

**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 SEPTEMBER 10, 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 -

**TCGI Engineers**, 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 9<sup>th</sup> Floor, Feliza Bldg., 108 V.A. Rufino Street, Legazpi Village 1229 Makati City, represented herein by its President and COO, **VIRGILIO A. MADRAZO**, who is duly authorized for this purpose, as evidenced by the Secretary's Certificate dated SEPTEMBER 11, 2018, 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;

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**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 June 19, 2018, 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. BC-2018-027, the BCDA President and CEO, during its meeting on August 03, 2018, approved the award of the Contract to the **CONSTRUCTION MANAGER** for the Construction Management and Supervision of the Project, in the amount of **Pesos: Ninety-Three Million Three Hundred Sixty-Nine Thousand One Hundred Fifty-Eight and 40/100 (P93,369,158.40)**, 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.

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- 1.2 **Construction Manager** refers to TCGI Engineers, 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: **Ninety-Three Million Three Hundred Sixty-Nine Thousand One Hundred Fifty-Eight and 40/100 (P93,369,158.40)**, 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**

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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,

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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

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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

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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

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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

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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**;

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**BCDA RESCUE MANAGEMENT**

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

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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

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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**

**CERTIFIED TRUE COPY**  
**ARISTOTEL GUERRERO**  
**BCDA RECORDS MANAGEMENT**

- 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

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*duff* *[Signature]* *[Signature]*

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

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*Handwritten signatures and initials: "Call", "L", and "A"*



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**:

9<sup>th</sup> Floor Feliza Bldg., 108 V.A.  
Rufino Street, Legazpi Village  
1229 Makati City

Attention:

**VIRGILIO A. MADRAZO**  
President and COO

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 3RD day of OCTOBER, 2018 at Taguig City, Metro Manila, Philippines.

**BASES CONVERSION AND  
DEVELOPMENT AUTHORITY**

**TCGI Engineers**

By:

By:

  
**VIVENCIO B. DIZON**  
President and CEO  
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**VIRGILIO A. MADRAZO**  
President and COO

SIGNED IN THE PRESENCE OF:

\_\_\_\_\_

  
\_\_\_\_\_

**BCDA**  
Bases Conversion and  
Development Authority

Project Management Department

  
DE2018-0583

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)  
Taguig City ) S.S.

BEFORE ME, a Notary Public, for and in the City of Taguig City, this day of OCT 11 2018, 2018, personally appeared the following:

Name	Evidence of Identity	Date/Place Issued
VIVENCIO B. DIZON		
VIRGILIO A. MADRAZO		

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 OCT 11 2018 2018 at Taguig City, Philippines.

NOTARY PUBLIC

Doc No. 224  
Page No. 46  
Book No. 07  
Series of 2018.

ATTY. MARICEL C. CORONACION-SAN  
NOTARY PUBLIC FOR AND IN TAGUIG CITY  
NOTARIAL COMMISSION UNTIL DECEMBER 31.  
ROLL OF ATTORNEYS NO. 63834  
IBP NO. 031591 / 1-29-18 / RIZAL  
PTR NO. A-3810406 / 1-26-18 / TAGUIG CITY  
MCLE COMPLIANCE NO. V-9016874 / 16 MARCH 2016

Handwritten initials: JV, R

CERTIFIED TRUE COPY  
ARISTOTE GUERRERO  
DCA RECORDS MANAGEMENT

Handwritten signatures and initials: C, S, R

## SECRETARY'S CERTIFICATE

Republic of the Philippines)  
Taguig City ) SS.

CERTIFIED TRUE COPY

TINA ROSE R. VILLA  
RECORDS MANAGEMENT OFFICER IV  
BCDA RECORDS OFFICE  
SEP 8 2018

I, JOANNA EILEEN M. CAPONES, of legal age, being the Assistant Corporate Secretary of the Bases Conversion and Development Authority (BCDA), with office address at the 2/F Bonifacio Technology Center, 31<sup>st</sup> Street corner 2<sup>nd</sup> Avenue, Bonifacio Global City, Taguig City, do hereby certify that on the occasion of the 506<sup>th</sup> Regular BCDA Board Meeting held on 18 December 2017 with a quorum being present, the Board of Directors, upon motion duly seconded, unanimously approved the following resolution:

### Resolution No. 2017-12-197

Resolve, as it is hereby resolved, that the Approved Budget for the Contract (ABC) in the amount of Php7,476,255,000.00 be, as it is hereby APPROVED.

