

MEMORANDUM OF SUBSIDIARY ARRANGEMENT

BETWEEN THE

GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

AND THE

GOVERNMENT OF AUSTRALIA

RELATING TO THE

PROVINCIAL ROAD MANAGEMENT FACILITY (PRMF)

1. GENERAL PROVISIONS

- 1.1. This Arrangement expresses the understandings and intentions of the Government of the Republic of the Philippines (hereinafter referred to as GOP) and the Government of Australia (hereinafter referred to as GOA) concerning the responsibilities and contributions in regard to the Provincial Road Management Facility (PRMF).
- 1.2. This Arrangement supersedes the previous Arrangement dated 27 March 2009.
- 1.3. The goal of the Provincial Road Management Facility is to increase economic growth and improve access to public infrastructure and services in the southern Philippines.
- 1.4. The Provincial Road Management Facility will provide grant assistance directly to, or in support of, selected Provincial Governments.
- 1.5. This Arrangement is concluded pursuant to and is subject to the provisions of the General Agreement on Development Cooperation (GADC) between the GOP and the GOA signed on 28 October 1994 in Sydney, Australia, governing implementation of activities under the Philippines Australia Development Cooperation Program.

2. DEFINITIONS

- 2.1. For the purposes of this Arrangement:
- 2.2. "PRMF" means "The Provincial Roads Management Facility" and herein referred to as "PRMF" or "the Project".
- 2.3. Facility Managing Contractor (or FMC) refers to the organization, institution, company or consortium contracted by the GOA to manage and administer the Project in accordance with this Arrangement.
- 2.4. Minister-Counsellor Development Cooperation (MCDC) refers to the Minister-Counsellor of the Development Cooperation Section of the Australian Embassy-Manila (or delegate);
- 2.5. "DILG" means "The Department of the Interior and Local Government" and is the GOP counterpart to PRMF, authorized to represent the Government of the Republic of the Philippines in all PRMF activities.
- 2.6. Partner Provincial Governments are the governments of those provinces selected to participate in PRMF.
- 2.7. IMG means the Implementation Management Group and is the AusAID unit established to manage PRMF and represent AusAID in all PRMF matters;
- 2.8. PCU means the Project Coordination Unit and is the DILG unit established to represent DILG in all PRMF matters and manage DILG's responsibilities under the PRMF;
- 2.9. "Project Team Leader" means the designated representative in the Philippines of the FMC.
- 2.10. "Provincial Coordinator" means the long-term personnel employed by the FMC to represent PRMF in each Province – one coordinator will be employed for each partner province.
- 2.11. Memorandum of Arrangements (MOA) refers to an arrangement among AusAID, DILG and a Provincial Government. It is subsidiary to this MSA.
- 2.12. Southern Philippines Road Maintenance Program (SPRMP) refers to the framework that brings together AusAID's assistance to the road sector into a coherent portfolio of activities;
- 2.13. PRMF Imprest Account, is a bank account held by the FMC from which all PRMF activities will be funded;
- 2.14. PRMF Provincial Trust Account is a bank account held by each respective provincial government from which all PRMF activities directly procured by the respective provincial government will be funded;

- 2.15. Project Steering Committee (PSC) refers to the decision making body for PRMF and approves PRMF forward work plans and budget allocations and other matters as defined in Section 4 of this MSA. It is comprised of one representative of DILG and one representative of AusAID in decision making roles, and other members as may be invited to participate in an advisory capacity;
- 2.16. All other definitions come from Article 3 of the GADC.

3. IMPLEMENTING AGENCIES

- 3.1. As a bilateral program, GOP and GOA are formally accountable and ultimately responsible for the direction, decisions, and activities carried out under the Provincial Road Management Facility.

For the GOP: Department of the Interior and Local Government (DILG)

For the GOP: Partner Provincial Governments

For the GOA: the Australian Agency for International Development (AusAID)

- 3.2. AusAID will engage a suitably qualified Facility Managing Contractor (FMC) to carry out management and administration of the Provincial Road Management Facility. The FMC may sub-contract delivery of program activities under this Arrangement.

4. MANAGEMENT STRUCTURES

- 4.1. The overall management of the Facility will be under the strategic direction of the AusAID Implementation Management Group (IMG). Daily operations of the Facility will be supported by the FMC team working with provincial governments.

- 4.2. The Department of the Interior and Local Government (DILG) will be the counterpart agency of AusAID for the strategic implementation of PRMF. The following are the general roles and responsibilities of DILG:

4.2.1. Undertake strategic program implementation with AusAID, advocate for sustained interest and commitment of provincial partners, and coordinate other government agencies to support effective program implementation;

4.2.2. Sign a Memorandum of Arrangement (MOA) on behalf of the GOP with AusAID and each Provincial Government partner (see Annex 3);

- 4.2.3. Participate in each provincial workshop convened to discuss the development of the Provincial Works and Reform Program (PWRP).
 - 4.2.3.1. Provide support to the FMC, if requested, to arrange these workshops, including by ensuring participation from all relevant local government representatives.
- 4.2.4. Review the FMC's PWRP. In the event that DILG or AusAID objects to an element of the PWRP, a letter of objection providing clear reasons for the objection, details of the issues, and measures that need to be undertaken to redraft the PWRP will be provided within 14 working days from date PWRP provided to DILG. If such objection is not received by the FMC within 14 days, it will be deemed that no objection exists;
- 4.2.5. Work with AusAID in complying with the GOP approval processes and requirements, namely:
 - 4.2.5.1. Investment Coordination Committee approval
 - 4.2.5.2. Memorandum of Subsidiary Arrangement
 - 4.2.5.3. Environmental Compliance Certificate
- 4.2.6. Provide advice to the Program Steering Committee (PSC) to improve synergy of PRMF with other related GOP and donor initiatives;
- 4.2.7. Disseminate lessons learned and reforms coming from the PRMF to the national government and to other non-participating provincial governments;
- 4.2.8. Monitor and evaluate the progress of PRMF activity implementation and provide the necessary monitoring and evaluation reports as required by GOP, i.e., Regional Project Monitoring and Evaluation and annual ODA sectoral review;
- 4.2.9. Jointly with the FMC, submit a six-monthly status report of the implementation of the PRMF to the PSC.
- 4.2.10. Undertake an annual assessment of LGU performance by convening a meeting with each partner Provincial Government each year, one month prior to a PSC meeting, to:
 - 4.2.10.1. Obtain feedback from each partner Provincial Government on the performance of the Facility Managing Contractor and independent consultants employed by the Facility Managing Contractor; and
 - 4.2.10.2. Discuss issues associated with the implementation of PRMF, including unforeseen issues that have impacted on program delivery, and any problems associated with program delivery.

- 4.2.11. Provide feedback to each partner Provincial Government on the Provinces performance in implementing PRMF
- 4.2.12. Provide a written report to AusAID and the Facility Managing Contractor outlining all issues raised during the LGU assessments.
- 4.2.13. Review the design of capacity building programs for LGUs ensuring these are aligned with national government policies and thrusts on decentralization and devolution. In the event changes are required DILG will provide specific detail regarding these changes within 10 days of receiving a copy of the Capacity Building Plan.
- 4.2.14. Provide support to the FMC, if requested, to arrange and facilitate training programs, including ensuring participation from all relevant local government representatives.
- 4.2.15. Participate in training programs to build the in-house capacity of DILG personnel.
- 4.2.16. Participate on each monitoring and evaluation mission jointly with AusAID. DILG responsibilities during these missions will include:
 - 4.2.16.1. Consultation with the LGU to discuss the implementation issues and concerns, if necessary;
 - 4.2.16.2. Evaluations of the LGU's compliance with the approved PWRP, Annual Physical Works Program (APWP) and Capacity Building Plans;
- 4.2.17. Participation of one DILG representative (not a member of the Project Coordination Unit), at DILG expense, in the 6-monthly independent Technical Monitoring Group (TMG).
- 4.2.18. Preparation of a status/monitoring report following each monitoring mission and submit this report to the PSC within 10 days of the completion of the mission.
- 4.3. DILG will establish a Project Coordination Unit (PCU) within the Office of Project Development Service (OPDS) to undertake the responsibilities of DILG regarding PRMF implementation;
- 4.4. AusAID and DILG will co-chair a Project Steering Committee (PSC). The permanent members of the PSC will be DILG and AusAID. The PSC may invite members from relevant GOP and/or GOA departments and/or from civil society and/or other donors to participate in PSC discussions. PSC decision-making authority will rest with DILG and AusAID.

