

**CONTRACT FOR THE CONSTRUCTION OF THE NEW CLARK CITY (NCC) TO  
SUBIC-CLARK-TARLAC EXPRESSWAY (SCTEX) ACCESS ROAD**

**THE PUBLIC IS INFORMED:**

This Contract is executed 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 the BCDA Corporate Center, 2/F Bonifacio Technology Center, 31<sup>st</sup> Street, corner 2<sup>nd</sup> Avenue, Bonifacio Global City, Taguig City, 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 March 14, 2018, a certified true copy of which is hereto attached as **Annex "A"**, and made an integral part hereof, hereinafter referred to as "**BCDA**";

-and-

**VICENTE T. LAO CONSTRUCTION/CHINA HARBOUR ENGINEERING COMPANY (Consortium)**, a consortium duly organized and existing under the laws of the Republic of the Philippines, with office address at Unit 18V, Legaspi Tower 300, Roxas Boulevard corner Vito Cruz, Malate, Manila, Philippines, represented herein by **VICENTE T. LAO and MA JIANHUA**, who are duly authorized for this purpose as stated in the Consortium Agreement dated 22 February 2018 and its Addendum dated 21 May 2018 executed between Vicente T. Lao Construction, represented by its owner, **VICENTE T. LAO**, and China Harbour Engineering Company, represented by its Authorized Representative in the Philippines, **MA JIANHUA**, who is authorized for this purpose as evidenced by a duly authenticated Power of Attorney with validity period from 01 April 2017 to 31 March 2019, which is attached hereto as **Annex "B"**. Copies of the Consortium Agreement and its Addendum are hereto attached as **Annexes "C" and "D"**, and made integral parts hereof, hereinafter referred to as the "**CONTRACTOR**".

Each referred to as "Party" and collectively as "Parties".

**ANTECEDENTS**

**WHEREAS, BCDA** was created under Republic Act No. 7227, as amended, primarily to carry out the declared policy of the government to accelerate the sound and balanced conversion of the former U.S. Military Bases and their extensions, and to enhance the benefits to be

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delivered from said properties in order to promote the economic and social development of Central Luzon in particular and the country in general;

**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 said 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;

**WHEREAS**, in order to proceed with the above-mentioned Works, **BCDA** invited eligible general engineering contractors to submit proposals through competitive public bidding for the purpose;

**WHEREAS**, on 27 February 2018, the **BCDA** opened the bids of participating contractors for the Project. After evaluation and review of the technical and financial proposals, the **BCDA – Special Bids and Award Committee (SBAC)** found that the **CONTRACTOR** offered the lowest calculated responsive bid for the Project;

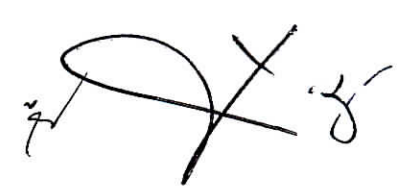
**WHEREAS**, in its Resolution of Award dated 17 April 2018, the **BCDA** Special Bids and Awards Committee (SBAC) resolved to recommend to the Head of the Procuring Entity the award of the Contract to the **CONTRACTOR** in the amount of Pesos: **Pesos: Three Billion One Hundred Twenty-Four Million Five Hundred Four Thousand Nine Hundred Forty-Three and 24/100 (Php3,124,504,943.24)** being the lowest and most advantageous bid to **BCDA**;

**WHEREAS**, Pursuant to Resolution No. 2017-12-197, the **BCDA** Board, during its meeting on 18 December 2017, approved the award of the Contract for the Construction of NCC-SCTEX Access Road (Package 1) in Capas, Tarlac, Philippines to the **CONTRACTOR**.

**NOW, THEREFORE**, the Parties hereby agree as follows:

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**ARTICLE I  
DEFINITION OF TERMS**

- 1.1 **Project** refers to the Construction of the NCC-SCTEX Access Road (Package 1) in Capas, Tarlac, Philippines.
- 1.2 **Project Manager** refers to the representative of **BCDA** to the Project.
- 1.3 **Contract** refers to this Agreement, including the contract documents.
- 1.4 **Contract Documents** refer to the documents specified in Article IV of this Contract.
- 1.5 **Contract Price** refers to the consideration which the **CONTRACTOR** shall be entitled to receive from BCDA under Article VI of this Contract.
- 1.6 **Contractor** refers to the consortium duly organized and formed between Vicente T. Lao Construction and China Harbour Engineering Company (Consortium), who are jointly and severally liable for all the obligations, covenants and warranties of the Contractor under this Contract.
- 1.7 **Construction Period** refers to the period specified in Section 5.1 within which the **CONTRACTOR** shall complete the services.
- 1.8 **Force Majeure** refers to strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, landslides, earthquakes, storms, floods, civil disturbances, explosions or the issuance of any government policy, rule or regulation, and other similar events, which are beyond the control of either party and which, with the exercise of due diligence, neither party is able to overcome.
- 1.9 **Works** refer to the services to be performed by the **CONTRACTOR** in accordance with the terms and conditions of this Contract and the Contract Documents.

**ARTICLE II  
PROJECT**

- 2.1 The Project refers to the Construction of the NCC-SCTEX Access Road (Package 1) in Capas, Tarlac, Philippines.

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**ARTICLE III  
SCOPE OF WORKS**

- 3.1 The **CONTRACTOR** shall, at its own expense and with the use of its own resources and equipment, undertake the construction of the Project in accordance with the approved plans, specifications and other contract and bidding documents, as well as relevant government laws, codes, and other applicable rules and regulations, as well as ordinances.
- 3.2 The **CONTRACTOR** shall for its own account, secure the necessary permits, licenses and documentary approvals required by concerned government agencies, such as those prescribed by national agencies, local government units and utility companies.
- 3.3 For any decrease or increase in the Scope of Works, the provisions of Annex E of the Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 shall apply.