Package	Project Title	Project Cost
1	NCC to SCTEx Access Road (12.054 km. road, 4 bridges & 2 interchanges)	3,358,500,000.00
2	Airport to NCC Access Road (3.50 km. road, Sacobia Bridge & 2 minor)	3,900,000,000.00
A	CMS for Package 1	100,755,000.00
B	CMS for Package 2	117,000,000.00
Total		7,476,255,000.00

Resolve further, as it is hereby further resolved, that the 2018 budget of BCDA in the amount of Php16,440 million be, as it is hereby APPROVED.

Particulars	Amount
BCDA Operation	5,257
New Clark City Project	8,514
Subic-Clark-Tarlac Expressway Project	1,496
Subsidiaries	582
Clark Airport Expansion Project	279
Iconic Building Project	273
National Government Administrative Center	39
Total	16,440

Resolve further, as it is hereby further resolved, that the use of BCDA's 27.5% share pursuant to Section 8 of RA 7227, as amended, to fund the following projects (COA requirements) be, as it is hereby APPROVED."

Particulars	Amount
New Clark City Project – CAPEX	2,474
Clark Airport Expansion Project	279
John Hay Management Corporation	125
Poro Point Management Corporation	93
National Government Administrative Center	39
Total	3,010

Resolve finally, as it is hereby finally resolved, that the following recommendations be, as it is hereby APPROVED.

- a) Inclusion of the projects in the 2018 Annual Procurement Plan (APP);
- b) Authority to proceed with the bidding of the projects; and
- c) Authority of BCDA President and Chief Executive Officer to approve the bidding including contracts and all other documents related to the implementation of the projects.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 10<sup>th</sup> day of September 2018.


  
**JOANNA EILEEN M. CAPONES**  
Assistant Corporate Secretary

SUBSCRIBED AND SWORN to before me this SEP 18 2018 at Taguig City, Philippines, by Atty. JOANNA EILEEN M. CAPONES who exhibited to me her LTO Driver's License NO. D16-03-278382 issued at the City of Pasig on 03 March 2018 and valid until 03 March 2023.


Doc. No. 213  
Page No. 44  
Book No. 87  
Series of 2018.

*Purpose: As an attachment to the contract.*

SC2018-150  
YB2018-0477

  
**ATTY. MARICEL C. CORONACION-SANTOS**  
NOTARY PUBLIC FOR AND IN TAGUIG CITY  
NOTARIAL COMMISSION UNTIL DECEMBER 31, 2019  
ROLL OF ATTORNEYS NO. 63834  
IBP NO. 831591 / 1-29-18 / RIZAL  
PTR NO. A-3810406 / 1-26-18 / TAGUIG CITY  
MCLE COMPLIANCE NO. V-0016874 / 16 MARCH 2018

**CERTIFIED TRUE COPY**

  
**TINA ROSE R. VILLA**  
RECORDS MANAGEMENT OFFICER IV  
BCDA RECORDS OFFICE  
SEP 18 2018

SECRETARY'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

I, **MARITESS C. SY**, of legal age, Filipino citizen and with office address at the 4<sup>th</sup> Floor, The Valero Tower, 122 Valero Street, Salcedo Village, Makati City, Metro Manila, being the duly elected and qualified Assistant Corporate Secretary of **TCGI Inc.**, a corporation duly organized and existing under the laws of the Philippines, with principal office at the 9<sup>th</sup> Floor, Feliza Building, 108 V.A. Rufino Street, Legaspi Village, Makati City, Metro Manila, do hereby certify that at the Special Meeting of the Board of Directors of the Corporation held on September 10, 2018 the following resolutions were approved:

"RESOLVED, that the Board of Directors of **TCGI, INC.** (the 'Corporation') authorize and empower, as it hereby authorizes and empowers, the Corporation to participate in the bidding for the Consulting Services for the Construction Management and Supervision of the New Clark City (NCC) to Subic-Clark-Tarlac Expressway (SCTEX) Access Road Project by Bases Conversion and Development Authority ("BCDA");

RESOLVED FURTHER, that the President and Chief Operating Officer, **Mr. Virgilio A. Madrazo** and/or the Vice President, **Mr. Efren A. Sanchez**, be designated as they are hereby designated, to execute and perform any and all acts necessary to sign and execute the ensuing contract, for and on behalf of the Corporation, as well as any and all other documents necessary or essential to implement the foregoing resolution."


IN WITNESS WHEREOF, this Certificate has been signed this \_\_\_ day of SEP 11 2018 at Makati City, Metro Manila.

