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GRANT NUMBER 0142-PHI (SF)

GRANT AGREEMENT  
(Philippine Energy Efficiency Project)

between

REPUBLIC OF THE PHILIPPINES

and

ASIAN DEVELOPMENT BANK

DATED 2 MARCH 2009

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GAS:PHI 42001

## **GRANT AGREEMENT**

GRANT AGREEMENT dated 2 March 2009 between the REPUBLIC OF THE PHILIPPINES (the "Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

### **WHEREAS**

(A) the Recipient has applied to the Clean Energy Financing Partnership Facility ("CEFPPF") for a grant ("CEF Grant") for the purposes of financing Part C (i) of the Project described in Schedule 1 to this Grant Agreement;

(B) the Recipient has also applied to ADB for a loan (the "Loan") for the purposes of financing a portion of the Project;

(C) by an agreement of even date herewith between the Recipient and ADB (hereinafter called the Loan Agreement), ADB has agreed to provide to the Recipient, from its Ordinary Operations resources an amount of thirty one million one hundred thousand dollars (\$31,100,000) for the purposes of the Project; and

(D) ADB has, on the basis inter alia of the foregoing, also agreed to provide, on behalf of the CEFPPF, and administer the CEF Grant upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Grant Regulations; Definitions**

Section 1.01. CEFPPF is a trust fund, as opposed to a Special Fund. However, the Recipient and ADB agree that all provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (the "Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. The definitions set forth in the Grant Regulations and the Loan Agreement are applicable to this Grant Agreement unless the context requires otherwise.

## **ARTICLE II**

### **The Grant**

Section 2.01. ADB agrees to make available to the Recipient from CEF on terms and conditions set forth in this Agreement an amount of one million five hundred thousand dollars (\$1,500,000).

## **ARTICLE III**

### **Use of Proceeds of the Grant**

Section 3.01. The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement.

Section 3.02. The Goods consulting services to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant among different categories of such Goods and consulting services shall be in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, all Goods and consulting services to be financed out of the proceeds of the Grant shall be procured in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Withdrawals from the Grant Account in respect of Goods and consulting services shall be made only on account of expenditures relating to

- (a) Goods which are produced in and supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and
- (b) Goods and consulting services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 October 2011 or such other date as may from time to time be agreed between the Recipient and ADB.

## ARTICLE IV

### Particular Covenants

Section 4.01. 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 Schedule 5 to the Loan Agreement and Schedule 4 to this Grant Agreement.

Section 4.02. (a) The Recipient shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Grant proceeds and compliance with the financial covenants of this Grant Agreement as well as on the use of the procedures for imprest account/statement of expenditures), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Recipient shall enable ADB, upon ADB's request, to discuss the Recipient's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Recipient pursuant to Section 4.02(a) hereabove, and shall make necessary arrangements for any representatives of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Recipient unless the Recipient shall otherwise agree.

Section 4.03. The Recipient shall enable ADB's representatives to inspect the Project, the goods financed out of the proceeds of the Grant, and any relevant records and documents.

## ARTICLE V

### Effectiveness

Section 5.01. The following is specified as an additional condition to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations: the Loan Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Recipient and shall have become legally binding upon the Recipient in accordance with its terms, subject only to the effectiveness of this Grant Agreement.

Section 5.02. The following is specified as an additional matter, for the purposes of Section 9.02(c) of the Grant Regulations, to be included in the opinion or opinions to be furnished to ADB: that the Loan Agreement has been duly authorized or

ratified by, and executed and delivered on behalf of, the Recipient and is legally binding upon the Recipient in accordance with its terms, subject only to the effectiveness of this Grant Agreement.

Section 5.03. A date ninety (90) days after the date of this Grant Agreement is specified for the effectiveness of the Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

## **ARTICLE VI**

### **Miscellaneous**

Section 6.01. The Secretary of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

#### For the Recipient

Department of Finance  
DOF Building  
Roxas Boulevard  
Manila, Philippines

Facsimile Number:

+63 2 523-9216  
+63 2 521-9495

#### For ADB

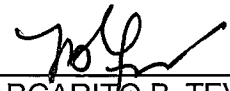
Asian Development Bank  
P.O. Box 789  
0980 Manila, Philippines

Facsimile Numbers:

(632) 636-2444  
(632) 636-2336

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant 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   
MARGARITO B. TEVES  
Authorized Representative

ASIAN DEVELOPMENT BANK

By   
HARUHIKO KURODA  
President

## SCHEDULE 1

### Description of the Project

1. The Project is expected to reduce the cost of energy production, through investments in energy efficient appliances, adoption of energy saving measures in buildings, improved capacity of ESCOs to undertake energy efficient projects, and improvement of equipment testing facilities.