**ARTICLE IV  
CONTRACT DOCUMENTS**

- 4.1 The following documents shall form part of this Contract:
- A. Contract Agreement;
  - B. Bidding Documents;
  - C. Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals, and all other documents/statements submitted;
  - D. Performance Security;
  - E. Notice of Award; and
  - F. Other contract documents that may be required by existing laws and/or Procuring Entity concerned in the Bidding Documents, such as the construction schedule and S-curve, manpower schedule, construction methods, equipment utilization schedule, construction safety and health program approved by the Department of Labor and Employment, and PERT/CPM or other acceptable tools of project scheduling for infrastructure projects.
- 4.2 All contract documents are and shall remain the properties of **BCDA**.
- 4.3 The Contract Documents shall be complementary to each other and what is called for or prescribed by one shall be considered as if called for or prescribed by all. In case of any discrepancy between any of the Contract Documents or any defective or erroneous description, omission or ambiguity in any of the Contract Documents, the **CONTRACTOR** shall, within thirty (30) calendar days (as the case maybe), submit the matter in writing to **BCDA** through **BCDA's** Project Manager. **BCDA** shall, within a reasonable time, make a decision thereon in writing, after taking into consideration the intent and purpose of this Project.

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- 4.4 **BCDA** shall have the right to furnish the **CONTRACTOR** during the progress of the Works such additional drawings, instructions and documents as **BCDA** may deem necessary for the proper accomplishment of the Works. All such additional drawings, instructions and documents, as well as any decision made by **BCDA** shall form integral parts of this Contract.
- 4.5 The provisions of the Contract and the Contract Documents should be harmonized and effected as far as practicable. However, in case of an irreconcilable conflict between this Contract and the provisions of any of the Contract Documents, the former shall prevail.

## ARTICLE V CONSTRUCTION PERIOD

### 5.1 Completion Period

The **CONTRACTOR** shall complete the Project to **BCDA's** satisfaction within **Five Hundred Forty (540) calendar days** from the date indicated in the Notice to Proceed (NTP) in accordance with the approved Contract Schedule.

### 5.2 Extension of Completion Period

- 5.2.1 No extension of contract time shall be granted to the **CONTRACTOR** due to ordinary unfavorable weather conditions, non-availability of equipment or materials to be furnished thereby, labor problems, such causes for which **BCDA** is not directly responsible, or when time-affected activities do not fall within the critical path of the network. However, extension of time may be granted in case of delay occasioned by force majeure or such other reasons as **BCDA** may find acceptable and justified; provided, that, the extension may only be granted on favorable recommendation of **BCDA's** Project Manager after due notice has been given to **BCDA** as provided below; and provided further that, said extension shall in no case exceed the actual period of delay.
- 5.2.2 The pertinent provisions of RA 9184 and its Revised IRR, particularly Section 10 of Annex E of the Revised IRR, shall be applicable to any request made by the **CONTRACTOR** for extension of the period of completion of the Project.
- 5.2.3 **BCDA** shall not take into account any request for contract extension unless the **CONTRACTOR** has given notice thereof in writing to **BCDA** within thirty (30) calendar days after the circumstances leading to such request have arisen or such additional Works affecting the critical path of the Project schedule has been commenced, in order that **BCDA** could have them investigated. Failure to provide such notice shall constitute a waiver by the **CONTRACTOR** of any claim.





### 5.3 Slippage

- 5.3.1 Order for Acceleration – Should for reasons attributable to it, the **CONTRACTOR** incur a negative slippage of at least five percent (5%) but less than fifteen percent (15%) on the critical path, **BCDA**, through its Project Manager, shall notify the **CONTRACTOR** in writing to submit a catch-up schedule and a crash program. The **CONTRACTOR** shall, thereupon, take immediate steps as are necessary, with the approval of **BCDA** as recommended by its Project Manager, in order to expedite the Works. The **CONTRACTOR** shall not be entitled to any additional payment for taking such remedial steps if the negative slippage is due to the fault of the **CONTRACTOR**. Any difference or increase in cost under subsequent Works by administration or award to another contractor shall be paid for by the **CONTRACTOR**.
- 5.3.2 Slippage of Fifteen Percent (15%) - Should the **CONTRACTOR** incur a negative slippage of at least fifteen percent (15%) on the critical path based on the approved PERT/CPM or Bar Chart/S-Curve schedule, **BCDA** shall have the right to terminate the contract if:
- 5.3.2.1 Due to the **CONTRACTOR**'s fault and while the project is on-going, it has incurred a negative slippage of fifteen percent (15%) or more in accordance with Presidential Decree 1870;
- 5.3.2.2 Due to the **CONTRACTOR**'s fault and after the Contract time has expired, it has incurred negative slippage of ten percent (10%) or more in the completion of the Works.
- 5.3.3 The right mentioned in the immediately preceding paragraphs may be availed of without prejudice to any of **BCDA**'s rights under other laws, including, but not limited to compensation for damages.

### 5.4 Liquidated Damages

- 5.4.1 The **CONTRACTOR** shall complete the Project within the completion period stipulated in Section 5.1 hereof, exclusive of such extensions of time as may be mutually agreed upon by the parties. In the event that the **CONTRACTOR** fails for reasons attributable to it or unjustifiably refuses to satisfactorily complete the Works within the stipulated period, the **CONTRACTOR** shall pay **BCDA** liquidated damages, not by way of penalty, an amount equivalent to one-tenth of one percent (1/10 of 1%) of the Total Contract Price as stated in Section 6.1 hereof less the value of the Works satisfactorily completed, as certified by **BCDA** for each calendar day of delay. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, **BCDA** may rescind or terminate the contract, without prejudice to the other courses of actions and remedies available under the circumstances.

