

October 01, 2005

**LOAN AGREEMENT (MINDANAO ROADS IMPROVEMENT PROJECT) BETWEEN THE SAUDI FUND FOR DEVELOPMENT AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES**

LOAN: 1/433

SIGNED ON : 27 Sha'ban 1426 A.H.

CORRESPONDING TO:1 October 2005 A.D.

LOAN AGREEMENT

AGREEMENT dated 27 Sha'ban 1426 A.H. corresponding to 1 October 2005 A.D. between :

1) THE SAUDI FUND FOR DEVELOPMENT, Riyadh, Kingdom of Saudi Arabia (hereinafter called the Fund), represented by H.E. Eng. Yousef I. AL-bassam, Vice Chairman And Managing Director.

and

2) THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES acting through the Department of Finance (hereinafter called the Borrower) represented by H.E. BAHNARIM A. GUINOMLA Ambassador of the Philippines to the Kingdom of Saudi Arabia.

PREAMBLE General Conditions; Definitions General Conditions; Definitions

(A) WHEREAS the Borrower has requested the Fund to grant it a Loan to assist in the financing of Mindanao Roads Improvement Project, n described in Schedule No. (2) to this Agreement (hereinafter called the Project);

(B) WHEREAS the purpose of the Fund is to assist developing countries in developing their economies and to provide them with loans required for the implementation of their development projects and programs;

(C) WHEREAS the Fund is convinced of the importance of the Project and its beneficial effects for the economic development of the friendly people of Philippines; and

(D) WHEREAS the Board of Directors of the Fund has agreed, in view of the foregoing, by its Resolution No.10/81/908 to grant the Borrower a Loan upon the terms and conditions hereinafter set forth.

NOW THEREFORE the parties hereto hereby agree as follows :

**ARTICLE I  
GENERAL CONDITIONS; DEFINITIONS**

Section 1.01. The parties to this Agreement accept all the provisions of the General Conditions Applicable to Loan Agreements of the Fund, issued by Resolution of the Board of Directors of the Fund No.11/14 dated Rajab 29, 1396 AH corresponding to

July 26, 1976 AD with the same force and effect as if they were fully set forth herein (said General Conditions Applicable to Loan Agreements of the Fund being hereinafter called the General Conditions).

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in Preamble to this Agreement have the respective meanings therein set forth, and the following terms have the meaning herein set forth:

a) The term 'The Department' means the Department of Public Works and Highways of the Borrower.

b) The term "ARG" means the Autonomous Regional Government of The Autonomous Region in Muslim Mindanao.

c) The term "External Debt" means any obligation for the payment of borrowed money or similar extension of credit (including under any Guarantee) which is (i) expressed or payable in currency other than the lawful currency of the Borrower's country and (ii) owed to a person other than a person that is organized under the laws of or is a citizen of the Borrower's country.

## **ARTICLE 11 THE LOAN**

Section 2.01. The Fund agrees to lend to the Borrower, on the terms and conditions in the Loan Agreement set forth or referred to, a Loan in an amount of seventy five million (75,000,000) Saudi Riyals.

Section 2.02. The amount of the Loan may be withdrawn from the Loan Account in accordance with the provisions of Schedule No.(1) to this Agreement, as such Schedule may be amended from time to time by agreement between the Fund and the Borrower, and in accordance with the Procedures for the Withdrawals of the Saudi Fund for Development Loans, for expenditures made (or, if the Fund shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Loan.

Section 2.03. The Borrower shall apply the proceeds of the Loan exclusively to financing the reasonable cost of the goods and services required for the carrying out of the Project. Procurement of such goods and services shall be in accordance with the Fund's Guidelines for the Borrower on Procurement of Goods and Services and Technical Reporting. The Borrower shall obtain the Fund's approval before awarding the contracts to be financed out of the proceeds of the Loan and before effecting any material modification thereto in the future.

Section 2.04. The Closing Date shall be 31-12-2009 AD or such later date as the Fund shall establish in consultation with the Borrower. The Fund shall promptly notify the Borrower of such later date.

Section 2.05. The Borrower shall pay a Loan Charge at the rate of two percent (2%) per annum on the principal amount of the Loan withdrawn and outstanding from time to time.

Section 2.06. Loan Charge and other charges shall be payable semi-annually on 1 February and 1 August in each year.

Section 2.07. The term of the Loan is twenty five (25) years including a five (5) year grace period. The Borrower shall repay the principal amount of the Loan in accordance with the Amortization Schedule set forth in Schedule No.(3) to this Agreement.

### **ARTICLE III EXECUTION OF THE PROJECT**

Section 3.01. (a) The Borrower shall carry out the Project through the Department and ARC with due diligence and efficiency, and in conformity with appropriate engineering, financial and administrative practices and shall provide or cause to be provided, promptly as needed, the funds, facilities and other resources required for the purpose.

(b) The Borrower shall make available to the Department and ARG promptly as and when needed, in addition to the proceeds of this Loan, all other funds which shall be required for carrying out the Project (including any funds that may be required to meet any increase in the cost of the Project beyond the estimated cost thereof at the time of signing this Agreement). All such sums shall be made available on terms and conditions acceptable to the Fund.

Section 3.02. The Borrower shall furnish to the Fund, promptly upon their preparation, the plans, specifications, reports, contract documents and construction and procurement schedules for the Project, and any modifications thereof or additions thereto in such details as the Fund shall request.

Section 3.03. For the supervision of the execution of the Project, the Borrower shall have consultant engineers whose qualifications and experience are acceptable to the Fund.

