

December 22, 1983

PRESIDENTIAL DECREE NO. 1894

AMENDING THE FRANCHISE OF THE PHILIPPINE NATIONAL CONSTRUCTION CORPORATION TO CONSTRUCT, MAINTAIN AND OPERATE TOLL FACILITIES IN THE NORTH LUZON AND SOUTH LUZON EXPRESSWAYS TO INCLUDE THE METRO MANILA EXPRESSWAY TO SERVE AS AN ADDITIONAL ARTERY IN THE TRANSPORTATION OF TRADE AND COMMERCE IN THE METRO MANILA AREA

WHEREAS, the Government's developmental goals have been assisted by the construction, maintenance and operation of infrastructure toll facilities as envisioned by Presidential Decree No. 1112 and 1113;

WHEREAS, the Philippine National Construction Corporation (formerly the Construction and Development Corporation of the Philippines) is presently substantially owned by various Government financial institutions and has played a major role in the success of its endeavor through its efficient construction, maintenance and operation of the toll facilities in the North Luzon and South Luzon expressways as mandated by Presidential Decree Nos. 112 and 113 and its Toll Operation Agreement with the Toll Regulatory Board;

WHEREAS, for the continued efficiency and viability of the toll facilities in the North Luzon and South Luzon Expressways, it is essential that the Philippine National Construction Corporation be granted such powers and authority necessary to enable it to promote the convenience of the monitoring public in the expressways;

WHEREAS, there is an urgent need to link the North Luzon and North Luzon Expressways through the construction, maintenance and operation of the Metro Manila Expressway which will serve as an additional route and thereby decongest traffic and facilitate the department of trade and commerce in and around Metro Manila.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, hereby order and decree:

SECTION 1. Any provision of law to the contrary notwithstanding, there is hereby granted to the Philippine National Construction Corporation, a corporation duly organized and existing under by the virtue of Philippine laws (hereinafter called the "GRANTEE"), the right, privilege and authority to construct, maintain and operate the following expressways (hereinafter collectively called "the Expressways"), together with the toll facilities appurtenant thereto:

- (a) the North Luzon Expressway from Balintawak (Station 9 + 563) to Carmen, Rosales, Pangasinan;

- (b) the South Luzon Expressway from Nichols, Pasay City (Station 10 + 540) to Lucena, Quezon;
- (c) the Metro Manila Expressway, from Bicutan, Parañaque, Metro Manila (Station 18 +720) to Meycauayan, Bulacan (approximate Station 63 + 290) with an approximate length of 44.570 km., to serve as an artery in the transportation of trade and commerce in the Metropolitan Manila area.

The GRANTEE is hereby further granted the right, privilege and authority to construct, maintain and operate any and all such extensions, linkages or stretches, together with the toll facilities appurtenant thereto, from any part of the North Luzon Expressway, South Luzon Expressway and/or Metro Manila Expressway and/or to divert the original route and change the original end-points of the North Luzon Expressway and/or South Luzon Expressway as may be approved by the Toll Regulatory Board (any and all such extensions, linkages, stretches and diversions hereinafter deemed included in the term "Expressways").

SECTION 2. The term of the franchise provided under Presidential Decree No. 1113 for the North Luzon Expressway and the South Luzon Expressway which is thirty (30) years from 1 May 1977 shall remain the same; provided that, the franchise granted for the Metro Manila Expressway and all extensions linkages, stretches and diversions that may be constructed after the date of approval of this decree shall likewise have a term of thirty (30) years commencing from the date of completion of the project.

SECTION 3. Subject to the limitations and procedure prescribed by law, the GRANTEE is empowered and authorized to exercise the right of eminent domain insofar as may be reasonably necessary for, in furtherance of, the right, privilege and authority granted under its franchise; provided, however, that it shall continue to be the litigation of the Toll Regulatory Board to acquire the necessary land and/or rights of way pursuant to its power under Presidential Decree No. 1112 and cede the same to the GRANTEE at no cost.

SECTION 4. The Toll Regulatory Board is hereby given jurisdiction and supervision over the GRANTEE with respect to the Expressways, the toll facilities necessarily appurtenant thereto and, subject to the provisions of Section 8 and 9 hereof, the toll that the GRANTEE will charge the users thereof.

SECTION 5. In consideration of this franchise, the GRANTEE shall:

- (a) Construct, operate and maintain at its own expense the Expressways; and
- (b) Turn over, without cost, the toll facilities and all equipment, directly related thereto to the Government upon expiration of the franchise period.

SECTION 6. This franchise is granted subject to such conditions, consistent with the provisions of this Decree, as may be imposed by the Toll Regulatory Board in the Toll Operation Agreement and such other modification or amendments that may be made

thereto, and with the understanding and upon the condition that it shall be subject to amendment of alteration when public interest so dictates.