4.5. The PSC will have the following functions:

- 4.5.1. Provide strategic direction and policy guidelines on the implementation of PRMF;
- 4.5.2. Provide guidance to ensure PRMF properly aligns with GOP policies, programs and regulations;
- 4.5.3. Review and approve the Annual Plan of the FMC;
- 4.5.4. Approve the selection criteria and selection of each additional provincial partner;
- 4.5.5. Approve the PRMF Operations Manual;
- 4.5.6. Review the status of PRMF activity implementation of each provincial partner;
- 4.5.7. Perform strategic oversight functions, identify strategic issues and recommend measures to address these to any Advisory Board established under the Southern Philippines Road Maintenance Program (SPRMP) framework; and
- 4.5.8. Prepare reports on the critical issues requiring policy actions for the SPRMP Advisory Board.

4.6. The Provincial Governments will be the primary counterpart partners in the implementation of PRMF activities. The roles and responsibilities of the Provincial Governments will be detailed in the MoA (see Paragraph 6 of this MSA) and will include:

- 4.6.1. Sign with AusAID and DILG a MoA that details the implementation arrangements for PRMF in the province;
- 4.6.2. Sign the PWRP with the FMC;
- 4.6.3. Implement the APWP and Capacity Building Plans developed for the Province with the FMC based on the principles set out in this MSA and the relevant MOA ;
- 4.6.4. Comply with the monitoring and evaluation requirements of GoP relevant for PRMF activities, particularly that of the Provincial Project Monitoring and Evaluation Committee and DILG annual inventory of provincial roads, among others;

- 4.6.5. A minimum annual cash contribution equivalent to twelve percent (12%) of AusAID funds provided to the province each year for all PRMF works associated with road rehabilitation and maintenance and the purchase of equipment including hardware and software and any other form of asset. Any contribution in excess of 12% of AusAID provided funds for works associated with road rehabilitation and maintenance will be at the sole discretion of each respective provincial government, but will be subject to all conditions set forth within this MSA.
- 4.6.6. Each Provincial Government will establish a PRMF Provincial Trust Account to facilitate control, accounting and audit. Where the FMC undertakes and manages the tender process for road rehabilitation and/or maintenance, the Provincial Government will allow the provincial government's contribution to be transferred from the Provincial Government PRMF Provincial Trust Account to the PRMF Imprest Account.
- 4.6.7. Accept modified procurement arrangements as detailed in Paragraphs 8.1 to 8.9 of this MSA and in all relevant procurement paragraphs in each MOA, for all procurements undertaken by the Provincial Government using PRMF funding;
- 4.6.8. Accept the Accountability, Anti-corruption and Anti-terrorism paragraphs of this MSA; and
- 4.6.9. Provide counterpart office space, equipment and personnel, as needed, to work with the PRMF Provincial Coordinator and other PRMF personnel.
- 4.7. For each partner province, the PRMF Provincial Trust Account will operate as follows:
- 4.7.1. Provincial Government Counterpart contributions to PRMF activities will be placed in this trust account;
- 4.7.2. where the FMC is the procuring entity for any PRMF activity that requires a provincial government counterpart contribution (ie physical works or the purchase of any form of asset), then the PRMF Provincial Trust Account will pay the required funds to the PRMF Imprest Account;
- 4.7.3. where the Provincial Government is the procuring entity for any PRMF activity, the FMC will pay the required funds, less any provincial government counterpart requirement, into the PRMF Provincial Trust Account;
- 4.7.4. The PRMF Provincial Trust Account may not be used to fund any activity that is not approved by the PRMF Project Steering Committee;

- 4.7.5. The Provincial Government will keep financial records for the PRMF Provincial Trust Account for a minimum period of 10 years, and allow AusAID and any AusAID nominated representative full access to these records for auditing purposes.
- 4.7.6. The untied incentive fund paid to each province will also be paid into the PRMF Provincial Trust Account. These funds, to the limit approved by the PSC on an annual basis, will be disbursed by the Provincial Government for any activity that would normally be eligible under the province's 20% Development Fund. Funds used for this purpose, to the limit specified by the PSC are exempt from clause 4.7.4;
- 4.7.6.1. All interest earned on funds held within the PRMF Provincial Trust Account will be retained within the PRMF Provincial Trust Account and be used solely for PRMF activities approved by the PSC. Interest earned cannot be used to fund any activity associated with the untied incentive fund.
- 4.7.6.2. Any funds remaining within the PRMF Provincial Trust Account at the completion of PRMF will be refunded to the PRMF Imprest Account.

5. CONTRIBUTIONS

- 5.1. The contribution of the GOA is expected to be up to A\$ 100 million over five years, unless otherwise mutually determined by the GOA and GOP.
- 5.2. Disbursement of Australian contributions will be subject to the normal Australian annual parliamentary approval of appropriations.
- 5.3. The contribution of GOP will be:
- 5.3.1. DILG will provide office space and equipment (an internet enabled computer installed with Microsoft office, and printer) for the FMC representative in Manila, if required, and all costs associated with the DILG Project Coordination Unit for PRMF activity implementation.
- 5.3.2. Each Provincial Government that receives PRMF assistance will provide office space and equipment (an internet enabled computer installed with Microsoft office, relevant GIS software (if available) and printer) for the Provincial Coordinator and a minimum annual cash contribution equivalent to twelve percent (12%) of AusAID funds provided to the province each year for all PRMF works associated with road rehabilitation and maintenance and the purchase of equipment including hardware and software and any other form of asset.
- 5.4. The GOP Contributions are further detailed in Annex 2. GOA Contributions are further detailed in Annex 1.

6. PROVINCIAL GOVERNMENT REQUIREMENTS

- 6.1. Following selection to participate in PRMF, each province will sign a Memorandum of Arrangement (MoA) with AusAID and DILG accepting PRMF principles and implementation arrangements.
- 6.2. The MoA will make specific reference to this MSA and the terms of this MSA, unless otherwise stated, will apply to each MoA.
- 6.3. Each MoA will be substantially consistent with the template at Annex 3 to this MSA.

7. FACILITY SUPPLIES, MOTOR VEHICLES AND PROFESSIONAL AND TECHNICAL MATERIAL AND SERVICES

- 7.1. Subject to Paragraphs 7.2 to 7.4 below, Article 7 of the GADC will apply to all Project supplies, vehicles, professional and technical material and services provided for the implementation of the activities under the Project.
- 7.2. In respect of supplies, motor vehicles and professional and technical material and services required by the Project for the conduct of PRMF, whether imported into or procured within the Philippines, the GOP will:
 - (a) coordinate with concerned agencies in the exemption of Expanded Value Added Tax (eVAT) and other duties and taxes imposed in the Philippines, and be responsible for inspection fees, storage charges and all other levies, fees and charges levied in the Philippines; and
 - (b) facilitate the expeditious clearance and release of imported supplies and motor vehicles including the provision of appropriate customs and wharfage facilities.
- 7.3. Supplies and motor vehicles provided for the use of the Project by the GOA will be available for restricted Project use and will not be withdrawn from such use without the consent of the Minister-Counsellor Development Cooperation. The Project Team Leader will exercise administrative control over such supplies and motor vehicles for the duration of the Facility or such other time as mutually arranged by both Governments.
- 7.4. Motor vehicles provided by the GOA for the Project's use will be registered and insured jointly in the names of the Australian Embassy, representing AusAID and the Project. At the end of the Project's life span, all equipment and motor vehicles will be handed over to the Minister-Counsellor Development Cooperation who will reassign them in accordance with the following:
 - 7.4.1. All equipment, supplies and motor vehicles used primarily by Provincial Coordinators will be provided to the Provincial Government in the province in which the Provincial Coordinator was assigned;

7.4.2. All equipment, supplies and motor vehicles used primarily for PRMF activities within a particular province will be assigned to the Provincial Government of that province;

7.4.3. All equipment, supplies and motor vehicles provided to national government departments as part of PRMF activities, will be assigned to the same government department;

7.4.4. All other equipment, supplies and motor vehicles will be provided to DILG for use by DILG regional or provincial offices that have geographical jurisdiction for provinces that have received PRMF assistance.

