

**TF071674**

**ADMINISTRATION AGREEMENT  
BETWEEN  
THE AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT  
AND  
INTERNATIONAL FINANCE CORPORATION**

**FOR**

**THE FINANCIAL SUPPORT OF  
PHILIPPINES PUBLIC PRIVATE PARTNERSHIP (PPP) PROGRAM  
RELATING TO  
IFC ADVISORY SERVICES IN THE PHILIPPINES  
(AusAID Agreement No 59308)**

AGREEMENT dated 27 May 2011 between the Australian Agency for International Development (AusAID) (the “Donor”) and the International Finance Corporation (“IFC”), an international organization established by Articles of Agreement among its member countries (including Australia) and a member of the World Bank Group<sup>1</sup> (“WBG”), to provide for the creation of a donors’ trust fund, identified by the number **TF071674** (the “Donors’ Trust Fund”) to finance PPP Advisory Services in the Philippines. In addition to the Donor, other donors may contribute funds to the Donors’ Trust Fund and therefore the Donor’s contributions and the contributions from such other donors (collectively, the “Donors’ Funds”) will be commingled in the Donors’ Trust Fund.

**WHEREAS:**

- (A) IFC has established a program called the PHILIPPINES PPP PROGRAM (the “Program”). The objectives of the Program are:
- i. To increase public access to new and improved infrastructure services, such as transport, water, agriculture and health, and to facilitate private investment in these sectors;
  - ii. To support the Government of the Philippines (GoP) on specific public-private partnership (PPP) transactions, structuring the arrangements and assisting in the tender of bankable PPPs that balance investors’ interests, public policy considerations and community needs;
  - iii. To promote and establish a transparent and competitive process, administered by the GoP, to solicit private investment in specific PPP transactions and to promote value-for-money for the public sector.
- (B) The Donor has expressed strong support for the Program and wishes to provide funding for the activities undertaken by IFC under the Program.

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<sup>1</sup> The World Bank Group consists of the International Finance Corporation (IFC), the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the Multilateral Investment Guarantee Agency (MIGA), and the International Centre for Settlement of Investment Disputes (ICSID).

(C) IFC is prepared to utilize funds provided by the Donor for the purpose of financing activities in support of the Program (the "Activities") within the framework of the Program. IFC will utilize such funds in accordance with IFC's policies and procedures and in accordance with the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, the parties hereto agree as follows:

**1 The Grant**

- 1.1 The initial contribution of the Donor under this Agreement is four million five hundred thousand Australian dollars (**AUD4,500,000**).
- 1.2 The Donor may later agree with IFC to contribute additional funding support for the Activities which will be governed in all respects by this Agreement unless otherwise agreed.
- 1.3 The initial contribution and any subsequent funding from the Donor under this Agreement together with any income from investment and reinvestment will be referred to as the "Grant Funds" in this Agreement.

**2 The Activities**

- 2.1 The Activities to be funded out of the Donors' Trust Fund are described in **Annex A** to this Agreement. The parties may agree to adjustments within the overall budget of the Activities and to changes to the scope, content, timing and cost of the Activities. Such changes will be recorded by a revision of Annex A, duly signed and dated by the representatives of the Donor and IFC.
- 2.2 The Activities are currently projected to be carried out until **30 June 2013**. However, the implementation of the Activities may be extended beyond that date by agreement of the parties.
- 2.3 The Donors' Funds will be utilized by IFC to meet the costs of the Activities in accordance with IFC's applicable procedures. Such costs will include those of WBG's consultants and staff dedicated to the implementation of the Activities, equipment, workshops/training, grants, office space and furniture, travel and communications, public relations and business development expenses, termination costs as specified in paragraph 5.2, and any other costs incurred in the implementation of the Activities. The Donors' Funds may be utilized for the payment of salaries and benefits for WBG's staff and consultants only to the extent that their work is dedicated to the implementation of the Activities.
- 2.4 The selection and recruitment of consultants, consulting firms, experts, staff and other suppliers of services will be the responsibility solely of IFC and will be carried out in accordance with its usual procedures and will not be tied by nationality.
- 2.5 IFC may seek funding from sources other than the Donor for the implementation of the Activities and/or for implementation of specific components of the Activities.

