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FINANCING AGREEMENT

(Integrated Coastal Resources Management Project)

between

REPUBLIC OF THE PHILIPPINES

and

ASIAN DEVELOPMENT BANK

DATED 28 MARCH 2007

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## FINANCING AGREEMENT

FINANCING AGREEMENT dated 28 March 2007 between the REPUBLIC OF THE PHILIPPINES (hereinafter called the Recipient) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

### WHEREAS

(A) the Recipient and ADB have entered into a loan agreement ("Loan Agreement") for the purposes of the project described in Schedule 1 to the Loan Agreement ("Project");

(B) the Recipient has requested ADB to apply on behalf of the Recipient to the Global Environment Facility ("GEF") for a grant ("GEF Grant") to finance a portion of the Project; and

(C) The GEF Grant will be provided on a joint basis through, and administered by, ADB in accordance with the terms and conditions agreed upon between the GEF and ADB;

NOW THEREFORE the parties hereto agree as follows:

## ARTICLE I

### Definitions

Section 1.01. Wherever used in this Financing Agreement, the terms defined in the Loan Agreement have the respective meaning therein set forth.

Section 1.02. The following additional terms have the following meanings:

(a) "GEF Grant Account" means the account opened or to be opened by ADB on its books in the name of the Recipient to which the GEF Grant has been or will be credited; and

(b) "GEF Grant Closing Date" means the date specified in Section 2.15 of this Financing Agreement, after which ADB may terminate the right of the Recipient to make any withdrawals from the GEF Grant Account.

## ARTICLE II

### Administration and Use of the GEF Grant proceeds, and Covenants

Section 2.01. ADB shall administer the GEF Grant in the amount of nine million dollars (\$9,000,000). ADB shall provide the Recipient with the GEF Grant on a grant basis.

Section 2.02. (a) Subject to any conditions and restrictions specified in this Financing Agreement, the Recipient shall be entitled to withdraw from the GEF Grant Account such amounts as shall have been paid or, if ADB shall so agree, such amounts as shall be required to meet payments to be made, for the reasonable cost of Goods, Works, consulting services and any other expenditures required for the Project and to be financed under this Financing Agreement.

(b) Except as the Recipient and ADB shall otherwise agree, no withdrawals shall be made on account of (i) payments made before this Financing Agreement becomes effective or (ii) expenditures in the territory of any country which is not a member or for goods produced in, or services supplied from, such territory.

Section 2.03. When the Recipient shall desire to withdraw any amount from the GEF Grant Account, the Recipient, through DENR, shall promptly deliver to ADB an application in such form and containing such statements, representations, warranties and agreements as ADB shall reasonably request. Except as the Recipient and ADB shall otherwise agree, applications for withdrawal, with the necessary documentation as hereinafter in this Article provided, shall be made promptly in relation to expenditures for the Project.

Section 2.04. The Recipient shall furnish to ADB sufficient evidence of the authority of the person authorized to sign applications for withdrawal and the authenticated specimen signature of such person.

Section 2.05. The Recipient, through DENR, shall furnish to ADB such documents and other evidence in support of the application for withdrawal as ADB shall reasonably request, whether before or after ADB shall have permitted any withdrawal requested in the application.

Section 2.06. Each application for withdrawal and the accompanying documents and all other evidence must be sufficient in form and substance to satisfy ADB that the Recipient is entitled to withdraw from the GEF Grant Account the amount applied for and that the amount to be withdrawn from the GEF Grant Account is to be used only for the purposes of the Project.

Section 2.07. Payment by ADB of amounts which the Recipient is entitled to withdraw from the GEF Grant Account shall be made to or on the order of the Recipient.

Section 2.08. The Recipient, through DENR, shall cause the GEF Grant proceeds to be applied to the financing of the expenditures on the Project in accordance with the provisions of this Financing Agreement.

Section 2.09. The Goods, Works and consulting services and other items of expenditure to be financed out of the proceeds of the GEF Grant and the allocation of amounts of the GEF Grant among different categories of such Goods, Works and consulting services and other items of expenditure shall be in accordance with the provisions of the Schedule 1 to this Financing Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 2.10. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the GEF Grant shall be procured in accordance with the provisions of the Schedule 2 to this Financing Agreement. ADB may refuse to finance a contract where Goods, Works or consulting services have not been procured under procedures substantially in accordance with those agreed between the Recipient and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.11. Except as ADB may otherwise agree, the Recipient shall cause all Goods, Works and consulting services financed out of the proceeds of the GEF Grant to be used exclusively in the carrying out of the Project.