SECTION 7. In cases of force majeure rendering Expressways totally or partially inoperable, the annual concession fee due the government shall be proportionately reduced or the authorized toll rate increased to the extent determined by the Toll Regulatory Board in order to allow the GRANTEE to recover such losses in revenue incurred due to such calamities.

In cases of force majeure attributable to acts of Government or man, such as but not limited to, war, rebellion, insurrection, government shall have the right to cause the closing of the Expressways subject to the payment of just compensation to the GRANTEE.

SECTION 8. (a) For the North Luzon Expressway and South Luzon Expressway, the GRANTEE shall collect toll at such rates as are currently in effect, subject to the provisions of Section 9.

(b) For the Metro Manila Expressway and such extensions, linkages, stretches and diversions of the Expressways which may henceforth be constructed, maintained and operated by the GRANTEE, the GRANTEE shall collect toll at such rates as shall initially be approved by the Toll Regulatory Board. The Toll Regulatory Board shall have the authority to approve such initial toll rates without the necessity of any notice and hearing, except as provided in the immediately succeeding paragraph of this Section. For such purpose, the GRANTEE shall submit for the approval of the Toll Regulatory Board the toll proposed to be charged the users. After approval of the toll rate(s) by the Toll Regulatory Board and publication thereof by the GRANTEE once in a newspaper of general circulation, the toll shall immediately be enforceable and collectible upon opening of the expressway to traffic use.

Any interested Expressways users shall have the right to file, within a period of ninety (90) days after the date of publication of the initial toll rate, a petition with the Toll Regulatory Board for a review of the initial toll rate; provided, however, that the filing of such petition and the pendency of the resolution thereof shall not suspend the enforceability and collection of the toll in question. The Toll Regulatory Board, at a public hearing called for the purpose after due notice, shall then conduct a review of the initial toll shall be appealable to the Office of the President within ten (10) days from the promulgation thereof. The GRANTEE may be required to post a bond in such amount and from such surety or sureties and under such terms and conditions as the Toll Regulatory Board shall fix in case of any petition for review of, or appeal from, decisions of the Toll Regulatory Board.

In case it is finally determined, after a review by the Toll Regulatory Board or appeal therefrom, that the GRANTEE is not entitled, in whole or in part, to the initial toll, the GRANTEE shall deposit in the escrow account the amount collected under the approved initial toll fee and such amount shall be refunded to Expressways users who had

paid said toll in accordance with the procedure as may be prescribed or promulgated by the Toll Regulatory Board.

SECTION 9. The GRANTEE shall have the right and authority to adjust any existing toll being charged the users of the Expressways under the following guidelines:

- a) Adjustments may be made not more than once a year.
- b) Adjustments shall be made solely on the basis of the following formula, which is subject to amendment, modification or repeal as may from time to time be agreed upon between the GRANTEE and the Toll Regulatory Board:

$$R = K \times R_o \left(\frac{I}{L_o} + a' \frac{F}{E_o} \right) C = .30 L + .10$$

R = Adjusted Toll Rate

R_o = Current Toll Rate

I

L = Prevailing Manila Reference Rate Plus Bankers' Association of the

Philippines (BAP) Intermediation Index plus the going spread as quoted by the major Commercial banks, or any other index rate which may be more reflective of the prevailing conditions in the local financial markets.

I

L_o = Prevailing local interest rate (averaged as above) when current toll rate is approved.

I

F = Prevailing foreign interest rate at time of adjustment which shall be the rate is approved.

I

F_o = Prevailing foreign interest rate (averaged as above) when current toll rate approved.

a = Ratio of local debt to total debt.

a' = Ratio of foreign debt to total debt.

E = CB foreign exchange (\$ to P) rate (selling rate at time of adjustment).

E_o = CB foreign exchange (\$ to P) rate (selling rate when current toll rate is approved).

L = Consumer price index for Metro Manila at time of adjustment.

L_o = Consumer price index for Metro Manila when current toll rate is approved.

C = Construction Materials Price Index at the time of adjustment computed as the sum of the unit prices of cement, asphalt concrete, reinforcing bars and diesel as authorized by government price control authority and if not controlled, as quoted in the open market.

Co = Construction Material Price Index when last toll rate was approved computed as the sum of the unit prices of cement, asphalt concrete, reinforcing bars and diesel as authorized by government price control authority and if not controlled, as quoted in the open market.