### 3 Disbursement and Deposit of Funds

- 3.1 The Donor's initial contribution under this Agreement will be disbursed within three weeks of signing of this Agreement.
- 3.2 Except for the five percent (5%) administration fee to be retained by IFC as specified in **paragraph 3.8**, and an additional 5% funding allocation for pre-mandate scoping and other pre-implementation activities, any draw down from the Grant Funds shall be contingent on IFC confirming in writing with the Donor that IFC has secured a mandate from the GoP for a specific PPP project and that the GoP has agreed to make a complementary contribution in the form of advisory fees (as described in **paragraph 5, Annex A**).
- 3.3 A written disbursement request will be submitted by IFC before each disbursement of the Donor's contribution. Except for the first disbursement, any disbursement request may be submitted by IFC before full utilization of the previous disbursement, and will be processed expeditiously by the Donor to ensure that any component of the Activities does not face any funding shortfalls or delays.
- 3.4 Amounts disbursed by the Donor will be deposited into such account with such bank (the "T-Account") designated in the corresponding disbursement request submitted by IFC.

When making deposits, the Donor will instruct their bank to include in their payment details information (remittance advice) field of their SWIFT payment message, information indicating:

- a. the amount paid,
- b. that the payment is from the Donor for the PHILIPPINES PPP PROGRAM, Trust Fund Nr. TF071674, and
- c. the date of the deposit.

In addition, the Donor will send a copy of its payment request to the IBRD's Trust Funds Division (by fax to +1-202-614-1315 or by email to [tfremittance@worldbank.org](mailto:tfremittance@worldbank.org)) and by fax to the Controller, IFC CEA Department, Hong Kong, Fax Nr. +852-2509-9363.

- 3.5 Upon receipt of the Grant Funds, if funds are received in a currency other than United States dollars, the funds will be converted into United States dollars. All Financial Reports will be prepared in United States dollars. All Donors' Funds may be freely exchanged into other currencies as may facilitate their disbursement by IFC.
- 3.6 The Donors' Funds will be accounted for as a single trust fund. IFC will have the right to commingle the Donors' Funds in the Donors' Trust Fund with other trust funds assets maintained by IBRD and IFC, provided however that all such assets will be kept separate and apart from those of IBRD and IFC.
- 3.7 IFC may establish sub-accounts within the Donors' Trust Fund for separate components of the Activities. Donors' Funds may be allocated to these sub-accounts, and subsequently may be reallocated between sub-accounts, as needed.

- 3.8 Notwithstanding **paragraph 2.3** above, at the time of receipt of each contribution from the Donor, five percent (5%) of the amount received will be deducted from the amount received and retained by IFC as a fee to help cover the costs of administration and other expenses incurred by IFC.
- 3.9 IBRD, on behalf of IFC, may invest and reinvest the Donors' Funds pending their application. The income from such investment and reinvestment will be credited to the Donors' Trust Fund for use for the purposes of the implementation of the Activities.

#### **4 General Provisions, Reporting and Auditing**

- 4.1 IFC will exercise the same care in the discharge of its function under this Agreement as it exercises with respect to the administration and management of its own affairs and will have no further liability to the Donor, including, without limitation, any duties or obligations that might otherwise apply to a fiduciary or trustee under general principles of trust or fiduciary law.
- 4.2 IFC will have sole responsibility for the supervision and execution of the Activities and will report to the Donor semi-annually of the progress of the Activities. The format and content of the reports shall be consistent with the IFC's accounting system. It is the intention of the parties that meetings for the review of the Activities will be held at least twice every year. The venue and timing of the review meetings will be agreed by the parties.
- 4.3 IBRD, on behalf of IFC, will maintain separate records and accounts in respect of the Donors' Funds in the Donors' Trust Fund and funds disbursed from it by IFC pursuant to the provisions of this Agreement. IBRD, on behalf of IFC, will make available to the Donor current financial information relating to receipts, disbursements and fund balance in United States dollars with respect to the Donors' Funds via the World Bank's Trust Funds Donor Center secure website (<https://clientconnection.worldbank.org>). Within six (6) months after all commitments and liabilities under the Donors' Trust Fund have been satisfied and the Donors' Trust Fund has been closed, the final financial information relating to receipts, disbursements and fund balance in United States dollars with respect to the Donors' Trust Fund will be made available to the Donor via the World Bank's Trust Funds Donor Center secure website. IBRD, on behalf IFC, will provide to the Donor, within six (6) months following the end of each IFC's fiscal year, an Annual single Audit Report, comprising:
- (1) a management assertion together with an attestation from the WBG's external auditors concerning the adequacy of internal control over cash-based financial reporting for all cash-based trust funds as a whole; and
  - (2) a combined financial statement for all cash-based trust funds together with the WBG's external auditor's opinion thereon. The cost of the single audit will be borne by the WBG.
- 4.4 In addition, if the Donor wishes to request, on an exceptional basis, a Financial Statement Audit by WBG's external auditors of the Donors' Trust Fund, the Donor and IFC will first consult as to whether such an external audit is necessary. The Donor and IFC will agree on the most appropriate scope and terms of reference of such audit. Following agreement on the scope and terms of reference, IFC will arrange for such external audit. The cost of such an audit, including the internal costs of IFC with respect to such audit, will be borne by the Donor.

