

MEMORANDUM TO PARLIAMENT

FROM THE

HON. MINISTER FOR FINANCE & ECONOMIC PLANNING

ON

**A SUPPLIER'S CREDIT AGREEMENT BETWEEN THE GOVERNMENT
OF GHANA AND STX ENGINEERING AND CONSTRUCTION GHANA
LIMITED (GHANA-KOREA JOINT VENTURE COMPANY) FOR AN
AMOUNT UP TO USD 1,525,443,468.00**

FOR THE

**CONSTRUCTION OF 30,000 UNITS OF HOUSES FOR SECURITY
AGENCIES IN GHANA**

4th MAY, 2010

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1.0 ACTION REQUIRED

Honourable Members are humbly requested to consider and approve a Supplier's Credit Agreement between the Government of Ghana and STX Engineering and Construction Ghana Limited (Ghana-Korea Joint Venture Company) for an amount up to **USD 1,525,443,468.00** (One Billion and Five Hundred and Twenty-Five Million, Four Hundred and Forty-three Thousand, Four Hundred and Sixty-Eight United States Dollars) for the construction of the 30,000 units of houses for the security agencies in Ghana. The project will be executed by Messrs STX Engineering and Construction Ghana Limited.

Further, Parliament is respectively invited to consider the provision of securities in the appropriate forms, to secure viable project financing, lands and title deeds. In addition, it is also proposed that part or the entire credit facility be converted into commodity trading after the execution of the project in about five (5) years.

Parliament is again respectfully requested to consider and approve the required tax and duties exemptions on the specific machinery and equipments, spare parts and materials to be imported or purchased locally where appropriate for the execution of the project. In the absence of a double taxation agreement with the Republic of Korea, it may be necessary to grant the required income tax exemptions for expatriate contractors and specified expatriate personnel, as will be provided for under the contract document.

2.0 BACKGROUND

The Office of The President, in a letter dated 2nd December, 2009 gave an Executive Approval to Ministry of Water Resources, Works and Housing to enter into a Public Private Participation to develop 200,000 units of houses in all the 10 regional capitals for the next five years. The Executive approval was further enhanced in a letter dated April 28, 2010, copy attached.

In accordance with the Off-taker Agreement dated 9th December 2009 between Government of Ghana and STX Ghana, Government of Ghana agreed to off-take 90,000 units which represent 45 percent of the housing project. Ministry of Water Resources, Works and Housing per the off-taker agreement, indicated the need to provide 30,000 units out of the total 90,000 units representing 33 percent as duty post for Security Agencies.

The estimated cost for construction and delivery of the 30,000 units includes the houses as well as on-site infrastructure such as road, water, drainage, telephone, schools and others.

3.0 OBJECTIVES

- The overall objective of this project is to provide the Security Agencies such as the Police, Military, Prisons, Immigration, Fire and others with 30,000 decent and adequate housing.

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- To create jobs, improve incomes, reduce poverty and bring about socio-economic stability.
- To enhance technology transfer, especially in the housing sub-sector between Ghana and the Republic of Korea.
- To further strengthen private sector institutions and leverage their participation in housing delivery and home financing.

4.0 SCOPE OF WORKS

The main Scope of Works identified under the housing project and which has been negotiated with Ministry of Water Resources, Works and Housing, the Security Agencies and STX Engineering and Construction Ghana Limited is the provision of 30,000 housing units with on- site infrastructure.

4.1 Implementation Plan

The 30,000 units for the Security Agencies will be constructed over five years, which would be tied to the grace period of the supplier's credit agreement. The detailed implementation plan is detailed in the table below:

Locations	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Accra & Tema	2,037	2,037	2,037	2,037	2,037	10,185
Kumasi	665	665	665	665	665	3,325
Takoradi	495	495	495	495	495	2,475
Koforidua	488	488	488	488	488	2,440
Sunyani	555	555	555	555	555	2,775
Wa	408	408	408	408	408	2,040
Bolga	422	422	422	422	422	2,110
Tamale	338	338	338	338	338	1,690
Ho	302	302	302	302	302	1,510
Cape Coast	290	290	290	290	290	1,450

4.2 Housing Supply Plan

The project when completed will deliver to the Security Agencies one, two, three bedrooms apartments and three and four bedrooms bungalows at the various sites across the country. The actual and final price per unit of the houses to be acquired by Government under the Housing Project shall be agreed between the Government of Ghana and STX Engineering and Construction Ghana Limited. The construction and delivery of the various housing units are detailed in the table below:

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Security Agencies	Area	Type					Sub Total
		1-bed	2-bed	3-bed	3-bed Bungalow	4-bed Bungalow	
Police	Accra & Tema	3,650	2,000	900	20	20	6,590
	Kumasi	1,550	802	400	10	4	2,766
	Takoradi	900	650	320	8	3	1,881
	Koforidua	750	416	320	8	2	1,496
	Sunyani	890	600	320	8	3	1,821
	Wa	500	312	240	5	2	1,059
	Bolga	500	439	240	5	2	1,186
	Tamale	700	320	240	5	2	1,267
	Ho	400	320	240	5	2	967
	Cape Coast	400	320	240	5	2	967
	Total	10,240	6,179	3,460	79	42	20,000
Military & Others	All regional capitals	5,000	3,177	1,757	43	23	10,000
	Total	15,240	9,356	5,217	122	65	30,000

5.0 BENEFITS

The project will provide the following benefits.