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5.4.2 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 the money due or which may become due the **CONTRACTOR** under the contract and/or collect such liquidated damages from retention money or other securities posted by the **CONTRACTOR** whichever is convenient to **BCDA**.

## 5.5 Certificate of Completion and Preliminary Acceptance

### 5.5.1 Substantial Completion

Once the Project reaches an accomplishment of **Ninety-Five Percent (95%)** of the total contract amount, **BCDA** may create an inspection team to undertake preliminary inspection and submit a punch-list to the **CONTRACTOR** in preparation for the final turnover of the Project. Said punch-list will contain, among others, the remaining Works, work deficiencies for necessary corrections, and the specific duration/time to fully complete the Project considering the approved remaining contract time. This, however, shall not preclude **BCDA**'s claim for liquidated damages or be deemed a waiver of its right under the Contract as well as applicable laws, rules and regulations.

### 5.5.2 Final Completion

Once the Project is completed in accordance with this Contract, the **CONTRACTOR** shall give a written notice to **BCDA** through its Project Manager, who may promptly deploy its inspection team to verify. **BCDA** shall issue a Certificate of Completion and Preliminary Acceptance of the Project through **BCDA**'s Project Manager, stating the date of actual completion, within ten (10) days from completion of the Project to the satisfaction of **BCDA**; provided that the **CONTRACTOR** has submitted the following:

- 1) Five (5) sets of blue print copy of "As-Built" Drawings plus one (1) original set thereof, including the electronic files;
- 2) Summary of materials testing reports;
- 3) All other permits required relative to the Project; and
- 4) Such other documents as **BCDA** may reasonably require.

5.5.3 **BCDA**'s issuance of the Certificate of Completion and Preliminary Acceptance shall mean the start and effectivity of the one (1) year Defects Liability Period as provided in Section 62.2.2 of the Revised IRR of RA 9184.

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5.5.4 **BCDA**'s issuance of the Certificate of Completion and Preliminary Acceptance of the project shall entitle the **CONTRACTOR** to the payment of final billing.

## **ARTICLE VI CONSIDERATION**

### **6.1 Consideration**

For and in consideration of the full, satisfactory and faithful performance by the **CONTRACTOR** of all its obligations under this Contract, **BCDA** shall pay the **CONTRACTOR** the total amount of **Pesos: Three Billion One Hundred Twenty-Four Million Five Hundred Four Thousand Nine Hundred Forty-Three and 24/100 (Php 3,124,504,943.24)**, inclusive of Value-Added Tax (VAT), as well as all expenses, fees and taxes, for obtaining the necessary licenses, permits and clearances from concerned government agencies.

### **6.2 Price Escalation/Price Adjustment**

No escalation/adjustment of price will be effected under this Contract even in the event of price increase of construction materials and equipment, except under extraordinary circumstances pursuant to and in accordance with Section 61 of RA 9184 and its Revised Implementing Rules and Regulations (IRR).

In cases where the price of the contract is affected by any applicable laws, ordinances, regulations, or other governmental acts promulgated after the signing of this Contract, the adjustment of the contract price shall be made or appropriate relief shall be applied on a "no loss-no gain" basis pursuant to 61.2 of the Revised IRR of RA 9184, that is, the relief or adjustment thereof shall only be to the extent to the actual adjustment or change caused by the supervening issuance or governmental act.

## **ARTICLE VII MANNER OF PAYMENT**

### **7.1 Advance Payment**

**BCDA** shall, upon written request of the **CONTRACTOR** and submission of the guarantee bond specified in Section 9.5, make an advance payment for mobilization to the **CONTRACTOR** in an amount equal to fifteen percent (15%) of the Contract Price. The advance payment shall be recouped through a deduction by **BCDA** of fifteen percent (15%) of the amount of remaining payments due the **CONTRACTOR**. Further recoupment shall be done until the full amount of the advance payment shall have been recouped.



## 7.2 Remaining Billings

7.2.1 Remaining billings submitted by the **CONTRACTOR** to **BCDA** shall be based on project completion under a phased-basis, to wit: 1. Roadway Section from NCC to MacArthur Highway; 2. Roadway Section from MacArthur Highway to SCTEX; 3. Rosario Bridge 1 & 2 and Bridge 3; 4. MacArthur Interchange; 5. SCTEX Interchange, as certified by the BCDA Project Manager, Engr. Luis C. Palafox, and as determined and approved by BCDA, on the agreed lump sum or unit price therefor. The following shall be deducted from the remaining billings:

- a) Fifteen percent (15%) of the amount of the remaining billings to effect recoupment of the advance payment;
- b) Ten percent (10%) retention money as provided for in Section 7.4;
- c) Money(ies) paid by **BCDA** to settle unpaid valid third-party claims against the **CONTRACTOR**, or other obligations of the **CONTRACTOR** arising from this Contract, if any; and
- d) Other deductions prescribed by existing laws, government rules and regulations in the manner set forth under such laws, rules and regulations.

7.2.2 No payment shall be construed as an acceptance by the **BCDA** of the Works or any portion thereof.

## 7.3 Final Payment

Final payment to the **CONTRACTOR** shall be made only after the issuance of a Certificate of Completion and Preliminary Acceptance of the Project by **BCDA**. **BCDA** shall effect the final payment to the **CONTRACTOR** upon proper endorsement to **BCDA** of the final payment billing; provided, however, that the **CONTRACTOR** has submitted the following documents:

- a. Sworn statement, to be executed by a duly authorized representative of the **CONTRACTOR**, stating that all liabilities incurred have been paid and that there are no outstanding liens, garnishments, attachments or claims relative to the Project;
- b. Quitclaim and release to be executed by the **CONTRACTOR'S** duly authorized representative in a form satisfactory to **BCDA**, releasing **BCDA** from any further claim relating to the Contract; and
- c. Such other documents as **BCDA** may reasonably require.