## 5 Duration and Termination

- 5.1 Subject to **paragraphs 5.2 and 5.3** below, this Agreement will continue to be in effect until all the funds in the Donors' Trust Fund have been fully utilized by IFC in accordance with the terms of this Agreement and all resulting obligations have been fulfilled in accordance with this Agreement, unless otherwise agreed between the Donor and IFC.
- 5.2 Either party may at any time, by ninety (90) days' notice in writing, terminate this Agreement in whole or cancel any portion of the undisbursed and uncommitted Grant Funds, in which event IFC will have no claim against the Donor by reason of such termination or cancellation other than payment of expenses actually incurred or committed under this Agreement prior to the date of such termination or cancellation, less any sums previously paid on account thereof. Such expenses will include, but not necessarily be limited to, all shutdown costs and final report, payout of staff and consultant contractual salaries and benefits (collectively, "Termination Costs"). IFC may deduct these Termination Costs from the Donors' Funds. Such termination or cancellation will not affect any agreements entered into between IFC and staff and consultants, other persons or third parties prior to IFC's giving or receiving such notice of termination or cancellation, and where such agreements cannot be cancelled IFC will be entitled to continue to make disbursements and receive further disbursements from the Donor in respect of such agreements as if this Agreement had not been so terminated or any portion of the Grant Funds not been cancelled, provided that:
- (i) IFC has fulfilled all its duties, responsibilities and obligations to the date of termination or cancellation, as specified in this Agreement and;
  - (ii) the implementation of the Activities was not unilaterally terminated by IFC without consultation with the Donor.
- 5.3 If any portion of the Donors' Funds remains in the Donors' Trust Fund after the termination date specified in **paragraph 2.2** above or in the event of an earlier termination of the implementation of the Activities or of this Agreement, IFC and the Donor will agree on the disposition of the Donors' Portion (as defined below) of these funds. In the event that IFC and the Donor do not reach any agreement on the disposition of any remaining funds, IFC will return to the Donor such portion of any unutilized and uncommitted portion of the Donors' Funds, including any unutilized and uncommitted income derived from investment of the Donors' Funds, as the amount disbursed by the Donor pursuant to this Agreement bears to the total amount of Donors' Funds made available for the Activities (but deducting from that total amount of Donors' Funds the corresponding contribution of any donor who has received any portion of the then unutilized and uncommitted Donors' Funds in any prior distribution) (such portion the "Donor's Portion"), and will provide a final report to the Donor promptly thereafter. IFC will have no liability to the Donor under this Agreement except for the return of unutilized and uncommitted funds after application to costs, including Termination Costs, contemplated under this Agreement.
- 5.4 Following completion or termination of the implementation of the Activities, any equipment purchased for the Activities will be either transferred to the beneficiaries of the Activities or will be used or disposed of in accordance with normal IFC procedures.

## 6 Acknowledgements

- 6.1 Where appropriate, IFC will acknowledge the Donor's contribution in any reference made by IFC with respect to the Activities in publications, speeches, press releases or other similar publications. IFC shall obtain prior clearance from the Donor for all references to Australian Government contributions or support in the release of public information in relation to this Program. IFC will invite Donor representatives to participate in key events related to the activity.
- 6.2 The PHILIPPINES PPP PROGRAM is not a separate legal entity, but rather is a facility or program of IFC currently administered by its PPP Advisory Department. Nothing in this Agreement is intended to create or imply a legal partnership between or among IFC, the Donor, any other donor and/or any other person.

