

NO. PBC20220210570

**PREFERENTIAL BUYER'S CREDIT
LOAN AGREEMENT**

On

**THREE PRIORITY BRIDGES CROSSING PASIG-
MARIKINA RIVER AND MANGGAHAN FLOODWAY
BRIDGES CONSTRUCTION PROJECT¹
(CONTRACT PACKAGE 2)**

BETWEEN

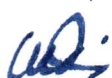
**THE GOVERNMENT OF THE REPUBLIC OF THE
PHILIPPINES, ACTING BY AND THROUGH,
THE DEPARTMENT OF FINANCE
as Borrower**

AND

**THE EXPORT-IMPORT BANK OF CHINA
as Lender**

DATED January 4, 2023

¹ Also known as "Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway under Chinese Government Financing" as approved by the National Economic and Development Authority (NEDA) Board



Contents

ARTICLE 1	DEFINITIONS	5
ARTICLE 2	CONDITIONS AND UTILIZATION OF THE FACILITY	11
ARTICLE 3	DISBURSEMENT OF THE FACILITY	12
ARTICLE 4	REPAYMENT OF PRINCIPAL AND PAYMENT OF INTEREST	14
ARTICLE 5	REPRESENTATIONS AND WARRANTIES BY THE BORROWER	17
ARTICLE 6	SPECIAL COVENANTS	19
ARTICLE 7	EVENTS OF DEFAULT	22
ARTICLE 8	MISCELLANEOUS.....	25
ARTICLE 9	EFFECTIVENESS	29
Appendix 1	Conditions Precedent to the First Disbursement	33
Appendix 2	Conditions Precedent for Each Disbursement after the First Disbursement	36
Appendix 3	Power of Attorney (for Signing and Drawdown under the Agreement)	38
Appendix 4	Form of Irrevocable Notice of Drawdown	40
Appendix 5	Form of Legal Opinion.....	43
Appendix 6	Irrevocable Power of Attorney (Appointment of the Borrower's Process Agent).....	48
Appendix 7	Letter of Confirmation (Acceptance of the Borrower's Process Agent)	50
Appendix 8	Form of Notice of Effectiveness of Loan Agreement	51
Appendix 9	Form of Repayment Schedule	52

THIS PREFERENTIAL BUYER'S CREDIT LOAN AGREEMENT on Three Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway Bridges Construction Project - Contract Package 2 (hereinafter referred to as this "Agreement") is made on the 4th day of January 2023 between:

- (1) **THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES**, acting by and through the Department of Finance (hereinafter referred to as the "**Borrower**" or "**DOF**"), having its registered office at the DOF Building, Roxas Boulevard, Malate, Manila 1004, Philippines; and
- (2) **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 Borrower and the Lender hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**", to finance the Three Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway Bridges Construction Project² Contract Package 2 (hereinafter referred to as the "**Project**")

WHEREAS:

(A) On October 20, 2016, the Borrower and the Lender have signed a Memorandum of Understanding (hereinafter referred to as the "**MOU**") on Financing Cooperation to facilitate the promotion of financing cooperation between the Parties and utilization of the financing facilities being extended by the Lender to the Borrower for the purpose of financing projects mutually identified and agreed between the Government of the Republic of the Philippines (hereinafter referred to as the "**GPH**")

² *Also known as "Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway under Chinese Government Financing" as approved by the NEDA Board



and the Government of the People's Republic of China (hereinafter referred to as the "GPRC") (hereinafter collectively referred to as the "**Governments**");

(B) On March 3, 2017, the GPH, through the Department of Foreign Affairs (hereinafter referred to as the "**DFA**"), 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 GPRC to support priority projects of the Borrower, which was confirmed by GPRC on March 8, 2017 (hereinafter referred to as the "**Note Verbale**");

(C) On June 29, 2017, on behalf of both Governments, the DOF and the Embassy of the People's Republic of China in the Republic of the Philippines executed the Clarificatory Letter on the Procedures and Arrangements for the Implementation of the Note Verbale to further implement and clarify the said Note Verbale (hereinafter referred to as the "**Clarificatory Procedures and Arrangements**");

(D) On August 23, 2019, the DFA issued Note 19-3119 confirming the procedures and arrangements for the availment and utilization of concessionary loans under a Renminbi-denominated loan facility committed by the GPRC. In turn, on August 29, 2019 the Embassy of the People's Republic of China in the Republic of the Philippines issued Note Verbale No. (2019)PG-418 confirming No 19-3119 and thus constituting an agreement between the GPH and GPRC;

(E) On April 25, 2018, and August 19, 2021, the National Economic and Development Authority (NEDA) Board confirmed the Investment Coordination Committee's approval of the Project, with the approved project title, Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway under Chinese Government Financing and the changes to the Project, respectively;

(F) Pursuant to the MOUs and the abovementioned Notes Verbales and Clarificatory Procedures and Arrangements, the Department of Public Works and Highways of the Republic of the Philippines (hereinafter referred to as the “**End-User**”) commenced the procurement process and undertook Limited Competitive Bidding among Chinese Contractors provided by GPRC. China State Construction 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;