- I. When this project is completed, it would solve the acute accommodation shortage in the country. It is estimated that about 58% of nearly 25,000 personnel of the Police Service are without decent accommodation with most of them housed in 'makeshift facilities' such as canteens, open workshops, kitchens and uncompleted structures. This housing project will provide 20,000 units of houses to the Police Service and 10,000 units to the Military and other Security services across the country. This would meet the five year strategic plan covering 2006-2010 designed by the Police Administration to address the accommodation problems.
- II. The provision of decent accommodation to the security services will go a long way to boost morale among personnel whose responsibility it is to provide security as this would solve overcrowding and risk of health hazards in the barracks. The problem of some personnel running shifts, to sleep at night, bath on lawns, crammed into small space-rooms will be solved.
- III. This project will also help the Security Agencies to increase their staff strength. The police administration had to suspend enlistment into the Ghana Police Service in June 2009 in order not to aggravate the accommodation problem.
- IV. Since this project seeks to construct permanent security accommodation (barracks), it would help to separate the personnel from the civilian population. This would enforce discipline, training and *esprit de corps*. This would also help to mobilize personnel in case of emergency situations, requiring urgent response.

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- V. The construction of the various housing units will engage the services of contractors, artisans, consultants, building materials sellers and suppliers, food vendors, among others. Thus it is estimated that the project will generate 75,000 direct and indirect employment to Ghanaians, as it will ensure a minimum of 30% local participation.
- VI. The project will bring about an increase in the Foreign Direct Investment in the country.
- VII. A project of this scale will certainly transfer technology to local counterparts at the end of the project.

6.0 CONSTRUCTION PERIOD

The completion period for the project is sixty (60) months commencing from the effective date of the contract. The project will be executed on a yearly basis of 6,000 units per annum.

7.0 FINANCING DETAILS

The project will be financed with a Supplier's Credit from STX Group of the Republic of Korea with a grant element of 36.93%. This funding satisfies Government's condition for concessionary financing. The financing terms and conditions are as follows:

Total Contact Amount	-	Up to USD 1,525,443,468.00 (Including Insurance Premium)
Grace Period	-	5 years
Repayment Period	-	15 years (semi-annual payment)
Maturity Period	-	20 years
Interest Rate	-	2.00% fixed p.a.
Arrangement Fee	-	0.75% flat
Management Fee	-	0.50% flat
Grant Element	-	36.93%

see Section 14.2

* In addition, the Lender has proposed to engage the Borrower in further discussion on Debt-Commodity-Swap after the execution period.

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8.0 CONCLUSION

The security housing project is a priority project, which, when implemented, will reduce the acute accommodation problem facing the various security agencies across the country.

Considering the immense socio-economic benefits to be derived from this project to the various security agencies and the provision of employment avenues, Hon. Members of Parliament are kindly requested to do the following;

- Consider and approve the above facility as stated in paragraphs (1 and 2).
- And to grant a waiver of VAT and taxes on the equipment and materials to be imported under the loan facility.


HON. DR KWABENA DUFFUOR
MINISTER OF FINANCE AND
ECONOMIC PLANNING

SUPPLIER'S CREDIT FINANCING AGREEMENT

BETWEEN

STX ENGINEERING AND CONSTRUCTION GHANA LIMITED

As Lender

AND

**THE GOVERNMENT OF GHANA ACTING THROUGH
THE MINISTRY OF FINANCE AND ECONOMIC PLANNING**

**in relation to the financing of the
SECURITY SERVICES HOUSING PROJECT**

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[To be inserted]

THIS AGREEMENT is made on the day of 2010

BETWEEN

1. **The Government of Ghana acting through the Ministry of Finance & Economic Planning** having its office at the main Ministries Area of Accra; of P.O. Box MB 40, Ministries, Accra, Ghana (the "**Government**") of the one part;

AND

2. **STX ENGINEERING AND CONSTRUCTION GHANA LIMITED**, a private company limited by shares incorporated and registered in the Republic of Ghana whose registered office is at 2nd Floor, Pyramid House, P.O. Box 19951, Ring Road, Accra-North, Ghana (the "**Lender**") of the other part.

WHEREAS:

- A. The Government has signed a joint venture agreement dated [] with the Lender for the development of a total of 200,000 housing units in Ghana (the "**Ghana Housing Project**").
- B. The Government has also signed an off-taker agreement dated [] with the Lender to acquire 90,000 housing units under the Ghana Housing Project.
- C. The Government has decided to assign 30,000 housing units out of its agreed off-take to the securities agencies, being the Ghana Police Service and the Armed Forces (the "**Security Services Housing**").
- D. The Government and the Lender have agreed to enter into this Agreement under which the Lender will agree to finance the construction of the Security Services Housing on the basis of a supplier's credit arrangement under the terms and conditions of this Agreement.