  
**MARITESS C. SY**  
Assistant Corporate Secretary

SUBSCRIBED AND SWORN to before me, a Notary Public for and in the City of Makati, Philippines, this SEP 11 2018, affiant who is personally known to me and whose identity I have confirmed through her Passport No. EC3387774 issued at DFA Manila on April 8, 2015 bearing the affiant's photograph and signature, and who showed to me her Community Tax Certificate No. 24583479 issued on February 5, 2018 in Makati City.

Doc. No. 90;  
Page No. 19;  
Book No. VIII;  
Series of 2018.



  
**MA. FELORA A. MANGAWANG**  
Appointment No. M-438  
Notary Public for Makati City  
Until December 31, 2018  
Castillo Laman Tan Pantaleon  
& San Jose Law Firm  
The Valero Tower, 122 Valero Street  
Salcedo Village, Makati City  
PTR No. 6616060;01-04-2018;Makati City  
BP Lifetime No. 013749;04-15-2015;Makati Chapter  
Roll No. 64804

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**ARISTOTLE GUERRERO**  
BCDA RECORDS MANAGEMENT

**TERMS OF REFERENCE**  
**CONSULTANCY SERVICES FOR THE CONSTRUCTION MANAGEMENT &**  
**SUPERVISION OF THE NEW CLARK CITY – SCTEX ACCESS ROAD**

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**1. GENERAL BACKGROUND**

The Bases Conversion and Development Authority (BCDA) is mandated under Republic Act No. 7227, as amended by Republic Act 7917, to accelerate the sound and balanced conversion into alternative productive 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 uses of these properties.

In 1993, the Clark Special Economic Zone (CSEZ) was established by virtue of Proclamation No. 163 signed by former President Fidel V. Ramos 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.

On 29 May 2014, the National Economic and Development Authority (NEDA) Board chaired by President Benigno Aquino III approved the Master Plan for the development of 9,450 hectares of idle land within the Clark Special Economic Zone (CSEZ) - the New Clark City also known as NCC (formerly "Clark Green City"- CGC Project ). Subsequently, the House of Representatives passed Resolution No. 116 on 28 July 2014 expressing support to the NCC Project.

New Clark City Project is 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.

The Philippines will be hosting the South East Asian (SEA) Games in 2019 where New Clark City (NCC) was chosen as one of the major venues for the said games. In line with the preparation for the hosting of the 2019 SEA Games, various infrastructure projects are needed to be undertaken by BCDA, including the construction of one of the two major access roads - NCC to Subic-Clark-Tarlac Expressway (SCTEX).

The NCC – SCTEX access road is prescribed in the Comprehensive Master Development Plan (CMDP) of NCC. To encourage prospective locators to start investing in NCC, BCDA must implement immediately the construction of the primary access roads leading to and from NCC.

The NCC to SCTEX Access Road is 12 kilometers long, with two (2) interchanges and an 8-lane road with three (3) bridges, bike lanes, pedestrian lanes, roadway lighting and linear parks along MacArthur Highway that terminates into a Full Cloverleaf Interchange and continues up to the SCTEX via Trumpet Interchange.

**2. DESCRIPTION OF CONSULTING SERVICES**

The Consulting Services required under this Terms of Reference shall be for the Construction Management and Supervision of the New Clark City – Subic Clark Tarlac Access Road, hereinafter referred to as the "PROJECT". Construction works include earthworks, preparation of sub-base and base courses, application of surface courses, interchanges, bridges and toll plaza construction,

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**ARISTOTELE GUERRERO**  
**BCDA RECORDS MANAGEMENT**  
**OCT 11 1 2018**

drainage and slope protection works, streetlights, and landscape works and other ancillary miscellaneous works.

The Consulting Services required under this Terms of Reference (TOR) shall be the Project Implementation and Management Services for the Construction Supervision of the mentioned work items.

### 3. OBJECTIVES

The tasks to be rendered by the Consultants shall include the following Services:

- a. Project Management Support,
- b. Construction Supervision,
- c. Assistance to BCDA on the coordination with Local Government Units (LGUs) concerned; and
- d. Enforce the Environmental Management and Monitoring of the Environmental Compliance Certificate (ECC) requirements.

BCDA shall require the Consultant to render other technical support Services which are deemed relevant to the Project.

### 4. SCOPE OF SERVICES

The Consultant shall fulfill its obligations using its technical expertise in construction management and supervision according to the best accepted professional and industry standards. It shall exercise all reasonable skill, care, diligence and prudence in discharging its duties and shall always work in the best interest of BCDA. It shall deploy to the Project its technical personnel with sufficient qualification and experience to ensure the full and satisfactory accomplishment of the required Services.

The Consultant shall undertake construction management and supervision of the Project according to what are required in this TOR. Instructions and directions may be made by BCDA from time to time during the duration of its Service to ensure proper and efficient implementation of the Project. It shall conduct regular consultation and coordination with BCDA in relation to its obligations and responsibilities to the Project.