(G) The End-User and the Chinese Contractor have entered into the Contract Agreement with Contract No. 20Z00006 for the Design and Build of the Project (hereinafter referred to as the “**Commercial Contract**”) on December 3, 2020 for the purpose of the implementation of the Project;

(H) The Borrower, on September 26, 2022, following the original application on December 15, 2020, has requested the Lender to make available a mixed loan facility of Preferential Buyer’s Credit and Government Concessional Loan in a maximum aggregate amount equivalent to PHP Four Billion Seventy One Million Two Hundred Sixty Seven Thousand Five Hundred Forty Seven and Forty Cents (PHP 4,071,267,547.40) with applicable exchange rate of USD 1=PHP 48.0440 and CNY 1=PHP 7.3202 to the Borrower for the financing needs under the Commercial Contract.

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 shall 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 the earlier of (a) the date falling five (5) years thereafter, or (b) the date on which the Facility is cancelled or terminated hereunder, unless 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 “**Billing Amount**” means the payment amount specified under the bill issued by the Chinese Contractor to be payable by the End-User under the Commercial Contract (for the avoidance of doubt, including taxes and fees due and payable related to the full amount of the said payment).

1.5 “**Borrower’s Country**” means the Republic of the Philippines.

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

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

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

1.9 “**Commercial Contract**” means the Contract Agreement for the Priority



Bridges Crossing Pasig-Marikina River and Manggahan Floodway Bridges Construction Project under China Government Financing Facility Contract Package 2 - Palanca-Villegas Bridge and Eastbank-Westbank Bridge 2 (Design and Build) with the contract number of 20Z00006 for the purpose of the implementation of the Project entered into by and between the End-User and the Chinese Contractor on December 3, 2020 with the total amount of Four Billion Seven Hundred Eighty-Nine Million Seven Hundred Twenty-Six Thousand Five Hundred Twenty-Six Pesos and Thirty-Five Cents Only (PHP 4,789,726,526.35, the **“Commercial Contract Amount”**).

1.10 **“Commercial Contract (CP 1)”** means the Contract Agreement for the Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway Bridges Construction Project under China Government Financing Facility Contract Package 1 - North and South Harbor Bridge (Design and Build) with the contract number of 19Z00041 for the purpose of the implementation of the Project entered into by and between the End-User and China Road and Bridge Corporation on August 6, 2020 with the total amount of Six Billion Seven Hundred Fifty-Three Million One Hundred Seventy-One Thousand Two Hundred Eighty-Four Pesos and Sixty-Eight Cents Only (PHP 6,753,171,284.68).

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

1.12 **“Disbursement Amount”** means the amount specified under the irrevocable notice of drawdown substantially set out in the form of Appendix 4 (*Form of Irrevocable Notice of Drawdown*) hereto, which shall satisfy the requirements under Article 3.8 of this Agreement.

1.13 **“End-User”** means the Department of Public Works and Highways of the Republic of the Philippines, which is the implementing agency of the Project and



ultimately utilizes the Facility.

1.14 "**Effective Date**" means the date upon which this Agreement becomes effective pursuant to Article 9 of this Agreement.

1.15 "**Event of Default**" means any event or circumstance specified as such in Article 7.

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

1.17 "**Facility**" has the meaning set forth in Article 2.1.

1.18 "**Final Repayment Date**" means the date on which the Maturity Period expires.

1.19 "**First Repayment Date**" means the first Repayment Date of Principal and Interest after the end of the Grace Period.

1.20 "**Grace Period**" means the period from the Effective Date to the date following Seven (7) years thereafter, during which period only the interest and no principal is payable by the Borrower to the Lender. For the avoidance of doubt, the Grace Period includes the Availability Period.

1.21 "**Interest Payment Date**" means the 21st day of January and the 21st day of July in each calendar year commencing from the Effective Date up to the Final Repayment Date.

1.22 “**Interest Period**” means, in relation to any Disbursement under the Facility, (i) the first Interest Period shall be the period commencing on the date of Disbursement (inclusive) and ending on its first Interest Payment Date (exclusive); (ii) the Interest Period other than the first one and the last one shall be the period of six (6) months commencing on the Interest Payment Date (inclusive) and ending on the preceding date to the immediate following Interest Payment Date; and (iii) the final Interest Period shall be the period commencing on the penultimate Interest Payment Date (inclusive) and ending on the Final Repayment Date (exclusive).

1.23 “**Irrevocable Notice of Drawdown**” means the notice issued in the form set out in Appendix 4 attached hereto.

1.24 “**Loan**” means the aggregate principal amount disbursed and from time to time outstanding under the Facility.

1.25 “**Loan Agreement (CP 2-GCL Loan)**” means the Government Concessional Loan Agreement for RMB facility and its appendices and any amendment to such agreement and its appendices from time to time mutually agreed upon in writing by the Parties signed on or about this Agreement in relation to the Project under the Commercial Contract.

