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MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE ITALIAN REPUBLIC CONCERNING THE CONCESSION OF A SOFT LOAN FOR THE...

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The Government of the Republic of the Philippines, henceforth referred to as "the Philippine Government", represented by the Honorable Secretary Roberto M. Pagdanganan of the Department of Agrarian Reform, and the Government of the Italian Republic, henceforth referred to as "the Italian Government", represented by its Ambassador to the Philippines, His Excellency Umberto Colesanti, henceforth referred as the Parties,

Recalling

the traditionally friendly relations between the Italian Republic and the Republic of the Philippines;

Stressing

the importance of a sound economic and social co-operation between the two countries;

Reminding

the request of the Philippine Government dated April 5 1999, for a soft loan to be utilized for the above-mentioned Project;

Considering

that on January 24th, 2001, the Steering Committee of the Directorate General for Development Cooperation (DGCS) of the Ministry of Foreign Affairs of the Italian Republic has approved the concession of a soft loan up to a maximum of Euro 26,205,539.52 in favor of the Philippine Government to be utilized for the financing of the Project.

Have agreed as follows:

ARTICLE I
Parts and Definitions of the Memorandum
This Memorandum of Understanding is composed of thirteen (13) articles and two Annexes (Technical Annex and Procurement). The Annexes shall be considered a substantial part of the present Memorandum.

The words and acronyms mentioned below in the text have the following meaning:

Project:

"Agrarian Reform Community Development Support Project"

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MAE-DGCS:

Ministry of Foreign Affairs of Italy – Directorate General for Development Co-operation.

DOF:

Department of Finance of the Republic of the Philippines

DAR:

Department of Agrarian Reform

EC:

Executing Company(ies), a general definition of the contractor(s) selected to execute project implementation contract(s)

PMU:

Project Management Unit

ARC

Agrarian Reform Community

FSC

Farmers Support Centers

ICC

Indigenous Cultural Communities

LGU

Local Government Unit

MOU

Memorandum of Understanding

PhP

Currency of the Borrower (Philippine Peso)

ARTICLE II
Project Objectives and Configuration
The Parties agree to co-operate, within the framework set up by this MOU to implement the Project aimed at the following objectives, which are described in detail in the Technical Annex to this MOU:

2.1

Overall Objective: The overall objective is to alleviate poverty by increasing farm productivity and income of farmers in the area thereby improve the social and economic conditions of the groups of beneficiaries of the

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agrarian reform communities (ARC) and the indigenous cultural communities (ICC) affected by the armed conflict.

2.2

Specific Objectives: The specific objectives are:

1)

To modernize production by mechanizing major aspects of farm production and post harvest processes;

2)

To provide facilities for the processing of farm produce for added value and improve the marketing of products;

3)

To establish nurseries to provide farmers with high quality planting materials;

4)

To develop alternative high value cash crops as a way of increasing farmers' income.

5)

To train farmers and farm workers on the necessary skills in the mechanization to be put up by the project.

The specific objectives of the Project shall be obtained by implementing the following Project's activities by chronological phases:

A)

Phase IA: Component "FSC Physical Infrastructures", the activities include: technical assistance, promotion and creation of Agrarian Reform Communities (ARCs), procurement of goods and services and civil works to build and equip the three Farmer Support Centers (FSC);

B)

Phase IB: Component "Start-up period (3 years) FSC management and training", the activities include: the actual transfer of assets to the beneficiaries, technical assistance and training;

C)

Phase II: the Operations and Maintenance Phase. The activities include: technical assistance and training after the completion of the donor's funded Project.

ARTICLE III

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Commitments of the Philippine Side
Pertaining to the Implementation of the Project
The Philippine Government engages itself:

3.1

In establishing a proper Farmers Trust Instrument, as stated in the feasibility study presented by the Philippine side, to assign the property of the project to the project beneficiaries, i.e. farmers, A.R.C.s and I.C.C.s, in the framework of the Agrarian Reform in the areas concerned. The Farmers Trust Instrument shall ensure equitable and viable management of the assets.

3.2

The Government of the Philippines, through the DAR, shall also enter into a Memorandum of Agreement with the LGU concerned (whether provincial, municipal or barangay) specifying therein that the LGU shall facilitate the proper operation, maintenance, administration and further development of the completed project so as to better serve the interest of the people and the community as a whole.

3.2.1

The Government of the Philippines shall provide the MAE-DGCS with a copy of the Memorandum of Agreement documents for its "no objection" appraisal.