#### Construction Phase

- 1.1 Maintain all documents of the Project from pre-construction up to its completion and final acceptance;
- 1.2 Manage and control the day to day activities of the Project;
- 1.3 Ensure that appropriate safety measures are strictly complied with at the construction site and its surrounding limits;
- 1.4 Deploy and maintain a fulltime supervisory and inspection staff to perform overall supervision and inspection of the Project;
- 1.5 Present charts showing on-site personnel and organizational channels. Changes shall be made only upon prior written approval from BCDA;
- 1.6 Monitor works in progress to ensure that the Project complies with approved drawings, specifications, schedule and budget;
- 1.7 Ensure that all works are accomplished according to approved plans and specifications;
- 1.8 Witness all the required testing and calibrations;
- 1.9 Ensure effective deployment of labor and equipment;

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ARISTOLE GUYONG  
ESDA PROJECT MANAGEMENT

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- 1.10 Ensure timely delivery of material requirements;
- 1.11 Establish procedures for the proper coordination and consultation among the Contractor, Designer, BCDA and the CMS Consultant;
- 1.12 Review cost estimates regularly as the Project progress and update the estimates as required;
- 1.13 Establish procedures to facilitate the effective approval of shop drawings, progress billings, change orders, time extensions and other claims on the Project;
- 1.14 Prepare alternative measures when labor and equipment are inadequate for the work on schedule;
- 1.15 Ensure that the safety program developed by the contractor is appropriate to the requirements of the Project and is strictly followed;
- 1.16 Review and recommend the update of the PERT-CPM and S-Curve of the Project when conditions so require;
- 1.17 Ensure that all plans, documents and records related to the Project are properly maintained at the construction site;
- 1.18 Ensure that the Contractor maintains its own set of plans, documents and records related to the Project;
- 1.19 Conduct regular review of accomplishment of the Contractor and submit a report based from MS Project Format to BCDA. Control slippages when it occurs and prepare recommendations for catch up programs;
- 1.20 Keep accurate progress reports during all stages of construction and provide BCDA with weekly and monthly progress reports;
- 1.21 Evaluate and recommend all requests for payments submitted by the contractor;
- 1.22 Verify all quantities involved in, but not limited to, the as-staked quantities, progress billings, final quantities and related information.
- 1.23 Evaluate and recommend all requests for variation orders and time extensions;
- 1.24 Provide appropriate documents that may be required to handle claims and disputes, if any;
- 1.25 Set up appropriate procedures and ensure the safe and efficient inspection of concerned government agencies, parties recognized by BCDA and the BCDA Inspectorate. Prepare and make recommendations on these inspections;
- 1.26 Prepare recommendations to BCDA on matters that require immediate action;
- 1.27 Seek guidance from BCDA on certain project issues that may arise; and
- 1.28 Implement any special requirement or instruction deemed necessary by BCDA for the timely and effective implementation of the Project.

**Post Construction Phase**

- 1.29 Set up appropriate procedures for the conduct of preliminary (punchlisting) and final inspections;
- 1.30 Conduct preliminary and final inspections and ensure that construction defects are properly rectified;
- 1.31 Prepare and submit a Final Project (or Close Out) Report based from MS Project Format at the satisfaction of BCDA;
- 1.32 Certify that construction works are completed according to plans and specifications and recommend to BCDA that the Project can then be issued a certificate of completion; and
- 1.33 Ensure that all documents, plans and records required by the Project from the contractor are complied with, including manuals and brochures of equipment that may be installed.

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ANILTON GUERRERO  
BCDA RECORDS MANAGEMENT

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## 5. OTHER RESPONSIBILITIES

Notwithstanding the obligation of the Contractor to secure permits, licenses and other documents needed to implement the Project, the Consultant shall ensure that all requirements of the Commission on Audit, other concerned government agencies are properly and promptly complied with for the efficient implementation, completion and turn-over of the Project.

## 6. DELIVERABLES

The Consultant shall be required to prepare and submit, but not limited to, the following documents:

- 6.1 Original copies of clearances, permits and licenses required to implement the Project;
- 6.2 Approved safety program;
- 6.3 Minutes of all progress meetings and consultations;
- 6.4 Field reports on all site inspections/investigations;
- 6.5 Original copies of materials test results and calibrations of equipment;
- 6.6 Updates in manpower and equipment deployment;
- 6.7 Schedule of delivery of materials;
- 6.8 Weather charts;
- 6.9 Weekly and monthly progress reports and the final (close-out) report;
- 6.10 Incident reports when required;
- 6.11 Endorsements on all claims, such as billings, change orders, time extensions and similar requests;
- 6.12 Updates on S-Curves and PERT-CPMs that may be brought about by changes in design, cost or construction period in MS Project Format;
- 6.13 Recommendations for the most effective implementation of the Project when changes in plans, cost and schedule occur or are necessary;
- 6.14 Recommendations for corrective measures on inconsistencies, defects and inadequacies on documents related to the Project;
- 6.15 Approved shop drawings;
- 6.16 Approved as-built plans;
- 6.17 All other reports and documents that may be required by BCDA.

