

SUPPLEMENTAL TOLL OPERATION AGREEMENT
(covering the Metro Manila Skyway – Stage 3)

This Supplemental Toll Operation Agreement covering the Metro Manila Skyway – Stage 3 is made and executed this ____ day of July 2013, in _____, Philippines, by and among:

REPUBLIC OF THE PHILIPPINES, acting by and through the **TOLL REGULATORY BOARD** (the "TRB"), with office address at the 2/F IBP Building, Doña Julia Vargas Avenue, Ortigas Center, Pasig City, and herein represented by its Alternate Chairman, **Undersecretary Jose Perpetuo M. Lotilla** (the "Grantor");

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, a government-owned and controlled corporation, with office address at Kilometer 15, East Service Road, Bicutan, Parañaque City, and herein represented by its **President and Chief Executive Officer, Luis F. Sison** ("PNCC");

CITRA CENTRAL EXPRESSWAY CORP., a corporation duly organized and validly existing under and by virtue of the laws of the Republic of the Philippines, with office address at 23/F One Magnificent Mile-Citra Building, San Miguel Avenue, Ortigas Center, Pasig City, and herein represented by its **Chairman and President, Agus Sjafrudin** (the "Investor"); and

CENTRAL METRO MANILA SKYWAY CORPORATION, a corporation duly organized and validly existing under and by virtue of the laws of the Republic of the Philippines, with office address at Toll Operations Complex, Doña Soledad Avenue, Better Living Subdivision, Parañaque City, and herein represented by its **Chairman and President, Jose P. Magno, Jr.** (the "Operator").

WITNESSETH: That

WHEREAS, Presidential Decree ("P.D.") No. 1113 granted to **PNCC** (then named "Construction and Development Corporation of the Philippines") a franchise to operate, construct and maintain the toll facilities known as the North and South Luzon Expressways, consistent with the policy of the Government of the Republic of the Philippines to attract and encourage private sector investment and participation in the Government's infrastructure development program;

Manila Expressway (C-6) which embodies, among others, an implementation schedule indicating the time frame within which **CITRA** (acting through the **Investor**), in cooperation with **PNCC**, commits itself to finance, design and construct the Metro Manila Skyway in three (3) stages, commencing with the **South Metro Manila Skyway**, next the North Metro Manila Skyway, and thereafter, the Central Metro Manila Skyway;

WHEREAS, the **Grantor**, **PNCC** and Citra Metro Manila Tollways Corporation ("**CMMTC**"), which is a joint venture company of **CITRA** and **PNCC**, executed a Supplemental Toll Operation Agreement covering the **South Metro Manila Skyway** dated 27 November 1995, and as amended on 18 July 2007 ("**SMMS STOA**");

WHEREAS, the design and the construction of the **South Metro Manila Skyway**, had been completed and it is now being operated and maintained by an operator which replaced the wholly-owned subsidiary of **PNCC**;

WHEREAS, the **SMMS STOA** stated in one of its Whereas Clauses that "as regards the North Metro Manila Skyway, the Central Metro Manila Skyway, and also the planned Metro Manila Expressway, these are likewise intended to be undertaken jointly by **PNCC** and the **Investor** (and/or **CITRA**), in succession, after the commencement of the construction of **South Metro Manila Skyway**. Separate discussions on the appropriate investment proposal relating to each of the above projects may be held and/or conducted subsequently, and the appropriate toll operation agreement applicable to each of such projects may be entered into at the appropriate time";

WHEREAS, for purposes of the North Metro Manila Skyway and the Central Metro Manila Skyway, both otherwise known as the "**Metro Manila Skyway – Stage 3**", an **Updated Joint Investment Proposal for Stage 3** was submitted to the **Grantor** by **CITRA** and **PNCC** on 03 May 2011;

WHEREAS, the **Grantor**, acting through the **TRB**, pursuant to the latter's mandate and authority granted under P.D. No. 1112, has reviewed, evaluated and approved the **Updated Joint Investment Proposal for Stage 3**;

WHEREAS, the **Grantor** has determined that public interest requires that the **Toll Operation Agreement** (between the **Grantor** and **PNCC**) executed in October 1977 be further amended, supplemented, and/or modified, pursuant to and in the manner set forth in this **Agreement**, as it pertains to the **Metro Manila Skyway – Stage 3**;

WHEREAS, PNCC has assigned its rights, interests and obligations to the Operation and Maintenance of the **Metro Manila Skyway – Stage 3** to “**CENTRAL METRO MANILA SKYWAY CORPORATION**”, herein also referred to as the **Operator**;