1.26 “**Loan Agreements (CP 1)**” means the Government Concessional Loan Agreement and Preferential Buyer’s Credit Loan Agreement and their appendices and any amendment to such agreements and their appendices from time to time mutually agreed upon in writing by the Parties signed on or about this Agreement in relation to the project under the Commercial Contract (CP 1).

1.27 “**Management Fee**” means the fee calculated and paid in accordance with

Article 2.5.

1.28 **“Maturity Period”** means the period from the Effective Date to the date falling Twenty (20) years thereafter, including the Grace Period and the Repayment Period.

1.29 **“Notice of Effectiveness of Loan Agreement”** means a written notice in the form set forth in Appendix 8 attached hereto, in which the Effective Date of this Agreement shall be specified in accordance with Article 9 of this Agreement.

1.30 **“Pesos” or “PHP”** means the lawful currency for the time being of the Republic of the Philippines.

1.31 **“Relevant Loan Agreements”** means the Loan Agreement (CP 2-GCL Loan) and the Loan Agreements (CP 1).

1.32 **“Renminbi” or “RMB” or “CNY”** means the lawful currency for the time being of the People’s Republic of China.

1.33 **“Repayment Date of Principal and Interest”** means each Interest Payment Date during the Repayment Period up to the Final Repayment Date.

1.34 **“Repayment Period”** means the period commencing on the immediate following day to the last day of the Grace Period and ending on the Final Repayment Date.

1.35 **“Repayment Schedule”** means the schedule showing the dates and amounts of repayments of the Loan set forth in Appendix 9 attached hereto.

1.36 **“US Dollar” or “USD” or “US\$”** means the lawful currency of the United States

of America, in which the Facility is denominated.

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 Dollar Forty-Two Million Three Hundred and Seventy Thousand One Hundred and Ninety-Seven and Sixty Cents Only (USD 42,370,197.60).

2.2 **Interest rate** The rate of interest applicable to the Loan shall be fixed at two point five percent (2.5%) per annum.

2.3 **Maturity Period** The Maturity Period for the Facility shall be Twenty (20) years commencing from the Effective Date, wherein the Grace Period shall be Seven (7) years and the Repayment Period shall be Thirteen (13) years.

2.4 **Purpose** The entire proceeds of the Facility shall be applied by the Borrower for the sole purpose of the payment not exceeding forty-two point five percent (42.5%) 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 for the Facility in the aggregate amount of the Facility equal to US Dollar One Hundred and Twenty-Seven Thousand One Hundred and Ten and Fifty-Nine Cents Only (USD 127,110.59) in one lump sum within thirty (30) days after the Effective Date but not later than the date of the first disbursement. The Management Fee shall

be paid to the account designated in Article 4.4.

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, or as may be extended, the Borrower shall pay semi-annually to the Lender a Commitment Fee respectively 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 Effective Date 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 4.4 on each Interest Payment Date.

ARTICLE 3 DISBURSEMENT OF THE FACILITY

3.1 The first disbursement shall comply with all relevant conditions under this Agreement and is subject to the satisfaction of the conditions precedent set out in Appendix 1 attached hereto (or unless any 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 comply with all relevant conditions under this Agreement and 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.

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 Appendix 1 and Appendix 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 rectification by the Borrower within a specified period. In the event that the Borrower fails to rectify within the reasonable period of time designated by the Lender, the Lender may refuse to make the disbursement.

3.5 Subject to conditions in Article 3.1 and other terms and conditions of this Agreement, the Borrower shall, through the End-User, issue, during the Disbursement Period, an irrevocable Notice of Drawdown via courier/by authenticated SWIFT message to the Lender and instruct the Lender to make the Disbursement, via the Borrower's Account (as defined in Article 4.5 hereof), into:

(a) the account opened by the Chinese Contractor with the Lender for the purpose of the Commercial Contract:

Payee: China State Construction Engineering Corporation Limited

Opening Bank: THE EXPORT-IMPORT BANK OF CHINA

Account No.: 1360000100000966110

(b) Or, such other account as designated in any agreement made in writing entered into by and among the Borrower, the Lender and the Chinese Contractor for the purpose of receiving payments under or in connection with the Commercial Contract. Each account under above paragraph (a) and (b) is hereinafter referred to as the

“Chinese Contractor’s Account”.

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 total amount of the Facility as provided in Article 2.1 of this Agreement.

3.8 Unless otherwise agreed by the Lender, the Disbursement shall comply with the following conditions:

(a) each Disbursement made under this Agreement shall be made with a corresponding disbursement under the Loan Agreement (CP 2-GCL Loan) simultaneously; and

(b) the Disbursement Amount under this Agreement shall be 42.5% of the Billing Amount denominated in PHP converted to USD in accordance with the exchange rate specified in the Irrevocable Notice of Drawdown.

