\_\_\_\_\_

By:

By:

**VIVENCIO B. DIZON**  
President and CEO

\_\_\_\_\_  
\_\_\_\_\_

**SIGNED IN THE PRESENCE OF:**

\_\_\_\_\_

\_\_\_\_\_

**ACKNOWLEDGMENT**

**REPUBLIC OF THE PHILIPPINES)**  
\_\_\_\_\_ ) S.S.

**BEFORE ME**, a Notary Public, for and in the City of \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2018, personally appeared the following:

Name	Evidence of Identity	Date/Place Issued

known to me to be the same persons, through their competent evidence of identity, who executed the foregoing instruments and they acknowledged to me that their signatures confirm their own free deed and the entities they represent.

**WITNESS MY HAND AND SEAL**, this \_\_\_\_ day of \_\_\_\_\_ 2018 at \_\_\_\_\_, Philippines.

**NOTARY PUBLIC**

Doc No. \_\_\_\_\_  
Page No. \_\_\_\_\_  
Book No. \_\_\_\_\_  
Series of 2018.



## ANNEX D

## **Bid-Securing Declaration**

**(REPUBLIC OF THE PHILIPPINES)**

**CITY OF \_\_\_\_\_ ) S.S.**

**x-----x**

**Invitation to Bid** *[Insert reference number]*

To: *[Insert name and address of the Procuring Entity]*

I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Bid Security, which may be in the form of a Bid-Securing Declaration.
2. I/We accept that: (a) I/we will be automatically disqualified from bidding for any contract with any procuring entity for a period of two (2) years upon receipt of your Blacklisting Order; and, (b) I/we will pay the applicable fine provided under Section 6 of the Guidelines on the Use of Bid Securing Declaration, within fifteen (15) days from receipt of written demand by the procuring entity for the commission of acts resulting to the enforcement of the bid securing declaration under Sections 23.1(b), 34.2, 40.1 and 69.1, except 69.1 (f), of the IRR of RA 9184; without prejudice to other legal action the government may undertake.
3. I/We understand that this Bid-Securing Declaration shall cease to be valid on the following circumstances:
  - a. Upon expiration of the bid validity period, or any extension thereof pursuant to your request;
  - b. I am/we are declared ineligible or post-disqualified upon receipt of your notice to such effect, and (i) I/we failed to timely file a request for reconsideration or (ii) I/we filed a waiver to avail of said right;
  - c. I am/we are declared as the bidder with the Highest Rated Responsive Bid, and I/we have furnished the performance security and signed the Contract.

**IN WITNESS WHEREOF**, I/We have hereunto set my/our hand/s this \_\_\_\_ day of *[month]* *[year]* at *[place of execution]*.

***[Insert NAME OF BIDDER'S AUTHORIZED REPRESENTATIVE]***  
***[Insert signatory's legal capacity]***

Affiant

**SUBSCRIBED AND SWORN** to before me this \_\_ day of *[month]* *[year]* at *[place of execution]*, Philippines. Affiant/s is/are personally known to me and was/were identified by me through competent evidence of identity as defined in the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC). Affiant/s exhibited to me his/her *[insert type of government identification card used]*, with his/her photograph and signature appearing thereon, with no. \_\_\_\_\_.

Witness my hand and seal this \_\_\_\_ day of *[month]* *[year]*.

**NAME OF NOTARY PUBLIC**

**Serial No. of Commission** \_\_\_\_\_  
**Notary Public for** \_\_\_\_\_ **until** \_\_\_\_\_  
**Roll of Attorneys No.** \_\_\_\_\_  
**PTR No.** \_\_, *[date issued]*, *[place issued]*  
**IBP No.** \_\_, *[date issued]*, *[place issued]*  
**Doc. No.** \_\_\_\_  
**Page No.** \_\_\_\_  
**Book No.** \_\_\_\_  
**Series of** \_\_\_\_.

## ANNEX E



## ANNEX F

New Clark City

Full Cloverleaf Interchange @ MacArthur Highway

Rumpel Interchange @ SCITEX

Google earth

2010

©2018 Google  
Imagery Date: 4/13/2017  
159°18'35.65" W, 120°34'09.33" E Elev: 51 m Eye Alt: 1.2, 18



## ANNEX G



**BASES CONVERSION AND DEVELOPMENT AUTHORITY**

**Construction Management and Supervision of the New Clark City to  
Subic-Clark-Tarlac Expressway Access Road**

**CHECKLIST AND TABBING OF BIDDING REQUIREMENTS**

**Technical Proposal**

<b>Tab #</b>		<b>Description</b>
1	TPF 1	Technical Proposal Submission Form
2		Valid Bid Security
3	TPF 2	Consultant's References
4	TPF 3	Comments and Suggestions of the Consultant on the TOR
5	TPF 4	Description of the Methodology & Work Plan
6	TPF 5	Team Composition and Tasks
7	TPF 6	Curriculum Vitae for each of the nominated key staff Curriculum Vitae (CV) of proposed Professional Staff to be assigned to the Project (duly signed and notarized). Please attach supporting documents, i.e. valid licenses/professional registrations, certificates of trainings attended, work experiences and other supporting documents relative to credentials of proposed Professional Staff.
	7.1	Team Leader/Project Manager
	7.2	Survey/Quantity Engineer
	7.3	Sr. Highway Engineer
	7.4	Sr. Bridge Engineer
	7.5	Sr. Materials Engineer II (DPWH Accredited)
	7.6	Sr. Drainage/Hydraulic Engineer
	7.7	Sr. Structural Engineer
	7.8	Sr. QA/QC Engineer
	7.9	Sr. Quantity Surveyor
	7.10	Sr. Geodetic Engineer
	7.11	Professional Electrical Engineer
	7.12	Sr. Landscape Architect
8	TPF 7	Time Schedule for Professional Personnel
9	TPF 8	Activity (Work) Schedule
12		Omnibus Sworn Statement using the prescribe form in the Bidding Documents

**Financial Proposal**

14	FPF 1	Financial Proposal Submission Form
15	FPF 2	Summary of Cost
16	FPF 3	Breakdown of Price Per Activity
17	FPF 4	Breakdown of Remuneration Per Activity
18	FPF 5	Not Applicable
19	FPF 6	Miscellaneous Expenses

**Note:** BCDA shall not assume any responsibility regarding erroneous interpretations or conclusions by the Consultant out of the data furnished by BCDA in relation to this bidding. The Consultant shall take the responsibility to ensure the completeness of its submission after taking the steps to carefully examine all of the Bidding Documents and its amendments.