## 7. OBLIGATIONS OF THE CONSULTANT

7.1. **Responsibilities of the Consultant.** Generally but without limiting the Consultant's responsibilities elsewhere stated under this TOR which shall form part of the Contract, the Consultant shall:

7.1.1. Accept full responsibility for the Consulting Services to be performed under this TOR. **CERTIFIED TRUE COPY**

7.1.2. Perform the work in an efficient and diligent manner.

**ARISTOTLE GUMARRIGAO**  
ESRA RECORDS MANAGEMENT

OCT 11 2018

7.2. **Records.** The Consultant shall keep accurate and systematic records and accounts with respect to the Consulting Services in such form and with such details as is customary and sufficient to establish accurately that the costs and expenditures have been duly incurred.

7.3. **Information and Progress Reports.** In addition to the reports required in the TOR, the Consultant shall furnish BCDA monthly progress reports and any such information relative to the Consulting Services as BCDA may from time to time reasonably request and as the Commission on Audit (COA) may require on post audit.

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- 7.4. **Assignment and/or Sub-Contract.** Except with prior written approval of BCDA, the Consultant shall neither assign nor sub-contract any part of the professional Consulting Services to any other person or firm.
- 7.5. **Prohibition on Professional Engagement.** No full-time Staff of the Consultant during his assignment under the Contract shall, without the written consent of BCDA, engage directly or indirectly, either in his name or through the Consultant, in any activity in the Philippines which will conflict with the performance of his duties or assignment under the Contract.
- 7.6. **Confidentiality.** Except with the prior written consent of BCDA, the Consultant or its Principals and Staff shall not at any time communicate to any person or entity any information disclosed thereto for the purpose of the Consulting Services, nor shall the Consultant or its Principals and Staff make public any information as to the recommendations formulated in the course of or as a result of the Consulting Services.
- 7.7. **Independent Contractor.** Nothing contained herein shall be construed as establishing or creating between BCDA and the Consultant the relationship of employer and employee or principal and agent, it being understood that the position of the Consultant and anyone else performing the Consulting Services is that of an independent contractor.

#### 8. OBLIGATIONS OF BCDA

- 8.1. **Project Data.** BCDA shall make available to the Consultant for reference all existing documents pertaining to the Project. Whenever practicable, BCDA shall provide assistance to the Consultant in securing data from concerned government agencies/offices. BCDA shall furnish the Consultant all available construction and survey plans and such other instructions or documents that may be needed for the effective performance of its duties.
- 8.2. **Availability of Funds.** Funds required for the engagement of the Consulting Services of the Consultant in the amount of Pesos: **One Hundred Million Five Hundred Fifty-Five Thousand and 00/100 Pesos (Php100,555,000.00)** inclusive of all applicable taxes and fees, is made available by BCDA through the issuance of Certificate of Funds Availability (CFA) for that purpose.
- 8.3. **Evaluation of Consultant's Outputs.** BCDA shall review and evaluate the documents submitted by the CONSULTANT as required herein.

#### 9. MANNING REQUIREMENT

The Consultant shall provide a team comprising qualified technical personnel, support and administrative staff (not necessarily limited to those listed below) with duties and responsibilities described in this TOR and with satisfactory experience in implementing projects of similar nature and size. The Consultant shall provide the resources to fulfil the general requirements described in this TOR.

The Consultant is required to have previous experience in supervision of road and/or bridges construction works and, as well as having the following minimum qualifications and experience amongst its team members:

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 BCDA REGIONAL MANAGEMENT  
 OCT 11 2018