ARTICLE 4 REPAYMENT OF PRINCIPAL AND PAYMENT OF



INTEREST

4.1 The Borrower is obligated to (i) repay to the Lender all the principal amount drawn and outstanding under the Facility, and (ii) pay 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, the Maturity Period shall not be extended.

4.2 The Borrower shall pay interest on the principal amount of the Loan 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 during each Interest Period as defined in Article 1.22, against an annum of 360 days, and shall be paid in arrears on each Interest Payment Date and the Final Repayment 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.

4.3 **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 9 sent by the Lender to the Borrower after the expiration of the Availability Period.

4.4 **Repayment Account**

4.4.1 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 ("**Repayment Account**") on the Repayment Date of Principal and Interest of each year:

Payee: The Export-Import Bank of China

Opening Bank: Bank of China, Head Office

Account No.: 778407900258

SWIFT CODE: EIBCCNBJXXX

4.4.2 All repayments/payments by the Borrower to the Lender under this Agreement shall only be made to the Repayment Account. Any repayment/payment by the Borrower to the Lender made to an account other than the Repayment Account does not constitute a valid repayment/payment under the Agreement and the Borrower shall not be exempted from its repayment/payment obligations under this Agreement in accordance with the terms and conditions thereof.

4.4.3 Any amendments or changes to the Repayment Account under any Loan Agreement or under any subsequent loan agreement entered into by the Borrower and the Lender shall be made only through signing of written amendment agreement between the Borrower and the Lender after the receipt of a written notification by the Borrower from the Lender. Amendments or changes to such Repayment Account by any unilateral form, including but not limited to instruction, notice or emails, shall be null and void.

4.5 **Borrower's Account** The Lender shall open and maintain on its book a lending account for the Borrower entitled "The Government of the Republic of the Philippines, acting by and through the Department of Finance, Account on Three Priority Bridges Crossing Pasig-Marikina River And Manggahan Floodway Bridges Construction 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.



4.6 **Book Records** Both the Borrower and the Lender shall keep accurate book records of any disbursement under the Facility and repayment of principal and payment of interest under this Agreement and shall verify such records at least once a year.

4.7 **Voluntary Prepayment** The Borrower may prepay the principal amount of the Loan, drawn and outstanding under the Facility by giving the Lender a thirty (30) days' prior written notice, and such prepayment shall be subject to the prior written consent of the Lender. At the time of prepayment, the Borrower shall also pay to the Lender (i) the prepaid principal and (ii) all interest accrued on the prepaid principal in accordance with Article 4.2 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.

4.8 **Cancellation by the Borrower** After consultation with the Lender, the Borrower may, by at least ninety (90) days prior written notice to the Lender, cancel any amount of the Facility which has not been disbursed.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES BY THE BORROWER

The Borrower hereby represents and warrants to the Lender as follows:

5.1 The Borrower is the Government of the Republic of the Philippines represented by the Department of Finance and has the full power, authority and legal rights to borrow under the Facility on the terms and conditions hereunder.

5.2 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 valid and legally binding obligations 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 the 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.

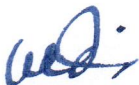
5.3 As from the Effective Date, this Agreement constitutes legal, valid and binding obligation of the Borrower.

5.4 The Borrower is not in default under any law applicable to it or in default with any of its External Indebtedness, 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.

5.5 The signing of this Agreement by and performance of the obligations of the Borrower under this Agreement will constitute commercial acts.

5.6 All information supplied to the Lender by the Borrower is 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 unsecured and unsubordinated External Indebtedness, whether present or future, actual or 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, then 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 5.2, 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 will include all amounts due and payable, or to fall due and payable to the Lender hereunder in each of its annual budget during each fiscal year. However, the Borrower's failure to include corresponding allocation in its budget shall not in any way reduce or affect its obligations under this Agreement or to be used as a defense for the failure to make any payment due under this Agreement.

6.6 The Borrower undertakes with the Lender that within 15 days after each disbursement made by the Lender, the Borrower, through the End-User, will submit to the Lender the documents evidencing that all Philippine taxes and fees due and payable under the related settlement have been paid in full by the End-User according to the Commercial Contract and applicable law.

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

- (1) The Borrower, through the End-User, shall submit to the Lender annually during the Availability Period reports on the actual progress and operation status of the Project and the utilization of proceeds disbursed under the Facility;
- (2) 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.

6.8 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 by the Lender.

6.9 During the Maturity Period, the Borrower shall inform in writing the Lender within 30 days from the date when 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 change of the authorized persons involved in the drawdown of the Facility under this Agreement and their specimen signatures;
- (3) any change of the communication address of the Borrower specified in Article 8.7;
- (4) the occurrence of any Event of Default specified in Article 7;
- (5) any significant amendment or supplement to the Commercial Contract;

6.10 The Borrower, through the End-User, 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 and effective performance of the Commercial Contract, the Borrower, through the End-User, shall promptly do all such acts and coordinate with relevant parties to remedy and minimize the impact arising out of such aforementioned events or disputes.