NOW THEREFORE, IT IS AGREED as follows:

1 Definitions and Interpretation

1.1 Definitions

In this Agreement the following definitions apply.

Applicable Laws" means any statute, law, regulation, ordinance, rule, judgement, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental regulation or restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any Government authority, court or other judicial or administrative body having jurisdiction over the matter in question, whether in effect as of the date of Agreement or thereafter;

"Applicable Permits" means any and all permissions, clearances, licenses, authorisations, consents, sanctions, no-objections, approvals of or from any Government authority required in connection with the execution of the Project;

"Business Day" means a day (other than a Saturday or Sunday) on which commercial banks generally are open for business in Accra;

"Contractor Equipment" means equipments, materials and inputs imported by the EPC Contractor for the purpose of the Project;

"Disbursement Date" means the date on which a disbursement of the Facility is made or is proposed to be made;

"EPC Contract" means the engineering, procurement and construction contract made and to be entered into between the Government and the EPC Contractor for the execution of the Project;

"EPC Contractor" means the special purpose vehicle to be used by the Lender for the execution of the Project;

"EPC Contract Amount" means the contract amount of USD1,525,443,468.00 as stipulated in the EPC Contract;

"EPC Payment Obligations" means the payment obligation of the Government under the terms of the EPC Contract;

"Event of Default" means any one of the events described as such in Clause 13;

"Facility" means the supplier's credit facility of USD1,525,443,468.00 to be made available to the Government under the terms of this Agreement;

"Facility Period" means the period starting on the date of this Agreement and ending on the date on which the Lender notifies the Government in writing that all the Outstandings are irrevocably and unconditionally discharged in full;

"Final Repayment Date" means the date that is 20 years after the first Disbursement Date;

"Financing Documents" means this Agreement, the EPC Contract any other document designated as such by the Lender;

"Interest Period" means each period determined in accordance with Clause 6 for the purpose of calculating interest on any disbursements or on overdue amounts;

"Material Adverse Effect" means a material adverse effect on the ability of the Government to comply with its obligations under the Financing Documents;

"Milestone Report" means a report issued under the EPC Contract certifying that the Lender has completed an agreed milestone of the Project in accordance with its obligations under the EPC Contract;

"Outstandings" means at any given time the aggregate of (a) the disbursements; and (b) interest, fees and any other sums which have become due and payable under the Financing Documents, to the extent that the same have not been paid;

"Project" means the Security Services Housing Project;

"Potential Event of Default" means an event or omission which, with the giving of any notice, the lapse of time or the satisfaction of any other condition under Clause 13 (*Event of Default*), would be an Event of Default;

"Repayment Date" means any of the dates specified in the first column of the Repayment Schedule;

"Repayment Notice" means a notice substantially in the form set out in Schedule 5;

"Repayment Instalment" means, in relation to any Repayment Date, the minimum outstanding principal amount of that Facility which is required to be repaid pursuant to the Repayment Schedule;

"Repayment Schedule" means the table set out in Schedule 2 of this Agreement;

"Secured Obligations" means all moneys, liabilities and other obligations now or at any time due, owing, incurred or payable or expressed to be due, owing, incurred or payable under the Financing Documents by the Government (whether actual or contingent, present or future, joint or several, as principal debtor or surety or otherwise);

"Taxes" means all present and future taxes, charges, imposts, duties, levies, deductions, withholdings or fees of any kind whatsoever, or any amount payable on account of or as security for any of the foregoing, by whomsoever on whomsoever and wherever imposed, levied, collected, withheld or assessed, together with any penalties, additions, fines, surcharges or interest relating thereto; and

"USD" means the lawful currency of the United States of America.

1.2 Headings

The headings in this Agreement are for convenience only and shall be ignored in construing this Agreement.

1.3 Interpretation

In this Agreement (unless otherwise provided):

- (a) words importing the singular shall include the plural and vice versa;
- (b) references to Clauses and Schedules are to be construed as references to the clauses of, and schedules to, this Agreement;
- (c) references to any Financing Document or any other document shall be construed as references to that Financing Document or that other document, as amended, varied, novated or supplemented from time to time;

purpose of financing the Project by means of payments of the EPC Contract Amount.

4 Conditions Precedent to Disbursement

4.1 Notwithstanding any other term of this Agreement, the Lender shall not be under any obligation to make the Facility available to the Government unless the Lender has received all the documents and evidence listed in Schedule 1 (*Conditions precedent*) (each in form and content satisfactory to the Lender).

