

CHINA EXIMBANK PBC 2018 NO.56 TOTAL NO.482

PREFERENTIAL BUYER'S CREDIT LOAN AGREEMENT

on

The New Centennial Water Source-Kaliwa Dam Project

BETWEEN

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM

as Borrower

AND

THE EXPORT-IMPORT BANK OF CHINA

as Lender

DATED Nov 20,2018



Contents

ARTICLE 1 DEFINITIONS.....	3
ARTICLE 2 CONDITIONS AND UTILIZATION OF THE FACILITY	6
ARTICLE 3 DISBURSEMENT OF THE FACILITY	8
ARTICLE 4 REPAYMENT OF PRINCIPAL AND PAYMENT OF INTEREST	9
ARTICLE 5 REPRESENTATIONS AND WARRANTIES BY THE BORROWER..	11
ARTICLE 6 SPECIAL COVENANTS	13
ARTICLE 7 EVENTS OF DEFAULT	17
ARTICLE 8 MISCELLANEOUS	19
ARTICLE 9 CONDITIONS TO EFFECTIVENESS	23
Appendix 1	27
Appendix 2	31
Appendix 3	33
Appendix 4	34
Appendix 5	35
Appendix 6	37
Appendix 7-1	41
Appendix 7-2	45
Appendix 8-1	49
Appendix 8-2	51
Appendix 9-1	52
Appendix 9-2	54

Appendix 10	55
Appendix 11	56

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THIS PREFERENTIAL BUYER'S CREDIT LOAN AGREEMENT (hereinafter referred to as the "Agreement") is made on the day of November 20, 2018 between:

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM (MWSS) (hereinafter referred to as the "**Borrower**"), with principal and registered office at MWSS Complex, Katipunan Road, Balara, Quezon City, Philippines;

AND

THE EXPORT-IMPORT BANK OF CHINA (hereinafter referred to as the "**Lender**"), having its registered office at No. 30, Fuxingmennei Street, Xicheng District, Beijing 100031, China;

The Lender and the Borrower are hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**".

WHEREAS:

(A) The Memorandum of Understanding (**MOU**) on Financing Cooperation between the Republic of the Philippines, represented by the Department of Finance (**DOF**) and the Export-Import Bank of China was signed on October 20, 2016 to facilitate the promotion of financing cooperation between the Parties and utilization of the financing being extended by the Lender to the Borrower for the purpose of financing projects mutually identified and agreed upon between the Government of the Republic of the Philippines (**GPH**) and the Government of the People's Republic of China (**GPRC**) (hereinafter collectively referred to as the "**Governments**");

(B) On March 3, 2017, the GPH, through the Department of Foreign Affairs, sent a Note Verbale No. 17-1049 to the GPRC, through the Ministry of Commerce, related to the procedures and arrangements of the utilization of concessionary loans committed by the PRC to support priority projects of the Borrower, which was confirmed by GPRC on March 8, 2017 (hereinafter referred to as the "**Notes Verbale**");

(C) On June 29, 2017, on behalf of both Governments, the DOF and the Embassy of the GPRC in the GPH executed the Clarificatory Letter on the Procedures and Arrangements for the Implementation of the Notes Verbale to further implement and clarify the said Notes Verbale (hereinafter referred to as the “**Clarificatory Procedures and Arrangements**”);

(D) On November 15, 2017, the GPH, represented by the DOF, and the Export-Import Bank of China signed the Financing Cooperation Agreement on the Chico River Pump Irrigation Project and New Centennial Water Source-Kaliwa Dam Project on the summary of the progress and arrangements in implementing the two (2) projects to be financed by Preferential Buyer’s Credit facility;

(E) The Borrower is a government instrumentality with corporate powers duly incorporated and validly existing under the laws of the Republic of the Philippines, specifically, Republic Act No. 6234, as amended, entitled “*An Act Creating the Metropolitan Waterworks and Sewerage System and Dissolving the National Waterworks and Sewerage Authority and for Other Purposes*” (hereinafter referred to as “**MWSS Charter**”);

(F) The National Economic and Development Authority (NEDA) Board confirmed on April 25, 2018 the Investment Coordination Committee (ICC) approval of the Project, which aims to increase Metro Manila’s raw water supply and ensure water security;

(G) Pursuant to the MOU and the abovementioned Notes Verbale and Clarificatory Procedures and Arrangements, China Energy Engineering Corporation Limited has been selected as the Contractor (hereinafter referred to as the “**Chinese Contractor**”) for the Project, following the Borrower’s relevant procurement laws, rules and regulations;

(H) The MWSS (hereinafter alternatively referred to as the “**End-User**”) and the Chinese Contractor have agreed and initialed on the draft of the New Centennial Water Source - Kaliwa Dam Project Contract (hereinafter referred to as the “**Commercial Contract**”);

(I) The Borrower in a Loan Application dated September 21, 2018 has requested the Lender to make available a loan facility of up to US Dollars Two Hundred Eleven Million Two Hundred Fourteen Thousand Six Hundred Forty-Six and Fifty-Four Cents only (US\$ 211,214,646.54) to the Borrower representing eighty-five percent (85%) of its financing needs under the Commercial Contract; and

NOW THEREFORE, the Borrower and the Lender hereby agree as follows:

ARTICLE 1 DEFINITIONS

Unless the context otherwise requires, under this Agreement and its Appendices, the following terms have the following meanings:

1.1 “**Account Bank**” means the Export-Import Bank of China.

1.2 “**Agreement**” means this preferential buyer’s credit loan agreement and its appendices and any amendment to such agreement and its appendices from time to time mutually agreed upon in writing by the Parties.

1.3 “**Availability Period**” means the period commencing on the Effective Date and ending on earlier of (a) the date falling sixty-six (66) months thereafter, or (b) the date on which the Facility is cancelled or terminated hereunder, or ending on any date mutually agreed upon in writing by the Parties, during which time all the disbursements shall be made in accordance with the stipulations of this Agreement.

1.4 “**Borrower’s Country**” refers to the Republic of the Philippines.

1.5 “**Business Day**” means a day on which banks are open for ordinary banking business in Beijing, China, and Metro Manila, Philippines.

1.6 “**China**” means the People’s Republic of China.

1.7 “**Commitment Fee**” means the fees calculated and paid in accordance with Article 2.6.

1.8 “**Commercial Contract**” means the New Centennial Water Source-Kaliwa Dam Project Contract Agreement with contract number NCWS-KDP 001-2018 for the purpose of the implementation of the Project to be entered into by and between Metropolitan Waterworks and Sewerage System and China Energy Engineering Corporation Limited with the total amount of Philippine Peso Twelve Billion One Hundred Eighty-Nine Million Eight Hundred Ninety-Three Thousand Seven Hundred Ninety-Eight and Seventy Centavos only (PHP 12,189,893,798.70).

1.9 “**Disbursement**” means the advance of the Facility made in accordance with Article 3 of this Agreement.

1.10 “**End-User**” means the Metropolitan Waterworks and Sewerage System (MWSS), namely the Borrower which is also the implementing agency of the Project that ultimately utilizes the Facility.

1.11 “**Effective Date**” means the date upon which this Agreement becomes effective pursuant to Article 9 of this Agreement.

1.12 “**Event of Default**” means any event or circumstance specified as such in Article 7.

1.13 “**External Indebtedness**” means any indebtedness for money borrowed which is (i) denominated or payable in currency other than the lawful currency of the Republic of the Philippines and (ii) owed by the Borrower or Guarantor to a person other than a person that is organized under the laws of, or is a resident of the Republic of the Philippines.

1.14 “**Facility**” has the meaning set forth in Article 2.1.

1.15 “**Final Repayment Date**” means the date on which the Maturity Period expires.

1.16 "**First Repayment Date**" means the first repayment date of the principal and interest after the end of the Grace Period.

1.17 "**First Disbursement Date**" means the date on which the first Disbursement is made.

1.18 "**Grace Period**" means the period from the Effective Date until the end of eighty-four (84) months thereafter, during which period only the interest and no principal is payable by the Borrower to the Lender. The Grace Period includes the Availability Period.

1.19 "**Guarantor**" means the Government of the Republic of the Philippines, acting by and through the Department of Finance.

1.20 "**Interest Payment Date**" means the 21st day of January and the 21st day of July in each calendar year and the Final Repayment Date.

1.21 "**Interest Period**" means in relation to the Loan, any period determined in accordance with Article 4.

1.22 "**Irrevocable Notice of Drawdown**" means the notice issued in the form set out in Appendix 5 attached hereto.

1.23 "**Principal Subsidiary(ies)**" means any company whose operation may have certain effect on the Borrower, or above 50% of whose shares are owned by the Borrower, or a comparative majority of whose shares are owned by the Borrower.

1.24 "**Letter of Guarantee**" means a letter of guarantee to be given by the Guarantor in favor of the Lender substantially in the form set out in Appendix 6 attached hereto.