8. PROCUREMENT

8.1. It is intended that wherever possible, from the second year of engagement in any particular province, PRMF assistance be delivered through government systems, subject to satisfactory outcomes of assessments of those systems.

8.2. All procurement carried out by Provincial Governments and funded by PRMF will follow GOP Requirements (as provided in Republic Act 9184 and the Government Procurement Reform Act, and any amendments and/or revisions thereof) with the following amendments/exceptions:

8.2.1. Procurement will be carried out in line with R.A. 9184 and its IRR-A. Below and up-to the following set thresholds:

Category	Threshold
Goods	US\$1 million
Works	US\$5 million
Consulting Services	US\$200,000

as follows:

- (a) Competitive Bidding (akin to National Competitive Bidding) as the default method.
- (b) Limited Source Bidding, otherwise known as Selective Bidding, Direct Contracting, otherwise known as Single Source Procurement, Repeat Order, Shopping or Negotiated Procurement under the conditions stipulated in R.A. 9184 and IRR-A

modified where required to meet the conditions detailed in this MSA

8.2.2. The Provincial Government, the FMC, DILG, AusAID or any related entity, is not obliged to accept any tender received for any procurement undertaken and related to PRMF;

8.2.3. With the exception of the criteria under this MSA, no further eligibility criteria will be applied to screen tenderers for any PRMF related procurement prior to tenders being assessed.

- 8.2.4. No entity or individual will be eligible to tender for work under PRMF if that entity or individual is listed on the World Bank's "Listing of Ineligible Firms" or "Listing of Firms, Letters of Reprimand" as posted at www.worldbank.org.
- 8.2.5. No entity or individual that has been found by AusAID to have previously breached contract conditions under any AusAID related procurement, or have not fully delivered the goods or services required under such a contract, will be eligible to tender for further PRMF related procurements unless AusAID determines in writing that the entity or individual is eligible.
- 8.2.6. No entity or individual that has been found by AusAID to have misappropriated funds, or engaged in any corrupt, fraudulent, collusive or coercive practises will be eligible for PRMF related procurements;
- 8.2.7. No procurements may be reserved for, or preference given to, organizations such as NGOs, cooperatives and others.
- 8.2.8. Any nationality requirement, and any domestic and/or regional preference will not be applied in the evaluation of bids, and any other preferences in effect in the Philippines will not be used except with prior concurrence of AusAID.
- 8.2.9. Any foreign firm wishing to participate in any tender will be permitted to do so, and procuring entities may freely invite them to bid for any PRMF procurement requirements.
- 8.2.10. Reference to brand names will be allowed when there is no other sufficiently precise or intelligible way of describing the requirement, provided that the words "or equivalent" are included in the specification.
- 8.2.11. Foreign bidders will be allowed to bid without registration, licensing, and other government authorizations, leaving these requirements for after award and before contract signing.
- 8.2.12. Whenever the circumstances warrant it (e.g. in the case of major clarifications or modifications being required within the last 7 days of the tender period) the deadline for submission and receipt of bids will be extended to provide sufficient time to enable all bidders to take the clarification or modification into account in finalizing their bids.
- 8.2.13. Any bid will not be rejected as late if the reason for its lateness is due solely to mishandling or other error, action or omission by the procuring entity.

- 8.2.14. All tenders undertaken by the Provincial Government will be advertised, at a minimum, in the local and national print media, the Philippine Government Electronic Procurement System, the PRMF web-site and on the Provincial Government web-site (if any);
- 8.2.15. All contracts, including contract variation/amendments exceeding fifteen percent (15%) of the original contract value will be subject to prior review and "no objection" by the FMC, except for Shopping which is regulated by thresholds in R.A. 9184. The FMC will carry out the review of documents and provide the "no objection" to the Provincial Government. The 15% trigger applies to cumulative changes to an original contract that together exceed 15% of the original contract value.
- 8.2.16. For all PRMF related procurements undertaken using Provincial Government systems, the Provincial Government will seek a "no objection" from the FMC for the use of procurement methods other than competitive bidding (except Shopping which is regulated by thresholds in R.A. 9184), or for the issuing or use of the following documents: procurement plans and budgets, advertisements, bidding documents, pre-qualification documents, requests for expression of interest, shortlists, bid evaluation reports and award recommendations. A "no objection" will also be sought for the wording of final contracts and contract variations or amendments.
- 8.2.17. National and Provincial Governments will allow and facilitate the FMC to monitor the key steps in the procurement process including planning, invitation to bid, bid opening and bid evaluation, contract award, contract negotiation, and contract administration. In doing so the FMC will participate as observer in pre-bid meetings, bid opening, bid evaluation, and contract negotiation. Documents which certify that goods have been delivered and/or services and works have been carried out will be verified by the FMC before payments are made.
- 8.3. The FMC will be provided access to partner governments' and contractors' records to allow the FMC to verify disbursement vouchers and related documents before payments are made.
- 8.4. AusAID, or any entity authorized by AusAID has the right to inspect at any time the premises and records of any supplier, consultant or contractor. DILG and the relevant Provincial Government will ensure that all contracts entered into under PRMF or using PRMF funds will include a clause providing AusAID the right to inspect at any time the premises and records of any supplier, consultant or contractor.
- 8.5. The Provincial Government will establish and maintain complete records related to all PRMF procurement activities. These records will be retained by the Provincial Government for a minimum of 10 years and will be made available to AusAID and/or DILG for any purpose including audit.

- 8.6. The Provincial Engineers Office or any other Provincial Government Department assigned to monitor contract progress and approve contract milestones and/or completion, will provide approval or a "notice to rectify" for milestones and/or completion within 21 days of receipt of duly rendered invoice. Where the works undertaken do not meet contract requirements, the Provincial Engineers Office, or any other Provincial Government Department assigned to the task, will provide written advice ("notice to rectify") to the Contractor that the works do not meet required standards, detail steps that need to be taken to rectify the problems, and provide a timeframe for the Contractor to comply with these directions.
- 8.7. Where the Provincial Government, Provincial Development Council, or any other responsible entity fails to either approve, or provide written "notice to rectify" regarding, milestones and/or completion of works within 21 days of receipt of a duly issued invoice, approval will be deemed to have been granted.
- 8.8. All approvals are subject to future audits to be undertaken by the Provincial Government and/or the Facility Managing contractor and/or GOP and/or AusAID. Where payments are made incorrectly and/or made for work that has not been properly completed according to contract, the GOP and the Provincial Government undertakes to retrieve all funds paid, including through legal action if required.
- 8.9. The Provincial Government undertakes to pay Contractors within 30 days of a duly issued invoice, subject to the completion assessment detailed in Paragraphs 8.6, 8.7 and 8.8.

