

Republic of the Philippines  
Province of Davao del Norte  
CITY OF TAGUM

**BEFORE THE 4<sup>TH</sup> CITY COUNCIL**

**EXCERPT FROM THE MINUTES OF THE 74<sup>th</sup> REGULAR SESSION OF THE SANGGUNIANG PANLUNGSOD OF THE CITY OF TAGUM, PROVINCE OF DAVAO DEL NORTE HELD ON DECEMBER 17, 2008 AT THE SP SESSION HALL.**

**PRESENT:**

Hon. ALLAN L. RELLON, MPA,	City Vice Mayor (Presiding Officer)
Hon. ROBERT L. SO,	Member
Hon. DE CARLO L. UY,	Member
Hon. VICENTE C. ELIOT, SR.,	Member
Hon. JOEDEL T. CAASI,	Member
Hon. ALAN D. ZULUETA,	Member
Hon. NICANDRO T. SUAYBAGUIO, JR.,	Member
Hon. REYNALDO T. SALVE,	Member
Hon. FRANCISCO C. REMITAR,	Member
Hon. ALFREDO R. PAGDILAO,	Member (ABC Representative)

**ON FORCE LEAVE:**

Hon. RAYMOND JOEY D. MILLAN,	Member
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**ON LEAVE:**

Hon. MARIA LINA F. BAURA,	Member
Hon. CYRIL LEONARD L. MURING,	Member (SKF Representative)

**RESOLUTION NO. 602, S-2008**

**A RESOLUTION AUTHORIZING THE LOCAL CHIEF EXECUTIVE, HON. REY T. UY TO ENTER INTO LOAN AGREEMENT WITH THE DEVELOPMENT BANK OF THE PHILIPPINES (DBP) FOR AN OMNIBUS LOAN AMOUNTING TO FOUR HUNDRED MILLION (P 400,000,000.00) PESOS FOR THE PURPOSES STATED HEREIN AND TO SIGN THE LOAN AGREEMENT, DEED OF ASSIGNMENT WITH HOLD OUT CHATTEL MORTGAGE, THE PROMISSORY NOTE AND OTHER DOCUMENTS RELATED THERETO.**

**WHEREAS**, it is the policy of the city government to accelerate the economic development with the view of instituting effective administrative reforms and upgrade the quality of life for the people in the community;

**WHEREAS**, the programs and projects as stipulated in the Annual Investment Program for 2009 include various infrastructure development, completion of the New City Hall Building, acquisition of lands for various purposes, purchase of several heavy equipment and utility vehicles, preservation and enhancement of our natural resources both inland and aquatic and other projects as identified with equal importance to the city government and its constituents;

**WHEREAS**, the programs and projects of the city government is a response to the worldwide economic recession, to continually induce business establishments to invest in the city and provide job opportunities to the constituents;

**WHEREAS**, the Development Bank of the Philippines (DBP), a government financial institution is offering its services and expertise to be able to extend assistance to our Local Government Unit relative to the planned undertaking;

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**NOW THEREFORE**, be it resolved by the Sangguniang Panlungsod to authorize the Local Chief Executive, Hon. Rey T. Uy to enter into Loan Agreement with the Development Bank Of The Philippines (DBP) for an Omnibus Loan amounting to Four Hundred Million (P 400,000,000.00) Pesos for the purposes stated herein and to sign the Loan Agreement, Deed Of Assignment with Hold Out Chattel Mortgage, the Promissory Note and Other Documents related thereto.

**RESOLVED FURTHER**, that the full text of the Term Loan Agreement and the Deed of Assignment with Hold-Out shall be read as follows:

#### **TERM LOAN AGREEMENT**

This TERM LOAN AGREEMENT (the "Agreement") dated \_\_\_\_\_, by and between:

The **DEVELOPMENT BANK OF THE PHILIPPINES (DBP)** for brevity), a government financial institution created and operating pursuant to the provisions of Executive Order No. 81 dated December 3, 1986, otherwise known as the 1986 Revised Charter of the Development Bank of the Philippines, as amended by Republic Act No. 8523 dated February 14, 1998, with principal office at DBP Building, Sen. Gil J. Puyat Avenue corner Makati Ave., Makati City, Philippines, represented in this act by **SAVP EDGAR N. SERONAY**, Head, Regional Marketing Center for Southeastern Mindanao (RMC-SEM), hereinafter referred to as the "**Lender**"

- and -

The **CITY GOVERNMENT OF TAGUM**, a Local Government Unit created and operating under and by virtue of the laws of the Republic of the Philippines, with principal office address at the City Hall Building, Tagum City, Davao del Norte, Philippines, represented in this act by **HON. REY T. UY**, City Mayor, per SB Resolution No. \_\_\_\_\_, s2008, hereinafter referred to as the "**Borrower**".