1.25 "**Loan**" means the aggregate principal amount disbursed and from time to time outstanding under the Facility.

1.26 “**Management Fee**” means the fees calculated and paid in accordance with Article 2.5

1.27 “**Maturity Period**” means the period from the Effective Date to the date falling two hundred and forty (240) months thereafter, including the eighty-four (84) months Grace Period and the one hundred and fifty-six (156) months Repayment Period.

1.28 “**Notice of Effectiveness of Loan Agreement**” means a written notice in the form set forth in Appendix 10 attached hereto, in which the Effective Date of this Agreement shall be specified in accordance with Article 9 of this Agreement.

1.29 “**Project**” means the New Centennial Water Source-Kaliwa Dam Project.

1.30 “**Repayment Date of Principal and Interest**” means each Interest Payment Date and the Final Repayment Date.

1.31 “**Repayment Period**” means the period commencing on the date on which the Grace Period expires and ending on the Final Repayment Date.

1.32 “**Repayment Schedule**” means the schedule showing the dates and amounts of repayments of the Loan set forth in Appendix 11 attached hereto.

1.33 “**Self-Raised Fund**” means the payment made by the End-User to the Chinese Contractor, without utilizing the proceeds of the Loan, prior to each Disbursement, with the aggregate amount equivalent to the 15% of the Commercial Contract amount.

1.34 “**US Dollar**” or “**US\$**” means the lawful currency of the United States of America.

ARTICLE 2 CONDITIONS AND UTILIZATION OF THE FACILITY

2.1 **Amount** Subject to the terms and conditions of this Agreement, the Lender hereby

agrees to make available to the Borrower, a loan facility (hereinafter referred to as the "Facility") in an aggregate principal amount not exceeding US Dollars Two Hundred Eleven Million Two Hundred Fourteen Thousand Six Hundred Forty-Six and Fifty-Four Cents only (US\$ 211,214,646.54).

2.2 **Interest rate** The rate of interest applicable to the Loan shall be two percent (2%) per annum.

2.3 **Maturity Period** The Maturity Period for the Facility shall be two hundred and forty (240) months, among which the Grace Period shall be eighty-four (84) months and the Repayment Period shall be one hundred and fifty-six (156) months.

2.4 **Purpose** The entire proceeds of the Facility shall be applied by the Borrower for the sole purpose of the payment of up to eighty-five percent (85%) of the Commercial Contract amount, and not be used for payment of brokerage fees, agency fees, or commission.

2.5 **Management Fee** The rate applicable to the Management Fee shall be zero point three percent (0.3%). The Borrower shall pay to the Lender a Management Fee in the aggregate amount of the Facility equal to US Dollar Six Hundred and Thirty-Three Thousand Six Hundred and Forty-Three and Ninety-Four Cents (US\$ 633,643.94) in one lump sum within thirty (30) days after this Agreement becomes effective but not later than the First Disbursement Date. The Management Fee shall be paid to the account designated in Article 4.5.

2.6 **Commitment Fee** The rate applicable to the Commitment Fee shall be zero point three percent (0.3%) per annum. During the Availability Period, the Borrower shall pay semi-annually to the Lender a Commitment Fee calculated on the undrawn and uncanceled balance of the Facility. The Commitment Fee shall accrue from and including the date falling thirty (30) days after the date on which this Agreement becomes effective and shall be calculated on the basis of the actual number of days elapsed and a 360-day year. The Commitment Fee shall accrue on a daily basis and be paid in arrears to the account

designated in Article 4.5 on each Interest Payment Date.

ARTICLE 3 DISBURSEMENT OF THE FACILITY

3.1 The first disbursement is subject to the satisfaction of the conditions precedent set out in Appendix 1 attached hereto (or such conditions precedent have been waived by the Lender in writing).

3.2 In relation to each disbursement after the first disbursement, besides the satisfaction of the conditions set forth in Article 3.1, such disbursement shall also be subject to the satisfaction of the conditions set out in Appendix 2 attached hereto.

3.3 The Availability Period may be extended, provided that a written application for such extension is submitted by the Borrower to the Lender thirty (30) days prior to the end of the Availability Period and such application is approved by the Lender. In any event, the Availability Period shall not exceed the Grace Period. Any portion of the Facility undrawn at the end of the Availability Period or the extension thereof shall be automatically canceled. Before the end of the Availability Period, the Borrower shall not, without the consent of the Lender, cancel all or any part of the undrawn Facility.

3.4 The Lender shall not be obliged to make any disbursement under this Agreement unless it has received all the documents set forth in Articles 3.1 or 3.2 and has determined after examination that the conditions precedent to the drawdown of the Facility by the Borrower have been satisfied. For those conditions which have not been satisfied by the Borrower, the Lender may require the necessary remedy by the Borrower within a specified period. In the event that the Borrower fails to remedy within a reasonable period of time, the Lender may refuse to make the disbursement.

3.5 Subject to conditions in Articles 3.1 and 3.2 and other terms and conditions of this Agreement, in case the Borrower issues an Irrevocable Notice of Drawdown via courier to the Lender during the Disbursement Period, the Lender shall allocate in due course the

amount specified in the Irrevocable Notice of Drawdown via the Borrower's Account as referred to in Article 4.6 of this Agreement to the Chinese Contractor's account as designated in the Irrevocable Notice of Drawdown. Such account shall be opened by the Chinese Contractor with the Lender for the purpose of the Commercial Contract. The Irrevocable Notice of Drawdown shall not be issued more than once a month.

3.6 Forthwith upon the allocation of the disbursement to the Borrower's Account, the Lender shall be deemed as having completed its disbursement obligation under this Agreement and such disbursement shall become the indebtedness of the Borrower. The Borrower shall repay to the Lender the principal amount drawn and outstanding under the Facility, together with any interest accrued thereon in accordance with this Agreement.

3.7 The Lender shall not be under any obligation to make any further Disbursement under the Facility if the aggregate amount of the Disbursements made under this Agreement would exceed the principal amount of the Facility.

ARTICLE 4 REPAYMENT OF PRINCIPAL AND PAYMENT OF INTEREST

4.1 The Borrower is obligated to repay to the Lender all the principal amount drawn and outstanding under the Facility, including all the interest accrued thereon, and such other amount payable by the Borrower in accordance with the terms and conditions of this Agreement. Without the written consent of the Lender and the Guarantor, the Maturity Period shall not be extended.

4.2 The Interest Period applicable to each Disbursement shall be six (6) months period, provided that:

(1) the first Interest Period in relation to the first Disbursement shall commence on the date on which the respective Disbursement is made (inclusive) and end on the first Interest Payment Date (exclusive);

(2) in relation to each Disbursement after the first Disbursement, the first Interest Period shall commence on the date on which the respective Disbursement is made (inclusive) and end on the last day of the then current Interest Period (inclusive) in respect of the Loan so that all existing Disbursements shall be consolidated upon the expiry of each Interest Period;

(3) each Interest Period (except the first Interest Period and the last Interest Period in relation to each Disbursement) shall commence on the Interest Payment Date for the immediately preceding Interest Period (inclusive) and end on the last day of the then current Interest Period (inclusive);

(4) any Interest Period which would otherwise extend beyond the Final Repayment Date shall instead end on the date immediately preceding the Final Repayment Date.

4.3 The Borrower shall pay interest on the principal amount drawn and outstanding under this Agreement at the rate set forth in Article 2.2. The interest shall be calculated on the basis of the actual number of days elapsed and a 360-day year, including the first day of the Interest Period during which it accrues but excluding the last day of the Interest Period, and shall be paid in arrears on each Interest Payment Date. If any payment to be made by the Borrower hereunder falls due on any day which is not a Business Day, such payment shall be made on the immediately preceding Business Day.

4.4 **Repayment** All the principal amount drawn under this Agreement shall be repaid to the Lender in twenty-six (26) equal installments on each Repayment Date of Principal and Interest within the Repayment Period and the Final Repayment Date in accordance with the Repayment Schedule as Appendix 11 sent by the Lender to the Borrower after the expiration of the Availability Period.

4.5 Any payment or repayment made by the Borrower under this Agreement shall be remitted to the following account or any other account from time to time designated by the Lender on the Repayment Date of Principal and Interest of each year:

Payee: The Export-Import Bank of China
Opening Bank: Bank of China, New York Branch
Account No.: 01000130
SWIFT CODE: BKCHUS33

4.6 The Lender shall open and maintain on its book a lending account for the Borrower entitled "Metropolitan Waterworks and Sewerage System Account on the New Centennial Water Source-Kaliwa Dam Project" (hereinafter referred to as the "**Borrower's Account**") to record the amount owing or repaid or paid by the Borrower. The amount of the Facility recorded as drawn and outstanding in the Borrower's Account shall be the evidence of the Borrower's indebtedness owed to the Lender and shall be binding on the Borrower in the absence of manifest error.