**Key Staff**

Personnel/Minimum Qualifications	Responsibilities
<p><b>a. Team Leader/Project Manager</b>                      [should be a licensed Civil Engineer with at least ten (10) years of managerial experience in projects of a similar nature and magnitude]</p>	<p>The Team Leader/Project Manager shall be responsible for the following:</p> <ul style="list-style-type: none"> <li>• Overall supervision of the project team, and in the management and organization of the project;</li> <li>• Leading the team in the preparation of all project deliveries;</li> <li>• Ensuring all reporting required by BCDA is fully and punctually delivered; and</li> <li>• Any other task required to complete the Consulting Services.</li> </ul>
<p><b>b. Deputy Project Manager</b>                      [should be a licensed Civil Engineer with at least ten (10) years of managerial experience in projects of a similar nature and magnitude]</p>	<p>The Deputy Project Manager shall be responsible for the following:</p> <ul style="list-style-type: none"> <li>• Oversee the progress of works, the Contractor's performance, the quality of works and the project's financial status and forecasts;</li> <li>• In constant coordination with the Team Leader and other members of the team;</li> <li>• Supervision of the works of the Contractor in the subject site at all times and issuance of instruction(s) and timely assistance and direction to the Contractor; and</li> <li>• Any other task required to complete the Consulting Services.</li> </ul>
<p><b>c. Sr. Highway Engineer</b>                      [should be a licensed Civil Engineer with at least ten (10) years experience in projects of a similar nature and magnitude]</p>	<p>The Sr. Highway Engineer shall be responsible for the following:</p> <ul style="list-style-type: none"> <li>• Oversee the progress of all works related to highway/road;</li> <li>• Coordinates with the Sr. Bridge Engineer with regards to the design and details of the bridges; and</li> <li>• Any other task required to complete the Consulting Services.</li> </ul>

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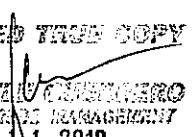
<p><b>d. Sr. Bridge Engineer</b> [should be a licensed Civil Engineer with at least ten (10) years experience in projects of a similar nature and magnitude]</p>	<p>The Sr. Bridge Engineer shall be responsible for the following:</p> <ul style="list-style-type: none"> <li>• Inspection, monitoring and construction supervision of bridge construction in compliance with the particular plans and specifications;</li> <li>• Coordinates with the Sr. Highway Engineer with regards to the design and details of the roads; and</li> <li>• Any other task required to complete the Consulting Services.</li> </ul>
<p><b>e. Sr. Materials Engineer</b> [should be a licensed Civil Engineer and DPWH accredited Materials Engineer II with at least ten (10) years experience in projects of a similar nature and magnitude]</p>	<p>The Sr. Materials Engineer shall be responsible for the following:</p> <ul style="list-style-type: none"> <li>• Ensure that all works are accomplished according to approved plans and specifications;</li> <li>• Witness all the required testing and calibrations; and</li> <li>• Any other task required to complete the Consulting Services.</li> </ul>
<p><b>f. Sr. Drainage/Hydraulic Engineer</b> [should be a licensed Civil Engineer with at least ten (10) years experience in projects of a similar nature and magnitude]</p>	<p>The Sr. Drainage/Hydraulic Engineer shall be responsible for the following:</p> <ul style="list-style-type: none"> <li>• Inspection, monitoring and construction supervision of drainage structures construction in compliance with the approve drainage plans and specifications; and</li> <li>• Any other task required to complete the Consulting Services.</li> </ul>
<p><b>g. Sr. Structural Engineer</b> [should be a licensed Civil Engineer with at least ten (10) years experience in projects of a similar nature and magnitude]</p>	<p>The Sr. Structural Engineer shall be responsible for the following:</p> <ul style="list-style-type: none"> <li>• Inspection, monitoring and construction supervision of bridges bridge construction in compliance with the approve bridge plans and specifications; and</li> <li>• Coordinates with the Sr. Bridge Engineer with regards to the design and details of the bridges; and</li> </ul>