6.11 The Borrower undertakes with the Lender that so long as any sum remains outstanding under this Agreement, the Borrower will not engage in the activities which, in the opinion of the Lender, will materially and adversely affect the performance of the Borrower's obligations under this Agreement.

6.12 The Borrower, through the End-User, 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 of the Project within six (6) months of completion of the Project. The Borrower shall ensure the authenticity, accuracy, validity and integrity of the documents and materials provided.

6.13 The Borrower hereby represents, warrants and undertakes that its obligations and liabilities under this Agreement are independent and separate 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.

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, and other fees in



accordance with the provisions hereof), unless the Borrower or the Borrower's bank 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, Article 6 or other articles of this Agreement, or any certificate, document and material submitted and delivered by the Borrower pursuant to this Agreement proves 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 sixty (60) calendar days after receipt of written notice from the Lender requiring it to do so;
- (4) Any other event which constitutes a default of the Borrower in respect of any other agreement(s) involving External Indebtedness of the Borrower between the Borrower and any other banks or financial institutions, the aggregate amount of which External Indebtedness is equal to or more than US\$100 million or its equivalent in other currencies, and such default shall continue for more than the period of grace, if any, expressly provided under such agreement(s);
- (5) Significant changes have occurred with respect to the Project or the Borrower, 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 stops or suspends repayment to its creditors generally.

- (7) any other events or circumstances, in the reasonable judgment of the Lender, that can be deemed as a material credit deterioration of the Borrower or may materially jeopardize the Loan or any right of the Lender under this Agreement.

7.2 Upon the occurrence of any of the aforesaid Event of Default (unless such Event of Default has been waived by 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 it:

- (1) suspend any Disbursement under this Agreement;
- (2) and if such event shall remain unremedied for a period of thirty (30) calendar days for payment obligations and sixty (60) calendar days for non-payment obligations after such written notice by the Lender, the Lender may, by further written notice to the Borrower:
 - a) cancel any further Disbursement under this Agreement; and
 - b) declare 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 without further demand, notice or other legal formality of any kind.

7.3 If, at any time, it is or will become unlawful in any applicable jurisdiction or impractical for either the Lender or the Borrower to perform any of its obligations as contemplated by this Agreement or to extend the Facility and/or to maintain the Loan because of, including but without limitation, the enactment of foreign exchange control, export control and/or sanction policies, the Lender may, by written notice to the Borrower, immediately suspend the disbursement of the Facility, and/or negotiate with the Borrower over the repayment of all the then outstanding

principal and accrued interest and all other sums payable under this Agreement.


ARTICLE 8 MISCELLANEOUS

8.1 **Assignment** 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 prior 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 costs incurred by the Borrower in connection therewith shall be borne by the Lender.

8.2 **Independence** This Agreement is legally independent of the relevant Commercial Contract. Any claims or disputes arising out of the Commercial Contract shall not affect the obligations of the Borrower under this Agreement.

8.3 **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.

8.4 **Arbitration** Any dispute arising out of or in connection with this Agreement shall be resolved through friendly consultations. If no settlement can be reached through such consultations, each party shall have the right to submit such dispute to the Singapore International Arbitration Centre (SIAC) for arbitration. The arbitration shall be administered by SIAC. The arbitration shall be conducted in accordance with the SIAC'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 and venue of arbitration shall be both in Singapore. 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 SIAC.

The Borrower hereby waives right of immunity on the grounds of sovereignty or otherwise to which it (i) may be entitled in connection with any arbitration proceeding pursuant to Article 8.4 hereof or (ii) any of its assets may be entitled under or in connection with the enforcement of any arbitral award pursuant thereto except for 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. Notwithstanding the foregoing, the Borrower does not waive any immunity of its assets 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, (iii) located in the Philippines and dedicated to a public or governmental use, or (iv) the international reserves of the Bangko Sentral ng Pilipinas.

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 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.

8.5 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 Philippines in Singapore with its address at 20 Nassim Road, Singapore as its authorized agent to receive and acknowledge on its behalf service of any notice, writ, summons, order, judgment or other legal documents in Singapore. 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 Singapore, whether or not such agent gives notice thereof to the Borrower.

8.6 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.

8.7 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 or electronic mail to the following respective address or facsimile number of both Parties; in the event that the following address or facsimile number of either 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: 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: 0086-10-83578440

Email Address: jiaqiao@eximbank.gov.cn (cc: yuesiyu@eximbank.gov.cn)

Contact Person: Country Officer of the Republic of the Philippines

To the Borrower: The Department of Finance (DOF) of the Republic of the Philippines

DOF Building, Roxas Boulevard, Malate, Manila 1004, Philippines

Fax No.: 632-8523-9216

Telephone: 632-8526-9990

Email Address: osec@dof.gov.ph (cc: ifg_bilateral@dof.gov.ph)

Contact Person: Secretary of Finance (with copy to the Undersecretary of the International Finance Group)

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 delivery as acknowledged by the recipient;
- (2) if sent by post: fifteen (15) Business Days after posting;
- (3) if sent by facsimile, when the notice or document is dispatched by fax machine;
- (4) if sent by electronic mail, when the notice or document is transmitted into the recipient's system (the original documents shall be submitted subsequently).