4.7 Both the Borrower and the Lender shall keep accurate book records of any disbursement under the Facility and repayment of principal and interest under this Agreement and shall verify such records once a year or as may be reasonably required and agreed by the Parties.

4.8 **Voluntary Prepayment** The Borrower may prepay the principal amount drawn and outstanding under the Facility by giving the Lender thirty (30) days prior written notice, and such prepayment shall be subject to the consent of the Lender. At the time of prepayment, the Borrower shall also pay to the Lender all interest accrued on the prepaid principal in accordance with Article 4.3 up to and including the date of prepayment. Any prepayment made pursuant to this Article shall reduce the amount of the repayment installments in inverse order of maturity.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES BY THE BORROWER

The Borrower hereby represent and warrant to the Lender as follows:

5.1 The Borrower is a government instrumentality with corporate powers in the

Borrower's Country and has corporate power, authority, and legal rights to borrow the Facility on the terms and conditions hereunder.

5.2 Pursuant to the MWSS Charter, all authorizations, corporate acts, and procedures necessary for the execution and implementation of this Agreement have been completed and are in full force and effect.

5.3 The Borrower has completed all the authorizations, acts, and procedures as required by the laws of the Borrower's Country in order for this Agreement to constitute a valid and legally binding obligation of the Borrower in accordance with its terms, including obtaining all the approvals and authorizations from relevant authorities of the Borrower's Country, except for the final approval of the Monetary Board of Bangko Sentral ng Pilipinas, which shall be secured after the signing of this Agreement, and effecting all the registrations or filings as required by the laws of the Borrower's Country, and such approvals, authorizations, registrations and filings are in full force and effect.

5.4 As from the date on which this Agreement becomes effective, this Agreement constitutes legal, valid, and binding obligation of the Borrower.

5.5 There have been no material adverse changes in the financial, economic, and other conditions of the Borrower and its Principal Subsidiaries, and no litigation, arbitration, administrative proceeding or steps for liquidation is currently taking place, pending or threatened, against the assets or revenues of the Borrower or its Principal Subsidiaries, which would materially and adversely affect the Borrower's ability to perform its obligations hereunder. And no steps have been taken for the liquidation of the Borrower, whether voluntarily or by a third party.

5.6 The Borrower is not in default under any law or agreement applicable to it, the consequence of which default could materially and adversely affect its ability to perform its obligations under this Agreement and no Event of Default has occurred under this Agreement.

5.7 The signing of this Agreement by the Borrower constitutes, and the Borrower's performance of its obligations under this Agreement will constitute commercial acts. Neither the Borrower nor any of its assets is entitled to any right of immunity on the grounds of sovereign or otherwise from arbitration, suit, execution, or any other legal process with respect to its obligations under this Agreement, as the case may be, in any jurisdiction, except any other assets of the Borrower located within the territory of the Philippines to the extent that the Borrower is prohibited by the laws or public policies having force of law in the Republic of the Philippines, applicable and in effect at the signing date of this Agreement, from waiving such immunity.

5.8 All information supplied to the Lender by the Borrower are true and accurate in all material respects.

The Borrower represents and warrants to the Lender that the foregoing representations and warranties will be true and accurate throughout the Maturity Period with reference to the facts and circumstances subsisting from time to time. The Borrower acknowledges that the Lender has entered into this Agreement in reliance upon the representations and warranties contained in this Article.

ARTICLE 6 SPECIAL COVENANTS

6.1 **Pari Passu** The Borrower hereby covenants to the Lender that the obligations and liabilities of the Borrower under this Agreement are direct, unconditional, and general obligations and rank, and will rank at least pari passu in right of payment and security with all other present or future unsecured and unsubordinated External Indebtedness (both actual and contingent) of the Borrower. Any preference or priority granted by the Borrower to such indebtedness shall be forthwith applicable to this Agreement without prior request from the Lender.

6.2 The Borrower undertakes with the Lender that it will ensure that all amounts disbursed under this Agreement be used for the purposes specified in Article 2.4 and that it will pay

the interest and any other payable amounts hereunder and repay the principal to the Lender in accordance with the terms and conditions hereunder. The performance by the Borrower of all its obligations under this Agreement shall be unconditional under all circumstances.

6.3 All payments by the Borrower under this Agreement shall be paid in full to the Lender without set-off or counterclaim or retention and free and clear of and without any deduction or withholding for or on account of any Philippine taxes or any charges. In the event the Borrower is required by law to make any such deduction or withholding from any payment hereunder, the Borrower shall forthwith pay to the Lender such additional amount as will result in the immediate receipt by the Lender of the full amount which would have been received hereunder had no such deduction or withholding been made.

6.4 The Borrower hereby covenants to the Lender that it will take immediate steps and fulfill all the conditions necessary to maintain in full force and effect all approvals, authorizations, registrations, and filings specified in Article 5.3, which for the avoidance of doubt, shall include the final approval of the Monetary Board of the Bangko Sentral ng Pilipinas.

6.5 The Borrower shall submit to the Lender the following documents and hereby covenants to the Lender that the information contained in such documents are true and accurate:

(1) The Borrower shall submit to the Lender semi-annually during the Maturity Period reports on the actual progress and operation status of the Project and the utilization of the disbursed Facility proceeds.

(2) The Borrower shall submit to the Lender copies of the Borrower's audited financial statements of the previous year, within one hundred and eighty (180) days after the end of each fiscal year or thirty (30) days when it is available.

(3) The Borrower shall supply to the Lender any other information pertaining to the performance of this Agreement at any time reasonably requested by the Lender.

6.6 The Lender shall be entitled to examine and monitor the utilization of the proceeds of the Facility and the performance of this Agreement. The Borrower shall facilitate the aforesaid examination and monitoring of the Lender.

6.7 During the Maturity Period, the Borrower shall inform in writing the Lender within thirty (30) days from the date on which any of the following events occur:

- (1) any material decision, change, accident, and other significant facts or events pertaining to the Project or the Borrower;
- (2) any material and adverse change in the financial, economic and other conditions of the Borrower or any of its Principal Subsidiaries, including any suit, arbitration, or administrative proceeding against the Borrower or any of its Principal Subsidiaries;
- (3) any amendment to the MWSS Charter and any substantial change whatsoever in its operations
- (4) any change of the authorized persons involved in the drawdown of the Facility under this Agreement and their specimen signature;
- (5) any change of the communication address of the Borrower specified in Article 8.10; or
- (6) the occurrence of any Event of Default specified in Article 7
- (7) any significant amendment or supplement to the Commercial Contract;
- (8) any material change with respect to the accounting principles of the Borrower.

6.8 The Borrower is obliged to notify the Lender, without delay, upon becoming aware of the occurrence of any event or dispute which may limit, restrict, interfere with, or

otherwise adversely affect the performance by any Party of its obligations under the Commercial Contract, including but not limited to any event or dispute in connection with:

(1) taxation; and

(2) any Party's failure to timely perform its relevant obligations under such Commercial Contract.

To ensure the due performance of the Commercial Contract, the Borrower shall promptly do all such acts and coordinate with relevant parties to remedy and minimize the impact arising out of such aforementioned event or dispute.

6.9 The Borrower undertakes with the Lender that so long as any sum remains outstanding under this Agreement, the Borrower will not, unless the Lender otherwise agree in writing, engage in the following activities which, in the opinion of the Lender, will materially and adversely affect the performance of the Borrower's obligations under this Agreement:

(1) To merge or amalgamate with any other entity or make any step with a view to dissolution, liquidation, or winding-up;

(2) To materially change the nature of its business, sell, transfer, or otherwise assign, or dispose by other means all or substantial part of its assets or revenues (except for good consideration in the ordinary course of its business), whether by a single transaction or by a number of transactions whether related or not; or

(3) To create or attempt to create any encumbrance upon all or any part of the property, asset, or revenue, except any possessory lien arising by operation of law in the ordinary course of its business and not in connection with the borrowing or raising of money or credit.

6.10 The Borrower undertakes with the Lender that at the request of the Lender, it will provide a Project completion summary report, documents, and materials for the post

evaluation for the Project within six (6) months. The Borrower shall ensure the authenticity, accuracy, validity, and integrity of the documents and materials provided.

6.11 The Borrower hereby undertakes that the profit accruing from the Project will be applied to repay the principal and interest due and payable under this Agreement in priority, in so far as it will not unduly prejudice the Borrower's pari passu commitments.

6.12 The Borrower undertakes with the Lender that it shall not, without prior written consent of the Lender, which consent shall not be unreasonably withheld, assign its rights under or terminate the Commercial Contract unless it is mandatory by the laws of the Philippines.

