
GRANT NUMBER 0018-CAM(SF)

GRANT AGREEMENT
(Special Operations)

(Tonle Sap Rural Water Supply and Sanitation Sector Project)

between

KINGDOM OF CAMBODIA

and

ASIAN DEVELOPMENT BANK

DATED 27 DECEMBER 2005

GAS:CAM 34382

GRANT AGREEMENT (Special Operations)

GRANT AGREEMENT dated 27 December 2005 between KINGDOM OF CAMBODIA (the "Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Recipient has applied to ADB for a grant for the purposes of the Project described in Schedule 1 to this Grant Agreement; and

(B) ADB has agreed to provide a grant to the Recipient from ADB's Special Funds resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (the "Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. The definitions set forth in the Grant Regulations are applicable to this Grant Agreement unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "DORD" means the district Office of Rural Development within the Recipient's MRD and any successor thereto;

(b) "IEE" means the Initial Environmental Examination prepared for the Project by the Recipient and agreed by ADB dated 8 June 2005;

(c) "LARF" means the land acquisition and resettlement framework prepared for the Project by the Recipient and agreed by ADB dated 29 July 2005;

(d) "LARP" means any of the land acquisition and resettlement plans to be developed by the Recipient in accordance with LARF and to be submitted to ADB for approval;

(e) "MRD" means the Recipient's Ministry of Rural Development and any successor thereto;

(f) "NGO" means non-governmental organization;

(g) "O&M" means operation and maintenance;

(h) "Participating Provinces" means Battambang, Kampong Chhnang, Kampong Thom, Pursat and Siem Reap provinces where Project Activities will be carried out;

(i) "PDRD" means the provincial Department of Rural Development within the Recipient's MRD and any successor thereto;

(j) "PIU" means Project Implementation Unit;

(k) "PMU" means Project Management Unit;

(l) "PPMS" means the project performance monitoring system;

(m) "Project Executing Agency" for the purpose of, and within the meaning of, the Grant Regulations means MRD which is responsible for the carrying out of the Project;

(n) "Project facilities" means the wells, ponds, water pipe systems, public latrines and other water supply-related civil works to be reconstructed or built and the equipment to be purchased pursuant to this Grant Agreement;

(o) "RWSS" means Rural Water Supply and Sanitation;

(p) "subproject" means a village participating in the Project and located in a Participating Province; and

(q) "WSUG" means water and sanitation user group.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources on terms and conditions set forth in this Agreement an amount of eighteen million United States dollars (\$18,000,000.)

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement.

Section 3.02. Except as ADB may otherwise agree, all goods and services to be financed out of the proceeds of the Grant shall be procured in accordance with the provisions of Schedule 3 and Schedule 4 to this Grant Agreement.

Section 3.03. Withdrawals from the Grant Account in respect of goods and services shall be made only on account of expenditures relating to

- (a) goods which are produced in and supplied from and services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and
- (b) goods and services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.04. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2012 or such other date as may from time to time be agreed between the Recipient and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Grant Agreement.

Section 4.02. (a) The Recipient shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Grant proceeds and compliance with the financial covenants of this Grant Agreement as well as on the use of the procedures for imprest account/statement of expenditures), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Recipient shall enable ADB, upon ADB's request, to discuss the Recipient's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Recipient's auditors, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Recipient unless the Recipient shall otherwise agree.

Section 4.03. The Recipient shall enable ADB's representatives to inspect the Project, the goods financed out of the proceeds of the Grant, and any relevant records and documents.

ARTICLE V

Effectiveness

Section 5.01. The following are specified as additional conditions to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations:

(a) MRD shall have revised its Guidelines on the Establishment of WSUG (dated 21 August 2004, as revised from time to time), including but not limited to, organization and registration, statutes, rights and responsibilities of WSUG and its members, election and composition of WSUGs board, to the satisfaction of ADB; and

(b) each PIU shall have established procurement committee(s) and an NGO selection committee in accordance with the Recipient's regulations.