8.8 **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.

8.9 **Non-waiver** 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.

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

8.11 **Supplements** Matters not covered in this Agreement shall be settled through friendly consultations in good faith and mutual understanding including the signing of supplementary agreements between the Borrower and the Lender.

8.12 **Amendment** Any amendment or waiver of any provision of this Agreement and any waiver of any default under this Agreement shall be effective only if made in writing upon mutual agreement between the Parties and executed on their respective behalf by their duly authorized representatives.

ARTICLE 9 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 through their duly authorized representatives;



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

(3) All conditions under paragraph (1) and paragraph (2) of Article 9.1 of each Relevant Loan Agreements are satisfied.

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 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 (2) 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 Government of the Republic of
the Philippines

By:



BENJAMIN E. DIOKNO

Secretary

Department of Finance of the
Government of the Republic of the
Philippines



On behalf of
The Export-Import Bank of China

By:



WU FULIN

Chairman

The Export-Import Bank of China

Appendices:

1. Conditions Precedent to the First Disbursement
2. Conditions Precedent to Each Disbursement after the First Disbursement
3. Power of Attorney (for Signing and Drawdown under the Agreement)
4. Form of Irrevocable Notice of Drawdown
5. Form of Legal Opinion
6. Irrevocable Power of Attorney (Appointment of the Borrower's Process Agent)
7. Letter of Confirmation (Acceptance of the Borrower's Process Agent)
8. Form of Notice of Effectiveness of Loan Agreement
9. Form of Repayment Schedule

Appendix 1 Conditions Precedent to the First Disbursement

Upon the Borrower's application, through the End-User, to the Lender for the first disbursement to be made, the Lender shall not be obliged to make any such disbursement to the Borrower unless the following conditions have been fulfilled 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 copies of the Commercial Contract and other relevant documents in connection therewith which have been duly signed by all parties thereto and have become effective;
- (3) Drawdown schedule submitted by the Borrower which has been recognized and accepted by the Lender;
- (4) 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;
- (5) Certified true copies of any and all documents evidencing that the End-User has paid to the Chinese Contractor, the exact amount of which shall be equivalent to 15% of the advance payment under the Commercial Contract minus taxes and fees due and payable related to the full amount of the advance payment under the Commercial Contract;
- (6) 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;

(7) 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, 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;

(8) A legal opinion in the form and substance set forth in Appendix 5 or in the form and substance otherwise approved by the Lender in writing issued by the Secretary of Justice of the Borrower's Country in connection with the transactions contemplated hereunder;

(9) The irrevocable power of attorney to the process agent by the Borrower named in Article 8.5 in the form set forth in Appendix 6 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 7 or in the form and substance otherwise approved by the Lender in writing;

(10) Certified true copies of the implementation plan for the land acquisition and resettlement confirmed by the End-User and the written confirmation issued by the 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;

(11) Certified true copies of documents evidencing that the End-User and Chinese Contractor have reached consensus on the exchange rate and the payment terms.;
and

(12) 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 make any such disbursement to the Borrower unless all the conditions precedent set out in Appendix 1 attached hereto have been satisfied, 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, through the End-User, and affixed with the official stamp of the Borrower, and sent by courier or by authenticated SWIFT 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 due and payable under this Agreement in accordance with Article 4;
- (5) The Borrower has paid the Commitment Fee due and payable under this

Agreement in accordance with Article 2.6;

(6) 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 15% of each payment under the Commercial Contract minus taxes and fees due and payable related to the full amount of the said payment;

(7) The Facility hereunder has not been terminated or cancelled; and

(8) Such other document(s) and condition(s) as the Lender may reasonably request, subject to the Borrower's approval, such approval shall not unreasonably be withheld.

Appendix 3 Power of Attorney (for Signing and Drawdown under the Agreement)

Date

The Export-Import Bank of China

The Sovereign Business Department (Concessional Loan Department)

No. 30, Fuxingmennei Street, Xicheng District, Beijing 100031

People's Republic of China

Dear [Position of Authorized Official of the Lender],

Evidence of Authority

Provided herewith is a copy of the Special Authority issued by _____, on _____, authorizing the undersigned, or in his absence _____, to sign the Loan Agreement, and to do and perform every act and thing which may be requisite and necessary to be done under the Preferential Buyer's Credit Loan Agreement on the Three Priority Bridges Crossing Pasig-Marikina River And Manggahan Floodway Bridges Construction Project³ executed between the Government of the Republic of the Philippines (GPH), acting by and through the Department of Finance, and the Export-Import Bank of China (China Eximbank) on _____ (hereinafter referred to as the "**Loan Agreement**").

Further, in line with the abovementioned authority vested on the undersigned, any of the following _____ (herein referred to as the "**End-User**") officials, whose specimen signatures appear on the attached page, is authorized to apply for a

³ *Also known as the "Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway under Chinese Government Financing" as approved by the NEDA Board.



drawdown under the Loan Agreement, to sign the document and to handle other matters in connection therewith.