6.13 The Borrower hereby represents, warrants, and undertakes that its obligations and liabilities under this Agreement are independent and separate from the Letter of Guarantee and from those stated in agreements with other creditors (including but not limited to official creditors and Paris Club creditors), and the Borrower shall not seek from the Lender any kind of comparable terms and conditions which are stated or might be stated in agreements with other creditors.

6.14 The Borrower undertakes with the Lender that within thirty (30) days after each Disbursement made by the Lender, the Borrower will submit to the Lender the documents evidencing that all taxes and fees due and payable under the related settlement has been paid in full by the End-User according to the Commercial Contract and applicable law.

ARTICLE 7 EVENTS OF DEFAULT

7.1 Each of the following events and circumstances shall be an Event of Default:

(1) The Borrower, for any reason, fails to pay any amount due and payable under this Agreement (including but not limited to principal, interest, fees, and other sums in accordance with the provisions hereof), unless the Borrower can document that such

payment has been transferred to the Lender's account in accordance with Article 4 of this Agreement within thirty (30) calendar days of the date when such payment is due;

(2) Any representation and warranty made by the Borrower in Article 5 and Article 6 or other articles of this Agreement, or any certificate, document, and material submitted and delivered by the Borrower pursuant to this Agreement is proven to have been untrue or incorrect in any material respect;

(3) The Borrower fails to punctually perform any of its other obligations under this Agreement or is in breach of any of its covenants and undertakings made under this Agreement, and does not remedy such breach to the satisfaction of the Lender within thirty (30) calendar days from receipt of written notice from the Lender requiring it to do so;

(4) Any other event which constitutes a default of the Borrower occurs in respect of any other agreement involving the External Indebtedness of the Borrower and any other banks or financial institutions, the aggregate amount of which External Indebtedness is equal to or more than US\$25 million or its equivalent in other currency, and such default shall continue for more than the period of grace, if any, expressly provided under such agreement(s) when originally agreed and executed;

(5) Material deterioration of the financial conditions of the Borrower or its Principal Subsidiaries, or significant changes have occurred with respect to the Project or the Project encounters serious difficulties, either of which, in the opinion of the Lender, may have material adverse effect on the ability of the Borrower to perform its obligations under this Agreement;

(6) The Borrower or the Guarantor stops or suspends repayment to its creditors generally; or

(7) The Guarantor defaults in the payment of any External Indebtedness on its maturity, or any External Indebtedness of the Guarantor is required to be paid prior to its stated maturity

(8) This Agreement or the Letter of Guarantee ceases, for any reason, to be in full force and effect or becomes unenforceable, or there is any dispute regarding the same, or it becomes impossible for the Borrower or the Guarantor to perform any of its obligations under this Agreement or the Letter of Guarantee.

(9) The Borrower is closed, dissolved, wound up, revoked, or is declared or becomes bankrupt; or the Borrower fails to make arrangement on the repayment of its debts hereunder to the satisfaction of the Lender upon the reorganization or restructuring of the Borrower,

7.2 Upon the occurrence of any of the aforesaid Event of Default (unless such Event of Default has been waived by the Lender or remedied to the satisfaction of the Lender), the Lender may, by written notice to the Borrower, take the following actions without prejudice to any other rights and remedies available to it:

a) suspend any Disbursement under this Agreement;

and if such Event of Default shall remain unremedied for a period of thirty (30) calendar days for payment obligations and sixty (60) calendar days for non-payment obligations upon receiving of the Lender's written notice abovementioned, the Lender may:

b) terminate any further Disbursement under this Agreement; and

c) declare all the principal of and accrued interest in accordance with this Agreement and all other sums payable hereunder to be, whereupon the same shall become, immediately due and payable by the Borrower without further demand, notice or other legal formality of any kind.

ARTICLE 8 MISCELLANEOUS

8.1 Waiver of Immunity The Borrower hereby irrevocably waives any immunity on the

grounds of sovereignty or otherwise for itself or its property in connection with any arbitration proceeding pursuant to Article 8.5 hereof or with the enforcement of any arbitral award pursuant thereto, except any other assets of the Borrower located within the territory of the Philippines to the extent that the Borrower is prohibited by the laws or public policies having force of law in the Republic of the Philippines, applicable and in effect at the signing date of this Agreement from waiving such immunity.

8.2 Without prior written consent of the Lender and the Monetary Board of the Bangko Sentral ng Pilipinas, the Borrower may not assign or transfer all or any part of its rights or obligations hereunder in any form to any third party. At its own expense, the Lender is entitled to assign or transfer all or any part of its rights, interests, and obligations hereunder to a third party with notice to the Borrower. The Borrower shall sign all such documents and do necessary acts and things as the Lender may reasonably require for the purpose of perfecting and completing any such assignment and transfer, provided that any cost incurred by the Borrower in connection therewith shall be borne by the Lender.

8.3 This Agreement is legally independent of the relevant Commercial Contract. Any claim or dispute arising out of the Commercial Contract shall not affect the obligations of the Borrower under this Agreement.

8.4 **Governing Law** This Agreement, as well as the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of China.

8.5 Any dispute arising out of or in connection with this Agreement shall be resolved through friendly consultation. If no settlement can be reached through such consultation, each party shall have the right to submit such dispute to the Hong Kong International Arbitration Centre (HKIAC) for arbitration. The arbitration shall be conducted in accordance with the HKIAC arbitration rules in effect at the time of applying for arbitration. The arbitral award shall be final and binding upon both parties. The seat of arbitration shall be in Hong Kong. The arbitration shall be conducted in English. The Arbitral Tribunal shall consist of three (3) Arbitrators which shall be appointed pursuant to the arbitration rules of HKIAC.

8.6 The arbitral award obtained in accordance with this Article against the Borrower will be recognized and be enforceable in the Republic of the Philippines provided that:

(a) the arbitral tribunal had jurisdiction over the subject matter of the action in accordance with the jurisdictional rules;

(b) the Borrower had prompt notice of the proceedings;

(c) the arbitral award was not obtained through collusion or fraud, and such award was not based on a clear mistake of fact or law; and

(d) the arbitral award is not contrary to public policy in the Republic of the Philippines.

8.7 **Borrower's Process Agent** Without prejudice to the generality of this Article 8, the Borrower hereby irrevocably designates and appoints the Consul General of the Republic of the Philippines in Hong Kong, China with its address at Fourteenth Floor, United Centre, 95 Queensway, Admiralty, Hong Kong as its authorized agent to receive and acknowledge on its behalf service of any notice, writ, summons, order, judgment, or any other legal documents in China. If for any reason the agent named above (or its successor) no longer serves as agent of the Borrower to receive legal documents as aforesaid, the Borrower shall promptly designate a successor agent satisfactory to the Lender. The Borrower hereby agrees that, any such legal documents shall be sufficiently served on it if delivered to the agent for service at its address for the time being in Hong Kong, whether or not such agent gives notice thereof to the Borrower.

8.8 **The Representative Office of the Lender** The Lender intends to and will make its earnest efforts to appoint its Representative Office in Hong Kong, China with its address at 1904-05, 19/F, One International Finance Centre, 1 Harbour View Street, Central, Hong Kong, to receive the documentation in connection with arbitration proceedings on its behalf.

8.9 **Confidentiality** The Borrower shall keep all the terms, conditions and the standard of fees hereunder or in connection with this Agreement strictly confidential. Without the prior written consent of the Lender, the Borrower shall not disclose any information hereunder or in connection with this Agreement to any third party unless required by any

applicable Philippine laws, regulations, and rules, or by order of any courts, tribunals, or agencies of competent jurisdiction, or relevant regulatory bodies.

8.10 **Communications** Unless otherwise provided herein, all notices or other documents in connection with this Agreement shall be in writing and shall be delivered or sent either personally or by post or facsimile to the following respective address or facsimile number of both Parties. In the event that the following address or facsimile number of any Party hereunder has changed, such Party shall immediately inform in writing the other Party in the way set out in this Agreement:

To the Lender: Sovereign Business Department (Concessional Loan Dept.)
The Export-Import Bank of China
No. 30, Fu Xing Men Nei Street, Xicheng District, Beijing, 100031
People's Republic of China
Fax No.: 0086-10-66086308
Telephone: 0086-10-83578486
Contact Person: Country Officer of the Republic of the Philippines

To the Borrower: Metropolitan Waterworks and Sewerage System (MWSS)
Office of the Administrator
4th Floor, Administration Building
MWSS Complex, 489 Katipunan Road
Balara, Quezon City, 1105
Republic of the Philippines
Fax No.: +63-2-921-2887
Telephone: +63-2-922-2969
Contact Person: The Incumbent Administrator of the MWSS

Any notice or document so addressed to the relevant Party under this Agreement shall be deemed to have been delivered:

(1) if sent by personal delivery: at the time of the actual receipt as acknowledged by

the recipient;

(2) if sent by post: fifteen (15) days after posting (excluding Saturdays, Sundays and statutory holidays);

(3) if sent by facsimile, when the notice or document is dispatched by fax machine

8.11 **Language** This Agreement shall be signed in the English language. The notes and other written documents delivered between the Borrower and the Lender under this Agreement shall all be written in English.