Provided further that the gross amount for final billing shall not be below five percent (5%) of the final cost of the Project.

Nothing herein contained shall be construed as a waiver of the right of **BCDA**, which is hereby reserved, to reject the whole or any portion of the Works should the same be found to have been constructed in violation of the plans and specifications or any of the conditions or covenants of this Contract.

#### 7.4 **Retention Money**

Remaining payments are subject to retention of ten (10) percent referred to as the "retention money". Such retention shall be based on the total amount due to the **CONTRACTOR** prior to any deduction and shall be retained by **BCDA** from remaining payments until fifty (50) percent of the value of Works, as determined by **BCDA**, are completed. If, after fifty (50) percent completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten (10) percent retention shall be imposed. The total retention money retained shall not bear interest and shall be due for release upon **BCDA**'s final acceptance of the Works.

#### 7.5 **Compliance with Executive Order No. 398**

Pursuant to Executive Order No. 398, series of 2005 and its Implementing Rules, the **CONTRACTOR** shall pay taxes in full and on time and that failure to do so shall entitle **BCDA** to suspend payment for Works accomplished. In this regard, the **CONTRACTOR** shall regularly submit to **BCDA** its latest valid tax clearance from the Bureau of Internal Revenue (BIR), as well as a copy of its latest income and business tax returns duly stamped and received by the BIR and duly validated tax payments made thereon.

### **ARTICLE VIII COVENANTS OF BCDA AND THE CONTRACTOR**

#### 8.1 **BCDA covenants to do and perform the following:**

- 8.1.1 Make available the amount representing total construction cost for all Works stipulated in Article III for payment in accordance with Article VI hereof;
- 8.1.2 Review, evaluate and approve or disapprove (as applicable) proposals and recommendations submitted by the **CONTRACTOR**;
- 8.1.3 Evaluate and approve or cause necessary changes in the plans, detailed engineering, technical specifications and adjustments to the construction schedule;
- 8.1.4 Assign a Project Manager who shall supervise and monitor the execution of the Works by the **CONTRACTOR**. **BCDA** may stop the execution of the Works or any portion thereof, if in its judgment, the Works are not being pursued in

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accordance with the requirements of this Contract and the Contract Documents, without liability whatsoever for downtime costs;

- 8.1.5 Assist the **CONTRACTOR**, on a best-effort basis, in securing the permits, clearances, approvals and licenses from the concerned government agencies;
- 8.1.6 Free the **CONTRACTOR** from any and all liabilities pertaining to claims for ownership;
- 8.1.7 Make available all existing titles/documents, including future documents, pertaining to the property to the **CONTRACTOR** for reference;
- 8.1.8 Coordinate with the government agency concerned for the smooth entry of workers, equipment and materials needed to implement the Project; and
- 8.1.9 Ensure to the **CONTRACTOR** the availability of the right-of-way (ROW) for the Project.

**8.2 CONTRACTOR covenants to do and perform the following:**

- 8.2.1 Answer for the quality and workmanship of the Project consistent with sound engineering, administrative and financial practices and strictly in accordance with the approved plans, specifications and other contract documents. In the event **BCDA** finds that the materials, equipment and/or workmanship are not in conformity with the contract documents, these shall be removed or corrected by the **CONTRACTOR** at its own expense;
- 8.2.2 Act in a manner that will protect the interests of **BCDA** at all times and take all reasonable steps to complete the Project within schedule and within the contract cost, consistent with best accepted sound engineering practices;
- 8.2.3 Set-up a Quality Control (QC) System & Plan at the Project Site consistent with Article XV hereof;
- 8.2.4 Furnish **BCDA** Monthly Periodic Reports on the progress of the Works, including information relating to the Works and the Project every tenth day of the following month from the commencement of the project;
- 8.2.5 Submit prior to the effectivity of the Contract a Construction Safety, Sanitation and Security Program consistent with Article XVI hereof. The **CONTRACTOR** shall prepare and submit for approval of **BCDA** within the first fifteen (15) days of the effectivity of this Contract the PERT/CPM, Bar Chart and S-Curve that will be used and implemented during the actual Construction activities;

- 8.2.6 In compliance with RA 6685, the **CONTRACTOR** shall hire at least 50% of the unskilled and at least 30% of the skilled labor requirements from the available bonafide residents within the locality of the Project;
- 8.2.7 Secure the construction, building permit, application fees and licenses necessary for the execution and completion of the Project.
- 8.2.8 Nothing herein shall in any way be construed to limit the over-all responsibility of the **CONTRACTOR** for the performance of the obligations herein and **CONTRACTOR**'s liability for any violation of this Contract.

## ARTICLE IX BONDS AND INSURANCES

### 9.1 Performance Security

Prior to the signing of the Contract, the **CONTRACTOR** shall provide performance security in favor of **BCDA** in the manner, amount and form specified below, which shall be valid until issuance of the Certificate of Final Acceptance of the Project and which shall guarantee the faithful and complete performance by the **CONTRACTOR** of the Services as well as the other obligations of the **CONTRACTOR** under this Contract:

- 9.1.1 Thirty percent (30%) of the Contract Amount, if in the form of a surety bond callable upon demand issued by a reputable surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.
- 9.1.2 Ten percent (10%) of the Contract Amount, if in the form of a Bank draft/guarantee or irrevocable letter of credit issued by a universal or commercial bank: Provided that, it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.
- 9.1.3 The following provisions shall be deemed incorporated as a condition of the Performance Security in favor of **BCDA**: **"The right to institute action on the penal bond pursuant to Act No. 3688 of any individual, firm, partnership, corporation and association supplying the CONTRACTOR with labor and materials for the prosecution of the Works is hereby acknowledged and confirmed."**
- 9.1.4 **BCDA** may release the performance security and return it to the **CONTRACTOR** after the issuance of the Certificate of Final Acceptance subject to the following conditions:
1. **BCDA** filed no claims against the **CONTRACTOR**; and
  2. The **CONTRACTOR** has no pending claims for labor and materials filed against it.