The authorization granted shall take effect immediately and shall remain valid and binding on the GPH unless revoked in writing and delivered to you accordingly.

Very truly yours,

The Government of the Republic of the Philippines

Specimen Signature of the Authorized Signatory:

Name: _____

Title: _____

Name: _____

Title: _____



Appendix 4 Form of Irrevocable Notice of Drawdown

(By Express Delivery or Tested SWIFT)

From: (the Borrower)

To: The Export-Import Bank of China

No. 30, Fuxingmennei Street, Xicheng District, Beijing 100031

People's Republic of China

Fax:

SWIFT:

Tel:

Serial No: _____

Date: _____

Dear [Position of Authorized Official of the Lender],

We refer to the **Preferential Buyer's Credit Loan Agreement on the Three Priority Bridges Crossing Pasig-Marikina River And Manggahan Floodway Bridges Construction Project**⁴ with Loan Agreement No. _____ (hereinafter referred to as the "**Loan Agreement**") dated _____ (date) by and between the Government of the Republic of the Philippines, acting by and through the Department of Finance (the "**Borrower**"), and the Export-Import Bank of China (the "**Lender**"). This is a Notice of Drawdown. Capitalized terms used herein and not otherwise defined shall have the same meanings as defined in the Loan Agreement.

⁴ *Also known as the "Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway under Chinese Government Financing" as approved by the NEDA Board.



1. We hereby apply for a Disbursement on the following terms:

Proposed Disbursement Date: [] (or, if that is not a Business Day, the next Business Day)

Amount: [] (Currency: RMB/USD) or, if less, the available commitment

In Words: _____
(Currency: RMB/USD)

Chinese Contractor's Account: Payee: _____
Account Bank: _____
Account No.: _____

Exchange Rate: _____

Pursuant to the terms and conditions of the Loan Agreement, we hereby instruct and authorize you to debit the Borrower's Account with the Amount of the Disbursement.

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

3. We hereby confirm that forthwith upon the allocation of the Disbursement to the Borrower's Account, this Disbursement shall be deemed as having been made by us under the Loan Agreement and the amount drawn 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 Loan Agreement.

4. We further confirm that:



- 1) the representations and warranties made by us in the Agreement remain true, correct and valid in all respects by reference to the facts and circumstances subsisting as of the date of this Notice of Drawdown;
- 2) no Event of Default referred to in the Loan Agreement has occurred and continuously exists or would result from the proposed Loan;
- 3) all the conditions precedent specified in the Loan Agreement have been satisfied and have remained true, accurate and valid in all respects by reference to the facts and circumstances subsisting as of the date of this Notice of Drawdown.

5. This Notice of Drawdown is irrevocable.

The Government of the Republic of the Philippines

(Official Stamp of the Borrower)

_____ (Signature of Authorized
Signatory)



Appendix 5 Form of Legal Opinion

To: The Export-Import Bank of China

Date: _____

Dear [Position of Authorized Official of Lender],

Re: The Government Concessional Loan Agreements and Preferential Buyer's Credit Loan Agreements on Three Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway Bridges Construction Project⁵ (No. [insert the four Loan Agreements' Number, such as GCLxxx, GCLxxx, PBCxxx and PBCxxx])

I am the Secretary of Justice of the Republic of the Philippines, qualified and authorized to issue this legal opinion in connection with the Government Concessional Loan Agreements and Preferential Buyer's Credit Loan Agreements on the Three Priority Bridges Crossing Pasig-Marikina River And Manggahan Floodway Bridges Construction Project dated _____, (No. [insert the four Loan Agreements' Number, such as GCLxxx, GCLxxx, PBCxxx and PBCxxx], the "Loan Agreements") between the Export-Import Bank of China as the lender (the "Lender") and the Government of the Republic of the Philippines acting by and through the Department of Finance as the borrower (the "Borrower").

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

⁵ *Also known as the "Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway under Chinese Government Financing" as approved by the NEDA Board.



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

- (1) the executed Loan Agreements;
- (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 at the date hereof.

Based on the foregoing, I am of the opinion that:

1. The Borrower is the government of a sovereign state which is duly established and validly existing under the laws of the Republic of the Philippines and has the full power, authority and legal right to assume civil liabilities with its assets.
2. The Borrower has the full power, authority and legal right to enter into and perform its obligations under the Loan Agreements and has taken all necessary action to authorize the signing, delivery and performance of the Loan Agreements and _____ of the Borrower has been duly authorized and has the power to sign the Loan Agreements on behalf of the Borrower.
3. The Loan Agreements have 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 Agreements 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.

5. All authorizations and consents of any authority in the Republic of the Philippines required in connection with the Project and the signing, delivery and performance of the Loan Agreements by the Borrower have been obtained and are in full force and effect, including making payments in foreign currencies under the Loan Agreements and making the Loan Agreements admissible in evidence in the courts of the Republic of the Philippines.