Section 5.02. A date ninety (90) days after the date of this Grant Agreement is specified for the effectiveness of the Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Ministry of Economy and Finance is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Ministry of Economy and Finance
Royal Government of Cambodia
Phnom Pehn, Cambodia

Facsimile Numbers:

(855-23) 427-798
(855-23) 430-224

For ADB

Asian Development Bank
P.O. Box 789
0980 Manila, Philippines

Cable Address:

ASIANBANK
MANILA

Telex Numbers:

29066 ADB PH (RCA)
42205 ADB PM (ITT)
63587 ADB PN (ETPI)

Facsimile Numbers:

(632) 636-2444
(632) 636-2305

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

KINGDOM OF CAMBODIA

By


AUN PORN MONIROTH

Secretary of State,
Ministry of Economy and Finance

ASIAN DEVELOPMENT BANK

By


SHYAM P. BAJPAI

Country Director,
Cambodia Resident Mission

SCHEDULE 1

Description of the Project

1. The objective of the Project is to assist the Recipient in reaching its RWSS Sector Investment Plan (2005-2015) targets of increasing to 50% the percentage of the rural population with access to safe water supply and to 30% the percentage of the population with access to sanitation facilities in the five Participating Provinces. It is expected that the Project will cover about 1,760 villages in the five Participating Provinces.

2. The Project will include the following four components.

Part A. Community Mobilization and Skills Development.

This component will include the following activities to be carried out in each of the villages in the Participating Provinces:

- (i) awareness campaign on Project objectives, components, implementation arrangements and requirements for participation;
- (ii) identification and selection of target areas based on subproject selection criteria and preparation of provincial annual plans;
- (iii) preparation of water supply and sanitation village plans, including for selected villages water use and sanitation awareness, policies with regard to ADB's safeguard policies, rapid appraisal of needs, identification of WSUGs, inclusion of village plans in the commune planning process and identification of vulnerable groups and the poorest;
- (iv) organization and support of WSUGs;
- (v) hygiene and sanitation education; and
- (vi) skills awareness and development activities, including economic and employment opportunities for water supply and sanitation-related activities, identification of participants, capacity building in skills development and livelihood activities support.

Part B. Water Supply Improvement. This component will include:

- (i) rehabilitation and upgrading of existing water supply systems;
- (ii) construction of new water supply systems, wells, tube-wells, ponds with treatment facilities, small piped water systems and other family-based solutions on a matching fund basis where a community solution is not available;
- (iii) groundwater testing and surveys to improve drilling success;

- (iv) pilot water supply operations to introduce new types of water supply using appropriate technologies; and
- (v) water quality testing.

Part C. Sanitation Improvement. This component will include:

- (i) construction of household latrines;
- (ii) construction and rehabilitation of public latrines where commune councils have established a plan for O&M; and
- (iii) a national campaign for sanitation awareness.

Part D. Capacity Building and Institutional Support. This component will include:

- (i) capacity building for MRD, PDRD, DORD and commune councils in rural development and planning, accounting and budgeting, gender awareness and strategies, social and community development, project administration, environmental management, resettlement, private sector participation, and data collection;
- (ii) capacity building for private entrepreneurs involved in RWSS contracts;
- (iii) establishment of a national RWSS database to document RWSS coverage; and
- (iv) support in establishing a RWSS Strategic Policy Unit, a Development Partners Forum for RWSS, and preparing the RWSS Strategy and the necessary policy guidelines.

3. Consulting services will be provided for the Project. The Project is expected to be completed by 31 December 2011.

Schedule 2

Withdrawal of Grant Proceeds

Taxes

1. No withdrawals from the Grant Account shall be made in respect of any local taxes.

Imprest Account: Statement of Expenditures

2. (a) Except as ADB may otherwise agree, the Recipient shall: (i) establish immediately after the Effective Date, an imprest account at the National Bank of Cambodia, with authorization to MRD representatives to utilize the imprest account; and (ii) cause the PMU and each of the PIUs to establish, immediately after the Effective Date, a Second Generation Imprest Account (SGIA) at a commercial bank acceptable to ADB. The imprest account and each of the SGIAs shall be established, managed, replenished and liquidated in accordance with ADB's "Loan Disbursement Handbook" dated January 2001, as amended from time to time, and detailed arrangements agreed upon between the Recipient and ADB. The initial amount to be deposited into the imprest account shall be equivalent to six months' estimated expenditure, but in any event shall not exceed \$1,300,000. The initial amount to be deposited into each of the SGIAs, from the initial deposit into the imprest account, shall be equivalent to six months' estimated expenditure, but in any event shall not exceed \$200,000.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account, in accordance with ADB's "Loan Disbursement Handbook" dated January 2001, as amended from time to time, and detailed arrangements agreed upon between the Recipient and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed \$50,000.