Section 2.12. The Recipient, through DENR, shall maintain, and cause the Project Implementing Agencies to maintain, records and accounts adequate to identify Goods, Works and services and other items of expenditure financed out of the proceeds of the GEF Grant, separately from the records and accounts for the purpose of the Loan.

Section 2.13. Notwithstanding any other provision of this Financing Agreement, ADB is not required to make any disbursement from the GEF Grant Account, except to the extent that ADB has received funds from the GEF.

Section 2.14. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Article IV of the Loan Agreement and Schedule 5 to the Loan Agreement.

Section 2.15. Except as the Recipient and ADB shall otherwise agree, the GEF Grant Closing Date shall be the same date as the Loan Closing Date as specified in Section 3.05 of the Loan Agreement.

### **ARTICLE III**

#### **Suspension; Cancellation**

Section 3.01. If any of the following events shall have occurred at any time after the date of this Financing Agreement and be continuing, ADB may by notice to the Recipient suspend in whole or in part the right of the Recipient to make withdrawals from the GEF Grant Account:

- (a) the Recipient shall have failed to perform any of its obligations under this Financing Agreement.

- (b) the Loan shall have been suspended or cancelled.

The right of the Recipient to make withdrawals from the GEF Grant Account shall continue to be suspended in whole or in part, as the case may be, until the event which gave rise to such suspension shall have, in the reasonable opinion of ADB, ceased to exist or until ADB shall have notified the Recipient that the right to make withdrawals has been restored in whole or in part, whichever is the earlier.

Section 3.02. If (i) the right of the Recipient to make withdrawals from the GEF Grant Account shall have been suspended with respect to any amount of the GEF Grant for a continuous period of 30 days; (ii) at any time ADB determines, after consultation with the Recipient, that any amount of the GEF Grant will not be required for the purposes of the Project, (iii) by the GEF Grant Closing Date an amount of the GEF Grant shall remain unwithdrawn from the GEF Grant Account; (iv) at any time ADB determines, with respect to any contract to be financed in full or in part out of the GEF Grant proceeds, that corrupt or fraudulent practices, as determined by ADB, were engaged in by representatives of the Recipient or any beneficiary of the GEF Grant during the procurement of Goods, Works or services, consultants' selection or the execution of a contract, without the Recipient having taken timely and appropriate action satisfactory to ADB to remedy the situation; (v) at any time ADB determines that the procurement of any Goods, Works or services to be financed out of the GEF Grant proceeds is inconsistent with the procedure set out in this Financing Agreement, ADB may by notice to the Recipient terminate the right of the Recipient to make withdrawals with respect to such amount. Upon giving of such notice, such amount of the GEF Grant shall be cancelled.

Section 3.03. Notwithstanding any cancellation or suspension, all the provisions of this Financing Agreement shall continue in full force and effect except as specifically provided in this Article.

## **ARTICLE IV**

### **Effectiveness**

Section 4.01. This Financing Agreement shall not become effective until evidence satisfactory to ADB shall have been furnished to ADB that:

- (a) the execution and delivery of this Financing Agreement on behalf of the Recipient have been duly authorized or ratified by all necessary governmental action; and
- (b) the Loan Agreement shall have become effective.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Financing Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

REPUBLIC OF THE PHILIPPINES

By   
Authorized Representative

ASIAN DEVELOPMENT BANK

By   
HARUHIKO KURODA  
President

## SCHEDULE 1

### Allocation and Withdrawal of the GEF Grant Proceeds

#### General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, services and other items to be financed out of the proceeds of the GEF Grant and the allocation of amounts of the GEF Grant to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table.)

#### Percentages of the GEF Grant Financing

2. Except as ADB may otherwise agree, the items of the Categories listed in the Table shall be financed out of the proceeds of the GEF Grant on the basis of the percentages set forth in the Table.

#### Reallocation

3. Notwithstanding the allocation of the GEF Grant proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the GEF Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the GEF Grant then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Recipient, reallocate such excess amount to any other Category.

#### Disbursement Procedures

4. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the GEF Grant proceeds shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2001 (ADB's Loan Disbursement Handbook), as amended from time to time.