6. All amount payable by the Borrower under the Loan Agreements may be made free and clear of and without deduction for or on account of any tax, levy, deduction or charge by the Republic of the Philippines or any political subdivision or taxing authority thereof. No withholding would be made in respect of any payment to be made by the Borrower to the Lender under the Loan Agreements.

7. The signing and performance of the Loan Agreements by the Borrower constitute commercial acts and a declaration that the Borrower waives right of immunity on the grounds of sovereignty or otherwise to which (i) may be entitled in connection with any arbitration proceeding or (ii) any of its assets may be entitled under or in connection with the enforcement of any arbitral award pursuant thereto except for 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 is valid and irrevocably binding on the Borrower. Notwithstanding the foregoing, the Borrower does not waive any immunity of its assets 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, (iii) located in the Philippines and dedicated to a public or governmental use, or (iv) the



international reserves of the Bangko Sentral ng Pilipinas.

8. The payment obligations of the Borrower under the Loan Agreements rank at least *pari passu* with all its other unsecured and unsubordinated external indebtedness of the Borrower.

9. The choice of Chinese law as the governing law under the Loan Agreements is a valid choice of law. The submission of any dispute arising out of or in connection with the Loan Agreements by the Borrower to the Singapore International Arbitration Centre (SIAC) for arbitration under the Loan Agreements does not contravene any law of the Republic of the Philippines. The appointment by the Borrower of a process agent in Singapore does not violate any provision of any law or regulation of the Republic of the Philippines.

10. The arbitral award obtained in accordance with Article 8.4 of the Loan Agreements 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 Government of the Republic of the Philippines, acting through and represented by the Department of Finance, 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.

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 Loan Agreements.



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 agreements. Nothing has come to my attention which leads me to believe that such certificates and representations are not accurate.

74

Appendix 6 Irrevocable Power of Attorney

(Appointment of the Borrower's Process Agent)

Date: _____

Dear [Position of Authorized Official of the Lender],

We refer to the Government Concessional Loan Agreements and Preferential Buyer's Credit Loan Agreements on the Three Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway Bridges Construction Project⁶ dated _____ (No. _____, hereinafter referred to as "**the Loan Agreements**").

We hereby appoint you under the Loan Agreements as our Agent for the sole purpose of receiving for us and on our behalf service of any legal documents issued by the Singapore International Arbitration Centre (SIAC) in respect of any arbitration or legal proceedings arising out of or in connection with the Loan Agreements. We hereby confirm that we shall as soon as possible provide you with true and correct copies of the Loan Agreements 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 arbitration received by you:

⁶ *Also known as the "Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway under Chinese Government Financing" as approved by the NEDA Board.



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 Loan Agreements.

We should be grateful if you would indicate your acceptance of your appointment by signing the form of acknowledgement 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 7 Letter of Confirmation

(Acceptance of the Borrower's Process Agent)

To: (name of the Borrower)

Date: _____

We hereby acknowledge receipt of the letter dated _____ from the _____ (the Borrower), the above is a true copy of which, and accept our appointment under it to receive on behalf of _____ (the Borrower) service of legal documents issued out of the Singapore International Arbitration Centre (SIAC) in any arbitration or legal proceedings arising out of or in connection with the Loan Agreements referred to in that letter.

Yours faithfully,

Name:

Title:



Appendix 8 Form of Notice of Effectiveness of Loan Agreements

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 [Position of Authorized Official of the Borrower],

Pursuant to Article 9 of the Government Concessional Loan Agreements and Preferential Buyer's Credit Loan Agreements on the Three Priority Bridges Crossing Pasig-Marikina River And Manggahan Floodway Bridges Construction Project⁷ dated _____ (No. _____, hereinafter referred to as the "**Loan Agreements**") between the Government of the Republic of the Philippines, acting by and through the Department of Finance (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 Loan Agreements have been satisfied;
- (b) the Loan Agreements shall become effective on and from the date hereof.

The Export-Import Bank of China

(Signature of Authorized Signatory)

⁷ *Also known as the "Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway under Chinese Government Financing" as approved by the NEDA Board.



Appendix 9 Form of Repayment Schedule

Concerning the Preferential Buyer's Credit Loan Agreement on the Three Priority
Bridges Crossing Pasig-Marikina River and Manggahan Floodway Bridges
Construction Project⁸ dated _____ (No. _____)

Number of Installments	Date Due	Amount in RMB
1		
2		
3		
4		
5		
6		
7		
8		
Total		

Note: The amount appeared in this schedule just refer to repayment of the Principal of the Loan under the Preferential Buyer's Credit Loan Agreement on the Three Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway Bridges Construction Project dated _____ (No. _____), while the interest accrued shall be paid according to the provisions of Article 4 of the aforesaid Loan Agreement.

⁸ *Also known as the "Priority Bridges Crossing Pasig-Marikina River and Manggahan Floodway under Chinese Government Financing" as approved by the NEDA Board.