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9.1.5 The Performance Security posted in favor of **BCDA** shall be forfeited in the event it is established that the **CONTRACTOR** is in default in any of its obligations. The forfeiture of the performance security is in addition to other remedies that **BCDA** may have against the **CONTRACTOR**, as may be provided by law and this Contract.

9.2 **All-Risk Insurance** – Prior to the signing of the Contract, the **CONTRACTOR** shall, at its own cost and expense, secure an All-Risk Insurance from any reputable insurance company duly licensed by the Insurance Commission to insure the Project (including permanent and temporary Works, and equipment and materials delivered at site) against all risks and third-party liabilities from whatever causes other than an event constituting Force Majeure, in an amount equal to the Contract Price. The **CONTRACTOR** shall submit to **BCDA** the insurance policy and the receipts for current premium payments. The insurance policy shall include minimum third-party liability as follows:

- |     |                                     |   |
|-----|-------------------------------------|---|
| (a) | Bodily Injury Per Person-           | Twenty-five Thousand Pesos<br>(₱25,000.00)  |
|     | Per Occurrence-                     | One Hundred Thousand Pesos<br>(₱100,000.00) |
| (b) | Property Damage<br>Per Occurrence   | One Hundred Thousand Pesos<br>(₱100,000.00) |
| (c) | Aggregate limit<br>for (a) and (b)- | One Million Pesos<br>(₱1,000,000.00)        |

9.3 **Personal Accident Insurance** – Prior to the signing of the Contract, the **CONTRACTOR** shall, at its own cost and expense, secure a Personal Accident Insurance from a company acceptable to **BCDA** with a single limit of Ten Thousand Pesos (₱10,000.00) per worker, to answer for accidental injuries to or death of any worker or employee of the **CONTRACTOR** assigned to the Project, or the worker or employee of the **CONTRACTOR**'s sub-contractor. The Personal Accident Insurance shall be in force and effect during the Construction Period or any valid extension thereof. In this connection, the **CONTRACTOR** shall render **BCDA** free and harmless from any and all claims for damages, costs or compensation to be due by reason of any accidental injury to, or death of any worker or employee of the **CONTRACTOR** and its sub-contractor.

9.4 **Warranty Bond** – The **CONTRACTOR** shall, prior to issuance of the Certificate of Final Acceptance, obtain at its own cost a Warranty Bond, callable on demand, with any of the following schedule:



9.4.1 Thirty percent (30%) of the Total Contract Price, if in the form of a surety bond callable upon demand issued by the Government Service Insurance System (GSIS) or a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.

9.4.2 Ten percent (10%) of the Total Contract Price, if in the form of a bank guarantee confirmed by a universal or commercial bank.

Such bond shall be in force and effect during the applicable warranty period provided in Section 62.2.3 of the IRR of RA 9184 starting from the issuance of the Certificate of Final Acceptance by **BCDA**. The warranty bond shall remain effective for one (1) year from the date of issuance of the Certificate of Final Acceptance by the **BCDA**, and returned only after the lapse of the said one (1) year period.

9.5 **Advance Payment Security** – The **CONTRACTOR** shall, prior to the release of the advance payment specified in Section 7.1, submit, at its own cost and expense, an Advance Payment Security in the form acceptable to **BCDA**, such as an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee, or a surety bond callable upon demand issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by **BCDA** to guarantee the repayment to **BCDA** of the unliquidated portion of the advance payment. This bond shall be in force and effect until the advance payment shall be fully liquidated by the **CONTRACTOR**.

9.6 **Renewal of Bonds and Securities** – The **CONTRACTOR** shall also cause the renewal of any of the bonds and securities herein required whenever such renewal shall be necessary and applicable as determined by **BCDA**.

## ARTICLE X COMPLIANCE WITH LAWS

10.1 There is no employer-employee relationship between **BCDA** and the **CONTRACTOR**, its employees, agents and assigns. The **CONTRACTOR** alone is responsible for any death or injury caused to its own employees, agents or assigns in the performance of the Works herein stipulated, or any liability arising from employer-employee relationship with its own employees. The **CONTRACTOR** shall strictly comply and observe all laws regarding workmen's health, welfare, compensation, minimum wages, incentive leaves, overtime pay, 13<sup>th</sup> month pay, night differentials, if applicable, hours of labor and other pertinent labor laws. Any violation thereof shall be the sole responsibility of the **CONTRACTOR**. Relative thereto, the **CONTRACTOR** shall submit a Certification, executed by its duly authorized representative, accompanying every remaining billing that it has strictly complied and observed all laws regarding workmen's health, welfare, compensation, minimum wages, incentive leaves, overtime pay, 13<sup>th</sup> month pay, night differentials, hours of labor, and other pertinent labor laws. The **CONTRACTOR** at all times be personally

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and directly liable and shall hold **BCDA** free and harmless from any and all claims or liabilities arising from the acts or conduct of the **CONTRACTOR's** employees and workers.