#### Imprest Account: Statement of Expenditures

5. (a) Except as ADB may otherwise agree, the Recipient shall establish immediately after the Effective Date, the GEF Grant imprest account at Bangko Sentral ng Philippines. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook, and detailed arrangements agreed upon between the Recipient and ADB. The currency of the imprest account shall be Dollar. The initial amount to be deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure to be financed out of the GEF Grant proceeds for the first six

months of Project implementation, or (ii) the equivalent of ten (10) percent of the GEF Grant amount.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures for the Project and to liquidate advances provided into the GEF Grant imprest account, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Recipient and ADB. The SOE procedure shall apply to contracts not exceeding \$100,000.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF THE GEF GRANT PROCEEDS (Integrated Coastal Resource Management Project)</b>			
<b>CATEGORY</b>			<b>THE GEF GRANT FINANCING</b>
<b>No</b>	<b>Item</b>	<b>Amount Allocated \$</b>	<b>Percentage* and Basis for Withdrawal of Grant Amounts</b>
1	Civil Works (ICRM Center)	220,000	100 percent of total expenditure
2	Equipment, Materials and Vehicles	810,000	24 percent of total expenditure
3	Consulting Services	1,100,000	39 percent of total expenditure
4	Capacity Building	640,000	26 percent of total expenditure
5	Resource Management	2,850,000	32 percent of total expenditure
6	Disseminations, Demonstrations and Trials	280,000	6 percent of total expenditure
7	Surveys, Investigation, Design and Mapping	1,540,000	76 percent of total expenditure
8	Recurrent Cost	1,150,000	11 percent of total expenditure
9	Unallocated	410,000	
	<b>TOTAL</b>	9,000,000	

\* Percentages are calculated from total Category costs excluding taxes and duties

## SCHEDULE 2

### Procurement of Goods and Works, and Consulting Services

#### A. General

1. All Goods and Works, and consulting services, to be financed out of the proceeds of the GEF Grant shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Financing Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

#### B. Procurement for Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:

International Competitive Bidding
National Competitive Bidding
Shopping

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

4. Domestic Preference. The Recipient may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods.
5. National Competitive Bidding. The procedures to be followed for national competitive bidding shall be those set forth in Republic Act 9184 of the Republic of the Philippines, effective 26 January 2003, and Implementing Rules and Regulations, effective 8 October 2003, incorporating amendments as of August 2006, with the clarifications and modifications described in the following paragraphs required for compliance with the provisions of the Procurement Guidelines:

##### i. Eligibility

- (a) Eligibility screening as described in the Implementing Rules and Regulations shall not be applied. However, bids that do not containing the following documents will not pass the documentary compliance check if they are a specific requirement of the bidding documents: (i) evidence of the required financial, technical or production capacity; (ii) audited financial statements; (iii) credit line or cash deposit certificate; (iv) bid security; and (v) authority of the bid signatory.
- (b) National sanction list may be applied only with prior approval of ADB.

ii. Advertising

Bidding of National Competitive Bidding contracts estimated at \$500,000 or more for Goods or \$1,000,000 or more for Works shall be advertised concurrently with the general procurement notices on ADB's website.

iii. Price Ceiling

The approved budget for the contract (ABC) may be published, but it shall not be stated or implied that bid prices shall not exceed the ABC, or that bid evaluation will in any way take into account the ABC. The ABC, budgetary allocation, ceiling price, or similar estimates of contract value shall not be used to reject bids without prior concurrence of ADB.

iv. Domestic Preference

(a) No preference of any kind shall be given to domestic bidders or for domestically manufactured goods.

(b) Suppliers and contractors shall not be required to purchase domestically manufactured goods, supplies or materials.

(c) Foreign suppliers and contractors from ADB member countries shall be allowed to participate, if interested, without first being required to associate with, or enter into joint venture with, local firms.

(d) Foreign suppliers and contractors from ADB member countries shall be allowed to bid, without registration, licensing, or other government authorizations, leaving compliance with these requirements until after award and before signing of a contract.

v. Experience Qualification

For a Works contract, the experience qualification requirement shall be : (i) at least one previous contract at 80% of the estimated cost of the contract being procured; and (ii) an annual turnover from all Works average over the last three years equal to 100% of the estimated cost of the contract being procured.

vi. Bid Security

Bid Security shall be in the form of a bank guarantee from a reputable bank.

vii. Contract Amendment

ADB's concurrence shall be obtained before approving modifications to contracts under implementation where (i) the value of the modification exceeds 15% of contract amount, or (ii) it results in material changes to the conditions of contract.

viii. ADB Member Country Restrictions

Bidders must be nationals of member countries of ADB, and offered Goods and Works must be produced in and supplied from member countries of ADB.

**C. Selection of Consulting Services**

6. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, the Recipient shall apply quality- and cost-based selection for selecting and engaging consulting services.

**D. Industrial or Intellectual Property Rights**

7. (a) The Recipient shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Recipient shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

8. The Recipient shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

**E. ADB's Review of Procurement Decisions**

9. All contracts for procurement and contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between the Recipient and ADB and set forth in the Procurement Plan.

**F. Ownership of Goods procured out of the GEF Grant proceeds**

10. The ownership of Goods procured out of the GEF Grant proceeds shall vest in the Recipient.