WITNESSETH: THAT

WHEREAS:

1. The Borrower has requested the Lender to assist in the financing of the project described in its related application.
2. The Lender, having been satisfied as to the feasibility and priority of the project, has, per its duly approved Credit Application No. \_\_\_\_\_ dated \_\_\_\_\_, agreed to extend a loan to the Borrower on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties hereto hereby agree, as follows:

#### **ARTICLE 1** Definitions; References, Headings

##### Section 1.01. *Definitions*

The terms which are not expressly defined herein shall have the meanings ascribed to them in the "General Conditions Applicable to Term Loan Agreement under the DBP Retail Lending" (the "General Conditions"), incorporated herein as Annex "A", and the following additional terms shall have the following meanings:

- (i) "Advance" shall mean the advance by the Lender to the Borrower pursuant to Section 2.01 or, as the context may require, the amount of such advance from time to time outstanding.
- (ii) "Commitment" shall mean the principal amount of Pesos: FOUR HUNDRED MILLION (P 400,000,000.00), or 90% of total project cost, whichever is lower, reckoned on the date the Advance is made, the obligation of the Lender to lend up to such amount in accordance with the terms of this Agreement.
- (iii) "Commitment Period" shall mean the period from the date hereof to and including the earliest of (a) the date the Commitment is fully availed of by the Borrower, or (b) the date the Commitment is terminated or cancelled in accordance with the terms of this Agreement or (c) within six (6) months from date of execution of this Agreement and its related documents.

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- (iv) "Interest Payment Date" shall mean the last day of an Interest Period.
- (v) "Interest Period" shall mean the period commencing on the date of the initial Borrowing and having a duration of **one (1) quarter**, and each period thereafter commencing upon the expiry of the immediately preceding Interest Period and having a duration of **one (1) quarter**, provided, that (a) the first Interest Period with respect to a Borrowing subsequent to the initial Borrowing shall commence on the date of such subsequent Borrowing and shall end on the last day of the then current Interest Period as established above, and (b) if any Interest Period would otherwise end on a day which is not a Banking Day, that Interest Period shall be extended to the next succeeding day which is a Banking Day.
- (vi) "Loan Obligation" shall mean: (i) the aggregate principal amount of the Advances made by the Lender to the Borrower, (ii) all interests due on the Advances, including Capitalized Interests and Other Charges (CIOC), (iii) all fees, costs and expenses payable by the Borrower under the terms of this Agreement and such other agreements of the Borrower with the Lender, and (iv) all other obligations and liabilities of the Borrower to the Lender now existing or hereafter incurred either as a new loan or are extension, renewal or restructuring of the existing loan/s. The term shall include all advances made by the Mortgagee for insurance premiums and realty taxes.

Section 1.02. *References*

Except where the context otherwise requires, references in this Agreement to Article, Section, or Schedule are to Article, Section, or Schedule of this Agreement.

Section 1.03. *Headings*

The headings of the Articles and Sections hereof are inserted for convenience of reference only and are not to be construed as modifying the substance of this Agreement.

**ARTICLE 11** The Loan

Section 2.01. *Advance*

- (a) The Lender agrees, upon the terms and subject to the conditions hereinafter set forth, to make the Advance to the Borrower during the Commitment Period in the aggregate principal amount up to, but not in excess of, its Commitment.
- (b) The Advance shall be denominated in Philippine Pesos, and Philippine Pesos shall be the currency of account, disbursement, and any payment to be made by the Borrower under this Agreement.

Section 2.02. *Procedure for Borrowing*

- (a) The Borrower shall deliver a Notice of Borrowing, substantially in the form of the Lender at least five (5) Banking Days (or such shorter period as may be agreed upon) prior to the date of any proposed Borrowing hereunder. Such Notice of Borrowing, once delivered to the Lender, shall be irrevocable and shall commit the Borrower to avail of the amount stated therein on the proposed date of Borrowing.
- (b) Subject to the fulfillment of all applicable conditions set forth in this Agreement, the Lender shall make available the amount of the Advance not later than 11:00 a.m. on the proposed date of Borrowing specified in the Notice of Borrowing.

