

REPRESENTATIVES' CONFIDENTIALITY UNDERTAKING

This Confidentiality Undertaking (the "**Undertaking**") is executed in favor of the Bases Conversion and Development Authority ("**BCDA**") by *[Name of Recipient]* (the "**Recipient**") *[if a juridical entity, add: "by its duly authorized representative"]*.

1. CONFIDENTIAL INFORMATION

[name of Eligible PSP or Provisionally-Eligible PSP], a corporation with principal office address at *[address]*, organized and existing under and by virtue of the laws of the Philippines,] [The Consortium referred to *[name of Consortium]*, composed of Consortium Members *[name of Member]* and *[name of Member]*] ("**PSP**"), has or will obtain certain information from the BCDA pursuant to the PSP's interest to submit proposals for the purpose of entering into a joint venture with BCDA for the financing, design and engineering, establishment, construction, development, operation and maintenance of the water and wastewater infrastructure for New Clark City over a proposed thirty (30)-year period, which may be extended for an additional period of twenty (20) years subject to compliance with the conditions stipulated in the Concession Documentation (the "**Project**"). The selection process shall be undertaken through a public bidding in accordance with the 2017 Guidelines for the Privatization and Disposition of BCDA Properties - Procedures for Entering into Joint Venture (JV) Agreements with Private Entities.

By reason of such interest of the PSP, the PSP proposes to disclose certain Confidential Information (as defined below) to the Recipient who needs to know such Confidential Information for the exclusive purpose of evaluating the Project to enable the PSP submit its proposals. Recipient acknowledges that the BCDA has the exclusive right to determine what information it may furnish to the PSP or what the PSP may furnish to the Recipient.

As used herein, "**Confidential Information**" means all information concerning the BCDA or its assets, liabilities or obligations furnished to the PSP or its Consortium Member/s or the Recipient directly by any of the BCDA's officials, employees, and legal, technical, financial advisors, agents or other representatives (collectively, the "**BCDA Representatives**"), including: (i) information obtained by the PSP or Recipient (a) during the due diligence process, (b) through visits to BCDA, its offices and facilities, and (c) through any management presentation by the BCDA; (ii) information contained in any other written material furnished or otherwise made available to the PSP or Recipient; (iii) information furnished to the PSP or Recipient electronically; (iv) information presented to the PSP, the Recipient, or their respective representatives or advisors orally, whether presented in a management presentation or another forum; and (v) all analyses, compilations, forecasts, studies or other documents prepared by the PSP, Recipient, Recipient Representatives (as defined in Section 3 hereof) or PSP Representatives (as defined in Section 3 hereof) which contain or reflect any of the foregoing information.

Notwithstanding the foregoing, information disclosed by the BCDA which would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that it can be proven by written records that said information is (i) part of the public domain without violation of this Agreement or (ii) disclosed pursuant to administrative or judicial action; *provided*, that, the Recipient shall use its best efforts to maintain the confidentiality of the Confidential Information (including but not limited asserting in such action any applicable privileges), and shall, immediately after getting knowledge or receiving notice of such action, notify the BCDA thereof and give the BCDA the opportunity to seek any other legal remedies so as to maintain such Confidential Information in confidence. If only a portion of the

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Confidential Information falls under any of the above, then only that portion of the Confidential Information shall be excluded from the use and disclosure restrictions of this Agreement.

2. NO REPRESENTATION

Recipient acknowledges and agrees that the BCDA is not making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information or that such information will remain unchanged. Recipient releases the BCDA or any of its official and employees of any liability to the Recipient or any other person arising out of or related to the Confidential Information or any interpretations or conclusions made or drawn therefrom by the Recipient. Only those representations or warranties that are made to Recipient in a definitive agreement issued by the BCDA in connection with the Project, as, and if it is executed by the BCDA, and subject to such limitations and restrictions as may be specified in such agreement, will have any legal effect.