#### Scope of the Project

2. The scope of the Project comprises:

##### Part A: Efficient Lighting Initiative

- (i) retrofitting of selected government office buildings, including replacement of older style fluorescent lamps, incandescent bulbs and inefficient magnetic ballasts with new T8 fluorescent lamps, CFLs and electronic ballasts;
- (ii) distribution of approximately thirteen million (13,000,000) CFLs, free of charge, to the residential and small commercial customers of three (3) private utilities and about one hundred eight (108) ECs nationwide under the NLRP;
- (iii) replacement of incandescent bulbs and high pressure sodium lamps with mercury vapor lamps under the PLRP; and
- (iv) carrying out energy efficiency testing and lamp waste management to expand the capability of DOE's existing testing laboratory, and establishment of a new mercury waste management facility for recovery of mercury from used fluorescent lamps and for preventing the residual mercury from entering the food chain through landfill dumps leaching into ground water.

##### Part B: Efficiency Initiatives in Buildings and Industries

- (i) establishment of the Super ESCO to develop projects for its own implementation as well as support project development and implementation of other ESCOs through providing financial and technical advisory support; and
- (ii) carrying out the efficient building initiative to accelerate the implementation of the building rating system by streamlining existing initiatives in a single nascent building rating system.

Part C: Communication and Social Mobilization

- (i) carrying out communications campaign for efficient lighting;  
and
- (ii) carrying out awareness campaign for promoting energy efficiency in everyday life.

Part D: Project Implementation Support

3. The Project is expected to be completed by 30 April 2011.

**SCHEDULE 2****Allocation and Withdrawal of Grant Proceeds**General

1. The table attached to this Schedule sets forth the consulting services Category and other items to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant to such Category (hereinafter called the Table). (Reference to "Category" in this Schedule is to the Category of the Table.)

Percentages of ADB Financing

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

Disbursement Procedures

3. Except as ADB may otherwise agree, the Grant proceeds for financing Goods and consulting services and other items shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

**TABLE**

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Philippine Energy Efficiency Project)</b>			
<b>CATEGORY</b>			<b>ADB FINANCING BASIS</b>
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing \$ Category</b>	<b>Percentage of ADB Financing from the Grant Account*</b>
1	Consulting Services	1,500,000	100 percent of total expenditure
	<b>Total</b>	<b>1,500,000</b>	

\*Exclusive of taxes and duties imposed within the territory of the Recipient

### SCHEDULE 3

#### Procurement of Goods and Consulting Services

**A. General**

1. All Goods and consulting services to be financed out of the proceeds of the 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 Grant Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

**B. Procurement for Goods**

3. Except as ADB may otherwise agree, Goods 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 Recipient and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Recipient's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Recipient and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after written approval of such change by the Recipient and 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 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 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. Except as ADB shall otherwise agree, all contracts shall be subject to prior review by ADB, regardless of contract value.

## SCHEDULE 4

### Execution of Project, Reporting and Financial Matters

#### Project Executing and Implementing Agencies

1. As the Project Executing Agency, DOE shall be responsible for overall technical supervision and execution of the Project. The IAs shall be responsible for implementation of the following Parts of the Project:

(a) DOE for Part A (i), (ii) as they relate to private utilities, (iii) and (iv), Part B (ii), Part C and Part D;

(b) NEA for Part A (ii) except in the franchise areas of the private utilities;  
and

(c) The Super ESCO, once established in accordance with the terms of this Grant Agreement, for Part B (i).

#### Policy Guidance

2. Within three (3) months after the Effective Date, the Recipient through the Project Executing Agency shall establish a PSC to be chaired by the Secretary of DOE or a designated DOE representative, which shall be responsible for the overall policy guidance. The PSC shall meet at least on a quarterly basis to ensure that the objectives of the Project are being achieved.