Section 2.03. *Use of Loan Proceeds*

The Borrower agrees that the proceeds of the Loan will be used for the following purposes for the implementation of the project:

To partly finance the:

Particulars	-	Amount
a. Construction of city hall	-	P 250 Million
b. Acquisition of heavy equipment	-	P 15 Million

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c. Acquisition of utility vehicles	-	P 15 Million
d. Acquisition/re-fleeting of dump trucks	-	P 30 Million
e. Development of food terminal complex	-	P 70 Million
f. Acquisition of land for various uses	-	P 20 Million

Section 2.04. *Note*

Each Advance by the Lender shall be evidenced by a Note dated on the date on which such Advance is made and payable to the order of the Lender in the amount of such Advance.

Section 2.05. *Repayment*

(a) For the construction of city hall and development of food terminal complex:

Ten (10) years inclusive of two (2) years grace period, payable in thirty-two (32) equal quarterly principal installments to commence at the end of 9<sup>th</sup> quarter from initial drawdown.

(b) For the acquisition of heavy equipment/utility vehicles and re-fleeting of dump trucks:

Five years inclusive of one (1) year grace period, payable in twelve (12) equal quarterly principal installments to commence at the end of 5<sup>th</sup> quarter from initial drawdown.

(c) For the acquisition of land for various uses

Six (6) years inclusive of one (1) year grace period, payable in twenty (20) equal quarterly principal installments to commence at the end of the 5<sup>th</sup> quarter from initial drawdown.

Section 2.06 *Prepayment*

(a) Provided that the Borrower is not in default in payment of any sum due under this Agreement or under the Note, the Borrower may, at its option, prepay the Loan in part or in full, together with accrued interest thereon to the date of prepayment, and, if so required by the Lender under its approval, subject to the following conditions: (i) each prepayment shall be made on an Interest Payment Date, (ii) the Borrower shall give the Lender written notice not less than sixty (60) days prior to such proposed prepayment, which notice shall be irrevocable and binding on the Borrower; (iii) each partial prepayment shall be applied against the repayment installments of the Loan in the inverse order of their maturity; and (iv) any amount prepaid may not be reborrowed hereunder.

Section 2.07. *Interest*

The Borrower agrees to pay interest on the Advance in the following manner:

Section 2.07. *Interest*

The Borrower agrees to pay interest on the Advance in the following manner:

(a) It shall (i) be initially based on the Lender's prevailing rate in relation to the duly approved Credit Application No. \_\_\_\_\_ dated \_\_\_\_\_ under the relevant program applied for, determined on the date of initial Availment, (ii) be subject to adjustment by the Lender at such rate as it may determine (the "Adjusted Interest Rate") every month after the date of the relevant Note (the "Adjustment Date") until maturity of said Note, such Adjusted Interest Rate to be payable on or before the Interest Payment Date pertaining to the next Interest Period. Each Adjusted Rate shall be promptly communicated in writing by the Lender to the Borrower and shall become effective as of each Interest Period. If the Adjusted Interest Rate is not acceptable to the Borrower, the Borrower shall notify in writing the Lender of such fact and shall prepay the entire sum of principal and interest due without premium or penalty at the rate existing as of the last Interest Period if prepayment is made prior to the effectivity date of the relevant Adjusted Interest Rate as stated in the notice thereof, or if prepayment is made on or after the effectivity date of the relevant Adjusted Interest Rate, the interest shall be at a composite rate equivalent to the then prevailing 91-days Terasury Bills Rate plus six percent (6%) or the then Prevailing Interbank Offer Rate (PHIBOR) plus six percent (6%),

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whichever is higher, all within thirty (30) days from receipt by the Borrower of the written notice of the relevant Adjusted Interest Rate. If the Borrower fails or refuses to notify the Lender and to prepay as herein provided, the Lender shall have the right to declare the Loan due and demandable.

- (b) During the grace period on payment of principal, interest shall be payable quarterly in arrears commencing one (1) quarter from date of initial drawdown or Advance. Interest for the Note/s drawn after the initial Advance shall be payable on such date and frequency which coincide with the interest payment date and frequency for the Note of the initial Advance.
- (c) The Borrower hereby authorizes the Lender to record on the grid at the back of the Note the Adjustment Date and the Adjusted Interest Rate relevant thereto and such entries shall constitute conclusive evidence, in the absence of manifest error, of the existence of the obligation of the Borrower under the Note, but failure to record any adjustment thereunder shall not affect the obligation of the Borrower to pay the Lender.
- (d) If the Borrower fails to pay any principal or interest payable under the Note when due, or any sum payable by the Borrower under this Agreement (including, but without limitation, fees, charges, costs, and expenses), the Borrower shall, on demand by the Lender, pay a default charge at the rate of twenty four percent (24%) per annum over and above the basic interest rate.
- (e) All payments of interest pursuant to this Section shall be computed on the basis of a year of 360 days for the actual number of days elapsed (including the first day but excluding the last day) accruing in the period for which payable.
- (f) Gross Receipts Tax (GRT) or any applicable tax shall be for the account of the Borrower.