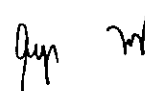


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BCDA, PROJECT MANAGEMENT

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	<ul style="list-style-type: none"> <li>Any other task required to complete the Consulting Services.</li> </ul>
<p><b>h. Sr. QA/QC Engineer</b> [should be a licensed Civil Engineer with at least ten (10) years experience in projects of similar in nature and magnitude]</p>	<p>The Sr. QA/QC Engineer shall be responsible for the following:</p> <ul style="list-style-type: none"> <li>Supervision of the works of the Contractor in the subject site at all times and issuance of instruction(s) and timely assistance and direction to the Contractor on all matters related to quality control and assurance; and</li> <li>Any other task required to complete the Consulting Services.</li> </ul>
<p><b>i. Sr. Quantity Surveyor</b> [should be a licensed Civil Engineer with at least ten (10) years experience in projects of similar in nature and magnitude]</p>	<p>The Sr. Quantity Engineer shall be responsible for the following:</p> <ul style="list-style-type: none"> <li>Supervise and manage works in progress to ensure that the Project complies with approved budget;</li> <li>Review cost estimates regularly as the Project progress and update the estimates as required;</li> <li>Verify all quantities involved in, but not limited to, the as-staked quantities, progress billings, final quantities and related information; and</li> <li>Any other task required to complete the Consulting Services.</li> </ul>
<p><b>j. Sr. Geodetic Engineer</b> [should be a licensed Geodetic Engineer with at least ten (10) years experience in projects of similar in nature and magnitude]</p> <p style="text-align: center;"> <b>CERTIFIED TRUE COPY</b>    <b>ARISTOTILO CRUZ</b>  <small>ECOA RECORDS MANAGEMENT</small>  <b>OCT 11 2018</b> </p>	<p>The Sr. Geodetic Engineer shall be responsible for the following:</p> <ul style="list-style-type: none"> <li>Supervise and manage all survey field work and data processing;</li> <li>Preparation of field reports;</li> <li>Ensuring that the survey activities are within survey standards;</li> <li>Periodic monitoring of the surveying works during construction; and</li> <li>Any other task required to complete the Consulting Services.</li> </ul>
<p><b>k. Professional Electrical Engineer</b> [should be a licensed Electrical Engineer with at least ten (10) years experience in electrical design of associated works]</p>	<p>The Professional Electrical Engineer shall be responsible for the following:</p> <ul style="list-style-type: none"> <li>Supervise and manage all the electrical engineering aspects of the project; and</li> </ul>

	<ul style="list-style-type: none"> <li>Any other task required to complete the Consulting Services.</li> </ul>
<p><b>1. Sr. Landscape Architect</b> [Should be a licensed Landscape Architect with at least ten (10) years experience in projects of similar in nature.</p>	<p>The Sr. Landscape Architect shall be responsible for the following:</p> <ul style="list-style-type: none"> <li>Supervise and manage all the outdoor design of public areas, landmarks and structures; and</li> <li>Any other task required to complete the Consulting Services.</li> </ul>

**10. PROJECT DURATION**

The duration of the Consulting Services for Construction Management and Supervision being required under this TOR is twenty one (21) months for the construction phase and three (3) month post-construction/documentation phase.

**11. APPROVED BUDGET FOR THE SERVICES**

The approved budget for the Consulting Services under this TOR is **One Hundred Million Five Hundred Fifty-Five Thousand and 00/100 Pesos (PhP100,555,000.00)**, inclusive of all applicable taxes and fees. Bids received in excess of the ABC shall be automatically rejected during the opening of the financial proposal.

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BCDA REGIONAL MANAGER  
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**12. MODE OF PAYMENT**

In consideration of the Services being required under this TOR, the Consultant shall be paid in the following manner:

Advance Payment equivalent to fifteen percent (15%) of the Contract Price upon written request from the Consultant and the submission and approval by BCDA of an irrevocable standby letter of credit of equivalent value from a commercial bank.

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 progress payments until the aforementioned advance payment shall have been fully recouped or recovered.

Progress Payment shall be made on a quarterly progress billing, which shall be proportionate to the value of actual work accomplished by the Contractor and acceptable to BCDA. The 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 Contractor and that the amount being claimed by the Consultant is based on the percentage of accomplishment of the Contractor for the period.

Final Payment shall be made upon the submission of the Final Billing together with the following documents:

- Certificate of Completion issued by BCDA to the Consultant;
- Sworn statement that all liabilities incurred by the Consultant have been paid and that there are no outstanding liens, garnishments, attachments or claims relative to the Project;
- Release and Quitclaim by the Consultant, in a form acceptable to BCDA, releasing BCDA from any further claims relating to the Consultancy Contract; and
- Such other documents that BCDA may require.

Consistent with the provisions of R.A. 9184, all consultancy contracts shall be fixed price contracts. Any extension of contract time shall not involve any additional cost.

### 13. QUALIFICATION OF BIDDERS

- 13.1. The Consultant should be a reputable firm with at least ten (10) years of business operation in Construction Management and Supervision. In case of Joint Venture (JV), each member firm should have at least (10) years of business operation in Construction Management and Supervision.
- 13.2. The Consultant should have undertaken at least one (1) Construction Management & Supervision of road and/or bridge project for the last ten (10) years whose value must be at least fifty percent (50%) of the ABC. In case of JV, at least one (1) of the JV partners should have undertaken at least one (1) Construction Management & Supervision of road and/or highway project for the last ten (10) years whose value must be at least fifty percent (50%) of the ABC.