- 10.2 In addition to the above, the **CONTRACTOR**, in carrying out its duties under this Contract, must comply with all applicable laws, including without limitation, all laws relating to the protection of the environment. **BCDA** shall have no responsibility for any costs of environmental compliance or remediation, to the extent caused by the negligent acts, omissions, or intentional or willful misconduct of the **CONTRACTOR** or any of its employees or agents, including without limitation, all its subcontractors.

#### **ARTICLE XI ACCESS OF PROJECT SITE FOR INSPECTION**

- 11.1 Inspection of the Works at the Project site shall at all times be afforded by the **CONTRACTOR** to **BCDA** or its authorized agents or representatives. If, as a result of an inspection, **BCDA** decides that any portion of the Works is non-conforming or otherwise not in accordance with this Contract, **BCDA** shall promptly notify the **CONTRACTOR** thereof. Such notice shall state **BCDA's** objections and its reasons therefore in reasonable detail. The **CONTRACTOR** shall ensure that any such portion of the Works complies with this Contract at no additional cost to **BCDA**.

#### **ARTICLE XII SUBCONTRACTING**

- 12.1 The **CONTRACTOR** shall not assign, transfer, pledge, subcontract or make other disposition of this Contract or any part thereof or interest therein except with the prior written consent of **BCDA** and provided that the amount to be subcontracted shall not exceed fifty percent (50%) of the Consideration in this contract. Such consent, if given, shall not relieve the **CONTRACTOR** from any liability or obligation under this Contract nor shall it create any contractual relation between the sub-contractor and **BCDA**.
- 12.2 The **CONTRACTOR** shall provide written notice to **BCDA** of all its proposed subcontractors for the Project. **BCDA** shall have the right to present to the **CONTRACTOR** any objections or concerns it has regarding such proposed subcontractors, which objections and concerns shall be duly considered by the **CONTRACTOR**.

#### **ARTICLE XIII WARRANTY PERIOD**

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- 13.1 The **CONTRACTOR** guarantees its Works against all structural defects and defects in workmanship and quality of materials supplied by the **CONTRACTOR** during the applicable warranty period provided in Section 62.2 of the Revised IRR of RA 9184. All defects made known to the **CONTRACTOR** shall be immediately repaired or replaced by the **CONTRACTOR** within fifteen (15) calendar days from receipt of notice of such defects. In the event that the **CONTRACTOR** shall fail to commence repair or replacement of the Works within fifteen (15) calendar days after being informed of such defects, **BCDA** shall, at its option, undertake the remedial or corrective work, or have the same undertaken by other contractors at the cost and expense of the **CONTRACTOR**, without prejudice to the filing of appropriate civil and/or criminal charges against it as well as the forfeiture of the Warranty Bond posted in favor of **BCDA**.

#### **ARTICLE XIV DISPUTE RESOLUTION**

- 14.1 Any disagreement arising from this Contract shall be discussed and settled amicably in good faith by the designated representatives of the Parties of equivalent ranks who shall serve as the Adjudication Committee. The number of representatives shall be four (4) – two (2) from **BCDA** and two (2) from the **CONTRACTOR**.

In the event that no agreement is reached by the Adjudication Committee within thirty (30) calendar days from the commencement of the claim or dispute, any and all disputes arising from the implementation of a contract covered shall be submitted to arbitration before the Philippine Dispute Resolution Center, Inc. (PDRI), according to the provisions of RA 876, otherwise known as “Arbitration Law” and RA 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.

- a. The number of arbitrators shall be three – one to be appointed by **BCDA** and another by the **CONTRACTOR**. The third one shall be appointed by the two arbitrators appointed by the Parties.
- b. The seat of arbitration shall be in the Philippines and the place shall be Metro Manila.
- c. The language to be used in the arbitral proceedings shall be English.

Should it be inevitable for the Parties to avail the remedies in the court of law, all legal actions relating to, arising from, or in connection with, this Contract shall be filed exclusively with the appropriate court in Taguig City to the exclusion of other courts of equal jurisdiction.



**ARTICLE XV  
QUALITY CONTROL**

**15.1 CONTRACTOR's Quality Control System**

15.1.1 The **CONTRACTOR** shall, at its own cost, set up a quality control system at the Project site for the purpose of ensuring the following:

- (a) Materials and/or equipment to be purchased shall be in accordance with the Contract Documents;
- (b) Materials and/or equipment are properly tested at accredited laboratories; and
- (c) Workmanship conforms to specifications.

15.1.2 The **CONTRACTOR** shall set up a separate crew independent of operations with sufficient manpower and with the following responsibilities:

- (a) **Submittals** – List down in advance all the submittals required; secure the submittals and forward them to the Project Manager who will review and submit them for **BCDA** approval; and monitor the status of these submittals. Cost of samples and other submittals shall be for the **CONTRACTOR's** account. Samples shall be returned to the **CONTRACTOR**.
- (b) **Inspection** – Coordinate with Project Manager; conduct actual inspection Works; require the construction group to submit construction methodology prior to implementation; see to it that approved methodology is properly implemented; and check that no materials and/or equipment are installed in the Project unless previously approved by **BCDA**.
- (c) **Testing** – List down in advance all the tests required for materials and equipment; conduct actual testing to be witnessed by the Project Manager; and report all test results to the Project Manager for appropriate action. The costs to be incurred for the conduct of the tests shall be borne by the **CONTRACTOR**.

**15.2 CONTRACTOR's Quality Control Plan**

The **CONTRACTOR** shall submit to **BCDA** within the first fifteen (15) calendar days of the effectivity of this Contract a Quality Control Plan, which shall include the personnel, procedures and forms to be used.