4.2 Each disbursement under this Agreement is subject to the following conditions:

- (a) All the conditions precedent to first drawdown have been satisfied, which conditions shall remain true, accurate and valid with reference to the facts and circumstances at the time of such drawdown;
- (b) All the interests, fees and charges due and payable under this Agreement have been fully paid by the Government;
- (c) No Event of Default has occurred and is continuing nor would an Event of Default result from the making of such disbursement; and
- (d) All the representations and warranties made or given by the Government herein remain true and accurate in all material respects on and as of the date the disbursement is to be made with reference to the facts and circumstances then subsisting.

5 Disbursement

5.1 Disbursement Procedure

Subject to the satisfaction of all relevant Conditions Precedent, disbursements under the Facility shall be made in accordance with the EPC Payment Obligations and on each Disbursement Date the Lender shall send a notice to the Government providing the following information:

- (a) Amount of the Facility disbursed;
- (b) A utilization schedule setting out the details of the proposed utilization of the disbursement; and
- (c) The undrawn portion of the Facility.

Each disbursement notice sent by the Lender to the Government shall be accompanied by a Milestone Report.

5.2 Conditions to each disbursement

The obligation of the Lender to disburse any funds under the Facility is subject to the condition that on each Disbursement Date:

has been amended, extended, first stated or repealed by the same, and shall include any orders, regulations, instruments or other subordinate legislative made under the relevant statute;

- (e) references to law include any legislation, any common or customary law, constitution, decree, judgment, order, ordinance, treaty or other legislative measure and any present or future directive, request, requirement, guidance or guideline (in each case, whether or not having the force of law but, if not having the force of law, compliance with which is in accordance with the general practice of persons to whom the directive, request, requirement, guidance or guideline is addressed);
- (f) references to assets shall include revenues and property and the right to revenues and property and rights of every kind, present, future and contingent and whether tangible or intangible (including uncalled share capital);
- (g) the words including and in particular shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- (h) the words other and otherwise shall not be construed as being limited by the context in which they appear or the words that precede them;
- (i) references to a person shall be construed as including references to an individual, firm, partnership, joint venture, company, corporation, body corporate, unincorporated body of persons or any state or any agency of a state;
- (j) references to any Party or any other person shall be construed so as to include that Party or person's permitted assigns, transferees and successors in title;
- (k) unless otherwise specified, where there is a reference in this Agreement to any amount, limit or threshold specified in USD, in ascertaining whether or not that amount, limit or threshold has been attained, broken or achieved, as the case may be, a USD amount shall be counted on the basis of the equivalent in Dollars of that amount using the applicable inter-bank exchange rate for the date on which such amount is to be ascertained; and
- (l) a reference to any bank account shall be construed as a reference to that account as it may be redesignated, renumbered, renamed or replaced and any sub-account thereof from time to time.

3 Project Financing

- 3.1 The Lender hereby agrees to make available to the Government a credit facility of an aggregate amount not exceeding USD1,525,443,468.00 for the execution of the Project in accordance with the Project Specifications and the EPC Contract.
- 3.2 The entire proceeds of the Facility shall be applied by the Government for the sole

- (a) the representations and warranties in Clause 11 to be repeated on those dates are correct and will be correct immediately after the Advance is made;
- (b) no Event of Default or Potential Event of Default has occurred and is continuing or would occur on the making of the disbursement;
- (c) the obligations of each party under each Financing Document is valid and binding obligations of that party and those obligations are not void, illegal or unenforceable; and
- (d) none of the parties to any Financing Document has repudiated any of its obligations under the relevant Financing Document and no Financing Document has been terminated (and no event has occurred which gives either party to the Financing Document the right to terminate the Financing Document) and no force majeure event has occurred in respect of the Financing Document.

6 Interest

6.1 Interest Rate

Interest shall accrue on each disbursement for each Interest Period at the rate 2.0% per annum.

- 6.1.1 The duration of each Interest Period shall be six months, provided that:
 - (a) the first Interest Period relating to a disbursement will commence on the Disbursement Date of that disbursement;
 - (b) the first Interest Period relating to a disbursement made during an existing Interest Period shall expire at the end of the then current Interest Period and that disbursement shall be consolidated with the balance of the Facility; and
 - (c) each subsequent Interest Period relating to the Facility will commence on the expiry of the previous Interest Period.
- 6.1.2 If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period shall instead end on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- 6.1.3 If an Interest Period begins on the last Business Day in a calendar month or on a Business Day for which there is no numerically corresponding day in the calendar month in which that Interest Period is to end, it shall end on the last Business Day in that later calendar month.
- 6.1.4 If an Interest Period would otherwise extend beyond the first Repayment Date or the Final Repayment Date (as applicable), it shall be shortened so that it ends on the first Repayment Date or Final Repayment Date (as applicable).

6.2 Default interest

- 6.2.1 If the Government fails to pay any amount payable under any Financing Document on the due date, it shall pay default interest on the overdue amount from the due date to the date of actual payment calculated at the rate per annum being the aggregate of (a) 2 per cent. per annum and (a) the Interest Rate.
- 6.2.2 So long as the overdue amount remains unpaid, the default interest rate shall be recalculated in accordance with the provisions of this Clause 6.3 on the last day of each such Interest Period and any unpaid interest shall be compounded at the end of each Interest Period.