Conditions of Withdrawals from Imprest Account

3. Notwithstanding any other provision of this Grant Agreement, the Recipient shall ensure that no disbursement of Grant proceeds shall be made to a SGIA if a misprocurement has occurred or other procurement action by the specified Participating Province has been identified as irregular until such misprocurement or other irregularity has been corrected by the concerned Participating Province to the satisfaction of the Recipient and ADB.

Schedule 3

Procurement

1. Except as ADB may otherwise agree, the procedures referred to in the following paragraphs of this Schedule shall apply in the procurement of goods and services to be financed out of the proceeds of the Grant. In this Schedule and the Attachment hereto, the term "goods" includes equipment and materials; the term "services" does not include consulting services.

2. Procurement of goods and services shall be subject to the provisions of the "Guidelines for Procurement under Asian Development ADB Loans" dated November 2004 (hereinafter called the Guidelines for Procurement), as amended from time to time, which have been furnished to the Recipient.

3. Procurement of goods and services shall be made without any restriction against, or preference for, any particular supplier or contractor or any particular class of suppliers or contractors.

4. (a) Each supply contract for vehicles, equipment or materials estimated to cost the equivalent of \$100,000 or more may be awarded on the basis of either (i) international shopping as described in Chapter III of the Guidelines for Procurement or (ii) the Recipient's regulations, as may be amended from time to time, and which are acceptable to ADB.

(b) Each draft invitation to bid and related bid document shall be submitted to ADB for approval before they are issued.

(c) Notwithstanding paragraph 3.03(b) of the Guidelines for Procurement, any award of contract shall be subject to prior ADB approval.

Local procurement

5. Civil works contracts estimated to cost the equivalent of \$50,000 or more for water supply systems and latrines, including equipment, materials and spare parts, and civil works contracts for rehabilitation or construction of PDRD offices may be awarded on the basis of local competitive bidding among prequalified contractors in accordance with the standard procurement procedures of the Recipient and acceptable to ADB. Prequalification, selection and engagement of contractors shall be subject to the approval of ADB. As soon as the bids received have been evaluated, the proposal for award of contract shall be submitted to ADB for approval. For this purpose, ADB shall be furnished with three copies of (i) an account of the public opening of bids; (ii) a summary and evaluation of the bids; (iii) the proposal for award; and (iv) a draft contract or a draft letter of acceptance. Promptly after each contract is awarded, ADB shall be furnished with three copies of the contract as executed.

6. Civil works contracts estimated to cost the equivalent of less than \$50,000 for water supply systems and latrines, including equipment, materials and spare parts, and civil works contracts for rehabilitation or construction of PDRD offices may be awarded on the basis of local competitive bidding among contractors in accordance with the standard procurement procedures of the Recipient and acceptable to ADB. The first two civil works contracts to be

awarded in each Participating Province shall be subject to prior ADB approval. Thereafter, the PIU shall maintain all relevant documents for each contract awarded and which documents shall be available for review by ADB. These required documents include the village plan, bid invitation letter, bid opening statement, bid evaluation report or approval document, and the signed contract.

Direct procurement

7. Vehicles, equipment, materials and spare parts estimated to cost the equivalent of less than \$100,000 per contract, may be purchased directly. Prior to such procurement, a list of individual items to be procured, an estimate of their costs, an indication of potential sources of supply and any related documents shall be submitted to ADB for approval. After award, three copies of each contract for such items shall be furnished to ADB.

Community Procurement

8. Civil works contracts for household sanitation estimated to cost the equivalent of \$5,000 or less may be awarded on the basis of ADB's *Guide on Implementing Small Projects with Community Participation*, as amended from time to time, a copy of which has been furnished to the Recipient. The Board of the WSUG shall act as the Managing Committee described in the Guide. The first two civil works contracts to be awarded in each Participating Province shall be subject to prior ADB approval. Thereafter, the PIU shall maintain all relevant documents for each contract awarded and which documents shall be available for review by ADB. These required documents include the village plan, bid invitation letter, bid opening statement, bid evaluation report or approval document, and the signed contract.

