

**COOPERATION WITH FRANCE
THE COOPERATION FUND FOR PROJECT PREPARATION
IN THE GREATER MEKONG SUBREGION**

I. INTRODUCTION

1. The Agence Française de Développement (AFD) has confirmed that it is prepared to make available to the Asian Development Bank (ADB) a contribution of one million five hundred thousand euros (€1.5 million) for the Cooperation Fund for Project Preparation in the Greater Mekong Subregion (the Fund) to finance, on an untied grant basis, a program of project preparatory technical assistance (TA) operations with a regional cooperation focus in the Greater Mekong Subregion.

2. This paper outlines the proposed cooperation arrangements between the AFD and ADB concerning the initial contribution of €1.5 million and any future contributions by the AFD to the Fund.

II. SALIENT FEATURES OF THE AFD'S ASSISTANCE

3. The initial contribution of €1.5 million will be committed by the AFD upon signing of the Channel Financing Agreement on Establishing the Cooperation Fund for Project Preparation in the Greater Mekong Subregion (the Agreement). The transfer of funds to ADB will be effected according to an installment schedule which has been agreed upon between the AFD and ADB. The first installment, of €0.3 million, will be made available upon execution of the Agreement. At its discretion, the AFD may provide additional resources to the Fund. The AFD will deposit its contributions to the Fund into an account to be specified by ADB. Interest accrued on the contributions will be used for the purpose of the Fund. The resources of the Fund may be freely exchanged by ADB into other currencies as required. Any fees and charges relating to the purchase of such other currencies will be paid out of the resources of the Fund.

4. The Fund will be untied and will be administered by ADB. For administering the Fund, ADB will be paid a service charge in accordance with ADB's policy on service charges for administering grant cofinancing from bilateral sources.¹ ADB may use part of the Fund (and any interest thereon) to cover the service charge. The operations to be financed by the Fund will be carried out in accordance with ADB's *Guidelines on the Use of Consultants* and *Guidelines for Procurement*.

5. The TAs to be financed under the Fund must be agreed on between ADB and the AFD. ADB will from time to time submit TA proposals to the AFD for its consideration. The AFD will review the proposals and advise ADB which proposals it is prepared to finance under the Fund. Processing of these proposals by ADB will follow the normal ADB procedures.

¹ ADB. 2000. *Review of Service Charges for the Administration of Grant Cofinancing from Bilateral Sources*. Manila (R68-00).

6. ADB will maintain records and accounts in accordance with its normal procedures to show expenditures financed by the Fund. ADB will provide the AFD with periodic reports on the utilization of the Fund and the activities financed thereunder.

7. ADB and the AFD will review the operation and administration of the Fund at least once a year. Upon request by the AFD, ADB will endeavor to facilitate visits by AFD personnel to projects financed under the Fund. ADB will, after termination of the arrangement, furnish the AFD with a final report and a financial statement disclosing the use of the Fund.

III. RECOMMENDATION

8. I recommend that the Board approve:

- (i) Establishment of a cooperation arrangement between the Agence Française de Développement and ADB relating to the financing of a mutually agreed TA program, and
- (ii) ADB entering into a Channel Financing Agreement on Establishing the Cooperation Fund for Project Preparation in the Greater Mekong Subregion substantially in the form attached.

Attachment

CHANNEL FINANCING AGREEMENT

between the

AGENCE FRANCAISE DE DEVELOPPEMENT

and the

ASIAN DEVELOPMENT BANK

Establishing the Cooperation Fund for Project Preparation
in the Greater Mekong Subregion

Dated as of _____ 2004

INITIALS

AGREEMENT dated as of _____

BETWEEN

the **AGENCE FRANCAISE DE DEVELOPPEMENT** (hereinafter referred to as the “AFD”) a public establishment (*établissement public*), having its head office at Paris 12^{ème}, 5, rue Roland Barthes, registered with the Commercial and Companies Registry of Paris under number n° B 775 665 599

represented by Mr., its, acting in that capacity and in accordance with the powers conferred on him for such purpose,

pursuant to decision n° C 20040115 of the Managing Director of the said AFD dated 6 August 2004,

ON THE ONE HAND

AND

the **ASIAN DEVELOPMENT BANK** (hereinafter referred to as the “ADB”) represented by Mr acting in his capacity as

ON THE OTHER HAND

PREAMBLE

WHEREAS the parties hereto wish to establish a framework of cooperation among themselves to benefit developing member countries of the ADB; and

WHEREAS for that purpose, the AFD wishes to establish a Cooperation Fund for Project Preparation in the Greater Mekong Subregion (hereinafter referred to as the “Fund”) and undertakes to be the agency responsible for the implementation of its obligations under this Agreement; and

WHEREAS the AFD will make available to the ADB, under the Fund, grant contribution or contributions for financing the program of activities described in Article II below (hereinafter referred to as the “Program”);