6.3 Calculation and payment of interest

- 6.3.1 Interest due from the Government under this Agreement shall:
 - (a) accrue from day to day at the rate calculated under this Clause 6;
 - (b) except as otherwise provided in this Agreement be paid by the Government to the Lender in arrear on each Repayment Date ;
 - (c) be calculated on the basis of the actual number of days elapsed and a 360 day year; and
 - (d) be payable both before and after judgment.

7 Repayment, Prepayment and Cancellation

7.1 Repayment

- 7.1.1 The Government shall repay the Facility on each Repayment Date in accordance with the Repayment Schedule.
- 7.1.2 On or by the Final Repayment Date, the Government shall pay or procure the payment to the Lender of the Outstandings.
- 7.1.3 After the execution of the Project, the Lender shall, pursuant to a debt/commodity swap agreement to be entered into with the Government, have the option to convert all or any part of the Outstandings to crude oil or other petroleum related resources on such terms as may be agreed between the parties.

7.2 Prepayment

- 7.2.1 The Government may, by giving the Lender not less than 30 days' prior notice, prepay the whole or part (but if in part, in a minimum amount of \$1,000,000 and an integral multiple of \$500,000) of the Facility on a Repayment Date.
- 7.2.2 Any notice of prepayment shall be irrevocable, shall specify the date on which the prepayment is to be made and the amount of the prepayment, and shall oblige the Government to make that prepayment

7.2.3 Any prepayment shall be made together with accrued interest on the amount prepaid and any amounts payable under Clause 24.1 and shall be applied against the unpaid Repayment Instalments in inverse order of maturity.

7.3 Limitation

The Government may not repay or prepay all or any part of the Facility except as expressly provided in this Agreement.

8 Moratorium

There shall be a five-year moratorium from the date of the first drawdown of the Facility during which there shall be no principal repayments. Interest shall however accrue and be payable during the moratorium period.

9.3 Currency of Payments

All payments to be made to the Lender under this Agreement shall be in USD.

9.4 Business Days

If a payment under this Agreement is due on a day, which is not a Business Day, the due date for that payment shall instead be the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

9.5 Accounts as evidence

The Lender shall maintain records of payments under this Agreement which shall, as between the Parties, be prima facie evidence of the amounts from time to time advanced by, owing to the Lender under this Agreement except in the case of any manifest error.

9.6 Application of payments

On each Repayment Date, the Lender shall apply repayments amounts received from the Government as follows

- (a) first, in or towards payment of any unpaid costs and expenses of the Lender under the Financing Documents;
- (b) second, in or towards payment of any accrued interest due but unpaid under this Agreement;
- (c) third, in or towards payment of any principal due but unpaid under this Agreement; and
- (d) fourth, in or towards payment pro rata of any other sum due but unpaid under the Financing Documents.

9.7 Set-off and counterclaim

All payments made to the Lender under this Agreement shall be made without set-off or counterclaim.

9.8 Tax Gross-up

9.8.1 All sums payable to the Lender pursuant to or in connection with any Financing Document shall be paid in full free and clear of all deductions or withholdings whatsoever except only as may be required by law.

9.8.1 If the Government is required to make any deduction or withholdings on account of Tax, the sum payable by the Government in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of the required deduction or withholding, the Lender receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

10 Security

The Facility shall initially be unsecured and shall rank pari passu with all unsecured financial obligations of the Government.

11 Representations and Warranties

11.1 The Government hereby represents and warrants for the benefit of Lender that:

- (a) **Power and authority:** it has power to execute, deliver and perform its obligations under the Financing Documents and to carry out the transactions contemplated by those documents and all necessary action, including relevant approvals of Ghana's Parliament and/or any other statutory body has been or will be taken to authorise the execution, delivery and performance of the same;
- (b) **Binding obligations:** the obligations of the Government under the Financing Documents constitute its legal, valid, binding and enforceable obligations;
- (c) **Contraventions:** the execution, delivery and performance by the Government of the Financing Documents do not:
 - (i) contravene any applicable law or regulation or any judgment, order or decree of any court having jurisdiction over it;
 - (ii) conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party ;
or
 - (iii) contravene or conflict with its constitutional documents;
- (d) **No Default:** no Default or Potential Default is continuing or will occur as a result of the making of any Advance;