3.3

Unless the Parties agree otherwise, the Farmers Trust Instrument shall be constructed as a Fiduciary Trust Fund. In this case, the Government of the Republic of the Philippines for this purpose shall:

3.3.1 be the Grantor of the Fiduciary Trust Fund on behalf of the Project's beneficiaries (the Beneficiaries of the FTF) that will be the proprietor of the assets (the Trust Estate) financed by the Project;

3.3.2 appoint a Fund Trustee and shall endorse the agreement (the Trust Indenture) that establishes the trust, contains its provisions, and sets forth the powers of the trustee;

3.3.3

provide the MAE-DGCS with a copy of the Trust Indenture document for its "no objection" appraisal.

3.4

In distributing the land in the Project's service areas to the property of the farmers included in the beneficiary groups as per the technical Annex to this MoU;

3.5

In funding the Project in the amount not less than PhP 90,86 Millions for the first three years of the Project, as in a more detail shown in the technical Annex to this MOU;

3.6

In facilitating access to Working Capital at the beginning of the fourth year through Government Financial Institutions in order to provide enough funds, at least PhP 110,00 Millions, to operate the three FSCs

3.7

In transferring the ownership of the land where the facilities have been installed to the project beneficiaries;

3.8

In facilitating Project's implementation at the local level by empowering its Local Government Units (LGUs) with enough resources and authority for the needs of the Project.

3.9

In producing, before the start of the Project implementation phase, a comprehensive Environmental Impact Assessment Report, which shall also include recommendations about proper use of chemical fertilizers and pesticides. The report shall be submitted to the MAE-DGCS at the latest at the time the Bidding Documentation prior Bid execution for its "no objection" evaluation is submitted;

3.10

In ensuring all possible means and provisions to guarantee safety conditions to the Project's expatriate personnel involved with the Project's activities to any title while stationed for any length of time in the Philippines, and to guarantee security conditions to their properties;

3.11

In providing to the MAE-DGCS, through the proper diplomatic channels, all intelligence information, risk assessment reports, risk warning reports and any other periodic information in its possession related to the safety issues in paragraph 3.8;

ARTICLE IV
The Loan

4.1

The Italian Government undertakes to authorize the Mediocredito Centrale S.p.a (Mediocredito Centrale) to grant a soft loan, subject to the completion of further procedural steps and arrangements mentioned in the present MOU, not exceeding € 26,205,539.52 to be used for financing the contract(s) with the Executing Company(ies) (EC) charged with the implementation of the Project, as defined in the technical Annex to this MOU.

4.2

The Philippine Government through the DOF undertakes to enter into a loan Agreement with Mediocredito, terms and conditions of which shall be mutually agreeable between both Parties, for the aforementioned amount Euro 26,205,539.52. The utilization of said loan for the project shall be implemented by DAR.

4.3

The Philippine Government undertakes to finance the Project with an amount not lower than PhP 201 Millions, of which PhP 101 Millions as a soft loan to be used as the Working Capital of the FSC for training, project management support and payment of duties and taxes.

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4.4

The Italian Government reserves the right to withdraw the concession of the soft loan in case of non-compliance with the conditions and procedural steps mentioned in the present MOU.

ARTICLE V
Supplies and Services
With reference to the detailed presentation contained in the Financial Prospect of the Technical Annex to this MOU, the soft loan is to be used for acquiring through a competitive bidding procedure, complying, if not otherwise agreed in this MOU, with the standards of the Manual of Instructions adopted by the European Commission on 10th November 1999, goods and services pertaining to the following contracts:

5.1

Restricted to Italian Companies, the contract for import supplies and services, of Italian origin, related to the Component of "FSC Physical Infrastructures" of the Project. A portion of this import contract amounting to approximately 3% of the total contract value may be used to procure goods and services in the Philippines or in other developing countries, especially in the southeast Region.

5.2

Open to Filipinos and Italian Companies, the contract, up to a maximum of equivalent € 4.788.000 for the procurement of goods and services which are more economically purchased in the Philippines or in other developing countries, especially in the South-East Region, related to the Component "FSC Physical Infrastructures" of the Project;

5.3

Open to Filipino and Italian Companies, the contract(s) for management and training services related to the Component, "Start-up period (3 years) FSC management and training" up to a maximum of equivalent € 4.525.000.

5.4

The supplies and services provided for the paragraphs 5.2 and 5.3, amounting to 37% of the total DGCS soft loan, may be purchased from the Republic of the Philippines or in other developing countries;

5.5

The Philippine Government will undertake to pay for any taxes and duties arising from the importation of equipment and machinery.

ARTICLE VI
Terms and Conditions
The soft loan will be denominated € and will be subject to the following concessional terms and conditions:

a) Nominal annual fixed interest rate: 1%

b) Payment period: 17 years

c) Grace period: 5 years

ARTICLE VII

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Procedures and Disbursement
After the signing of this MOU and according to the procedure followed by the Italian Cooperation for the concession of soft loans, the main steps to be followed before disbursement, shall be the following:

7.1

The Philippine Government shall forward the bidding plan and the draft bidding documents, including the Environmental Impact Assessment Report, to DGCS (through the Italian Embassy in Manila) for its "no objection" appraisal.