Intellectual Property Rights

9. (a) The Recipient shall ensure that all ADB-financed goods and services procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Recipient shall ensure that all ADB-financed contracts for the procurement of goods and services contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

SCHEDULE 4

Consultants

1. The services of consultants shall be utilized in the carrying out of the Project, particularly with regard to:

- (a) Project management;
- (b) Rural water supply and sanitation engineering;
- (c) Gender and social development;
- (d) Hydrogeology;
- (e) Monitoring and evaluation and management and geographic information systems;
- (f) External evaluations; and
- (g) Community mobilization.

The terms of reference of the consultants shall be as determined by agreement between ADB and MRD.

2. The selection, engagement and services of the consultants shall be subject to the provisions of this Schedule and the provisions of the "Guidelines on the Use of Consultants by Asian Development Bank and Its Recipients" dated January 2005 (hereinafter called the Guidelines on the Use of Consultants), as amended from time to time, which have been furnished to the Recipient and the EA.

3. The consultants to carry out the services described in para. 1(a) through (e), inclusive, of this Schedule, shall be selected and engaged as a firm by Recipient using the quality-and-cost-based selection (QCBS) method in accordance with the following procedures.

(a) Invitation for technical and financial proposals. The invitation to submit technical and financial proposals (hereinafter called the Request for Proposals or RFP) and all related documents shall be approved by ADB before they are issued. For this purpose, three copies of the draft RFP, the names of consultants to be short-listed, the proposed criteria for evaluation of both proposals, a draft consultancy contract, and other related documents shall be submitted to ADB. A period of at least 60 days shall be allowed for submission of both proposals. A copy of the final RFP as issued, together with all related documents, shall be furnished to ADB for information promptly after issuance. The validity period for the technical and financial proposals as provided in the RFP shall usually not exceed three months from the date specified for submission of the technical and financial proposals. The approval of ADB shall be obtained for any request to extend such validity period. Except as ADB may otherwise agree, the validity period, including any extensions, shall not exceed a maximum total period of six months. If the contract is not signed within the validity period in accordance with the Guidelines on the Use of Consultants, the selection shall be invalid and the selection and engagement process as provided in this paragraph shall be followed again.

(b) Evaluation and scoring of technical proposals. Immediately after the technical proposals have been evaluated and scored, approval of ADB shall be obtained to the evaluation and scoring of the technical proposals. For this purpose, ADB shall be furnished with three copies of the technical proposals.

Schedule 4

(c) Public opening of financial proposals. The financial proposals of the firms whose technical proposals meet the minimum qualifying technical score shall be opened publicly after adequate notice is given to such firms or their representatives to attend the opening of the financial proposals.

(d) Evaluation and scoring of financial proposals and ranking of technical and financial proposals. After the financial proposals have been evaluated and scored, the ranking of the technical and financial proposals shall be made. Before negotiations are started with the first-ranked consultants, approval of ADB shall be obtained to the evaluation and scoring of the financial proposals and the ranking of the technical and financial proposals. For this purpose, ADB shall be provided with three copies of (i) the evaluation and scoring of the financial proposals and (ii) the ranking of the technical and financial proposals.

(e) Execution of contract. After the conclusion of negotiations but before the signing of the contract, ADB shall be furnished with the contract as negotiated for approval. Promptly after the contract is signed, ADB shall be furnished with three copies of the signed contract. If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

4. The consultant to carry out the services described in para. 1(f) shall be selected and engaged by MRD in accordance with the following procedures.

(a) A list of the candidates together with their qualifications and their ranking and a draft contract shall be furnished to ADB for approval before the selection of consultant.

(b) Promptly after the contract is signed, ADB shall be furnished with the evaluation of the candidates and a brief justification for the selection, together with three copies of the signed contract.

(c) If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

5. The consultants to carry out the services described in para. 1(g) of this Schedule, shall be NGOs selected and engaged by Recipient in accordance with the following procedures.

(a) A list of the candidate NGOs together with their qualifications and their ranking and a draft contract shall be furnished to ADB for approval before the selection of consultants.

(b) Promptly after the contract is signed, ADB shall be furnished with the evaluation of the NGOs and a brief justification for the selection, together with three copies of the signed contract.