The procedure to be followed for any adjustment is as follows:

- (a) On or before the 30th day of September of each year, the GRANTEE shall submit to the Toll Regulatory Board a written report/statement on the then current application of the formula.
- (b) Any adjustment in the then current toll rate(s) resulting from the application of the formula and indicated in the aforesaid written statement shall (i) be published once by the GRANTEE in a newspaper of general circulation not later than November 30 of each year and (ii) be enforceable and collected by the GRANTEE effective on the first day of January of the immediately succeeding year.
- (c) Any interested Expressway user shall have the right to file, within a period of ninety (90) days after the date of publication of the adjusted toll rate(s), a petition with the Toll Regulatory Board for a review of the adjusted toll rate (s); provided, however, that, notwithstanding the filing of such petition and the pendency of the resolution thereof, the adjusted toll shall be enforceable and collectible by the GRANTEE effective on the first day of January in accordance with the immediately preceding paragraph.
- d) The Toll Regulatory Board, at a public hearing called for the purpose after due notice, shall then conduct a review of the adjusted toll to determine the propriety thereof based on the authorized formula provided in Section 9 (b) hereof. The Toll Regulatory Board shall render and promulgate its decision not later than 120 days from date of receipt of the petition.
- e) Decisions of the Toll Regulatory Board on petitions for review of adjusted toll shall be appealable to the Office of the President within ten (10) days from the promulgation thereof.
- f) The GRANTEE may be required to post a bond in such amount from such surety or sureties and under such terms and conditions as the Toll Regulatory Board shall fix in case of any petition for review of, or appeal from, decisions of the Toll Regulatory Board.
- g) In case it is finally determined, after a review by the Toll Regulatory Board or appeal therefrom, that the GRANTEE is not entitled, in whole or in part, to the adjustment, the GRANTEE shall deposit in an escrow account the excess amount collected under the adjustment and such amount shall be refunded to Expressway users who not paid the toll

adjustment in accordance with the procedure as may be prescribed or promulgated by the Toll Regulatory Board.

SECTION 10. For the purpose of carrying out the right and privilege granted herein, the GRANTEE may undertake the construction of improvement projects on public infrastructure abutting or crossing the expressways as may be necessary to ensure the smooth flow of traffic in the Expressways including the construction of additional or expanded toll pass bridges in the interchanges as may be identified by the GRANTEE and approved by the Toll Regulatory Board.

The GRANTEE shall advance the costs of said construction and deduct the same from the concession fee due to the Government.

SECTION 11. For the smooth merger of traffic in the Expressway with local traffic and thus ensure traffic mobility and congestion in areas around the vicinity of the interchanges, the GRANTEE shall have jurisdiction, supervision and traffic control over all immediate areas of influence of the interchanges, including the service roads along the Expressways as may be identified by the GRANTEE and approved by the Toll Regulatory Board. The appropriate personnel of the GRANTEE shall be deputized as traffic officers for this purpose.

SECTION 12. The GRANTEE shall hold harmless the municipal, provincial and national Government of the Philippines, from all claims, demands or actions arising out of accidents or injuries, whether to property or to persons, occasioned by the exercise of the GRANTEE'S right and privilege under this franchise.

SECTION 13. The GRANTEE shall not lease, transfer, grant the usufruct of, sell or assign this franchise nor the rights or privileges required hereby, to any person, firm, company, corporation or other legal entity, nor merge with any other company or corporation without the prior approval of the President of the Philippines. In the event that this franchise is sold, transferred or assigned, the transferee shall be subject to all the conditions, terms, restrictions and limitations of this Decree as fully and completely and to the same extent as if the franchise has been granted to the said person, firm, company, corporation or other legal entity.

SECTION 14. The provisions of existing laws to the contrary notwithstanding, no tax, charges or fees of any kind, nature or descriptions now or in the future imposed or levied by any municipal, city, provincial or national authority shall be imposed, levied or assessed on or be collected from the GRANTEE in connection with its exercise of the right and privilege under this franchise and/or in connection with its activities pursued in accordance with and pursuant to this Decree, other than taxes on its income and real property in conformity with existing laws.

SECTION 15. The ongoing construction, maintenance and operation by the GRANTEE of the existing North Luzon Expressway and South Luzon Expressway shall

be deemed to constitute acceptance by the GRANTEE of this franchise and all the terms hereof;

SECTION 16. If any of the provisions of this Decree is, or becomes, invalid or illegal, such invalidity or illegality shall not invalidate the entire Decree but it shall be construed as if not pertaining the particular provision or provisions held invalid or illegal and the rights and obligations of the Government and the GRANTEE shall be construed and enforced accordingly.

SECTION 17. All laws, decrees, orders, rules and regulations as well as agreements, inconsistent with the provisions of this Decree, are hereby repealed or modified accordingly. Provisions of Presidential Decree Nos. 1112 and 1113 and in the Toll Operation agreement not inconsistent with this Decree shall remain in full force and effect.

SECTION 18. This Decree shall take effect immediately.

DONE in the City of Manila, this 22nd day of December, in the year of Our Lord, nineteen hundred and eighty-three.