WHEREAS the parties hereby agree that projects prepared under technical assistance operations financed under the Fund shall endeavor to create reasonable opportunities for co-financing between the AFD and the ADB; and

WHEREAS the ADB is prepared to administer the Fund in accordance with the ADB’s standard procedures for technical assistance operations, on the terms and conditions hereinafter set forth or otherwise agreed upon between the parties hereto,

NOW THEREFORE the parties hereto have agreed as follows:

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ARTICLE I

The Contribution

1. The AFD shall make available to the Fund an initial contribution of 1.5 million (€1,500,000) Euros. Such amount, together with any additional amount the AFD may, at its discretion, provide for the purpose if the Program shall constitute the Fund.
2. The ADB shall administer the Fund. The ADB shall exercise the same degree of care and diligence in the discharge of its functions under this Agreement as it exercises with respect to the administration and management of its own resources. The ADB may do any and all such acts as may be necessary or appropriate for the proper administration of the Fund and the carrying out of the Program.
3. As per ADB Charter provisions, the contribution made available by the AFD shall not finance taxes, duties and levies of any kind, related to the Program, defined in Article II of this Agreement.

ARTICLE II

The Program

1. The Program shall consist of project preparatory technical assistance operations to be designed, processed and administered at the sole discretion of ADB, with a regional cooperation focus in the Greater Mekong Subregion, and other activities which may be agreed upon between the AFD and the ADB. The recipients of the Fund (the "Recipients") shall be developing member countries of the ADB in the Greater Mekong Subregion and regional institutions located in such countries.
2. Projects prepared under technical assistance operations financed under the Fund shall endeavor to offer reasonable prospects for cofinancing between AFD and ADB.

ARTICLE III

Selection and Contracting of Expertise

1. The ADB shall, in accordance with its established procedures, have the responsibility for the selection and hiring of consultants, consulting firms and other suppliers of consulting services financed by the Fund.
2. The recruitment of the consultants shall be the sole responsibility of the ADB. The recruitment of consultants shall be carried out by the ADB in accordance with its "Guidelines on the Use of Consultants" as amended from time to time. The procurement of goods and other services for technical assistance operations shall be carried out in accordance with the ADB's "Guidelines for Procurement" as amended from time to time.

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3. For technical assistance operations, the ADB shall submit to the AFD proposals for consideration and approval. The AFD shall convey to ADB its approval or disapproval of such proposals within thirty (30) calendar days from the date of the ADB's communication.

4. The proposals shall contain the following information:

- (i) a description of the technical assistance operation to be financed;
- (ii) the terms of reference for the supplier of the consulting services, if applicable;
- (iii) implementation schedule of the technical assistance operation; and
- (iv) the cost estimates and financing plan of the technical assistance operation, indicating the amount to be financed under the Fund.

5. The AFD shall use reasonable endeavors to make available to the ADB information concerning expertise available in France, and will assist the ADB in the identification of suitable French consultants, consulting firms or other suppliers of consulting services.

ARTICLE IV

Administration of the Resources of the Fund

1. The AFD shall deposit its initial contribution of €1.5 million to the Fund into a US dollar interest bearing account specified by the ADB (hereinafter referred to as the "ADB account") according to the following schedule:

- (i) 20 percent of the total amount of the Fund upon signing of this Agreement;
- (ii) and for each technical assistance project agreed upon AFD and ADB for financing under the Fund:
 - 70 percent of the amount to be financed under the Fund, upon presentation by ADB of a copy of the signed consultant contract;
 - and the remaining 10 percent of the amount to be financed under the Fund for each technical assistance project upon approval by ADB of the final report produced by the consultants.

2. The ADB will make withdrawals from the ADB account as necessary to meet expenditures under the Program as agreed between the AFD and the ADB. The resources of the Fund may be freely exchanged by the ADB into other currencies in order to meet these expenditures. Any fees and charges relating to the purchase of such other currencies shall be paid out of the resources of the Fund.

3. For the purpose of this Agreement, the funds referred to in paragraph 1 of this Article will be held, administered and invested at the discretion of ADB. Pending disbursement, ADB may invest and reinvest the proceeds of the contribution, and any income earned in respect of any investment and reinvestment, as well as any interest earned in respect to the ADB account, will be credited to the ADB account and used for the purposes of the Program.

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4. The ADB may use part of the Fund (together with any interest accrued thereon) to cover ADB's fee for the administration of the Fund up to five (5) percent of the amounts disbursed under the Fund.

ARTICLE V

Reports, Records and Accounts

1. The ADB shall, in accordance with its usual procedures, (i) maintain separate records ensuring separation of assets and liabilities of the Fund, and of any income that may be attributable to the Fund, and (ii) provide AFD with a financial statement of the Fund by February 28 of each calendar year, reflecting the activity of the Fund as of December 31 of the preceding calendar year.