8.12 Unless otherwise provided, no failure or delay by the Lender in exercising any of its rights, power or privilege under this Agreement shall impair such right, power, or privilege or operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.

8.13 The appendices to this Agreement shall be deemed as an integral part of this Agreement and have the same legal effect as this Agreement.

8.14 Matters not covered in this Agreement shall be settled through friendly consultation in good faith and mutual understanding, including the signing of supplementary agreements between the Borrower and the Lender.

ARTICLE 9 CONDITIONS TO EFFECTIVENESS

9.1 This Agreement shall become effective upon the satisfaction of the following conditions:

(1) This Agreement has been duly signed by the Lender and the Borrower;

(2) The Lender has received copies of the approval issued by the relevant authorities of the Borrower's Country approving the borrowing by the Borrower hereunder, including but not limited to, the certified true copy of the Bangko Sentral ng Pilipinas' Monetary Board Final approval on the financing;

(3) The Lender has received the original of the Letter of Guarantee duly issued by the Guarantor and acceptable to the Lender.

(4) The Lender has received copies of the Commercial Contract signed by the Borrower and the Chinese Contractor in full form and substance satisfactory to the Lender;

(5) The Lender has received certified true copy of the Environmental Compliance Certificate issued by the authorized governmental agency of the Borrower's Country.

9.2 The effective date of this Agreement shall be the date specified in the Notice of Effectiveness of Loan Agreement sent by the Lender to the Borrower after all the conditions precedent to the effectiveness of this Agreement have been fully satisfied.

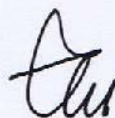
9.3 In the event that this Agreement fails to become effective within one (1) year after signing by the parties, the Lender shall have the right to re-evaluate the implementation conditions of the Project and utilization conditions of the Facility to determine whether to continue the performance of this Agreement or not.

9.4 This Agreement shall be executed in two originals with equal legal effect, one for each Party.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly signed on their respective behalf, by their duly authorized representatives, on the date stated at the beginning of this Agreement.

On behalf of
The Metropolitan Waterworks and
Sewerage System

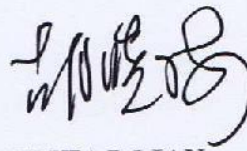
By:



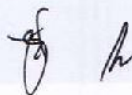
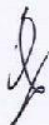
REYNALDO V. VELASCO
Administrator
Metropolitan Waterworks and
Sewerage System

On behalf of
The Export-Import Bank of China

By:



HU XIAO LIAN
Chairman
Export-Import Bank of China



Appendices:

1. Conditions Precedent to the First Drawdown
2. Conditions Precedent to Each Drawdown after the First Drawdown
3. Power of Attorney (for Signing)
4. Power of Attorney (for Drawdown)
5. Form of Irrevocable Notice of Drawdown
6. Letter of Guarantee
- 7-1. Form of Legal Opinion of Legal Counsel of the Borrower
- 7-2. Form of Legal Opinion on the Guarantee
- 8-1. Irrevocable Power of Attorney of Borrower's Process Agent
- 8-2. Letter of Confirmation (Consent of the Borrower's Process Agent)
- 9-1. Irrevocable Power of Attorney of Guarantor's Process Agent
- 9-2. Letter of Confirmation (Consent of the Guarantor's Process Agent)
10. Form of Notice of Effectiveness of Loan Agreement
11. Form of Repayment Schedule

Appendix 1

Conditions Precedent to the First Disbursement

Upon the Borrower's application to the Lender for the making of the first disbursement which equals to eighty-five percent (85%) of the advance payment of the Commercial Contract, the Lender shall not be obliged to make any such disbursement to the Borrower unless the Borrower has fulfilled the following conditions and the Lender has received the following documents to its satisfaction:

- (1) Copies of this Agreement which have been duly signed by all parties thereto respectively and have become effective;
- (2) Certified true copy of the Letter of Guarantee which has been duly executed by the Guarantor and has become effective;
- (3) Certified true copies of the Commercial Contract and other relevant documents in connection therewith acceptable to the Lender which have been duly signed by all parties thereto and have become effective;
- (4) Drawdown schedule submitted by the Borrower which has been recognized and accepted by the Lender;
- (5) Certified true copies of corporate documents in relation to the Borrower, including:
 - (a) its certificate of incorporation, memorandum, and/or articles of association and all other constitutional documents including the Republic Act No. 6234, *as amended*, or otherwise known as the MWSS Charter, whatever applicable;
 - (b) the certificate of approval on the incorporation and business operation of the Borrower granted by the relevant governmental authorities of the Borrower's Country, if any;
 - (c) a list of the Directors or Trustees of the Borrower and their specimen signatures;
 - (d) resolutions of the Borrower's Board of Trustees approving the borrowing on the terms and conditions hereof; and

(e) the authorization of the Borrower, by which the Borrower authorizes one or more representatives to sign this Agreement, Irrevocable Notice of Drawdown, and any other documents in relation to this Agreement, and the specimen signature of such authorized representatives.

(6) In respect of the Guarantor, certified true copies of:

(a) Documentary evidence of the authority of the Guarantor to sign, deliver, and perform the Letter of Guarantee; and

(b) Documentary evidence of the authority of the person who has signed the Letter of Guarantee on behalf of the Guarantor (such documentary evidence includes the authenticated specimen signature of and certificate of incumbency and certificate of delegation of power in respect of the person described above).

(7) Audited financial reports of the Borrower for the most recent year;

(8) Certified true copies of any and all documents evidencing that the End-User has paid to the Chinese Contractor certain amount which is equivalent to fifteen percent (15%) of the advance payment under the Commercial Contract.

(9) Certified true copies of any and all documents which could evidence that the Management Fee and Commitment Fee payable hereunder have been paid by the Borrower to the Lender in accordance with the provisions of Article 2.5 and Article 2.6;

(10) An original Irrevocable Notice of Drawdown in the form set out in Appendix 5 attached hereto, duly signed by the authorized signatory of the Borrower and affixed with the official stamp of the Borrower not later than the fifteenth (15th) Business Day prior to the date on which the drawdown is scheduled to be made; such Irrevocable Notice of Drawdown authorizes the Lender to pay the relevant amount to the account designated by the Borrower, and such drawdown shall be in compliance with the stipulations of the Commercial Contract;

(11) A legal opinion on the Agreement in the form set forth in Appendix 7-1 or in the form and substance otherwise approved by the Lender in writing issued by the Office of

the Government Corporate Counsel;

(12) A legal opinion on the Letter of Guarantee in the form and substance set forth in Appendix 7-2 or in the form and substance otherwise approved by the Lender in writing issued by the Philippine Department of Justice;

(13) If applicable, certified true copies of all necessary governmental and regulatory approvals and/or filing, registration, and record of this Agreement, the Letter of Guarantee and any other documents with any governmental agency, court, public office or other authority required under the laws and regulations of the Borrower's Country to ensure the validity, legality and enforceability of such documents;

(14) The irrevocable power of attorney to the process agent by the Borrower named in Article 8.7 in the form set forth in Appendix 8-1 or in the form and substance otherwise approved by the Lender in writing and the written confirmation of acceptance of appointment by such process agent in the form of Appendix 8-2 or in the form and substance otherwise approved by the Lender in writing;

(15) The irrevocable power of attorney to the process agent by the Guarantor in the form set forth in Appendix 9-1 or in the form and substance otherwise approved by the Lender in writing and the written confirmation of acceptance of appointment by such process agent in the form of Appendix 9-2 or in the form and substance otherwise approved by the Lender in writing;

(16) Certified true copies of the implementation plan for the land acquisition and resettlement confirmed by the Borrower, all requisite approvals for such plan issued by relevant authorities, and the written confirmation issued by the Chinese Contractor stating that the actual status of the land acquisition and resettlement could satisfy the commencement of the Project and ensure the timely completion as required in the Commercial Contract;

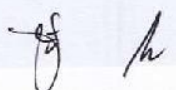
(17) Certified true copies of the subcontracts for the Project's construction, design, and key supply, in full form and substance satisfactory to the Lender, duly signed by the

Chinese Contractor and relevant subcontractors;

(18) Certified true copies of the supervisor/engineer contract, in full form and substance satisfactory to the Lender, duly signed by the relevant parties.

(19) Such other document(s) or condition(s) relating to the transactions under this Agreement as the Lender may reasonably request.

In the event that the Borrower fails to fulfill the above conditions within one (1) year after the effectiveness of this Agreement, the Lender shall have the right to re-evaluate the implementation conditions of the Project and utilization conditions of the Facility to determine whether to continue the performance of this Agreement or not.