9. INTELLECTUAL PROPERTY

- 9.1. All intellectual property held by the GOA in any Australian project supplies and professional and technical material will be retained by the GOA;
- 9.2. The GOA will grant to the GOP and PRMF Partner Provinces a non-exclusive royalty-free license in respect of the intellectual property rights subsisting in Australian project supplies and professional and technical material owned by the GOA. Such license will continue until otherwise mutually decided between the parties and will include the right to deal with the intellectual property for the purpose of Project objectives and as the GOP considers expedient.

10. SETTLEMENT OF DISPUTES

- 10.1. The GOP and GOA will work together in a spirit of openness, transparency and consultation to implement the Program. Where DILG PCU and AusAID's IMG cannot resolve a dispute the dispute will be sent to Undersecretary DILG and Minister-Counsellor AusAID for resolution.

11. ACCOUNTABILITY

- 11.1. Where Program monies are shown, either by audit or other mechanism, to have been misappropriated or used in a manner inconsistent with this Arrangement, or the Program's Financial and Procurement Procedures Manuals, GOP will investigate and endeavour to recover any misdirected funds. Such investigation will commence within 14 working days of the matter being reported to GOP. GOA reserves the right to suspend further Program payments in such circumstances until funds are recovered by GOP, or GOA is satisfied with the investigation.
- 11.2. Where a Partner Provincial Government fails to properly investigate and/or recover misappropriated funds, PRMF will immediately suspend all activities in that Province and the Province will be removed from the Program. Contracts already awarded to the Private Sector will be honored by PRMF where these contracts are not themselves associated with the misappropriated funds.
- 11.3. For the purpose of asset distribution, a province removed from the Program under Paragraph 11.2 will not be eligible to retain any PRMF equipment, supplies or motor vehicles under Paragraph 7.4 or otherwise.

12. COMPLIANCE

- 12.1. Where AusAID finds that Provincial Governments and/or the GOP are not complying with any commitments under this MSA and/or the provincial MOA, including Clause 5.2 of the MOA, AusAID may, at its sole discretion, invoke any and all of the measures detailed in Paragraph 12.2.
- 12.2. AusAID may, at its sole discretion:
- (a) notify Provincial Governments and/or the GOP of its decision to invoke any or all of the compliance measures under the terms of this Arrangement;
 - (b) withhold further funding from the PRMF Imprest Account and/or Provincial Government Accounts until conditions imposed by AusAID are met and/or AusAID directs otherwise;
 - (c) direct Provincial Governments and/or GOP to withhold further funding from any and all sub-contractors until conditions imposed by AusAID are met and/or AusAID directs otherwise; and/or
 - (d) request the return of any or all unused/uncommitted GoA contributions held in the Provincial Government Accounts and/or Imprest Account;
- 12.3. Upon receiving a notification and/or request to return GoA contributions, Provincial Governments and/or GOP will take all necessary steps to ensure the return of these monies to AusAID within 10 working days after receipt of the notification and/or request.

13. ANTI-CORRUPTION

- 13.1. Consistent with each Party's commitment to good governance, accountability, and transparency, each Party reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive, or coercive practices relating to the Program. In particular, all contracts entered into by GOP (Provincial Governments and/or any other level of Government) in connection with the Program will include provisions specifying the right of AusAID to audit and examine the records and accounts of all contractors, suppliers, consultants, and other service providers as they relate to the Program.
- 13.2. AusAID will cancel the portion of its financial assistance allocated to a contract if AusAID determines at any time that representatives of Provincial Governments, DILG and/or any other GOP responsible entity engaged in corrupt, fraudulent, collusive or coercive practices during the procurement or execution of that contract, without GOP having taken timely and appropriate action satisfactory to AusAID to remedy the situation.

14. ANTI-TERRORISM

- 14.1. DILG and partner Provincial Governments will use their best endeavours to ensure that funds provided by GOA under this Arrangement, do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Program, DILG and/or partner Provincial Governments discovers any link whatsoever with any organisation or individual associated with terrorism it will inform GoA immediately.

15. CLAIMS

- 15.1. The GOP will indemnify the GOA from any claims brought by the GOA's contractor against the GOA for damages arising from the GOP's failure to carry out its commitment pursuant to this Arrangement. In all other respects, Article 12 of the GADC applies to claims.
- 15.2. The GOP will indemnify the GOA from any action or claim arising from the implementation of the project and output thereof.

16. AMENDMENTS

- 16.1. Amendments to this Arrangement may be made at any time by an exchange of letters between the two Governments.

17. DURATION


17.1. This Arrangement will take effect from the date of its signature. The Project will take effect from the date to be decided by the two Governments. The Australian contribution to the Project and all commitments given herein will cease five years from the mutually arranged date of Project commencement, or on such other date as may be mutually decided by the two Governments.

17.2. ANNEXURES 1, 2 and 3 to this Arrangement form an integral part of it.

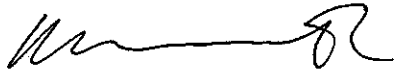
SIGNED in the City of Manila, Philippines this 25th day of November 2010.

For the Government of the
Republic of the Philippines

For the Government of Australia



Hon. Jesse Robredo
Secretary
Department of the Interior and
Local Government



H.E. Rod Smith
Ambassador
Australian Embassy-Manila

ANNEX 1

GENERAL RESPONSIBILITIES OF THE GOVERNMENT OF AUSTRALIA

The GOA will make contributions totaling an estimated A\$100 million to the **Project**.

The contributions of the GOA, listed by the type of inputs are set out below:

(a) Personnel

The GOA will provide all costs for full-time management and technical personnel as well as long/short-term personnel dedicated to PRMF.

(b) Procurement

The supply of necessary vehicles;

The supply of necessary office equipment, including hardware and software required to operate Geographical Information Systems (GIS), at both national and sub-national levels (excluding eVAT costs).

The supply of office equipment or commodities to support the functioning of each **Project** office (main office and partner Province offices if applicable), excluding eVAT costs.

The procurement of approved physical works (excluding eVAT costs).

(c) Training Delivery

(d) Other Project Management and Support Costs

ANNEX 2

GENERAL RESPONSIBILITIES OF THE GOVERNMENT OF THE PHILIPPINES

The GOP will make counterpart contributions to the **Project** as follows:

DILG will provide:

- (a) office space for FMC representative in Manila, if required;
- (b) equipment including an internet enabled computer installed with Microsoft office (and with the necessary specification to be installed with relevant GIS software), and printer for FMC representative in Manila, if required;
- (c) personnel to staff a Project Coordination Unit (PCU) and all costs (including airfare, accommodation and per diem) associated with the operation of the PCU; and
- (d) salary costs for all GOP agencies (excluding Provincial Government and Provincial Government Agencies) involved for the duration of the Facility.

Each Provincial Government that receives PRMF assistance will provide:

- (a) Furnished office space including utilities (including water, electricity and telephone) within the office of the Provincial Governor for the PRMF Provincial Coordinator;
- (b) Office equipment including an internet enabled computer installed with Microsoft Office (and with the necessary specification to be installed with relevant GIS software), GIS software (if available) and printer for the Provincial Coordinator;
- (c) A minimum annual cash contribution equivalent to twelve percent (12%) of AusAID funds provided to the province each year for all PRMF works associated with road rehabilitation and maintenance. Any contribution in excess of 12% of AusAID provided funds for works associated with road rehabilitation and maintenance will be at the sole discretion of each respective provincial government, but will be subject to all conditions set forth within this MSA; and
- (d) Salary and all other employment related costs for all Provincial Government personnel and Provincial Government Agencies involved in the implementation of PRMF for the duration of the Facility.

Provincial Government contributions will be detailed in each Memorandum of Arrangement signed between AusAID, DILG and the Provincial Government (proforma at Annex 3). Details contained in the MOA will form part of this Annex. Where inconsistencies exist the Provincial contribution contained in the MOA will take precedence over this MSA.