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**ARTICLE XVI**  
**SAFETY and HEALTH, SANITATION AND SECURITY**

**16.1 CONTRACTOR's Responsibilities**

It shall be the responsibility of the **CONTRACTOR** to take all necessary and adequate precautions in order to prevent and avoid risk of bodily harm to persons or damage to any property including properties of third parties who may be affected by the construction activities of the **CONTRACTOR**. The **CONTRACTOR** shall render **BCDA** free and harmless from any and all damages or claims for compensation payable under the law in respect or as a consequence of any accident or injury to any employee of the **CONTRACTOR** or third persons, or of any damage to properties of **BCDA** and third persons, and shall fully satisfy all claims, demands, proceedings, costs, charges, and expenses whatsoever in respect thereof, or in relation thereto, whether or not covered by the appropriate insurance policies.

**16.2 Construction Safety and Health, Sanitation and Security Program**

Prior to the signing of the Contract, the **CONTRACTOR** shall submit to **BCDA** a Construction Safety and Health, Sanitation and Security Program which shall include Rules and Measures to be Taken, Facilities and Tools to be Installed; and Organization and Procedure.

**ARTICLE XVII**  
**TRAFFIC CONTROL**

- 17.1 The **CONTRACTOR** must develop a comprehensive traffic control plan for the Project ("Traffic Control Plan") to ensure the prompt and safe access of the Project Site for deliveries of materials and equipment needed for the Project while minimizing disruption to the surrounding area.

**ARTICLE XVIII**  
**NON-WAIVER**

- 18.1 No failure or delay on the part of either Party to exercise any right, power or privilege hereunder shall operate as a waiver thereof, neither shall any single or partial exercise of any right, power or privilege hereunder preclude any other, or further exercise thereof, or the exercise of any other right, power or privilege.



**ARTICLE XIX  
LIABILITY OF CONTRACTOR**

19.1 The **CONTRACTOR** confirms that the liability of all the members of the Consortium in case of any breach of the **CONTRACTOR**'s obligations, covenants, or warranties under this Contract shall be joint and several. Thus, **BCDA** may claim for the entire amount of the **CONTRACTOR**'s obligation or recover damages therefrom from any of the members of the Consortium regardless of their individual share of liability based on the Consortium Agreement.

**ARTICLE XX  
EFFECTIVITY**

20.1 This Contract shall run and be effective as indicated in the **Notice to Proceed** to be issued by **BCDA** upon the execution of this Contract, up to and until the issuance by **BCDA** of a Certificate of Final Acceptance, unless sooner terminated by **BCDA** upon the occurrence of any of the grounds for termination specified under Article XXII hereof. The representations and warranties of the **CONTRACTOR** shall survive the termination or expiration of this Contract.

**ARTICLE XXI  
SUSPENSION, REDUCTION, STOPPAGE OF WORKS**

21.1 If at any time during the term of this Contract **BCDA** considers it impractical to commence or continue the performance by the **CONTRACTOR** of the Works or any portion thereof due to force majeure or fortuitous events, or for any valid cause, **BCDA** may order the **CONTRACTOR** in writing to temporarily reduce, or suspend or stop the work in its entirety or any part thereof. The **CONTRACTOR** shall have no claim for damages against **BCDA** by reason of such suspension or stoppage of work; provided that, the **CONTRACTOR** shall be entitled to receive from **BCDA** payment corresponding to the work accomplished in accordance with this Contract as certified by **BCDA** as of the date the order of suspension or stoppage takes effect. Such payment shall be considered as full satisfaction of all claims of the **CONTRACTOR** against **BCDA** subject to the provision of Section 22.4 in case of permanent stoppage of work and/or termination of contract. **BCDA** shall serve the aforesaid order at least three (3) calendar days prior to the intended date of suspension or stoppage.

21.2 This will not prejudice the application of paragraph 9, Annex "E", Implementing Rules and Regulations of RA No. 9184.

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**ARTICLE XXII**  
**RESCISSION, CANCELLATION, TERMINATION OF CONTRACT**

22.1 **BCDA** shall be entitled to rescind, cancel and terminate this Contract after giving a written notice to the **CONTRACTOR** upon the occurrence of any, some or all of the following events:

- (a) The **CONTRACTOR** shall have incurred a negative slippage of **at least** fifteen (15) percent if the negative slippage is due to the **CONTRACTOR's** fault and while the project is on-going and at least ten percent (10%) if the negative slippage is due to **CONTRACTOR's** fault and after the contract time has expired;
- (b) The **CONTRACTOR** shall have refused to comply with the order of **BCDA** concerning the proper execution of the Works, or shall have committed a breach of any of the stipulations, clauses, terms and conditions specified in this Contract Documents as determined by **BCDA**;
- (c) The **CONTRACTOR** abandons the Project, or fails to deliver to the Project site equipment, materials or personnel required for the performance of the Works;
- (d) The **CONTRACTOR** fails to pay for its labor and materials;
- (e) The **CONTRACTOR** is adjudged bankrupt or insolvent or makes a general assignment of its assets for the benefits of its creditors, or is placed under receivership or liquidation;
- (f) **BCDA** considers the continued performance of the Works by the **CONTRACTOR** prejudicial to the interest of **BCDA**;
- (g) The **CONTRACTOR** has assigned, transferred, pledged, subcontracted any portion of the Contract or Stipulated Works without the prior written consent or approval of **BCDA**;
- (h) Any material representation made by the **CONTRACTOR** shall have been false or misleading in any material respect when made; or
- (i) The **CONTRACT** has committed a breach of any of its obligations or has failed to comply with any of its commitments or warranties under this Contract.

22.2 The decision to rescind, cancel and terminate this Contract for any, some or all of the above events shall be at the sole discretion of **BCDA**, and the written notice to the **CONTRACTOR** shall be the sole necessary and sufficient condition for such termination.