Appendix 2

Conditions Precedent for Each Disbursement after the First Disbursement

For each disbursement after the first disbursement hereunder, the Lender shall not be obliged to make any such disbursement to the Borrower unless all the conditions precedent set out in Appendix 1 attached hereto have been satisfied, and the Borrower has fulfilled the following conditions and the Lender has received the following documents to its satisfaction:

- (1) An original Irrevocable Notice of Drawdown in the form set out in Appendix 4 attached hereto duly signed by the authorized signatory of the Borrower and affixed with the official stamp of the Borrower, and sent by courier not later than the fifteenth (15th) Business Day prior to the date on which the drawdown is scheduled to be made; such Irrevocable Notice of Drawdown authorizes the Lender to pay the relevant amount to the account designated by the Borrower, and such drawdown shall be in compliance with the stipulations of the Commercial Contract;
- (2) No Event of Default has occurred (or will likely to occur as a result of the drawdown being made) under this Agreement;
- (3) All representations, warranties, and undertakings made by the Borrower hereunder shall be true and correct as at the date such drawdown is scheduled to be made with reference to the facts and circumstances then subsisting;
- (4) The Borrower has paid the interest and Commitment Fee due and payable under this Agreement. The Facility hereunder has not been terminated;
- (5) Certified true copies of documents evidencing that the Borrower has made sufficient payment of the Self-raised Fund to the Chinese Contractor prior to each Disbursement, so that after such Disbursement, the ratio of the aggregate Self-raised Fund to the Loan shall be 15:85.

(6) The Letter of Guarantee remains in full force and effect;

Such other document(s) and condition(s) as the Lender may reasonably request



Appendix 3

Power of Attorney (for Signing the Agreement)

I, _____ (Name of the Authorizing Person), am _____ (Title of the Authorizing Person, such as legal representative) of _____ (hereinafter referred as the “**Company**”). I hereby confirm that I have the full legal right and authority to sign the Preferential Buyer Credit Loan Agreement on the _____ Project dated _____ (No. _____, hereinafter referred to as the “**Agreement**”) on behalf of the Company. However, in the event that I am not available when the Agreement is required to be signed, I confirm that I have the full legal right and authority to authorize, and I hereby authorize Mr. _____ (hereinafter referred as the “**Authorized Signatory**”), _____ (Title of the Authorized Signatory) of the Company, to sign the Agreement and other notices and documents in connection therewith on behalf of the Company.

Signature: _____

Title: _____

Date: _____

Specimen Signature of the Authorized Signatory:

Name: _____

Title: _____

Appendix 4

Power of Attorney (for Drawdown)

I, _____ (Name of Authorizing Person), am _____ (Title of the Authorizing Person, such as legal representative) of _____ (hereinafter referred as the "Company"). I hereby confirm that I have the full legal right and authority to make drawdowns on behalf of the Company in accordance with the terms and conditions of the Preferential Buyer Credit Loan Agreement on the _____ Project dated _____ (No. _____, hereinafter referred to as the "**Agreement**"). In the event that I am not available when a drawdown is to be made, I confirm that I have the full legal right and authority to authorize, and I hereby authorize Mr. _____ (hereinafter referred as the "**Authorized Signatory**"), _____ (Title of the Authorized Signatory) of the Company, to make the drawdown under the Agreement, to sign the documents and to handle other matters in connection therewith on behalf of the Company.

Signature: _____

Title: _____

Date: _____

Specimen Signature of the Authorized Signatory:

Name: _____

Title: _____

Appendix 5

FORM OF IRREVOCABLE NOTICE OF DRAWDOWN
(BY EXPRESS DELIVERY)

From: _____ (the Borrower)
To: The Concessional Loan Department
The Export-Import Bank of China
No. 30, Fuxingmennei Street, Xicheng District, Beijing 100031
People's Republic of China

Serial No: _____

Date: _____

Dear Sir or Madam:

Pursuant to Article 3 of the Preferential Buyer's Credit Loan Agreement on the _____ Project dated _____ (No. _____, hereinafter referred to as the "Agreement") between _____ (the "Borrower") and the Export-Import Bank of China (the "Lender"), we hereby instruct and authorize you to make a payment as follows:

Amount: _____ (Currency: USD)

Word Figure: _____ (Currency: USD)

_____ (Please fill in "Please pay in _____ (foreign currency)" in case that a drawdown in a foreign currency approved by the Lender is needed)

Payee: _____

Account Bank: _____ (This account shall be opened by the Chinese Contractor with the Lender or a bank designated by the Lender for the purpose of receiving payments under or in connection with the Commercial Contract)

Account No.: _____

Date of Payment: _____

This payment is made to the _____ Invoice (Invoice No. _____) under the _____ Contract (Contract No.: _____), and for the payment of _____ (*purpose*).

We hereby authorize you to debit the account mentioned in Article 4.5 of the Agreement with such amount of payment in USD in accordance with Article 2.1 of the Agreement.

We hereby confirm that your above-mentioned payment shall be deemed a drawdown made by us under the Agreement and upon your payment pursuant to this Irrevocable Notice of Drawdown, the amount of payment shall forthwith constitute our indebtedness to you accordingly. We shall repay such amount to you together with any interest accrued thereon in accordance with the terms and conditions of the Agreement.

We further confirm that the representations and warranties and covenants made by us in Article 5 and Article 6 of the Agreement remain true and correct as of the date of this Irrevocable Notice of Drawdown, and none of the events referred to in Article 7 of the Agreement has occurred and continuously exists.

Terms not otherwise defined herein shall have the meanings assigned to them in the Agreement.

This notice once given shall be irrevocable.

_____ (Full Name of the Borrower)

Appendix 6

LETTER OF GUARANTEE

To: The Export-Import Bank of China
No. 30, Fuxingmennei Street, Xicheng District, Beijing 100031
People's Republic of China

Date: _____

Dear Sirs:

In consideration of the Export-Import Bank of China (hereinafter referred to as the "Lender") agreeing to make available to Metropolitan Waterworks and Sewerage System, hereinafter referred to as the "Borrower") a loan facility in an aggregate principal amount not exceeding US\$_____ (In Word) (US\$ _____), on and subject to the terms and conditions of the Preferential Buyer's Credit Loan Agreement on the New Centennial Water Source-Kaliwa Dam Project dated _____ (No. _____, hereinafter referred to as the "Agreement") made between the Lender and the Borrower, the Government of the Republic of the Philippines, acting by and through the Department of Finance (hereinafter referred to as the "Guarantor"), hereby unconditionally and irrevocably guarantees the due and punctual payment by the Borrower of all the principal, interest, commitment fee, and management fee by it under the Agreement (hereinafter referred to as the "Guaranteed Indebtedness").

In the event that the Borrower fails to pay any amount of the Guaranteed Indebtedness when due (hereinafter referred to as the "Overdue Amount"), the Guarantor agrees to pay such Overdue Amount to the Lender within thirty (30) days after receiving the Lender's written payment request, which shall only be issued after the expiration of the remedy period under Article 7.2(a) of the Agreement.

In no event shall the obligations undertaken by the Guarantor under this Letter of Guarantee exceed all the Guaranteed Indebtedness due and payable under the Agreement. The Guarantor shall pay the amount payable by it under the Letter of Guarantee in full and

shall not make any reduction or set-off in any form. The obligations of the Guarantor under this Letter of Guarantee shall not be discharged until all the Guaranteed Indebtedness has been repaid in full.

The Guarantor's obligations under this Guarantee shall not be affected by any fact or conditions, including without limitation: (i) any defect or unenforceability of any obligations or responsibilities of the Borrower under the Agreement; (ii) insolvency, liquidation, dissolution, or any restriction or change in the legal person name, scope of operations, registered capital, or shareholders of the Borrower.

Any material amendment to the Agreement (including without limitation the extension of the term of the Agreement) shall require the written consent of the Guarantor. The Guarantor shall continue to assume its obligations according to the amended Agreement.

The Lender may transfer or assign its rights and benefits under the Agreement and this Guarantee to any third party with written notice to Guarantor. Any assignment or transfer by the Borrower of all or any part of its rights or obligations under Loan Agreement shall require the written consent of the Guarantor. The Guarantor shall continue to assume its obligations within the scope of this Guarantee.

The signing of this Letter of Guarantee by the Guarantor constitutes, and the Guarantor's performance of its obligations under this Letter of Guarantee will constitute commercial acts. The Guarantor hereby irrevocably waives any immunity on the grounds of sovereign or otherwise for itself or its property in connection with any arbitration proceeding pursuant to the following stipulation or with the enforcement of any arbitral award pursuant thereto, except any other asset of the Guarantor which are (i) used by a diplomatic or consular mission of the Republic of the Philippines, (ii) of a military character and under control of a military authority or defense agency of the Republic of the Philippines, or (iii) located within the territory of Philippines to the extent that the Guarantor is prohibited by the laws or public policies having force of law in the Republic of Philippines, applicable and in effect at the signing date of this Agreement, from waiving such immunity.