PROVINCIAL MEMORANDUM OF ARRANGEMENT

AMONG

PROVINCE NAME

AND THE

DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG)

AND THE

AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT (AUSAID)

RELATING TO THE

PROVINCIAL ROAD MANAGEMENT FACILITY (PRMF)

1. GENERAL PROVISIONS

- 1.1. This Provincial Memorandum of Arrangement (hereafter referred to as MOA) expresses the understandings and intentions of the PROVINCE NAME (hereafter referred to as “ ‘) and the Department of the Interior and Local Government (hereinafter referred to as DILG) and the Australian Agency for International Development (hereinafter referred to as AusAID) concerning their respective responsibilities and contributions in regard to the Provincial Road Management Facility (herein after referred to as PRMF).
- 1.2. This Arrangement supersedes the previous Arrangement dated DATE
- 1.3. The goal of the PRMF is to increase economic growth and improve access to public infrastructure and services in the southern Philippines.
- 1.4. The PRMF will provide grant assistance directly to, or in support of, PROVINCE NAME in the implementation of relevant road management and related capacity building activities.
- 1.5. This MOA is concluded pursuant to and is subject to the provisions of the Memorandum of Subsidiary Arrangement (MSA) signed between the Government of the Republic of the Philippines (hereafter referred to as GOP) and the Government of Australia (hereafter referred to as GOA) relating to the PRMF, and the General Agreement on Development Cooperation (GADC) between the GOP and the GOA signed on 28 October 1994 in Sydney, Australia, governing implementation of activities under the Philippines-Australia Development Cooperation Program. This MOA is subsidiary to the MSA.

2. DEFINITIONS

- 2.1. For the purposes of this MOA:
- 2.2. "PRMF" means "The Provincial Roads Management Facility" and herein also referred to as "the Project,"
- 2.3. Facility Managing Contractor (or FMC) refers to the organization, institution, company or consortium contracted by the GOA to manage and administer the Project in accordance with the MSA.
- 2.4. "Minister-Counsellor Development Cooperation (MCDC)" refers to the Minister-Counsellor of the Development Cooperation Section of the Australian Embassy-Manila (or delegate);
- 2.5. "DILG" means "The Department of Interior and Local Government" and is the GOP counterpart to PRMF, authorized to represent the GOP in all PRMF activities.
- 2.6. PROVINCE NAME is a partner province selected to participate in the PRMF and be a beneficiary of PRMF funding.
- 2.7. "The Provincial Government" means the Provincial Government of PROVINCE NAME
- 2.8. IMG means the Implementation Management Group and is the AusAID unit established to manage PRMF and represent AusAID in all PRMF matters;
- 2.9. PCU means the Project Coordination Unit and is the DILG unit established to represent DILG in all PRMF matters and manage DILG's responsibilities under the Project;
- 2.10. PDC means the Provincial Development Committee of PROVINCE NAME
- 2.11. "Project Team Leader" means the designated representative in the Philippines of the FMC engaged by the GOA to manage the PRMF.
- 2.12. PRMF Imprest Account, is a bank account held by the FMC from which all PRMF activities will be funded;
- 2.13. "PRMF Provincial Trust Account", also referred to as "PRMF Provincial Equity Trust Account", is a bank account held by each respective provincial government from which all PRMF activities directly procured by the respective provincial government will be funded. This Trust Account will also be used to hold Provincial Government counterpart contributions;
- 2.14. Project Steering Committee (PSC) refers to the decision making body for PRMF and approves PRMF forward work plans and budget allocations and other matters as defined in Section 4 of the MSA. It is comprised of one representative of DILG and one representative of AusAID in decision making

roles, and other members as may be invited to participate in an advisory capacity;

2.15. All other definitions come from Article 3 of the GADC.

3. IMPLEMENTING AGENCIES

3.1. As a bilateral program, GOP and GOA are formally accountable and ultimately responsible for the direction, decisions, and activities carried out under the Provincial Road Management Facility. The following agencies will discharge these responsibilities:

For the GOP: The Provincial Government of PROVINCE NAME

For the GOP: Department of the Interior and Local Government (DILG)

For the GOA: the Australian Agency for International Development (AusAID)

3.2. AusAID will engage a suitably qualified FMC to carry out management and administration of the PRMF. The FMC may sub-contract the delivery of program activities under this MOA.

4. PURPOSE OF THIS MOA

4.1. This MOA establishes the:

- 4.1.1. core principles underpinning the PRMF and to which each Party will work towards;
- 4.1.2. detailed management structure;
- 4.1.3. contributions of each Party to the delivery of PRMF in PROVINCE NAME; and
- 4.1.4. framework under which PRMF will operate.

5. CORE PRINCIPLES

5.1. The Core principles detailed in Paragraph 5.2, represent ideals which all parties seek to achieve. No time frame outlined under Paragraph 5.2 will be binding on any of the parties. However if AusAID determines that the Provincial Government of PROVINCE NAME is not working towards one or more of these principles, AusAID may, at its sole discretion (as allowed for in Clause 11.1 and Clause 11.2), terminate PRMF activity in PROVINCE NAME.

5.2. The Provincial Government of PROVINCE NAME accepts and commits to the following principles:

5.2.1. Within five years PROVINCE NAME will achieve a state of sustainable road maintenance. The province will:

- i. Provide sufficient annual budget allocation for road rehabilitation and maintenance to maintain the core network of provincial roads in good working order;
- ii. Ensure that the annual budget allocations for provincial road rehabilitation and maintenance do not compromise the Provincial Government's responsibility for the delivery of other services such as health; and
- iii. Ensure that funding allocated to provincial road rehabilitation and maintenance are determined using sound and transparent criteria for priority setting, take into consideration social, environmental and economic criteria, and the public is consulted in the process;

5.2.2. Within five years PROVINCE NAME will achieve a transparent and accountable budget and expenditure management system. The Province will:

- i. Prepare multi-year budgets and expenditure plans;
- ii. Ensure that all revenue and expenditure estimates are well founded;
- iii. Meet all GOP requirements for budget and expenditure management, including all reporting requirements;
- iv. Ensure transparency in all financial and contractual transactions; and
- v. Adopt sound technical standards based on best practise for accounting and financial management;

5.2.3. Within five years PROVINCE NAME will achieve a fully functioning internal control system including an independent internal audit. The Province will:

- i. Establish internal control systems and procedures and ensure staff understand these systems and procedures and are trained how to use them;
- ii. Establish and maintain an independent internal audit office;
- iii. Ensure adequate funding for the internal audit office;
- iv. Ensure an internal audit is conducted each year;
- v. Ensure all internal audit findings are followed-up and negative findings are rectified and actions taken reported; and
- vi. Ensure all GOP laws and requirements concerning internal controls and internal audit are fully implemented.

5.2.4. Within five years PROVINCE NAME will achieve a transparent procurement process which complies with all laws and regulations of the GOP. The Province will:

- i. Ensure that all GOP laws and regulations concerning procurement are fully implemented;
- ii. Ensure that all procurements, and procurement results, are adequately publicised.
- iii. Ensure that all staff concerned with procurement understand procurement systems and requirements, are trained to use the procurement systems, and actually use the systems for procurement;
- iv. Establish and maintain adequate record keeping to support procurement systems;
- v. Ensure that the Bids and Awards Committee (BAC) is properly funded and staffed with sufficient numbers of trained and qualified personnel.

5.2.5. Within five years PROVINCE NAME will achieve and implement a comprehensive Human Resource Development Plan and Management Strategy that clearly articulates the mandate of the Provincial Government and the role, skill-set and responsibilities of each individual in achieving that mandate.

6. MANAGEMENT STRUCTURE

6.1. The PRMF Management Structure is detailed in the MSA relating to the Provincial Road Management Facility and signed between GOP and GOA on (DATE). The Provincial Government of PROVINCE NAME accepts this structure.