3. RECIPIENT'S OBLIGATIONS

Unless the BCDA gives its prior written authorization, Recipient shall, during a period of one (1) year from the date of its receipt of any Confidential Information:

- (a) not use the Confidential Information for any other purpose than for the PSP's proposals for the Project;
- (b) protect the Confidential Information against disclosure in the same manner and with the same degree of care, but not less than a reasonable degree of care, with which it protects confidential information of its own;
- (c) limit circulation of the Confidential Information to: (1) its officers, directors, and employees (collectively, the "**Recipient Representatives**") who need to know such Confidential Information and only for the purpose of evaluating the Project for the PSP's proposals, and (2) the PSP's officers, directors, employees, affiliates, outside auditors and legal, technical, financial advisors, agents or other representatives (collectively, the "**PSP Representatives**") who need to know such Confidential Information and only for the purpose of evaluating the Project, and who have executed and delivered a confidentiality undertaking in favor of the BCDA covering the Confidential Information.

Confidential Information furnished in tangible form or on electronic media shall not be duplicated by Recipient or Recipient Representatives except for the above-stated purpose. Upon the request of the BCDA, Recipient shall either return all Confidential Information received by it and by Recipient Representatives in written, electronic or other tangible form, including copies, or reproductions or other media containing such Confidential Information or destroy the same and certify that it has been destroyed, as requested by the BCDA, within ten (10) days of such request; *provided*, however, that Recipient may retain one (1) copy of all Confidential Information provided in written, electronic or tangible form for its corporate records if required for regulatory purposes, subject to Recipient providing the BCDA written notification of such regulatory purpose with details satisfactory to the BCDA. Without limiting the generality of the foregoing, in the event that the Project is not consummated with the PSP (for any reason whatsoever, including but not limited to the PSP's not (i) submitting a proposal or (ii) being declared the winning bidder), neither the Recipient nor the Recipient Representatives shall use any of the Confidential Information for any purpose. Recipient will be responsible for any breach of this Agreement by the Recipient Representatives. ✓

Recipient agrees not to directly or indirectly contact or communicate with any BCDA Representatives concerning the Project, or to seek any information in connection therewith from such person, without the express written consent of the BCDA.

4. COMMUNICATIONS WITH OTHER PSPS

Except as may be required by applicable law, Recipient shall refrain from communicating, and cause the Recipient Representatives to refrain from communicating, directly or indirectly, with any private sector participant other than the PSP about the Project, or about any subject related to the Project; *provided*, however, that Recipient may communicate with Recipient Representatives or PSP Representatives bound by a confidentiality agreement with the BCDA covering the Confidential Information.

5. GOVERNING LAW AND VENUE

This Undertaking shall be governed by and construed in accordance with the laws of the Republic of the Philippines and Recipient consents to the exclusive jurisdiction of the courts of Metropolitan Manila (to the exclusion of all others) for any dispute arising out of this Undertaking.

6. NO IMPLIED WAIVER

Failure of the BCDA to insist in any one or more instances upon strict performance by the Recipient of any of the terms of this Undertaking shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

7. NO COMMITMENT

- a. Recipient acknowledges that the BCDA has reserved the right to terminate or suspend, at any time and without cause, further participation in the investigation by the PSP or Recipient and to refuse to disclose any further Confidential Information to the PSP or Recipient.
- b. This Undertaking does not constitute a solicitation of bids for the Project.

Recipient also acknowledges and agrees that no contract or agreement in respect of the Project or otherwise shall be deemed to exist between Recipient and the BCDA.

8. SEVERABILITY

If any term of this Undertaking is held by a court of competent jurisdiction to be invalid or unenforceable, then this Undertaking, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included. ✓

IN WITNESS WHEREOF, Recipient has executed this Undertaking in *[insert place of execution]* on *[insert date]*.

[Signature]

Name: *[name of authorized representative]*

Title: *[official designation / title of authorized representative]*

For and on behalf of:

[name of Recipient]

[Address of Recipient]

SUBSCRIBED AND SWORN TO before me this *[date]* at *[place]*, each affiant avowing under penalty of law to the whole truth of the contents of the document and exhibiting to me *[his/her]* *[proof of identity acceptable under Philippine notarial regulations]* issued at *[city and country]* on *[date]*.

Notary Public

Doc. No.: _____

Page No.: _____

Book No.: _____

Series of 2018.

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