Any dispute arising out of or in connection with this Letter of Guarantee shall be resolved

through friendly consultation. If no settlement can be reached through such consultation, each party shall have the right to submit such dispute to the Hong Kong International Arbitration Centre (HKIAC) for arbitration. The arbitration shall be conducted in accordance with the HKIAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award shall be final and binding upon both parties. The seat of arbitration shall be in Hong Kong. The arbitration shall be conducted in English. The Arbitral Tribunal shall consist of three (3) Arbitrators, which will be appointed following the HKIAC arbitration rules.

The arbitral award in connection with the Guarantee will be recognized and be enforceable in the Republic of the Philippines provided that:

- (a) the arbitral tribunal had jurisdiction over the subject matter of the action in accordance with the jurisdictional rules;
- (b) the Republic of the Philippines had notice of the proceedings;
- (c) the arbitral award was not obtained through collusion or fraud, and such award was not based on a clear mistake of fact or law; and
- (d) the arbitral award is not contrary to public policy in the Republic of the Philippines.

This Letter of Guarantee shall be governed by and construed in accordance with the Laws of the People's Republic of China.

All notices and other communications under this Letter of Guarantee shall be in writing, submitted and sent to the following post address or facsimile. In the event that any post address or facsimile changes, such party shall forthwith notify the other party of such change:

To the Guarantor: Department of Finance (DOF) of the Republic of the Philippines
Address: DOF Building, Roxas Boulevard, Malate, Manila 1004, Philippines
Telephone: 632-526-9990
Fax No.: 632-523-9216
Contact Person: Undersecretary of the International Finance Group

To the Lender: The Export-Import Bank of China

Address: No. 30, Fuxingmennei Street, Xicheng District, Beijing 100031
People's Republic of China
Fax No.: 0086-10-66086308
Telephone: 0086-10-83578486
Contact Person: Country Officer of the Republic of the Philippines

This Letter of Guarantee is signed by the Guarantor on the date of _____ (mm/dd/yy)
in _____ (the place of signing) and becomes effective as of the signing date.

Guarantor: The Government of the Republic of the Philippines acting by and
through the Department of Finance

Authorized Signatory: _____

Appendix 7-1

Form of Legal Opinion of Legal Counsel of the Borrower

To: The Export-Import Bank of China
No. 30, Fuxingmennei Street, Xicheng District, Beijing 100031
People's Republic of China

Date:

Dear Sirs:

**Re: The Preferential Buyer's Credit Loan Agreement on the _____
Project (No. _____)**

I am the Legal Counsel of the _____ (name of the Borrower), and submit this legal opinion in connection with the Preferential Buyer's Credit Loan Agreement on the _____ Project dated _____ (No. _____, the "Loan Agreement") between the Export-Import Bank of China as the lender (the "Lender") and _____ as the borrower (the "Borrower").

For the purposes of this legal opinion, we have examined copies of the following documents:

- (1) the executed Loan Agreement;
- (2) such laws and regulations and such other documents, certificates, records, and instruments as necessary and appropriate to render the opinions hereinafter set forth.

This legal opinion is given on the basis of the laws of the Republic of the Philippines effective as of the date hereof. Based on the foregoing, we are of the opinion that:

1. The Borrower is a government instrumentality with corporate powers duly

incorporated, validly existing as an independent legal entity and in good standing under the laws of the Republic of the Philippines, and has power, authority, and legal right to assume civil liabilities with its assets.

2. The Borrower has full power, authority, and legal right to enter into and perform its obligations under the Loan Agreement and has taken all necessary action to authorize the signing, delivery, and performance of the Loan Agreement and _____ of the Borrower has been duly authorized and has the power to sign the Loan Agreement on behalf of the Borrower.
3. The Loan Agreement has been duly signed by the Borrower, and constitutes legal, valid, and binding obligation of the Borrower enforceable in accordance with its terms.
4. The signing, delivery and performance of the Loan Agreement by the Borrower do not violate or conflict with, or result in a breach of any law or regulation of the Republic of the Philippines and any provisions of any contract or agreement to which the Borrower is a party.
5. All authorizations, approvals, consents, and licenses of any authority in the Republic of the Philippines required in connection with the signing, delivery, and performance of the Loan Agreement by the Borrower have been obtained and are in full force and effect, including making payments in foreign currencies under the Loan Agreement and making the Loan Agreement admissible in evidence in the courts of the Philippines.
6. No registration fee or similar tax is payable in _____ in respect of the Loan Agreement by the Borrower and the Lender, except that stamp duty is payable in respect of the Loan Agreement by each of the Borrower and the Lender at the currently applicable rate of _____%, and we are satisfied that all stamp duty payable under the Loan Agreement has been paid in full. No withholding is required to be made in respect of any payment to be made by the Borrower to the Lender under the Loan Agreement.

7. Subject to the stipulations in the Commercial Contract, the signing and performance of the Commercial Contract is eligible for tax deductions and exemptions under the law of the Republic of the Philippines, and all applications and approving procedures for such tax deductions and exemptions have been fulfilled.
8. The signing and performance of the Loan Agreement by the Borrower constitute commercial acts, and the declaration that the Borrower shall not have any right of immunity in connection with any proceedings or any enforcement of an arbitral award or court decision on the grounds of sovereignty or otherwise is valid and irrevocably binding on the Borrower, except any other assets of the Borrower located within the territory of the Philippines to the extent that the Borrower is prohibited by the laws or public policies having force of law in the Republic of the Philippines, applicable and in effect at the signing date of this Agreement, from waiving such immunity.
9. The arbitral award will be recognized and be enforceable in the Republic of the Philippines provided that: (a) the arbitral tribunal had jurisdiction over the subject matter of the action in accordance with the jurisdictional rules; (b) the Republic of the Philippines had notice of the proceedings; (c) the arbitral award was not obtained through collusion or fraud, and such award was not based on a clear mistake of fact or law; and (d) the arbitral award is not contrary to public policy in the Republic of the Philippines.
10. The payment obligations of the Borrower under the Loan Agreement rank at least pari passu with all its other unsecured and unsubordinated indebtedness except those which are mandatorily preferred by operation of _____ law
11. The choice of Chinese law as the governing law under the Loan Agreement is a valid choice of law. The submission of any dispute arising out of or in connection with the Loan Agreement by the Borrower to the Hong Kong International Arbitration Centre for arbitration under the Loan Agreement does not contravene

any law of the Philippines. The appointment by the Borrower of a process agent in Hong Kong does not violate any provision of any law or regulation of the Philippines.

12. The Lender is not and will not be deemed to be resident, domicile or having an establishment in the Republic of the Philippines by reason only of the execution, delivery, performance and/or enforcement of the Loan Agreement.

This legal opinion is strictly limited to the matters stated herein and may be relied upon only by you in respect of the captioned matter. It may not be relied upon for any other purposes and may not be disclosed to any other persons without our consent.

Yours faithfully,

Appendix 7-2

Form of Legal Opinion on the Guarantee

To: The Export-Import Bank of China

Date: _____

Dear Sirs:

I am the Secretary of Justice of the Republic of the Philippines, qualified, and authorized to issue this legal opinion in connection with the Letter of Guarantee dated _____ (No. _____, hereinafter referred to as the "Guarantee") provided by _____ (the "Guarantor") under the Preferential Buyer's Credit Loan Agreement on the _____ Project dated _____ (No. _____, the "Loan Agreement") between the Export-Import Bank of China as the lender (the "Lender") and _____ as the borrower (the "Borrower").

Unless otherwise defined herein, the terms defined in the Loan Agreement shall have the same meanings when used in this opinion.

For the purposes of this legal opinion, we have examined copies of the following documents:

- (a) the executed Guarantee;
- (b) the executed Loan Agreement;
- (c) such laws and regulations and such other documents, certificates, records and instruments as necessary and appropriate to render the opinions hereinafter set forth.