6.2. Provincial Government Systems will be progressively improved under PRMF, as determined between the FMC and the Provincial Government of PROVINCE NAME. When Provincial Government systems meet minimum standards as determined by AusAID they will then be used to implement the PRMF. To this end:

6.2.1. The Provincial Government of PROVINCE NAME undertakes to properly manage and administer all elements of the PRMF in an open and transparent and timely manner; and

6.2.2. The Provincial Government of PROVINCE NAME will make decisions on all elements of the program within their jurisdiction within 21 days of a decision being requested.

6.2.3. Where the Provincial Government of PROVINCE NAME has not made a decision within 21 days of request, the request will be deemed to have been approved.

7. FRAMEWORK

Contracting Out

- 7.1. All activities funded by and/or through PRMF, whether directly or by the Provincial Government of PROVINCE NAME using Provincial Government systems, will be provided through competitive tendering as described in paragraphs 7.6 to 7.16 and contracted to the private sector for implementation;
- 7.2. The Provincial Government of PROVINCE NAME and its agencies (including Provincial Government owned Corporations and other local government units in the Province), will not be eligible to bid for any PRMF activities;
- 7.3. The Provincial Government of PROVINCE NAME will provide a minimum annual cash contribution equivalent to twelve percent (12%) of AusAID funds provided to the province each year for all PRMF works associated with road rehabilitation and maintenance and the purchase of equipment including hardware and software and any other form of asset as specified in Clause 7.16. Any contribution in excess of 12% of AusAID provided funds for works associated with road rehabilitation and maintenance will be at the sole discretion of each respective provincial government, but will be subject to all conditions set forth within the MSA.

Procurement

- 7.4. During the first year of engagement with PROVINCE NAME, or until AusAID determines that Provincial systems meet minimum acceptable standards, whichever occurs later, the FMC will be responsible for all PRMF related procurement activities in the Province.
- 7.5. It is intended that from the second year of engagement with PROVINCE NAME, or when AusAID determines that Provincial systems meet minimum acceptable standards, whichever occurs later, PRMF assistance will be delivered using provincial government systems, subject to ongoing satisfactory assessments of those systems undertaken by the FMC.
- 7.6. All procurement carried out by the Provincial Government of PROVINCE NAME and funded by PRMF will follow GOP Requirements (as provided in Republic Act 9184 and the Government Procurement Reform Act, and any amendments and/or revisions thereof) with the following amendments/exceptions:
 - 7.6.1. Procurement will be carried out in line with R.A. 9184 and its IRR-A below and up-to the following set thresholds:

Category	Threshold
Goods	US\$1 million
Works	US\$5 million
Consulting Services	US\$200,000

as follows:

- (a) Competitive Bidding (akin to National Competitive Bidding) as the default method
- (b) Limited Source Bidding, otherwise known as Selective Bidding, Direct Contracting, otherwise known as Single Source Procurement, Repeat Order, Shopping or Negotiated Procurement under the conditions stipulated in R.A. 9184 and IRR-A.

modified where required to meet the conditions detailed in the MSA and this MOA.

7.6.2. The Provincial Government of PROVINCE NAME, the FMC, DILG, AusAID or any related entity, is not obliged to accept any tender received for any procurement undertaken and related to PRMF;

7.6.3. With the exception of the criteria under this MOA, no further eligibility criteria will be applied to screen tenderers for any PRMF related procurement prior to tenders being assessed.

7.6.4. No entity or individual will be eligible to tender for work under PRMF if that entity or individual is listed on the World Bank's "Listing of Ineligible Firms" or "Listing of Firms, Letters of Reprimand" as posted at www.worldbank.org.

7.6.5. Any entity or individual that has been found by AusAID to have previously breached contract conditions under any AusAID related procurement, or have not fully delivered the goods or services required under such a contract, will not be eligible to tender for PRMF related procurements unless AusAID determines in writing that the entity or individual is eligible.

7.6.6. Any entity or individual that has been found by AusAID to have misappropriated funds, or engaged in any corrupt, fraudulent, collusive or coercive practises will not be eligible for PRMF related procurements;

7.6.7. No procurements may be reserved for, or preference given to, organizations such as non-government organisations (NGOs), cooperatives and others.

7.6.8. No nationality requirement, or any domestic and/or regional preferences will be applied in the evaluation of bids, and any other

preferences in effect in the Philippines will not be used except with prior concurrence of AusAID.

- 7.6.9. Any foreign firm wishing to participate in any tender will be permitted to do so, and procuring entities may freely invite them to bid for any PRMF procurement requirements.
- 7.6.10. Reference to brand names will be allowed when there is no other sufficiently precise or intelligible way of describing the requirement, provided that the words "or equivalent" are included in the specification.
- 7.6.11. Foreign bidders will be allowed to bid without registration, licensing, and other government authorizations, leaving these requirements for after award and before contract signing.
- 7.6.12. Whenever the circumstances warrant it (e.g. in the case of major clarifications or modifications being required within the last 7 days of the tender period) the deadline for submission and receipt of bids will be extended to provide sufficient time to enable all bidders to take the clarification or modification into account in finalizing their bids.
- 7.6.13. Any bid will not be rejected as late if the reason for its lateness is due solely to mishandling or other error, action or omission by the procuring entity.
- 7.6.14. All tenders undertaken by the Provincial Government will be advertised, at a minimum, in the local and national print media, the Philippine Government Electronic Procurement System, the PRMF web-site and on the Provincial Government of PROVINCE NAME web-site (if any);
- 7.6.15. All contracts, including contract variation/amendments exceeding fifteen percent (15%) of the original contract value will be subject to prior review and "no objection" by the FMC, except for Shopping which is regulated by thresholds in R.A. 9184. The FMC will carry out the review of documents and provide the "no objection" to the Provincial Government. The 15% trigger applies to cumulative changes to an original contract that together exceed 15% of the original contract value.
- 7.6.16. For all PRMF related procurements undertaken using Provincial Government systems, the Provincial Government of PROVINCE NAME will seek a "no objection" from the FMC for the use of procurement methods other than competitive bidding (except Shopping which is regulated by thresholds in R.A. 9184), or for the issuing or use of the following documents: procurement plans and budgets, advertisements, bidding documents, pre-qualification documents, requests for expression of interest, shortlists, bid evaluation reports and award recommendations. A "no objection" will also be sought for the wording of final contracts and contract variations or amendments.

- 7.6.17. For PRMF procurements using the Provincial Government procurement systems and procedures, in whole or in part, The Provincial Government of PROVINCE NAME will allow and facilitate the FMC to monitor the key steps in the procurement process including planning, invitation to bid, bid opening and bid evaluation, contract award, contract negotiation, and contract administration. In doing so the FMC will participate as observer in pre-bid meetings, bid opening, bid evaluation, and contract negotiation. Documents which certify that goods have been delivered and/or services and works have been carried out will be verified by the FMC before payments are made.
- 7.7. The Provincial Government of PROVINCE NAME will provide the FMC with access to records to allow the FMC to verify disbursement vouchers and related documents before payments are made.
- 7.8. AusAID, or any entity authorized by AusAID has the right to inspect at any time the premises and records of any supplier, consultant or contractor. The Provincial Government of PROVINCE NAME will ensure that all contracts entered into under PRMF or using PRMF funds will include a clause providing AusAID the right to inspect at any time the premises and records of any supplier, consultant or contractor.
- 7.9. The Provincial Government of PROVINCE NAME will establish and maintain complete records related to all PRMF procurement activities. These records will be retained by the Province for a minimum of 10 years and will upon request be immediately made available to AusAID and/or DILG for any purpose including audit.
- 7.10. The Provincial Engineers Office or any other Provincial Government Department of PROVINCE NAME assigned to monitoring contract progress and approve contract milestones and/or completion, will provide approval or a "notice to rectify" for milestones and/or completion within 21 days of receipt of duly rendered invoice. Where the works undertaken do not meet contract requirements, the Provincial Engineers Office, or any other Provincial Government Department of PROVINCE NAME assigned to the task, will provide written advice ("notice to rectify") to the Contractor that the works do not meet required standards, detail steps that need to be taken to rectify the problems, and provide a timeframe for the Contractor to comply with these directions.
- 7.11. Where the Provincial Government of PROVINCE NAME, the Provincial Development Council of PROVINCE NAME, or any other responsible entity fails to either approve, or provide written "notice to rectify" regarding, milestones and/or completion of works within 21 days of receipt of a duly issued invoice, approval will be deemed to have been granted.
- 7.12. All approvals are subject to future audits to be undertaken by the Provincial Government of PROVINCE NAME and/or the FMC and/or GOP and/or AusAID. Where payments are made incorrectly and/or made for work that has not been properly completed according to contract, the Provincial Government of

PROVINCE NAME undertakes to retrieve all funds paid, including through legal action if required.