7.2

The DGCS (through the Italian Embassy in Manila) shall inform the Philippine Government of its "no objection" on the above documentation.

7.3

The Philippine Government shall send to DGCS a copy of the bidding invitations at least four weeks (28 days) before issuing the bid notice in order to allow the advertising of the invitations through Italian newspapers.

7.4

The Philippine Government executes the bids in accordance with the approved bidding plan and bidding documents and submits to DGCS a summary of the selection procedure and the draft copy of the contract(s). The complete bid documentation shall be maintained by DAR and disclosed to DGCS for consultation, upon request.

7.5

The DGCS will verify the selection procedure and will apprize the contract and in case of positive evaluation shall ask the Steering Committee of the Directorate General for Development Cooperation to issue its final approval.

7.6

The Italian Ministry of Economy and Finance shall issue the Project's Financing Decree.

7.7

The Department of Finance of the Republic of the Philippines and the Italian Mediocredito Centrale shall sign a Financial Convention, which will provide the legal framework between the Lender and the Borrower. The Financial Convention will constitute the bases for the actual funds disbursement against the aforementioned contract(s).

ARTICLE VIII
Monitoring and Control Procedures

8.1

The two Governments commit themselves to implement the appropriate monitoring and control procedures on the appropriate use of the soft loan in accordance with conditions mentioned in the present MOU.

8.2

The MAE-DGCS through its own funds will monitor the implementation of the Programme during its implementation and will evaluate the activities and the achievement of the objectives after the project's

conclusion.

ARTICLE IX
Controversies
Possible controversies that may arise in the course of Programme implementation shall be submitted to the Parties for resolution through discussion between DAR and MAE-DGCS via Embassy.

ARTICLE X
Impediments and Force Majeure
In case of impediments to the implementation of the Programme due to causes of force majeure recognised by both Parties according to practice (such as war, flood, fire, typhoon, earthquake, labour conflicts and strikes, acts of any government, unexpected transportation difficulties and other causes) or in case of peril or unsafe conditions for the expatriate personnel, the following provisions shall apply:

1)

In case the duration of the impediment to the implementation of the Programme is less than six months, the use of the funds shall be suspended until MAE/DGCS authorises resumption of Programme's activities.

2)

In case the duration of the impediment to the implementation of the Programme is greater than six months and less than twenty-four, the Programme shall be suspended. The residual funds shall be maintained until the impediment finishes and MAE/DGCS authorises resumption of the Programme's activities.

3)

In case the impediment to the implementation of the Programme is greater than twenty-four months, the Parties shall discuss on the continuation of the Programme and define an agree course of actions. In case the continuation of the Programme is not feasible, the Parties shall agree on the destination of the residual funds. By lack of agreement, the Philippines side commits itself to reimburse the amounts already disbursed by Mediocredito Centrale.

ARTICLE XI
Resolution of the Memorandum by the MAE / DGCS
The MAE / DGCS reserves the right to resolve this Memorandum in the following cases:

1)

Failure of the Project to reach its objectives or failure of the Filipinos Authorities to produce the pertinent requested documentation;

2)

Protracted impediment or force majeure per article XI 3).

In the two cases mentioned above, MAE / DGCS may decide unilaterally the termination of this Memorandum notifying, through a Verbal Note, DAR with at least three months in advance. In all cases, after such notification,

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DAR shall stop all activities of the Programme, unless otherwise agreed between the two Parties.

ARTICLE XII
Amendments
This Memorandum of Understanding may be amended at any time by mutual consent of the contracting Parties through Exchange of Notes via diplomatic channel.

ARTICLE XIII
Entry into Force and Duration
The present Memorandum shall enter into force at the receiving date of the last of the two notifications by which the Italian Government and the Philippine Government notify the completion of the respective ratification procedures. It shall remain into force until the last payment by Mediocredito Centrale is made.

In witness thereof the undersigned Representatives, duly authorized by their respective Governments, have signed the present Memorandum.

Done in Manila on 3 Nov 2003, in two originals in English language, both texts being equally authentic.

For and on behalf of the Government of the Republic of the Philippines

For and on behalf of the Government of the Republic of Italy

(Sgd.) (Sgd.)

ROBERTO M. PAGDANGANAN
Secretary, DAR

H.E. UMBERTO COLESANTI
Italian Ambassador

Witnesses:

(Sgd.)

(Sgd.)

JOSE DE VENECIA
Speaker of the House

JOSE MARI B. PONCE
Undersecretary, DAR

Entry into Force: August 28, 2013

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