## 7 Other Provisions

- 7.1 This Agreement, together with **Annex A**, as amended or supplemented from time to time, constitutes the entire agreement between IFC and the Donor with respect to the funding and implementation of the Activities.
- 7.2 This Agreement may be amended only by written agreement of the parties hereto.
- 7.3 This Agreement does not have the status of a treaty and the Donor and IFC will seek amicably to settle all differences and disputes arising out of or in connection with the implementation of this Agreement.
- 7.4 Any notice or request required or permitted to be given under this Agreement will be in writing and will be given at each party's address as follows:

For the Donor:

Name:	<b>Mr Andrew Egan</b>
Position/Section:	Counsellor, AusAID Manila
Address:	Australian Embassy Level 23 Tower 2 RCBC Plaza 6819 Ayala Avenue Makati City, Philippines 1200
Telephone:	+632 757 8235
Facsimile:	+632 757 8265
Email:	andrew.egan@ausaid.gov.au

For IFC:

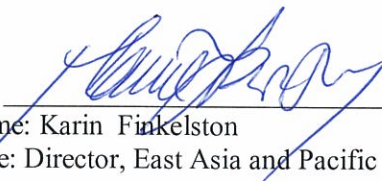
International Finance Corporation  
Director, East Asia and Pacific Department  
International Finance Corporation  
14th Floor, One Pacific Place  
88 Queensway, Admiralty  
Hong Kong  
Tel: +852 2509 8100  
Fax: +852 2509 9363

With copy to:  
The Director, Partnerships and Advisory Services Operations Department  
International Finance Corporation  
2121 Pennsylvania Ave., N.W.  
Washington, D.C. 20433  
United States of America  
Fax: +1-202-974-4344


- 7.5 Recognizing the obligations of WBG member countries under various United Nations Security Council Resolutions to take measures to prevent financing of terrorists, IFC undertakes to use reasonable efforts, consistent with the WBG's Articles of Agreement and policies, including those pertaining to combating financing for terrorists, to ensure that the funds provided under this Agreement are used for their intended purposes and are not diverted to terrorists or their agents.

**IN WITNESS WHEREOF**, the authorized representatives of the parties hereto have signed this Agreement.

**INTERNATIONAL FINANCE  
CORPORATION**

By:   
Name: Karin Finkelston  
Title: Director, East Asia and Pacific

**AUSTRALIAN AGENCY FOR  
INTERNATIONAL DEVELOPMENT**

By:   
Name: Titon Mitra  
Title: Minister Counsellor, AusAID Manila

**ANNEX A**  
**TO THE ADMINISTRATION AGREEMENT**  
**BETWEEN**  
**THE AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT**  
**AND**  
**INTERNATIONAL FINANCE CORPORATION**  
  
**FOR**  
  
**THE FINANCIAL SUPPORT OF**  
**PHILIPPINE PUBLIC PRIVATE PARTNERSHIP (PPP) PROGRAM**  
**MANAGED BY**  
**IFC ADVISORY SERVICES IN THE PHILIPPINES**

**1. Introduction**

The new Philippine government has launched an aggressive PPP program aimed at accelerating infrastructure development towards supporting and sustaining the country's economic growth. Vital to the success of this Program, in the first instance, is the right selection and proper preparation of transactions, and the transparent process for selecting private partners. With the right demonstration projects delivering the intended development objectives, the government can build its credibility with the investing community and also, but more importantly, promote support for the PPP strategy with the general public. As a development institution and with its vast global and local expertise in PPPs, IFC is well-positioned to support the GoP jumpstart its PPP program.

**2. Program Objectives**

The Program intends to support the Government of the Philippines (GoP) achieve early wins for its PPP Program by providing advisory assistance in the selection, preparation and implementation of priority PPP projects. Over the next three (3) years, the Program targets to support three (3) to five (5) priority PPP transactions of the GoP with particular interest in transport, water, agriculture and health sectors, that can serve as model transactions, enabling government to replicate these for other similar transactions. Currently, the initial pipeline includes:

- Metro Clark Bulk Water Project - signed mandate with Clark Development Corporation, ongoing
- NAIA Expressway - target mandate signing by March 2011, assistance to DPWH through DBP
- Agriculture PPPs - 2 pilot projects (1 in irrigation, 1 in post-harvest facilities) to be identified by April 2011, target mandate signing by May 2011, assistance to DA through LBP
- Health PPP - 2 pilot projects to be identified by April 2011, early discussions with DOH and DOF

**3. Project Selection**

IFC has developed a systematic methodology for evaluating potential infrastructure transactions before a decision is made by senior management to submit an advisory offer to the government. Initial approval is given on a project concept, documented as an Early Review (ER), which broadly looks at the project's development impact, consistency with the country's development strategy, IFC's additionality, commitment of the government sponsor and potential risks. An approved ER from IFC senior



management authorizes either the conduct of more detailed pre-mandate project scoping or the submission of a proposal to the potential government client for an advisory mandate.