- 7.13. The Provincial Government of PROVINCE NAME undertakes to pay Contractors within 30 days of a duly issued invoice, subject to the completion assessment detailed in paragraphs 7.10, 7.11 and 7.12.
- 7.14. The Provincial Government of PROVINCE NAME undertakes to allocate appropriate number of staff of appropriate skill and competence to the Bids-and-Awards Committee (BAC). The Provincial Government undertakes to work with the FMC or delegate to rectify any deficiencies found.
- 7.15. The Provincial Government of PROVINCE NAME undertakes to work with the Facility FMC to ensure the BAC is properly equipped, including with internet access to enhance transparency, accountability and ability for monitoring and evaluation.

Provincial Government Contributions

- 7.16. The Provincial Government of PROVINCE NAME undertakes to provide:
 - 7.16.1. Furnished office space including utilities (including water, electricity and telephone) within the office of the Provincial Governor for the PRMF Provincial Coordinator;
 - 7.16.2. Office equipment including an internet enabled computer installed with Microsoft Office (and with the necessary specification to be installed with relevant GIS software), GIS software (if available) and printer for the Provincial Coordinator;
 - 7.16.3. A minimum annual cash contribution equivalent to twelve percent (12%) of AusAID funds provided to the province each year for all PRMF works associated with road rehabilitation and maintenance and purchase of equipment and any other form of asset. Any contribution in excess of 12% of AusAID provided funds for works associated with road rehabilitation and maintenance will be at the sole discretion of each respective provincial government, but will be subject to all conditions set forth within this MSA;
 - 7.16.4. The Provincial Government will establish PRMF trust account(s) to facilitate control, accounting and audit. Where the FMC undertakes and manages the tender process for road rehabilitation and/or maintenance and equipment, the Provincial Government will allow the provincial government's contribution to be transferred from the Provincial Government PRMF Provincial Trust Account to the PRMF Imprest Account;

- 7.16.5. Salary and all other employment related costs for all Provincial Government personnel and Provincial Government Agencies involved in the implementation of PRMF for the duration of the Facility;
- 7.16.6. other contributions as specified in the MSA relating to the Provincial Road Management Facility, signed between GOP and GOA on DATE.
- 7.17. The Provincial Government of PROVINCE NAME will undertake to:
- 7.17.1. comply with the monitoring and evaluation requirements of GOP relevant to PRMF activities, including the requirements of the Provincial Project Monitoring and Evaluation Committee, the DILG annual inventory of provincial roads, and environmental safeguards compliance monitoring based on the Provincial Environmental Management Plan and Environmental Compliance Certificate; and
- 7.17.2. Provide counterpart office space, furniture, equipment, utilities, office operational expenses, and personnel, as needed, to work with the PRMF Provincial Coordinator and other PRMF personnel.
- 7.18. The Provincial Government of PROVINCE NAME will operate the PRMF Provincial Trust Account as follows:
- 7.18.1. The Provincial Government counterpart contributions to PRMF activities will be placed in this trust account;
- 7.18.2. where the FMC is the procuring entity for any PRMF activity that requires a provincial government counterpart contribution (ie physical works or the purchase of any form of asset), then the PRMF Provincial Trust Account will pay the required funds to the PRMF Imprest Account;
- 7.18.3. where the Provincial Government is the procuring entity for any PRMF activity, the FMC will pay the required funds, less any provincial government counterpart requirement, into the PRMF Provincial Trust Account;
- 7.18.4. The PRMF Provincial Trust Account may not be used to fund any activity that is not approved by the PRMF Project Steering Committee;
- 7.18.5. The Provincial Government will keep financial records for the PRMF Provincial Trust Account for a minimum period of 10 years, and allow AusAID and any AusAID nominated representative full access to these records for auditing purposes.
- 7.18.6. The untied incentive fund paid to each province will also be paid into the PRMF Provincial Trust Account. These funds, to the limit approved by the PSC on an annual basis, may be disbursed by the Provincial Government for any activity that would normally be eligible under the province's 20% Development Fund. Funds used for this purpose, to the limit specified by the PSC, are exempt from clause 7.18.4;

7.18.7. All interest earned on funds held within the PRMF Provincial Trust Account will be retained within the PRMF Provincial Trust Account and be used solely for PRMF activities approved by the PSC. Interest earned cannot be used to fund any activity associated with the untied incentive fund.

7.18.8. Any funds remaining within the PRMF Provincial Trust Account at the completion of PRMF will be refunded to the PRMF Imprest Account.

Incentive Program

7.19. PRMF will allocate funds to activities within PROVINCE NAME based on (a) a base program to be approved by AusAID on an annual basis and (b) from the second year of engagement with PROVINCE NAME an incentive program, to be determined by AusAID based on progress the Provincial Government of PROVINCE NAME makes in meeting reform targets mutually determined between PROVINCE NAME and AusAID represented by the FMC.

7.20. The incentive program will allocate funding to the Provincial Government as follows:

7.20.1. A grant based on the percentage increase in local tax and fee revenue raised by the Province, up to a cap to be determined by AusAID on an annual basis. This grant will be known as the "Untied Incentive Fund";

7.20.2. A grant determined by the Provincial Government of PROVINCE NAME's achievements in meeting mutually determined reforms in the areas of budget, planning, contracting-out road rehabilitation and maintenance works, internal controls and audit, and human resource management. The grant will be determined by AusAID on an annual basis.

7.21. The grant described at 7.20.1 will be paid to the Provincial Government of PROVINCE NAME, to be used for any development project eligible under the province's 20% Development Fund within the Province of PROVINCE NAME. This grant will not be tied to PRMF implementation. All other funds provided under the incentive program will be used for PRMF related activities, as approved by AusAID, but may include slope protection, bridge repairs and other larger-value PRMF related activities in addition to provincial road rehabilitation and maintenance;

7.21.1. The Untied Incentive Fund will be paid in four (4) equal instalments on the first working day in July, the first working day in October, the first working day in January and the first working day in April. Cheques will be made by PRMF to the Provincial Government of PROVINCE NAME. Cheques must be deposited into the PRMF Provincial Trust Account and allocated according to development projects during the usual or supplementary budget preparations. The untied contribution may not be used by the province as counterpart contribution to PRMF activities.

- 7.21.1.1 The first instalment payment under the Untied Incentive Fund will occur following the signing of this MOA. Subsequent payments will then be made in accordance with Clause 7.21.1.
- 7.21.2. Payment will be subject to an audit carried out by the PRMF team and/or AusAID and/or DILG showing the previous instalment has been used by the Provincial Government of PROVINCE NAME for development purposes allowed under the rules governing the province's development fund.
- 7.21.3. Payments will not be made where the audit undertaken under clause 7.21.2 determines that representatives of Provincial Governments, DILG and/or any other GOP responsible entity engaged in corrupt, fraudulent, collusive or coercive practices during the procurement or execution of any activity funded by the grant described in Clause 7.20.1, or where any member of the Provincial Government (elected or appointed) or the members family (to the third degree of consanguinity) obtains personal benefits (whether financial or other), without the Provincial Government having taken timely and appropriate action satisfactory to AusAID to remedy the situation.
- 7.22. The Provincial Government of PROVINCE NAME will determine with the FMC a range of performance indicators to be used to judge progress in meeting the incentive criteria. AusAID and DILG will approve the criteria, and AusAID will determine whether the criteria have been met.
- 7.23. The Provincial Government of PROVINCE NAME will determine performance indicators with the FMC each year prior to implementation of the year's workprogram. The first such determination will occur prior to PRMF mobilization in PROVINCE NAME.