### 14. SHORTLISTING OF THE PROSPECTIVE BIDDERS

The shortlist shall consist of at most five (5) prospective bidders who will be entitled to submit bids. The criteria and rating system for shortlisting are as follows:

Criteria	Rating
1. Relevant Experience of the Consultant	40%
2. Qualification of the Key Personnel to be assigned to the Project	50%
3. Current Workload of Key Personnel relative to Capacity	10%
<b>Total</b>	<b>100%</b>

The Consultant(s) must pass the required minimum score of seventy percent (70%) to be shortlisted. Failure of the Consultant to meet the specified requirement would result to a zero (0) rating for the specific criterion.

### 15. DETERMINATION OF THE HIGHEST RATED BID (HRB)

The shortlisted bidders shall be subjected to evaluation to determine the bidder with HRB, wherein the criteria and rating are as follows:

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 BCDA RECORDS MANAGEMENT  
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Criteria	Rating
1. Relevant Experience of the Consultant	30%
2. Qualification of the Key Personnel to be assigned to the Project	40%
3. Plan Approach and Methodology	30%
<b>Total</b>	<b>100%</b>

#### 16. EVALUATION PROCEDURE

In order to determine the Consultant with the HRB, BCDA shall conduct an evaluation of bids using the Quality-Cost Based Evaluation (QCBE) procedure wherein the technical and financial proposals shall be given a corresponding weight equivalent to 85% and 15%, respectively.

#### 17. PERFORMANCE SECURITY

17.1. To guarantee the faithful performance by the winning Consultant of its obligations, it shall post a performance security within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from BCDA and in no case later than the signing of the Contract.

17.2. The performance security shall be denominated in Philippine Pesos and posted in favor of BCDA in an amount equal to the percentage of the total contract price in accordance with the following schedule:

Form of Performance Security	Amount of Performance Security (Equal to Percentage of the Total Contract Price)
(a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank.	Five percent (5%)
(b) 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.	

17.3. The Performance Security shall be forfeited in favor of BCDA should the Consultant fail to fulfill any of its obligations under the TOR or the Contract. Additional penalties may also be imposed upon the Consultant for such failure.

#### 18. STANDARD OF SERVICES

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 BCDA ASSISTANT MANAGER  
 OCT 11 2018

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The Consultant shall fulfill its obligations under the agreement by using its technical expertise and according to the best-accepted professional and industry standards. The Consultant shall exercise all reasonable skill, care, diligence, and prudence in the discharge of the duties agreed to be performed and shall always work in the best interest of BCDA. To attain these, the consultant shall provide personnel with sufficient qualifications and experience to ensure the full and satisfactory accomplishment of the required Consulting Services/undertakings.

The Consulting Services shall be conducted by the Consultant in accordance with the instructions or directions made or to be made by the BCDA at any time before its completion. The Consultant shall conduct regular consultation with BCDA in relation to the undertaking of its responsibilities.

## 19. GENERAL TERMS AND CONDITIONS

### 19.1. Delay: Extension of time: Force Majeure

Any delay on the agreed completion date from failure of performance by either of the party shall not constitute a default hereunder nor shall give rise to any claim if such delay or failure is wholly attributable to acts of God, any act of sabotage, war, armed invasion, revolution insurrection blockade, riot, declaration of national emergency, industry-wide strike, or any other cause which cannot be foreseen, or even through foreseen, is beyond the reasonable control of either Party, or which cannot be avoided by the Consultant or BCDA despite the exercise of due diligence.

Within ten (10) days from the occurrence of such event, the Party affected shall notify in writing the other Party of such event of force majeure and of the obligations or part of the works the performance of which is affected by such force majeure. Immediately after such notification, the parties shall meet to discuss and agree on the appropriate steps/measures to be taken to minimize the effect(s) of the force majeure: provided that the party affected shall be entitled to an extension of the contract time for the number of days of the delay incurred by reason of the causes above mentioned.

### 19.2. Ownership of Reports and Documents

The reports, drawings, documents and materials compiled or prepared in the course of the performance of the Consulting Services are and shall remain the absolute properties of BCDA and shall not be used by the Consultant for purposes unrelated to the Consulting Services without the prior written approval of BCDA. Any equipment supplied by the BCDA, or for which payments are made or reimbursed shall become and remain the property of BCDA.

### 19.3. Representation and Warranties

The Parties hereby represent and warrant that no government official has benefitted directly or indirectly from this Consulting Services. The Parties warrant that they have not offered or given, and will not offer or give to any employee, agent or representative or either Party, any gratuity, with a view toward securing any business from one another, or influencing such persons with respect to terms, conditions or performance of any contract with each other.

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ARISTOTELIS GUERRERO  
LOCAL RECORDS MANAGEMENT  
OCT 11 2018

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