2. The ADB shall also furnish AFD with a semi-annual status reports, as of 30 June and 31 December of each calendar year, showing (i) amounts deposited in the Fund, (ii) technical assistance operations financed or to be financed by the Fund, including information on the individual consultants or consulting firms, status of implementation and delivered or expected outputs, (iii) amounts committed under the Fund, (iv) amounts disbursed under the Fund, and (v) amounts yet to be committed under the Fund.

ARTICLE VI

Consultation and Exchange of Information

1. The parties hereto shall cooperate to ensure that the purpose of this Agreement is fully accomplished. To this end, they shall at the request of either party exchange views on the implementation of this Agreement and the performance of their respective obligations hereunder.

2. Representatives of the AFD and the ADB shall meet at least once a year to review the status of the Program including exploring the potential for cofinancing by AFD of loan projects prepared under technical assistance activities financed under the Fund, and to discuss procedural arrangements and other matters arising out of this Agreement. Agreement by ADB to such exploration of cofinancing possibilities shall not be construed as an explicit or implied commitment of ADB to design and prepare, or cause to be prepared, projects that require cofinancing from AFD or any other external source. Upon request by AFD, the ADB will endeavor to facilitate visits by AFD personnel to projects financed under this Agreement.

3. The ADB shall furnish to AFD such reports and information as AFD may reasonably request concerning the use of the Fund and the implementation of the activities financed under the Fund without prejudice to ADB's discretion concerning the design, processing and administration of such activities. When requested, ADB will share with AFD the reports produced by consultants under technical assistance projects financed under the Fund, provided that the recipient of the technical assistance has no objection to disclosure of such reports or portions thereof. AFD however agrees not to publish or disseminate these reports to any other party except with ADB prior approval.

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4. ADB shall inform AFD promptly of any condition which interferes, or threatens to interfere, with the performance by the ADB of its obligations under this Agreement.

ARTICLE VII

Communications and Notices

1. Any notice under this Agreement shall be deemed to have been duly given or made when it has need delivered by hand, mail or telefax, as the case may be, by either party to the other at the appropriate address specified below or at such address as either party may hereinafter notify in writing to the other party.

FOR THE AFD

Agence Française de Développement
5 rue Roland Barthes
75598 Paris Cedex 12
France

Telefax No: 33 1 53 44 39 65

Telephone No.: 33 1 53 44 34 45

Attention: Mr Roger GOUDIARD, Head of Asia Department

FOR THE ADB

Asian Development Bank
Office of Cofinancing Operations
P.O. Box 789, 0980 Manila
Philippines

Telefax No.: (63 2) 636-2456

Telephone No.: (63 2) 632-6314

Attention: Principal Director
Office of Cofinancing Operations

2. For purposes of this Agreement, the representatives of the parties shall be those indicated in paragraph 1 of this Article. Either party may, by notice in writing to the other party, designate additional representatives or substitute other representatives for those designated in this Article.

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ARTICLE VIII

Final Provisions

1. This Agreement shall enter into force on the date it is signed by the authorized representatives of the parties hereto. Unless terminated as provided for under paragraph 5 of this Article, this Agreement shall remain valid until 30 June 2008.

2. Upon written agreement, the parties hereto may amend any of the provisions of this Agreement or enter into supplementary arrangements designed to extend the scope of this Agreement.

3. The parties shall use their best efforts to settle amicably all disputes, controversies or claims arising out of or in connection with this Agreement or the interpretation hereof. Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof – which cannot be settled amicably within two (2) months after receipt by one party of the other party's request for such amicable settlement - shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present force. The appointing authority shall be the President of the International Court of Justice. The number of arbitrators shall be one. The place of arbitration shall be Geneva. The language to be used in the arbitral proceedings shall be English.

4. Any matter for which no provision is made herein shall be determined in a manner mutually acceptable to the parties and, in this regard, each party shall give serious consideration to any proposal advanced by the other party.

5. Either party may terminate this Agreement by giving not less than three (3) months advance notice, in writing, to the other party. Such termination shall become effective only on the date specified in the termination notice, and provided further that termination shall not effect any commitment entered into under this Agreement with a third party prior to the date of receipt by the other party of the termination notice. In the event of termination by either party, both parties shall cooperate to ensure that all arrangements made hereunder are settled in an orderly manner.

6. The ADB shall, after termination of this Agreement, furnish AFD with a final report and a financial statement disclosing use of the Fund and any balance remaining in the Fund and shall, unless otherwise agreed, remit to AFD any amount remaining unutilized and not committed for payment according to paragraph 5 of this Article.

IN WITNESS WHEREOF, the parties hereto, each acting through its representative duly authorized thereunto, have signed this Agreement in two original counterparts in English.

FOR THE AGENCE FRANCAISE
DE DEVELOPPEMENT

FOR THE ASIAN DEVELOPMENT BANK

TADA0 CHINO
President

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