Ongoing Eligibility and Graduation

- 7.24. The Provincial Government of PROVINCE NAME will determine with the FMC during the first 12 months of PRMF activity in PROVINCE NAME conditions for graduation from the Program, and indicators to measure and report on these conditions.
- 7.25. Once the mutually determined conditions have been met, the Province will graduate from PRMF assistance. PRMF will continue to provide funding for all ongoing contract obligations until the end of the PRMF project life, but will not provide funding for any new contracts within PROVINCE NAME.
- 7.26. To remain a partner province, PROVINCE NAME must receive at least minimum funding under the incentives program. Failure to qualify for any funding under the incentives program will result in PRMF suspending all operations within PROVINCE NAME. No further funding will be provided to PROVINCE NAME, although contracts already awarded will be honoured. In the

event PRMF activities are suspended under this paragraph, PROVINCE NAME will not be eligible for distribution of assets as described in the Memorandum of Subsidiary Arrangements (Paragraph 7.4).

- 7.27. Other ongoing eligibility conditions are described under sections dealing with Anti-corruption and Accountability.

8. INTELLECTUAL PROPERTY

- 8.1. All intellectual property held by the GOA in any Australian project supplies and professional and technical material will be retained by the GOA;
- 8.2. The GOA will grant to the GOP and the Province of PROVINCE NAME a non-exclusive royalty-free license in respect of the intellectual property rights subsisting in Australian project supplies and professional and technical material owned by the GOA. Such license will continue until otherwise mutually decided between the parties and will include the right to deal with the intellectual property for the purpose of Project objectives and as the GOP considers expedient.

9. SETTLEMENT OF DISPUTES

- 9.1. The Provincial Government of PROVINCE NAME, the DILG and AusAID will work together in a spirit of openness, transparency and consultation to implement the Program. Where a dispute arises that cannot be solved by the three parties, the dispute will be elevated to the PRMF Project Steering Committee for resolution.

10. ACCOUNTABILITY

- 10.1. Where Program monies are shown, either by audit or other mechanism, to have been misappropriated or used in a manner inconsistent with this Arrangement, and the Program's Financial and Procurement Procedures Manuals, the Provincial Government of PROVINCE NAME will investigate and endeavour to recover any misdirected funds. GOA reserves the right to suspend further Program payments, including untied incentive fund payments, for PRMF activities within Province of PROVINCE NAME in such circumstances until funds are recovered by the Provincial Government of PROVINCE NAME, or GOA is satisfied with the investigation.
- 10.2. Where the Provincial Government of PROVINCE NAME fails to properly investigate and/or recover misappropriated funds, PRMF will immediately suspend all activities in the Province and the Province will be dropped from the Program. Contracts already awarded to the Private Sector will be honoured by PRMF where these contracts are not themselves associated with the misappropriated funds.

- 10.3. Upon receiving a notification and /or request to return GoA contributions, the Provincial Governments PROVINCE NAME will take all necessary steps to ensure the return of these monies to AusAID within 10 working days after receipt of the notification and/or request
- 10.4. For the purpose of asset distribution, if PROVINCE NAME is dropped from the Program under paragraph 10.2 the Provincial Government of PROVINCE NAME will not be eligible to retain any PRMF equipment, supplies or motor vehicles under paragraph 7.4 of the Memorandum of Subsidiary Arrangements.

11. COMPLIANCE

- 11.1. Where AusAID finds that Provincial Government of PROVINCE NAME and/or the GOP are not complying with any commitments under this MOA and/or the MSA, including those commitments outlined in clause 5.2, AusAID may, at its sole discretion, invoke any and all of the measures detailed in Paragraph 11.2.
- 11.2. AusAID may, at its sole discretion:
- (a) notify the Provincial Government of PROVINCE NAME and/or the GOP of its decision to invoke any or all of the compliance measures under the terms of this Arrangement;
 - (b) withhold further funding from the PRMF Imprest Account and/or the Provincial Government of PROVINCE NAME's Accounts until conditions imposed by AusAID are met and/or AusAID directs otherwise;
 - (c) direct the Provincial Government of PROVINCE NAME and/or GOP to withhold further funding from any and all sub-contractors until conditions imposed by AusAID are met and/or AusAID directs otherwise; and/or
 - (d) request the return of any or all unused/uncommitted GOA contributions held in the Provincial Government of PROVINCE NAME's Accounts and/or Imprest Account;
- 11.3. Upon receiving a notification and/or request to return GOA contributions, the Provincial Government of PROVINCE NAME and/or GOP will take all necessary steps to ensure the return of these monies to AusAID within 10 working days after receipt of the notification and/or request.

12. ANTI-CORRUPTION

- 12.1. Consistent with each Party's commitment to good governance, accountability, and transparency, each Party reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive, or coercive practices relating to the Program. In particular, all contracts entered into by the Provincial Government of PROVINCE NAME in connection with the Program will include

provisions specifying the right of AusAID to audit and examine the records and accounts of all contractors, suppliers, consultants, and other service providers as they relate to the Program.

12.2. AusAID will cancel the portion of its financial assistance allocated to a contract if AusAID determines at any time that representatives of the Provincial Government of PROVINCE NAME, DILG and/or any other GOP responsible entity engaged in corrupt, fraudulent, collusive or coercive practices during the procurement or execution of that contract, without the Provincial Government of PROVINCE NAME and/or other agencies of the GOP having taken timely and appropriate action satisfactory to AusAID to remedy the situation.

12.3. AusAID will cancel all activities, withdraw all funding, and withdraw all activity personnel and equipment from a Province if AusAID determines at any time that representatives of the Provincial Government of PROVINCE NAME, DILG and/or any other GOP responsible entity engaged in corrupt, fraudulent, collusive or coercive practices during the procurement or execution of any activity under PRMF in PROVINCE NAME or in relation to the untied incentive fund payment made to PROVINCE NAME, without the Provincial Government of PROVINCE NAME and/or other agencies of the GOP having taken timely and appropriate action satisfactory to AusAID to remedy the situation.

13. ANTI-TERRORISM

13.1. The Provincial Government of PROVINCE NAME will use its best endeavours to ensure that funds provided by GOA under this MOA and the related MSA; do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Program, the Provincial Government of PROVINCE NAME discovers any link whatsoever with any organisation or individual associated with terrorism it will inform GOA immediately.

14. CLAIMS

14.1. The Provincial Government of PROVINCE NAME will indemnify the GOA from any claims brought by the GOA's contractor against the Provincial Government for damages arising from the Provincial Government's failure to carry out its commitment pursuant to this MOA. In all other respects, Article 12 of the GADC applies to claims.

15. AMENDMENTS

15.1. Amendments to this ARRANGEMENT may be made at any time by an exchange of letters among the three Parties.

16. DURATION

16.1. This MOA will take effect from the date of its signature and cease on the fifth anniversary of this date, or at the completion of the project, whichever occurs first.

SIGNED in the City of _____, Philippines this ____ day of (month, year) .

For the Government of Australia:

For the Government of the
Republic of the Philippines

Name
Position
Australian Embassy-Manila

Name
Position
Department of the Interior and
Local Government

For the Provincial Government
of PROVINCE NAME

Name
Provincial Governor