- (e) **Information:** all information furnished by the Government or any person on its behalf to the Lender in connection with the Financing Documents or relating to the Government, was true and complete in all material respects when provided and there is no other fact or circumstance relating to the Government's affairs which has not been disclosed to the Lender which non-disclosure renders any of that information misleading, and all expressions of expectation, intention, belief and opinion contained in any of that information were honestly made on reasonable grounds after due and careful consideration;
- (d) **IMF and World Bank:** the Facility does not breach or conflict with any rules, regulations, directives, requirements or conditions of the International Monetary Fund and the World Bank in respect of any facility or program to which the Government is participating or is a party to ;
- (e) **Pari passu ranking:** its obligations under the Financing Documents rank at least pari passu with all its other present and future unsecured and unsubordinated Indebtedness except for any obligations which are mandatorily preferred by law;
- (f) **No immunity:** in any proceedings taken in Ghana or elsewhere in relation to any Financing Document, it will not be entitled to claim for itself or any of its assets (save diplomatic and consular assets) immunity from suit, execution, attachment or other legal process;
- (g) **Private and commercial acts:** its execution of each Financing Document constitutes, and its exercise of its rights and performance of its obligations thereunder will constitute, under Ghanaian law, private and commercial acts done and performed for private and commercial purposes; and

11.2 Repetition

The representations and warranties in Clause 11.1 shall survive the execution of this Agreement and shall be deemed to be repeated by the Government on the date on which each Disbursement Notice is given and on the first day of each Interest Period for each Advance or, as the case may be, each Loan with reference to the facts and circumstances existing at that time

12 Undertakings

12.1 Information Undertakings

The Government undertakes that during the Facility Period it shall, unless the Lender otherwise agrees in writing:

- (b) **Default etc:** promptly, upon becoming aware of the same, notify the Lender of:
 - (i) the occurrence of a Default or Potential Default;
 - (ii) any representation, warranty or statement made or deemed to be repeated by the Government in any Financing Document or in any document delivered by or on behalf of the Government under or in

connection with any Financing Document being incorrect on the date when made or deemed to have been repeated; and

- (iii) any occurrence (including any third party claim or liability) which could reasonably be expected to have a Material Adverse Effect.
- (c) **Other information:** supply to the Lender such information, documents and records about the Project, as the Lender may from time to time reasonably require.

12.2 General undertakings

The Government undertakes that during the Facility Period it shall, unless the Lender otherwise agrees in writing:

- (a) **Further documents:** at the request of the Lender, do or procure the doing of all such things and execute or procure the execution of all such documents as are reasonably necessary or desirable to ensure that the Lender obtains all its rights and benefits under the Financing Documents;
- (b) **Applicable Permits:** grant or assist the Lender and its agents and assigns in obtaining all Applicable Permits;
- (c) **Tax Exemptions:** apply for Tax exemptions for:
 - (i) The Lender and EPC Contractor in relation to corporate tax obligations;
 - (ii) the importation of the Contractor Equipment; and
 - (iii) expatriate employees of the Lender and the EPC Contractor in respect of income earned in relation to the Project.
- (d) **Project Implementation:** ensure that all its ministries, departments, agencies and officials cooperate with the Lender, the EPC Contractor and their assigns and agents to ensure the successful execution of the Project.

13 Events of Default

13.1 Events of Default

Each of the following shall be an event of default.

- (a) **Non-payment:** the Government does not pay on the due date any amount payable by it under the Financing Documents at the place at and in the currency and funds in which it is expressed to be payable unless the failure to pay such amount is due solely to administrative or technical delays in the transmission of funds which are not the fault of the Government and such amount is paid within three Business Days after its due date for payment;
- (b) **Other defaults:** the Government breaches any of its obligations under any

Financing Document (other than the obligations referred to in Clause 13.1(a)) and, if that breach is capable of remedy, it is not remedied within 15 days after notice of that breach has been given by the Lender to the Government;

- (c) **Breach of representation or warranty:** any representation, warranty or statement made or deemed to be repeated by the Government under any Financing Document or in any document delivered by or on behalf of the Government under or in connection with any Financing Document is incorrect on the date when made or deemed to have been repeated and, if the circumstances giving rise to that representation, warranty or statement being incorrect are capable of remedy, such circumstances continue for a period of seven days after notice of that breach has been given by the Government to the Lender in accordance with Clause 0;
- (d) **Unlawfulness or repudiation:** it is or becomes unlawful for the Government to perform or comply with, or the Government repudiates any of its obligations under, any Financing Document;
- (e) **Inability to pay debts:** the Government:
 - (i) suspends payment of its debts or is unable or admits its inability to pay its debts as they fall due; or
 - (ii) by reason of actual or anticipated financial difficulties, begins negotiations with any creditor with a view to the readjustment.
- (f) **Material adverse change:** any event or series of events occur which has or could reasonably be expected to have a Material Adverse Effect;
- (g) **Unenforceability:** any of the obligations of the Government under the Financing Documents are not, or ceases to be, legal, valid, binding and enforceable and the effect of which has or is likely to have a Material Adverse Effect;
- (h) **Litigation:** any litigation, arbitration or administrative proceeding is current or pending which, in the Lender's opinion, is likely to be adversely determined and if adversely determined (a) would restrain the entry into, or exercise of any of the Government's rights or the performance or enforcement of, or compliance with, any of its obligations under any Financing Document or (b) would be reasonably likely to have a Material Adverse Effect;

13.2 Acceleration

At any time while a Default is continuing the Lender may by notice to the Government require the Government to immediately repay the full amount of the Outstandings whereupon they shall become immediately due and payable.