WHEREAS, a large part of the proposed financing for the **Metro Manila Skyway– Stage 3** will be obtained by the **Investor** on a limited recourse project finance basis and the terms of this **Agreement** have taken into account certain requirements, which served as basis for certain provisions of this **Agreement**;

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

SECTION 1. DEFINITIONS AND INTERPRETATION

1.01. Defined Terms.

In this **Agreement**, the following capitalized words and expressions shall, unless the context requires otherwise, have the meanings ascribed to them hereunder:

- (1) “**Additional Right of Way**” shall mean the land area required for any **Additional Construction Works**, and the corresponding air rights, which land area and air rights shall be made available to the **Investor** and the **Operator** under the following conditions: that such entire area of land and air rights (a) may be used by the **Investor** for purposes of the **Additional Construction Works** and in the exercise of its rights and privileges under the **Agreement**, and by the **Operator** for purposes of **Operation** and **Maintenance** during the **Operation Period**; (b) shall be completely free and clear of any claims, encumbrances, and/or squatters; (c) shall in its entirety have been acquired or is controlled by the **Grantor** in a way that complies with the requirements of **Investor’s** obligations pursuant to this **Agreement**; and (d) shall be in a condition which enables the **Investor** and the **Operator** to utilize such entire land area, without any **Utilities** and other obstructions or any man-made obstacles located therein, in undertaking the **Additional Construction Works** and during the **Operation Period**;

- (2) "Additional Construction Works" shall mean additional construction works to be undertaken by the **Investor** after **Construction** and during **Operation**, as may be proposed by the **Investor** and/or the **Operator** or as may be required by the **Grantor**, or as contemplated in **Section 6.13(3)**;
- (3) "Agreement" shall mean this Supplemental Toll Operation Agreement covering a portion of the Metro Manila Skyway, particularly **Stage 3** thereof, as described herein, the annexes hereto (the contents of which are incorporated herein by reference and made integral parts hereof), and any and all subsequent amendment/s and/or supplement/s to such Supplemental Toll Operation Agreement and such annexes duly agreed and executed by all **Parties** hereto, or otherwise effected in accordance with this **Agreement**;
- (4) "Basic Design" shall mean the basic design, specifications and standards for **Stage 3**, as set forth in the documents attached hereto as **Annex A** prepared by the **Investor** and submitted to the **Grantor**;
- (5) "Business and Joint Venture Agreement" shall mean the **Business and Joint Venture Agreement** between **CITRA** and **PNCC** dated 30 August 1995, the Supplement thereto dated 09 January 2012, the Restated Second Supplement thereto dated 06 September 2012, and any and all subsequent amendments and/or supplements thereto;
- (6) "Certificate of Substantial Completion" shall have the meaning ascribed to it in **Section 5.17(2)(c)**;
- (7) "CITRA" shall mean **P.T. Citra Lamtoro Gung Persada**, a corporation duly established and validly existing under and by virtue of the laws of the Republic of Indonesia;

- (8) "Condition(s) Precedent" shall have the meaning ascribed to it in **Section 5.08(1)**;
- (9) "Construction" or "Construct" shall mean all aspects of construction work or activity relating to the **Project Road** specified in the **Basic Design** and the **Toll Road Facilities**;
- (10) "Construction Contract" as the context may require, shall mean the respective agreement/s relating to the **Construction** between the **Investor** and the **Contractor**, and any amendment/s, and/or supplement/s thereto;
- (11) "Contractor" shall mean the party appointed by and providing services to the **Investor** under the **Construction Contract**;
- (12) "Design" shall mean either the **Basic Design** or the **Final Engineering Design**, or jointly, as the context may require, as amended by any **Variation**;
- (13) "Dispute" shall have the meaning ascribed to it in **Section 12.01(1)**;
- (14) "Effective Toll" shall mean the price actually charged to any of the users of the **Toll Road** at any time and at any level that the **Investor** deems fit, as stated in **Section 7.03(5)**;
- (15) "Final Engineering Design" shall mean the detailed design for **Stage 3** or a **Section** thereof to be prepared by the **Investor** based on the **Basic Design**, and to be approved in accordance with **Sections 4.03** and **4.04**, as the case may be;
- (16) "Financial Projections" shall mean the document attached hereto as **Annex B** prepared by the **Investor**, which was submitted to and has been duly noted by the **Grantor** prior to the execution of this **Agreement**, in which are set forth the financial projections and other assumptions in relation to **Stage 3**, and which constitutes the financial basis on which the **Investor** agreed to enter into this **Agreement**;