#### Section 2.08. *Payment*

- (a) All payments to be made by the Borrower hereunder or under the Note shall be made in immediately available funds at the office of the Lender, not later than 11:00 a.m., Philippine time, on the relevant date when they are due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Banking Day).
- (b) Any payment made to the Lender hereunder or under the Note shall be applied in accordance with the following order: (i) against costs, expenses and indemnities due hereunder; (ii) against default charge on advances; (iii) against advances; (iv) against default charge on past due interest and/or past due principal; (v) against past due interest; (vi) against current interest; (vii) against past due principal; and (viii) against current principal.
- (c) Notwithstanding anything in this Agreement to the contrary, the Lender may apply any payment received from the Borrower or for its account to the payment of any or all existing accounts of the Borrower in the order of priority that the Lender may prescribe from time to time.

### **ARTICLE III** General Conditions

#### Section 3.01. *Integration of General Conditions; Modifications*

The General Conditions herein incorporated as Annex "A" with additional conditions and modifications set forth below constitute an integral part of this Agreement.

- 1. Article VII, Section 7.01 (i) of the General Conditions is hereby modified and shall now be read as, viz:
  - (i) The Lender shall be the major depository bank of the Borrower and the latter shall maintain therein savings and current accounts, placements and

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(Excerpt from the Minutes of the 74<sup>th</sup> Regular Session/December 17, 2008)  
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time deposit with an average daily balance (ADB) of at least such amount equivalent to one (1) quarterly amortizations, which the Lender is fully authorized to debit in the payment of the Note unpaid at maturity, including

accrued interests thereon as well as any and all outstanding Advances, costs, expenses, fees and charges, if any.

In case the Borrower fails to maintain the required ADB, the Borrower shall be charged an additional service fee of one (1%) per cent per annum based on outstanding Loan.

#### **ARTICLE IV Particular Covenants**

##### *Section 4.01. Additional Conditions*

The following are specified as additional terms and conditions:

1. Legal documentation shall be completed within 45 days from date of receipt by the Borrower of the notice of approval of the loan. Extension may be allowed for another thirty (30) days.
2. Revenues from local taxes, permits and licenses, service income and income from financed project shall be deposited with the Lender.
3. The Borrower shall constitute a Local Pre-Qualification Bids and Awards Committee with at least one representative from the Lender as observer.
4. The Borrower may not make the Lender as its depository bank for its Internal Revenue Allotment (IRA) until its loan with the Land Bank of the Philippines (LBP) is fully paid; provided that there is pro-rata sharing of IRA deposits between the Lender and LBP.
5. A portion of the Borrower's deposit account with the Lender in the amount equivalent to one quarterly amortization shall be subject to hold-out.
6. The Borrower may avail of loans from other banks; provided, that its debt service cover or capacity throughout the term of its loan from the Lender is not less than 1.20x.
7. The heavy equipment shall, upon their delivery or arrival, be subject to verification by the Lender. Thereafter, the Borrower shall execute a Chattel Mortgage over said equipment in favor of the Lender. A Borrower's letter to be attached to the mortgage contract, indicating that the Lender, may at its sole discretion, upon written notice to the Borrower, register the mortgage under any of the situations, to wit:
  - a. The occurrence of any Events of Default (as defined in the loan agreement); or
  - b. The change in the policy requirement if the Lender for unregistered mortgage; or
  - c. Other circumstances which, in the reasonable opinion of the Account Officer, should required the registration of the mortgage.
8. The Borrower shall submit a Certification from suppliers on availability of spare parts and components.
9. RA9184 shall govern the procurement process.
10. Cost overruns shall be shouldered by the LGU.

##### *Section 4.02. Security Document*

The following are specified to constitute the Security Document for the purpose of Section 5.01 of the General Conditions:

- a) Deed of Assignment of Borrower's Internal Revenue Allotment and local revenues specified herein with Holdout on its deposit in the amount equivalent to one (1) quarterly amortizations;

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(Excerpt from the Minutes of the 74<sup>th</sup> Regular Session/December 17, 2008)  
**RESOLUTION NO. 602, s-2008**, cont'd:

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- b) Unregistered Chattel Mortgage over the heavy equipment and utility vehicles to be acquired; and

- c) Insurance policy/ies covering the heavy equipment and utility vehicles to be acquired, based on sound value, to be placed by the Lender with GSIS, and the policy/ies duly indorsed in favor of the Lender.
- d) Contractor's All Risk (CAR) on building to be constructed to be placed by the Lender with GSIS and to be endorsed in favor of DBP. CAR to be converted to fire insurance upon completion of the building.