14 Fees and Expenses

14.1 Expenses

The Government shall within 10 Business Days of demand pay all expenses incurred (including legal, valuation and accounting fees, travel expenses and other out-of-pocket expenses), and any VAT on those expenses:

- (a) by the Lender in connection with the granting of any release, waiver or consent or in connection with any amendment or variation of any Financing Document; and
- (b) by the Lender in enforcing, perfecting, protecting or preserving (or attempting so to do) any of their rights, or in suing for or recovering any sum due from the Lender or any other person under any Financing Document, or in investigating any possible Default or Potential Default.

14.2 Fees

- (a) The Government shall pay to the Lender a facility Fee of 0.75% of the Facility.
- (b) The Government shall pay to the Lender a management fee of 0.75% of the Facility.
- (c) The Lender shall deduct the facility fee and the management fee from the Facility.

15 Documentary Taxes

All stamp, documentary, registration or other like duties or Taxes, including any penalties, additions, fines, surcharges or interest relating to those duties and Taxes, which are imposed or chargeable on or in connection with any Financing Document shall be paid by the Government.

16 Amendments and waivers

No term or provision of Any Financing Document may be amended, waived or varied, except with the written agreement of both the Lender and the Government

17 Miscellaneous

17.1 Severance

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (b) the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

17.2 Counterparts

This Agreement may be executed in any number of counterparts and this shall have the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

17.3 Notices

17.3.1 Method

Each notice or other communication to be given under this Agreement shall be given in writing in English and, unless otherwise provided, shall be made by telex, fax or letter.

17.3.2 Delivery

Any notice or other communication to be given by one Party to another under this Agreement shall (unless one Party has by 15 days' notice to the other Party specified another address) be given to that other Party, at the respective addresses given in Clause 18.3.3.

17.3.3 Addresses

The address, telex number and fax number of the Lender and the Government are:

The Lender

STX Engineering and Construction Limited

Fax No.:

Telephone:

Contact Person: B.K. Asamoah

The Government

Aid and Debt Management Division,
Ministry of Finance and Economic Planning
Address: P.O. Box MB 40, Ministries, Accra, Ghana
Fax No.: 00233 21 668016 / 667069 / 663854
Telephone: 00233 21 661358 / 686119 / 665587
Contact Person: Director, Aid/Debt Management Unit

17.3.4 Deemed receipt

- (a) Any notice or other communication given by the Lender or the Government shall be deemed to have been received:
 - (i) if sent by fax, with a confirmed receipt of transmission from the receiving machine, on the day on which transmitted;
 - (ii) in the case of a notice given by hand, on the day of actual delivery; and
 - (iii) if posted, on the second Business Day or, in the case of airmail, the fifth Business Day following the day on which it was dispatched by couriered airmail postage prepaid,

provided that a notice given in accordance with the above but received on a day which is not a Business Day or after normal business hours in the place of receipt shall be deemed to have been received on the next Business Day.

- (b) Any notice or other communication given to the Lender shall be deemed to have been given only on actual receipt.

17.4 No Waiver

No delay in exercising or omission to exercise any right, power or remedy accruing to any party under this Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof, nor shall any action of such party in respect of any default affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

17.5 Assignment

17.5.1 The Government may not assign or transfer any of its rights and obligations under this Agreement without prior written consent of the Lender.

17.5.2 The Lender may at any time assign, transfer or novate any of its rights and obligations under this Agreement with notice to the Government. The Government shall execute and do all such transfers, assignments, assurances, acts and things as the Lender may require for perfecting and completing the assignment of such rights, benefits and obligations.

17.6 No Release

No claim or dispute arising out of or in connection with any other contract or agreement whether or not related to the Project, shall have any effect on the Government's obligations under this Agreement nor in any way be deemed to release the Government from, such obligations being absolute and unconditional.

18 Governing Law and Arbitration

18.1 Governing Law

This Agreement is governed by and shall be construed in accordance with Ghanaian law.

18.2 Arbitration

It is agreed that any dispute arising out of or in connection with the Financing Documents, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration. Disputes submitted to arbitration shall be resolved in accordance with the Rules of the Ghana Arbitration Centre, which rules are deemed to be incorporated by reference into this Clause. The tribunal shall consist of one arbitrator who shall, in the absence of agreement of the Parties, be appointed by the Ghana Arbitration Centre. The tribunal shall give a written record of the award and reasons therefor.

18.3 Consent to enforcement

The Government consents generally in respect of any proceedings arising out of or in connection with the Financing Documents to the giving of any relief or the issue of any process in connection with such proceedings including the making, enforcement or execution against any property or assets whatsoever (except diplomatic and consular assets) of any award, order or judgment which may be made or given in such proceedings.