- (72) "Updated Joint Investment Proposal for Stage 3" shall mean the updated joint investment proposal dated 03 May 2011 for the construction of **Stage 3**, the original version of which was submitted to the **Grantor** by **CITRA** and **PNCC** on 10 June 1994;
- (73) "Utilities" shall mean public utilities such as water supply, electricity supply, telecommunication system and other public utilities located within the **Land in Vacant Possession**;
- (74) "Value of Completed Construction" shall mean the aggregate of all reasonable costs and expenses incurred by the **Investor** in connection with, in relation to and/or by reason of the **Project** in the original currency of expenditure (including, without limitation, all interest and capitalized interest and other reasonable financing costs and expenses incurred by the **Investor** in connection with the **Financing of the Construction**), as certified by the **Independent Consultant** and a reputable accounting firm to be appointed jointly by the **Grantor** and the **Investor**;
- (75) "Variation" shall mean any variation to the **Construction** of the **Project Road** other than as set out in the approved **Final Engineering Design**, and which variation is to be implemented in accordance with **Sections 5.13 to 5.16**; and
- (76) "Variation Payment" shall have the meaning ascribed to it in **Section 5.14(2)(a)(i)**.

1.02. Interpretation.

In this **Agreement**, except if otherwise specified or the context otherwise requires:

- (1) references to any **Party** to this **Agreement**, whether in this **Agreement** or in any other agreement and/or document issued pursuant thereto and/or contemplated thereunder, shall include its successor/s and/or permitted assign/s as approved accordingly;

- (2) references to any law or regulation shall include all amendments thereto and its implementing regulations and amendments thereto;
- (3) words denoting the singular shall include the plural and vice versa;
- (4) words denoting individuals shall include natural or juridical entities and vice versa;
- (5) headings are for convenience only and shall not affect the interpretation thereof;
- (6) references to **Sections** and **Annexes** are references to **Sections** and **Annexes** of and to this **Agreement**;
- (7) references to any document or agreement shall be deemed to include references to such document or agreement as amended, supplemented, novated, varied or replaced from time to time;
- (8) words denoting any gender shall include both genders;
- (9) unless otherwise expressly indicated, a reference to "**days**" shall mean calendar days;
- (10) whenever there shall appear any reference to a time within which an act should be done or agreement reached or consent given, such reference shall include any other period agreed from time to time by the **Parties**;
- (11) for purposes of this **Agreement**, the contents of all **Annexes** hereto shall be deemed incorporated herein by reference as if set forth at length in the body hereof, and the contents of each of the **Annexes** and this **Agreement** shall be taken as mutually explanatory of the other; provided, however, that in case of a conflict and/or inconsistency between the provisions in the body of this **Agreement** and the provisions or contents of any **Annex** hereto, the provisions in the body of this **Agreement** shall prevail over the conflicting and/or inconsistent provisions or contents of the **Annex**;
- (12) for purposes of this **Agreement**, the copies of the **Annexes** which shall be considered as authentic are those which are properly initialled by a representative of each of the **Parties** on each and every page;
- (13) the words "**includes**", "**including**" and "**such as**" shall be construed without limitation;

- (14) whenever under this **Agreement**, any **Party** is obliged to exercise a discretion, grant a consent or permit, or give an approval, or notify or acknowledge any event, such discretion shall be exercised reasonably, and such consent, permit or approval may not be unreasonably withheld or delayed and such notification or acknowledgment shall be given expeditiously;
- (15) for purposes of this **Agreement** and as between **CITRA** and **PNCC**, the contents of the **Business and Joint Venture Agreement** shall be deemed incorporated herein by reference as if set forth at length in the body hereof; provided, however, that in case of a conflict and/or inconsistency between the provisions in the body of this **Agreement** and the provisions or contents of the **Business and Joint Venture Agreement** thereto, the provisions in the body of this **Agreement** shall prevail over the conflicting and/or inconsistent provisions or contents of the **Business and Joint Venture Agreement**.

SECTION 2. PROJECT ROAD AS TOLL ROAD

2.01. Agreement to Design, Construct and Finance, and to Operate and Maintain the Project Road as Toll Road.

- (1) Subject to the terms and conditions of this **Agreement**, the **Grantor** hereby grants and declares and the other **Parties** agree, that the **Design** and the **Construction** of the **Project Road**, and the **Financing** thereof, shall be the primary and exclusive privilege, responsibility and obligation of the **Investor**; while the **Operation** and **Maintenance** of the **Toll Road**, and the **Financing** thereof, shall be the primary and exclusive privilege, responsibility and obligation of the **Operator**.
- (2) The **Project Road** shall consist of the following **Phases** and **Sections**:

Phase 1:

Section 1 – Buendia to Nagtahan

Section 2 – Nagtahan to Ramon Magsaysay Boulevard

Phase 2:

Section 3 – Ramon Magsaysay Boulevard to Quezon Avenue

Section 4 – Quezon Avenue to Balintawak