#### 4. Project Implementation

- a. **Pre-mandate scoping of projects:** This would include more in depth assessment of potential development impact and establishment of the business case, determining key conditions for success, which in turn would look at the attendant legal/regulatory/sectoral conditions, financial viability (e.g. required levels of user charges, government subsidies and support), and identification of potential environmental and social issues. For projects that are found to have potential for PPP, a second round of senior manager internal review and approval is conducted, based on the findings of the scoping exercise, before an advisory offer is made to the government.
- b. **Mandate Activities.** A Financial Advisory Services Agreement (FASA) is signed between IFC and the GoP Client once agreement is reached on the IFC advisory proposal. Typically, work on the mandate is done in 2 phases, as described below. At the end of Phase 1, the client is given the opportunity to reassess the PPP project, considering the key decisions that government has to make for the project to be viable and successfully implemented. Phase 2 will only be implemented when these key conditions are agreed with the government.
  - i. **(Phase 1) Project Preparation/Validation and Transaction Structuring:** This would involve the preparation of the detailed project feasibility study and would include: (i) technical, financial, social/environmental and legal due-diligence; (ii) preliminary market consultations to identify any major operational, marketing, and legal issues that would have to be considered in structuring the transaction; and (iii) transaction structuring, which would include designing key components of the transaction and defining the procurement strategy. The key output of Phase 1 is the Transaction Structure Report (TSR).
  - ii. **(Phase 2) Transaction Implementation:** This would involve the conduct of the competitive selection process for the private investors for the projects and will include the following activities:
    - Preparation of pre-qualification requirements, process and procedures, and assistance to the Client in the evaluation of pre-qualification submissions;
    - Establishment of the Project Data Room and related procedures for investor due diligence;
    - Preparation of the Project Information Memorandum for investor-marketing;
    - Formulation of the competitive tender process;
    - Preparation of all the necessary tender and contractual documents required for the transaction;
    - Assistance to the Client in the conduct of bidders' consultations;
    - Assistance to the Client in conducting the entire bidding process through to contract award.
- c. **Others.** Capacity-building support to government through the conduct of or sponsorship for their participation in workshops/seminars/trainings related to PPPs in general and/or to the transaction in particular.

#### 5. Government Contribution

Primarily to gauge the government's commitment to pursue the project, government contribution to offset the cost of implementing the advisory mandate is required in the form of advisory fees. This typically

constitutes about 30-40% of the total advisory cost (the balance of the cost being covered by the Program TF). Cognizant of the fiscal position of government and willing to share the risk of successful award of the PPP transaction, IFC fees are structured with the bulk of the payment (70-80%) in the form of a success fee, which is paid only if the transaction is successfully awarded. The Client has the option of passing the success fee payment obligation to the winning bidder. The rest of the fee is paid directly by the Client to IFC in tranches as milestone delivery payments.

## 6. Monitoring and Evaluation

The success of the Program will be measured by the development impact of transactions implemented, as measured by:

- (i) Private Financing Enabled (in AUD Million)
- (ii) People Reached (# of people with improved/new access to services)

The table below summarizes the monitoring and evaluation framework for the program.

Model PPP Implementation	Outputs	Outcomes	Impacts
Phase 1. Assessment of key conditions for PPP implementation	Phase 1 Report submitted <i>Target: 3 to 5</i>	Phase 1 report accepted by client <i>Target: 3 to 5</i>	N/A
Phase 2. Transaction structuring and tender design	Phase 2 Report submitted <i>Target: 3 to 5</i>	Phase 2 report accepted by client <i>Target: 3 to 5</i>	N/A
Phase 3. Tender implementation and selection of private developer	Number of bids conducted <i>Target: 3 to 5</i>	Number of bids awarded <i>Target: 3 to 5</i>	1. Private financing enabled (AUD): <i>Target: AUD X,XXX Million</i>  2. People reached (#s): <i>Target: X,XXX Thousands</i>