Section 4.03. *Effectiveness of Agreement*

The following are specified as additional conditions precedent to the effectiveness of this Agreement for the purpose of Section 8.01 (g) of the General Conditions:

- a) Submission of a certification from the Bureau of Local Government Finance – Department of Finance (BLGF-DOF) as to the Borrower's borrowing and debts capacity;
- b) Submission of Certificate of Non-Coverage or Environmental Compliance Certificate from the Office of the Department of Environment and Natural Resources (DENR).
- c) Submission of the Sangguniang Bayan Resolution/s which shall embody, among others, the following:
  - i. Authority of the Municipal Mayor to negotiate and enter into contract with the Lender for a Loan of the proposed project, and to sign the Loan Agreement, Deed of Assignment, Promissory Note and other documents contemplated thereby;
  - ii. Approving and ratifying all the terms and conditions of the Loan Agreement, and all other documents which were executed by and between the Borrower and the Lender pertaining to the Loan;
  - iii. Authorizing the continuing assignment of the Borrower's Internal Revenue Allotment (IRA) and local revenues with hold-out deposited with the Lender in the amount to cover one (1) quarterly amortizations, until the loan is fully paid;
  - iv. The undertaking of the Borrower to include in its budget the required amortizations to service its loan obligations with the Lender;
  - v. That the obligations of the Borrower under this Loan Agreement, including the terms and conditions hereof, shall be valid and binding and shall not be subject to recall, amendment or repeal by its Sangguniang Bayan for the whole term of the Loan, regardless of any change in the composition of the Sangguniang Bayan.

Section 4.04. *Fees and other Charges*

The following are specified as fees payable by the Borrower to the Lender for the purpose of Section 4.01 of the General Conditions:

- 1. Front-end Fee of 0.75 % of the Commitment, inclusive of 0.50% Forest Fund Fee, payable prior to initial Advance;
- 2. Commitment Fee of 0.134% p.a. based on the unreleased amount of the Commitment, to start forty five (45) days from date of receipt of notice of loan approval by the Borrower or upon completion of Legal Documentation, whichever comes earlier, up to final Advance; and

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized signatories as of the day and year first written above.

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(Excerpt from the Minutes of the 74<sup>th</sup> Regular Session/December 17, 2008)  
**RESOLUTION NO. 602, s-2008**, cont'd:

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LENDER:  
**DEVELOPMENT BANK OF THE PHILIPPINES**  
 By:

BORROWER:  
**CITY GOVERNMENT OF TAGUM**  
 By:

**SAVP EDGAR N. SERONAY**  
Head, RMC-SEM

**HON. REY T. UY**  
City Mayor

Signed in the presence of:

**ACKNOWLEDGMENT**

REPUBLIC OF THE PHILIPPINES )  
Province of Davao del Norte )  
City of Tagum ) S.S.

Personally appeared before me, a Notary Public for and in the above-mentioned jurisdiction, this \_\_\_\_ day of \_\_\_\_\_, 2008:

<u>Name</u>	<u>CTC No.</u>	<u>Date &amp; Place of Issue</u>
Development Bank of the Phils.	00126562	Jan. 04, 2008; Makati City
SAVP Edgar N. Seronay	12659421	Jan. 23, 2008; Davao City
Hon. Vicente D. Orenca	01584109	Jan. 02, 2008; Gov. Generoso

known to me and to me known to be the same persons who executed the foregoing instrument and acknowledged to me that the same is their free and voluntary act and deed as well as the free and voluntary act and deed of the principals represented herein. This instrument, which consists of seven (7) pages including this page, refers to a Term Loan Agreement and signed by the parties and two witnesses on each and every page hereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal at the place and on the date first above written.

Doc. No:  
Page No:  
Book No:  
Series of 2008.

**CARRIED AND APPROVED.**

**I HEREBY CERTIFY to the correctness of the foregoing.**

**MELODINA V. VALLE**  
Records Officer 1V  
Officer-In-Charge

**ATTESTED AND CERTIFIED  
TO BE DULY ADOPTED:**

**ALLAN L. RELLON, MPA**  
City Vice Mayor  
(Presiding Officer)

*fname:RN60208*  
*ffm\*\**