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- 22.3 Upon the termination of this Contract upon the happening of any, some or all of the conditions specified in Section 22.1, BCDA may, at its option, take over the performance of the Works, upon written notice to the **CONTRACTOR**, and take possession of all materials, tools, equipment and supplies remaining on the Project site for the purpose of completing the Project, or it may enter into a negotiated procurement with another contractor to finish or rectify the Works pursuant to the provisions of RA 9184 and its Revised IRR. The **CONTRACTOR** shall be liable for any additional cost and expenses incurred by **BCDA** as a result of said takeover.
- 22.4 Should **BCDA** terminate this Contract for reasons not attributable to the **CONTRACTOR**, **BCDA** shall pay to the **CONTRACTOR** a sum that bears the same ratio as the cost of the Works at the time of the termination, which shall include reasonable estimated costs of any work satisfactorily completed as determined by **BCDA**. In addition, **BCDA** shall pay the **CONTRACTOR** fair compensation for any equipment of the **CONTRACTOR** retained by **BCDA** either by purchase or lease, at the option of **BCDA**. It is understood that the **CONTRACTOR** shall exercise due diligence to protect the property and interest of **BCDA**.

#### **ARTICLE XXIII GENERAL PROVISIONS**

- 23.1 **Separability** – If any stipulation, clause, term or condition of this Contract is held invalid or contrary to law, the validity of the other stipulations, clauses, terms and conditions hereof shall not be affected thereby.
- 23.2 **Modification** – The Parties hereby agree to amend or modify any provision of this Contract, which might be declared invalid or contrary to law, to conform to the subject and objective thereof.

#### **ARTICLE XXIV MISCELLANEOUS PROVISIONS**

- 24.1 The Parties represent that they have the requisite power, authority, and capacity to enter into this Contract and to perform their obligations and undertakings according to the terms and conditions hereof.
- 24.2 Nothing in this Contract shall be construed as establishing the relationship of an employer and an employee between the **CONTRACTOR** and **BCDA** or any of their respective staff. The **CONTRACTOR** shall at all times be personally and directly liable and shall hold

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**BCDA** free and harmless from any and all claims or liabilities arising from the acts or conduct of its employees.

- 24.3 This Agreement is subject to compliance with the provisions of RA 9184 and its revised implementing rules and regulations. Also, other pertinent laws, rules and regulations are deemed to have been included and made part of this Agreement.
- 24.4 This Contract has been reviewed and approved by the Office of the Government Corporate Counsel (OGCC), as specified in Contract Review No. No. 425, Series of 2017. This Contract shall be binding and inure to the benefits of the Parties, their heirs, successors, and assigns.
- 24.5 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:

Notice to **BCDA**

**Bases Conversion and Development Authority**

BCDA Corporate Center  
2/F Bonifacio Technology Center  
31<sup>st</sup> Street, corner 2<sup>nd</sup> Avenue,  
Bonifacio Global City, Taguig City, Philippines

Attention:

**VIVENCIO B. DIZON**

President & Chief Executive Officer

Notice to **CONTRACTOR**

**VICENTE T. LAO CONSTRUCTION/CHINA HARBOUR  
ENGINEERING COMPANY LIMITED (Consortium)**

Unit 18 V, Legaspi Tower 300, Roxas Boulevard corner  
Vito Cruz, Malate  
Manila, Philippines,

Attention:

**VICENTE T. LAO**

Authorized Managing Officer







Attention:

**VICENTE T. LAO**  
Authorized Managing Officer

- 24.6 A Party may change its address for notice hereunder by giving the other Party notice in writing.
- 24.7 No amendment, modification and alteration to this Contract shall be valid or binding on either Party unless stipulated in writing and executed with the same formality as this Contract.

**SIGNED BY THE PARTIES** on \_\_\_\_\_ in Taguig City, Philippines.

**BASES CONVERSION AND  
DEVELOPMENT AUTHORITY**

By:

  
**VIVENCIO B. DIZON**  
President & Chief Executive Officer




**VICENTE T. LAO CONSTRUCTION/  
CHINA HARBOUR ENGINEERING  
COMPANY (Consortium)**

By:

  
**VICENTE T. LAO**  
Authorized Representative

**CHINA HARBOUR ENGINEERING  
COMPANY**

By:

  
**MA JIANHUA**  
Authorized Representative in the Philippines

Signed in the Presence of:

  
\_\_\_\_\_

  
\_\_\_\_\_



**ACKNOWLEDGMENT**

Republic of the Philippines)  
Taguig City ) S.S.


BEFORE ME, a Notary Public, personally appeared the following:

NAME	IDENTIFICATION DOCUMENT	DATE AND PLACE OF ISSUE
VIVENCIO B.DIZON	Passport J0011573A	21 Aug 17 / DFA, Manila
VICENTE T. LAO	Passport EC8413255	27 Jul 16 / DFA, Manila
MA JIANHUA	Passport PE0641183	08 Jul 15 /

known to me to be the same persons who executed the foregoing instrument and they acknowledged to me that the signatures they affixed confirm their own free acts and the entities they represent.

SIGNED AND SEALED on JUN 13 2018 in Taguig City, Philippines.

Doc. No. 207  
Book No. 43  
Page No. 11  
Series of 2018.

  
**GUALBERTO J. OYZON, JR.**  
Notary Public for Taguig City, Philippines  
Appointment No. 22, Until 31 December 2019  
2/F BTC 27<sup>th</sup> St., BGC, Taguig City, 1635  
PIR No. A-3774071, Taguig City/16 January 2018  
Roll of Attorneys No. 48062/187 Lifetime Member No. 04862  
MCLE Compliance No. V-6305317/14 January 2015