This legal opinion is given on the basis of the laws of the Republic of the Philippines effective as of the date hereof. Based upon the foregoing, we are of the opinion that:

1. The Guarantor is a sovereign state, and has full power, authority and legal right to assume civil liability with its assets.;

2. The Guarantor has full power, authority, and legal right to enter into and perform its obligations under the Guarantee and has taken all necessary action to authorize the signing, delivery and performance of the Guarantee and _____ of the Guarantor has been duly authorized and has the power to sign the Guarantee on behalf of the Guarantor;
3. The Guarantee has been duly signed by the Guarantor, and constitutes legal, valid, and binding obligation of the Guarantor enforceable in accordance with its terms;
4. The signing, delivery, and performance of the Guarantee by the Guarantor do not violate or conflict with, or result in any breach of any provision of any law or regulation of the Republic of the Philippines, and the Guarantor's constitution documents and any provisions of any contract or agreement to which the Guarantor is a party;
5. All authorizations, approvals, and consents of any authority in the Republic of the Philippines required in connection with the signing, delivery, and performance of the Guarantee by the Guarantor have been obtained and are in full force and effect, including making payments in foreign currencies under the Guarantee and making the Guarantee admissible in evidence in the courts of the Republic of the Philippines;
6. All amount payable by the Guarantor under the Letter of Guarantee will be made free and clear of and without deduction on account of any tax, levy, deduction, or charge by the Republic of the Philippines or any political subdivision or taxing authority thereof is required in respect of any payment to be made by the Guarantor to the Lender under the Guarantee;
7. The signing and performance of the Guarantee by the Guarantor constitutes commercial acts and the declaration that the Guarantor shall not have any right of immunity in connection with any proceedings or any enforcement of an arbitral award or court decision on the grounds of sovereignty or otherwise is valid and irrevocably binding on the Guarantor, except the assets of the Guarantor which are (i) used by a diplomatic or consular mission of the Republic of the Philippines, (ii) of a military




character and under control of a military authority or defense agency of the Republic of the Philippines, or (iii) located within the territory of the Philippines to the extent that the Guarantor is prohibited by the laws or public policies having force of law in the Republic of the Philippines, applicable and in effect at the signing date of this Letter of Guarantee, from waiving such immunity.

8. The payment obligation of the Guarantor under the Guarantee rank at least pari passu with all its other unsecured and unsubordinated External Indebtedness;
9. The choice of Chinese law as the governing law under the Guarantee is a valid choice of law. The submission of any dispute arising out of or in connection with the Guarantee by the Guarantor to the Hong Kong International Arbitration Centre (HKIAC) for arbitration under the Guarantee does not contravene any law of the Republic of the Philippines. The seat of arbitration shall be in Hong Kong. The arbitration shall be conducted in English. The irrevocable appointment by the Guarantor of a process agent in Hong Kong does not violate any provision of any law or regulation of the Republic of the Philippines; and
10. The foregoing arbitration awards and judgments obtained against the Guarantor will be recognized and be enforceable in the Republic of the Philippines provided that: (i) The Arbitral Tribunal had jurisdiction over the subject matter of the action in accordance with jurisdictional rules; (ii) the Republic of the Philippines had notice of the proceedings ; (iii) The arbitral award was not obtained through collusion or fraud, and such award was not based on a clear mistake of fact or law; and (iv) The arbitral award is not contrary to public policy in the Republic of the Philippines.
11. The Lender is not and will not be deemed to be resident, domicile or having an establishment in the Republic of the Philippines by reason only of the execution, delivery, performance and/or enforcement of the Guarantee.

This legal opinion is strictly limited to the matters stated herein and may be relied upon only by you in respect of the captioned matter. It may not be relied upon for any other purposes and may not be disclosed to any other persons without our consent.

As to the questions of fact material to my conclusions expressed herein, to the extent I have not independently established the facts, I have relied upon the statements of fact contained in the documents I have examined and on certificates or representations of responsible officers and other representatives of the Republic and other parties to the relevant agreement. Nothing has come to my attention which leads me to believe that such certificates and representations are not accurate.

Yours faithfully,



Appendix 8-1

**Irrevocable Power of Attorney
(Appointment of the Borrower's Process Agent)**

Date: _____

Dear Sirs:

We refer to the Preferential Buyer's Credit Loan Agreement on the _____
Project dated _____ (No. _____, hereinafter referred to as "the Agreement").
We hereby appoint you under the Agreement as our agent for the sole purpose of receiving
for us and on our behalf service of any legal documents issued by the Hong Kong
International Arbitration Center in respect of any legal action or proceedings arising out
of or in connection with the Agreement. We hereby confirm that we shall as soon as
possible provide you with a true and correct copy of the Agreement and all relevant related
documents. We further hereby confirm that your obligations as our agent are limited to
those set out in the paragraphs below and that any other services will only be on our
specific request and subject to your agreement and to your customary legal fees. Your
obligations are:

(1) Promptly to forward to us (to the extent lawful and possible) by registered post
prepaid express airmail addressed as hereafter shown, or by such expeditious means as
you may deem appropriate, the original or a copy of any notice of legal documents
received by you:

Attention:

Tel:

or to such other address as we may from time to time request in a notice to you sent by
registered post prepaid express airmail and marked "For the Attention of the person in
charge of Service of Process/ Re: Service of Process";

(2) Perform the duties as Process Agent in accordance with the Agreement.

We should be grateful if you would indicate your acceptance of your appointment by signing the letter of confirmation and returning the same to us or to such other person as we may identify to you.

Yours faithfully,

Name:

Title:



Appendix 8-2

**Letter of Confirmation
(Consent of the Borrower's Process Agent)**

To: (name of the Borrower)

Date: _____

We hereby acknowledge receipt of the letter dated _____ from you, and agree to our appointment under it to receive on behalf of you service of legal documents issued by the Hong Kong International Arbitration Centre in any legal action or proceedings arising out of or in connection with the Agreement referred to in that letter.

Yours faithfully,

Name:

Title:

Appendix 9-1

**Irrevocable Power of Attorney
(Appointment of the Guarantor's Process Agent)**

Date: _____

Dear Sirs:

We refer to the Letter of Guarantee dated _____ (hereinafter referred to as "the Guarantee") issued by us in favor of the Export-Import Bank of China (hereinafter referred to as "the Lender") concerning the Preferential Buyer Credit Loan Agreement on the _____ Project dated _____ (No. _____) between the Lender and _____ (hereinafter referred to as "the Borrower").

We hereby appoint you under the Guarantee as our agent for the sole purpose of receiving for us on our behalf service of any process issued by the Hong Kong International Arbitration Centre (HKIAC) in respect of any legal action or proceedings arising out of or in connection with the Guarantee. We hereby confirm that we shall as soon as possible provide you with a true and correct copy of the Guarantee and all relevant related documents. We further hereby confirm that your obligations as our agent are limited to those set out in the paragraphs below and that any other services will only be on our specific request and subject to your agreement and to your customary legal fees. Your obligations are:

- (1) Promptly to forward to us (to the extent lawful and possible) by registered post prepaid express courier addressed as hereafter shown, or by such expeditious means as you may deem appropriate, the original or a copy of any notice of legal documents received by you:

Attention:

Tel:

or to such other address as we may from time to time request in a notice to you sent by registered post prepaid express airmail and marked "For the Attention of the person in charge of Service of Process/ Re: Service of Process";

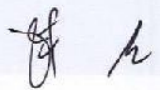
(2) Perform the duties as Process Agent in accordance with Article 8.7 of the Agreement.

We should be grateful if you would indicate your acceptance of your appointment by signing the letter of confirmation contained in the duplicate of this letter and returning the same to us or to such other person as we may identify to you.

Yours faithfully,

Name:

Title:



Appendix 9-2

**Letter of Confirmation
(Consent of the Guarantor's Process Agent)**

To: (name of the Guarantor)

Date: _____

We hereby confirm receipt of the Irrevocable Power of Attorney dated ____ from you, and agree to our appointment under it to receive on behalf of you service of process issued by HKIAC in any legal action or proceedings arising out of or in connection with the Guarantee referred to in the Irrevocable Power of Attorney.

Yours faithfully,

Name:

Title:



Appendix 10

Form of Notice of Effectiveness of Loan Agreement

From: The Export-Import Bank of China
No. 30, Fuxingmennei Street, Xicheng District, Beijing 100031
People's Republic of China

To: _____ (the Borrower)

Date: _____

Dear Sirs:

Pursuant to Article 9 of the Preferential Buyer's Credit Loan Agreement on the _____ Project dated _____ (No. _____, hereinafter referred to as "the Agreement") between _____ (the "Borrower") and the Export-Import Bank of China (the "Lender"), we hereby inform you that:

- (a) all the conditions as set out in Article 9.1 of the Agreement have been satisfied;
- (b) The Agreement shall become effective on and from the date hereof.

The Export-Import Bank of China

(Signature of Authorized Signatory)

Copy furnished: The Government of the Republic of the Philippines acting by and through the Department of Finance.

Appendix 11

Form of Repayment Schedule

Concerning the Preferential Buyer's Credit Loan Agreement on the _____
Project dated _____ (No. _____)

Number of Installments	Date Due	Amount In US Dollars
1		
2		
3		
4		
5		
6		
7		
8		
Total		

Note: The amounts appearing in this schedule refer to repayment of the Principal of the Loan under the Preferential Buyer's Credit Loan Agreement on the _____ Project dated _____ (No. _____), while the interest accrued shall be paid according to the provisions of Article 4 of the aforesaid Agreement.