Section 3.04. The Borrower shall appoint a qualified and experienced engineer as Project Manager in order to manage, coordinate and follow-up the activities of the execution of the project with assistance of a qualified team that has appropriate experience which comprise all necessary technical specialties.

Section 3.05. In carrying out the Project, the Borrower shall engage contractors acceptable to the Fund upon terms and conditions satisfactory to the Fund.

Section 3.06. The Borrower shall undertake to give preference to Saudi and Philippine products and services, and to local Saudi and Philippine nationals suppliers, consultants and contractors for the implementation of the project.

Section 3.07. The Borrower shall undertake to make adequate annual budgetary allocations to meet its share of the project costs. The Borrower shall undertake to provide the local component of the cost of the Project.

Section 3.08. The Borrower shall cause the imported goods to be financed out of the proceeds of the Loan to be insured against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance, any indemnity shall be payable in a currency freely usable by the Borrower to replace or repair such goods.

Section 3.09. The Borrower shall cause all goods and services financed out of the proceeds of the Loan to be used exclusively in carrying out of the Project.

Section 3.10. The Borrower shall cause the Department to undertake:

- a) to maintain records adequate to record the progress of the Project (including the cost thereof), to identify the goods and services financed out of the proceeds of the Loan and to disclose the use thereof in the Project and to reflect all the operations, resources and expenditures in respect of the Project;
- b) to afford all reasonable opportunity for the accredited representatives of the Fund to make visits for purposes related to the Loan, to examine the Project, the goods and services financed out of the proceeds of the Loan and any relevant records and documents;
- c) to furnish to the Fund all such information as the Fund shall reasonably request concerning the Project, the expenditure of the proceeds of the Loan, and the goods and services financed out of such proceeds.

Section 3.11. The Borrower, through the Department and ARG, shall take all such actions as shall be necessary to acquire all such land and rights in respect of land as shall be required for carrying out of the Project.

#### **ARTICLE IV PARTICULAR COVENANTS**

Section 4.01. (a) The Borrower and the Fund confirm their agreement that no other external debt shall enjoy any priority over the Loan by way of a lien created on assets of the Borrower. To that end, the Borrower undertakes that, except as the Fund shall otherwise agree, if any lien shall be created on any assets of the Borrower as security for any external debt, such lien will ipso facto and at no cost to the Fund equally and ratably secure the payment of the principal of the Loan, the Loan Charge and other charges on the Loan, and that in the creation of any such lien express provision will be made to that effect.

(b) The undertaking provided for in Paragraph (a) of this Section shall not apply to :

- i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property;
- ii) any lien on commercial goods to secure a debt maturing not more than one year after the date on which it is originally incurred and to be paid out of the proceeds of the sale of such commercial goods; or
- iii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.
- iv) any lien outstanding on the date hereof of which the Borrower has given written notice to the Fund prior to the date hereof;
- v) Such lien created or assumed with the written consent of the Fund;
- vi) Any such lien arising by operation of law.

Section 4.02. The Borrower undertakes to maintain the Project in accordance with the proper engineering standards and to take the necessary measures to appropriate the funds required for such purpose.

Section 4.03. The Borrower undertakes to make a Commemorative Plaque of suitable dimensions made of concrete or other suitable metal to be fixed in a conspicuous place in one of the facilities included in the Project, to show the contribution of the Fund in the financing of the Project.

Section 4.04. The Borrower shall maintain or cause to be maintained records adequate to reflect in accordance with sound accounting practices, the operation , resources and expenditures in respect of the Project of the Departments, ARC and other Agencies of the Borrower responsible for carrying out the Project or any part thereof.

Section 4.05. Promptly after completion of the Project, but in any event not later than twelve (12) months after the Closing Date, or such later date as the Fund may agree for this purpose, the Borrower shall prepare and furnish to the Fund a Project Completion Report, in reasonable form and detail as the Fund shall request, on the execution and initial operation of the Project, its costs and the benefits derived and to be derived therefrom, the performance by the Borrower of its obligations under the Loan Agreement and the achievement of the objectives of the Loan.

## **ARTICLE V REMEDIES OF THE FUND**

Section 5.01. For the purposes of Section 6.02 of the General Conditions, the following additional events are specified pursuant to Paragraph (f) thereof

i) Subject to Sub-Paragraph (ii) of this Paragraph :

A) the right of the Borrower to withdraw the proceeds of any loan or grant made to the Borrower for the financing of the Project shall have been suspended, cancelled or terminated in whole or in part, pursuant to the terms of the agreement providing therefore, or

B) any such loan shall have become due and payable prior to the agreed maturity thereof.

ii) Sub-Paragraph (i) of this paragraph shall not apply if the Borrower establishes to the satisfaction of the Fund that (A) such suspension, cancellation, termination or prematuring is not caused by the failure of the Borrower to perform any of its obligation under such agreement, and (B) adequate funds for the Project are available to the Borrower from other sources on the terms and conditions consistent with the obligations of the Borrower under this Agreement.

Section 5.02. For the purposes of Section 7.01 of the General Conditions, the following event is specified pursuant to paragraph (d) thereof, namely any event specified in paragraph (i) (B) of Section 5.01 of this Agreement shall occur.

## **ARTICLE VI EFFECTIVENESS DATE - TERMINATION**

Section 6.01. The period of six months from the date of the signing of the Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

## **ARTICLE VII REPRESENTATIVE OF THE BORROWER, ADDRESSES**