#### Project Management Unit and the Project Director

3. The PMU shall have the overall responsibility for implementation of the Project and provide administrative and technical support, counterpart staff, documentation and other services that may be required. The Recipient shall ensure that the PMU is headed by a Project director acceptable to ADB and is appropriately staffed for day-to-day coordination throughout the Project implementation period.

#### Anticorruption

4. The Recipient shall, and shall cause the Project Executing Agency and the IAs to: (a) undertake necessary measures to create and sustain a corruption-free environment for activities under the Project; (b) comply with ADB's Anticorruption Policy (1998, as amended to date); and (c) where appropriate, ensure that relevant provisions of ADB's Anticorruption Policy (1998, as amended to date) are included in all bidding documents for the Project. The Recipient: (a) acknowledges ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; and (b) agrees to cooperate fully with, and to cause the Project Executing Agency and the IAs to cooperate fully with, any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation. All external costs related to such investigations shall be borne by the Project.

5. Without limiting the generality of the preceding paragraph, the Recipient shall: (a) ensure that the Project Executing Agency conducts periodic inspections on the suppliers', contractors' and consultants' activities related to Loan and Grant proceeds, fund withdrawals and settlements; and (b) ensure, and cause the Project Executing Agency to ensure, that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of the Project Executing Agency and all suppliers, contractors, consultants and other service providers as they relate to the Project.

6. In addition to the above requirements, to ensure transparency and good governance, the Recipient shall cause the Project Executing Agency to publicly disclose in its website and in the PhilGEPS, the information on the utilization of the Loan proceeds, in particular: (a) the list of participating bidders; (b) name of the winning bidder; (c) basic details on bidding procedures adopted; (d) amount of the contract awarded; (e) list of goods and services purchased; and (f) intended and actual utilization of loan proceeds under each contract being awarded. The Recipient shall cause the Project Executing Agency to ensure that all Project staff are fully aware of ADB's procedures, including, but not limited to, procedures for: (a) implementation; (b) procurement; (c) use of consultants; (d) disbursement; (e) reporting; (f) monitoring; and (g) prevention of fraud and corruption.

#### Distribution of CFLs

7. The Recipient shall cause the Project Executing Agency and the NEA to closely monitor distribution of CFLs to the residential and small commercial customers under the NRLP. For that purpose, the Recipient shall cause (a) execution of implementation agreements between (i) the NEA and the ECs, with terms and conditions satisfactory to ADB, for effective implementation and monitoring of the CFL distribution, and (ii) the DOE and the private utilities, with terms and conditions satisfactory to ADB, for effective implementation and monitoring of the CFL distribution; and (b) where possible, execution of memorandum of agreements between the ECs and qualified non-governmental organizations that are acceptable to ADB, with terms and conditions that are similar to the implementation agreements mentioned in this paragraph.

#### Project Performance Monitoring System

8. The Recipient shall ensure that progress monitoring, safeguard monitoring and benefit monitoring and evaluation shall be carried out during Project implementation by the Project Executing Agency and the IAs in a manner acceptable to ADB. Post-evaluation shall be carried out three (3) years after Project completion. A Project Performance Management System shall be developed on the basis of the Project design and monitoring framework to examine the Project's technical performance, evaluate delivery of Project facilities, assess achievement of Project objectives and measure the Project's social, economic, financial and institutional impacts. Baseline and periodic surveys shall be carried out to collect data disaggregated by income group, gender, types of vulnerability and other characteristics as appropriate.

9. In addition, the Recipient shall cause the PMU to prepare quarterly progress reports and to submit these to ADB within twenty (20) days after the end of the applicable period. The reports shall be prepared in a format acceptable to ADB and shall include, among others, the following: (a) Project progress in each Project area; (b) the status of

institutional development activities; (c) delays and problems encountered and actions taken to resolve them; (d) compliance with the Loan Agreement and this Grant Agreement; and (e) expected progress during the next six (6) months following the submission of the progress report.

#### Project Review

10. The Recipient shall, jointly with ADB, conduct reviews of the Project at least twice a year. The semiannual reviews shall assess the implementation performance and achievement of Project outcomes and objectives, review the financial progress, identify issues and constraints affecting the Project, and work out a time bound action plan for their resolution.