18.4 No immunity

To the extent that the Government may be entitled in any jurisdiction to claim for itself or any of its property or assets immunity in respect of its obligations under the Financing Documents from service of process, jurisdiction, suit, judgment, execution, attachment (whether before judgment, in aid of execution or otherwise) or legal process or to the extent that in any jurisdiction there may be attributed to it or all or any of its property or assets immunity of that kind (whether or not claimed) the Government irrevocably agrees not to claim and irrevocably waives that immunity to the fullest extent permitted by the laws of that jurisdiction. Provided that consular and diplomatic assets shall in all cases be exempt from any process of suit or execution.

In witness whereof the Parties have caused this Agreement to be duly executed with the intention that it should take effect on the date set out above.

Execution Page

The Lender
STX Engineering and Construction Limited

.....

By:

Name:

Title:

In the presence of

Name of Witness:

Position:

Signature:

The Government
**Acting through the Ministry of Finance
and Economic Planning**

.....

By:

Name:

Title:

In the presence of

Name of Witness:

Position:

Signature:

Schedule 1

Conditions Precedent

- (a) A certified true copy of the approval of the Parliament of the Republic of Ghana approving the Facility in accordance with Article 181 of the 1992 Constitution and section 7 of the Loans Act, 1970 (Act 335);
- (b) Evidence that the Government has obtained the tax exemptions referred to in Clause 12(2)(c) or is taking steps to obtain them;
- (c) A copy of any other authorisation or other document, opinion or assurance which the Lender considers to be reasonably necessary or desirable in connection with the entry into and performance of the transactions contemplated by any Financing Document or for the validity and enforceability of any Financing Document;

[Additional CPs to be inserted]

**Schedule 2
Repayment Schedule**

(Unit : USD)

Due Date	Interest Payment	Principal Repayment
YR1 - 1H		
YR1 - 2H		
YR2 - 1H		
YR2 - 2H		
YR3 - 1H		
YR3 - 2H		
YR4 - 1H		
YR4 - 2H		
YR5 - 1H		
YR5 - 2H		
YR6 - 1H		
YR6 - 2H		
YR7 - 1H		
YR7 - 2H		
YR8 - 1H		
YR8 - 2H		
YR9 - 1H		
YR9 - 2H		
YR10 - 1H		
YR10 - 2H		
YR11 - 1H		
YR11 - 2H		
YR12 - 1H		
YR12 - 2H		
YR13-1H		
YR13-2H		
YR14-1H		
YR14-2H		
YR15-1H		
YR15-2H		
YR16-1H		
YR16-2H		
YR17-1H		
YR17-2H		
YR18-1H		
YR18-2H		
YR19-1H		
YR19-2H		

in case of any
number and of this
letter should be quoted.

My Ref. No.
Your Ref. No.

OP/CA-13

CONFIDENTIAL



OFFICE OF THE PRESIDENT
P.O. BOX 1627
ACCRA
MANAGEMENT DIVISION 18th April, 2010
MINISTRY OF FINANCE &
ECONOMIC PLANNING
P. O. BOX 1340, ACCRA

RECEIVED Date 29/4/10

RE: REQUEST FOR EXECUTIVE APPROVAL FOR A SUPPLIER'S CREDIT AGREEMENT BETWEEN THE GOVERNMENT OF GHANA AND STX ENGINEERING AND CONSTRUCTION GHANA LIMITED (GHANA-KOREA JOINT VENTURE COMPANY) FOR AN AMOUNT OF USD 1,525,443,468.00 FOR THE CONSTRUCTION OF 30,000 UNITS OF HOUSES FOR THE SECURITY AGENCIES IN GHANA

Your letter No. ADMD/FINPRO/MWRWH dated 16th April, 2010, on the above-mentioned subject refers.

2. H.E. the President has given Executive Approval for:
- (a) a request to Parliament to approve a Supplier's Credit Agreement between the Government of Ghana and STX Engineering and Construction Ghana Limited (Ghana-Korea Joint Venture Company) for an amount of one billion five hundred and twenty-five million four hundred and forty-three thousand four hundred and sixty-eight United States dollars (USD1,525,443,468.00) for the construction of 30,000 units of houses for the security agencies in the country;
 - (b) provision, by government, of securities in appropriate forms to secure viable project financing, lands and title deeds;
 - (c) conversion of the entire credit facility or part of it into commodity trading after the execution of the project, in five years;
 - (d) recommendation to Parliament to approve the required tax and duties exemptions on specific machinery and equipment, spare parts and materials to be imported or purchased locally for the execution of the project; and

(e) granting of the required income tax exemptions for expatriate contractors and specified expatriate personnel, as will be provided for in the contract document, in the absence of a double taxation agreement with the Republic of Korea.

3. I should be grateful if you could take requisite action on the decision.



BEN C. EGHAN
SECRETARY TO THE CABINET

THE HON MINISTER FOR FINANCE
AND ECONOMIC PLANNING

THE HON MINISTER FOR WATER RESOURCES,
WORKS AND HOUSING

cc: The Secretary to the President
The Secretary to the Vice President
The Chief of Staff

