

September 10, 2015

Mr. Rune Stroem
Head
Office of Cofinancing Operations
Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550, Metro Manila, Philippines



Dear Mr. Stroem:

Amendment No. 1 to the Financial Procedures Agreement between the Asian Development Bank and the International Bank for Reconstruction and Development concerning the Global Environment Facility Trust Fund

1. Reference is made to the Financial Procedures Agreement (the "Agreement") between the Asian Development Bank ("ADB") and the International Bank for Reconstruction and Development (the "World Bank") as trustee (the "Trustee") of the Global Environment Facility Trust Fund (the "GEF Trust Fund") dated October 23, 2008.

2. Reference is made to the decision of the Council of the Global Environment Facility (the "GEF") (the "Council") at its May 2012 meeting, on the basis of document GEF/C.42/04, *Clarifying the Responsibilities of the GEF's Key Actors with respect to the Use of GEF Resources*, to request the Trustee and the Implementing and Executing Agencies to prepare amendments to the existing Financial Procedures Agreements ("FPAs") to include appropriate provisions consistent with those described on such paper to address the return to the Trustee of funds that have not been used for the purposes provided in accordance with the Instrument and Council decisions.

3. Pursuant to Section 14.1 of the Agreement, both parties agree to amend the Agreement as follows:

3.1 Section 12.7 shall be renumbered as Section 12.8.

3.2 A new Section 12.7 shall be inserted as follows:

(a) **"Section 12.7.** (a) If any financial report provided to the Trustee by ADB under Section 12.2 or any auditor's report provided to the Trustee by ADB under Sections 12.4 or 12.5 indicates that the resources provided to ADB for any GEF Project or Special Initiative were not used for the purpose for which they were

provided in accordance with the Instrument and the decisions taken by the Council applicable to such GEF Project or Special Initiative:

- (i) If the funds were not used for the purpose for which they were provided in accordance with the Instrument and the decisions taken by the Council applicable to such GEF Project or Special Initiative due to ADB's actions or due to the action of a third party as a result of ADB's gross negligence or willful misconduct, ADB shall promptly return to the GEF Trust Fund, to such account as the Trustee may designate, the amount of GEF resources indicated by such report not to have been used for the purpose for which they were provided; or
- (ii) If the funds were not used for the purpose for which they were provided in accordance with the Instrument and the decisions taken by the Council applicable to such GEF Project or Special Initiative due to the action of a third party and not as a result of ADB's gross negligence or willful misconduct, ADB shall take the necessary actions within its control to address the matter, including, in accordance with its policies and procedures, using reasonable efforts to recover from such third party the amount of GEF resources indicated by such report to not have been used for the purpose for which they were provided and return such recovered GEF resources to the GEF Trust Fund, to such account as the Trustee may designate; it being understood that ADB shall not be required to return any such resources which are not so recovered.

(b) In the case of 12.7(a)(i) above, ADB shall notify the CEO and the Trustee of the return of GEF resources to the GEF Trust Fund. In the case of 12.7(a)(ii) above, ADB shall notify (i) the CEO and the Trustee that it has determined that the funds were not used for the purposes for which they were provided due to the action of a third party and not as a result of ADB's gross negligence or willful misconduct and, it will only return to the GEF Trust Fund any GEF resources to the extent they are recovered from such third party, and (ii) the CEO of any recovery actions.

(c) In the event ADB fails to comply with Section 12.7(a)(i) above, the Trustee shall bring the matter to the attention of the CEO and request the CEO to consult with ADB, and after such consultation to inform the Council and request the Council to consult with and seek the views of ADB. In the event ADB fails to comply with Section 12.7(a) (ii) above, the CEO shall consult with ADB, and after such consultation inform the Council and request the Council to consult with and seek the views of ADB.

If the Council determines, after consultation with ADB that such failure to comply with Section 12.7(a) above continues, the Council may instruct the Trustee to suspend any further commitment and/or cash transfer of GEF Trust Fund resources to ADB. In such case, the Trustee shall suspend any further commitment and/or cash transfer of GEF Trust Fund resources to ADB until such time as the Council otherwise instructs the Trustee."

4. All other terms of the Agreement remain unchanged.
5. The Trustee or ADB may disclose the Agreement, this Amendment and related information on the GEF Trust Fund in accordance with their applicable policies on disclosure of information. By entering into this Amendment, each party to this Amendment consents to such disclosure.
6. Nothing in or relating to any provision of this Amendment will be construed as constituting a waiver, either expressed or implied, of the policies, rules and regulations, or any of the privileges, immunities or exemptions accorded under the constituent documents, international law or any other applicable law, of either ADB or the Trustee.
7. Please confirm your agreement with the foregoing by signing, dating, and returning to us the enclosed copy of this Amendment. Upon receipt by the Trustee of the copy of this Amendment countersigned by you, this Amendment shall enter into effect as of the date of countersignature.

Sincerely,

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT



Jaehyang So
Director
Trust Funds and Partnerships
Development Finance

CONFIRMED AND AGREED:

ASIAN DEVELOPMENT BANK

By: 

FOR
Name: Mr. Rune Stroem

Title: Head, Office of Cofinancing Operations

Date: 25 SEPTEMBER 2015