(c) If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

6. In addition, the services of domestic consultants shall be utilized for the purpose of rural water supply and sanitation engineering at the PMU, rural water supply and sanitation advisers at the PIUs, accounting, community development, contracts and procurement, environmental, and resettlement/social issues. The terms of reference of the consultants shall be as determined by agreement between ADB and MRD. The consultants shall be selected in accordance with procedures acceptable to ADB, and the selection and engagement of the consultants shall be subject to the approval of ADB with regard to their competence and experience for carrying out the assignment. As soon as the proposals received have been evaluated but before negotiations are started with the consultants selected for negotiations, ADB shall be furnished with three copies of (i) a list of consultants invited; (ii) an evaluation of the proposals (together with one set of the first-ranked proposal); and (iii) justification for the selection. After the conclusion of negotiations but before the signing of the contract, the contract as negotiated shall be furnished to ADB for approval. Promptly after the contract is signed.

7. The Recipient shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

SCHEDULE 5

Execution of Project and Operation of Project Facilities; Financial Matters

Project Implementation

1. MRD shall be the Project Executing Agency and responsible for overall Project coordination and implementation.
2. MRD shall establish a PSC comprising the concerned departments within MRD, the chair of the Gender Working Group within MRD, and representatives from the Participating Provinces' PDRDs. The PSC shall be chaired by the Minister, Ministry of Rural Development, and the PSC shall meet at least every three (3) months in order to coordinate Project activities.
3. MRD shall establish a PMU with a part-time Project Director, a full-time Project Manager and other full-time staff with appropriate technical qualifications, including an environmental officer and a resettlement officer. The PMU shall be responsible for policy and implementation coordination between MRD and other central agencies, provincial agencies, international development agencies, the private sector and ADB; overall Project planning and coordination; standards for technical design, construction and quality of services; developing standard subproject, documents; review and implementation of the project performance monitoring system (PPMS) and participation in procurement committees in the provinces for contract packages in excess of \$50,000; undertaking national awareness campaign on water use and hygiene education; standardization and consolidation of Project reports; and providing information to the private sector on Project business opportunities. The PMU Project Manager and the PMU Project Director shall not be replaced during the term of the Project without the prior approval of the Ministry of Economy and Finance and ADB.
4. Each PDRD in the Participating Provinces shall establish a PIU with a part-time Director, a qualified PDRD staff member as the full-time PIU Project Manager, and other full-time staff with appropriate technical qualifications, an environmental officer and a resettlement officer.
5. Each PIU shall be responsible for daily coordination and implementation of the subprojects in the Participating Provinces, including liaison with commune councils and WSUGs; collection and screening of initial subproject applications; preparation of provincial project implementation plans; selection and contracting with civil works contractors and NGOs as well as supervising and certifying contractors' and NGOs' work; establishing a procurement committee; carrying out subproject feasibility assessments, technical design, appraisal and preparation of bidding documents for civil works contracts; with the PDRD, providing technical support to communities for O&M of water supply systems; implementation of land acquisition, resettlement, and environment activities; collection of monitoring and evaluation information; and report preparation.
6. Each PDRD shall appoint one District Officer from each district in its Participating Province, and which is participating in the Project, to assist the WSUGs in monitoring civil works and to ensure quality control.

Subproject Selection and Criteria

7. In order to select villages to participate in the Project, each PIU shall perform the following actions: (i) select an appropriate NGO active in RWSS to carry out community mobilization activities; (ii) issue a notice to all commune councils in the Participating Province and, through them, to the villages in the Participating Provinces, describing the Project, its objectives, scope and organization; (iii) in conjunction with the selected NGO, invite representatives from the commune councils and villages in the Participating Province to participate in a district level meeting to explain procedures and conditions to participate in the Project; (iv) attend the district integration workshops to determine a village's interest in becoming a subproject and thereby participating in the Project; (v) pre-select the villages which will be included in the Project for the coming year; (vi) ensure that the selected NGO assists each interested village in preparing a village plan suitable for inclusion in the Project; (vii) oversee submission of the village plan to the applicable commune council for approval; and (viii) after approval by the commune council, arrange for procurement of the appropriate civil works contracts. In the event a village is not represented at the district workshop but is interested in participating in the Project, it may do so by applying to the PIU without the necessity of attending the workshop.

8. PIUs shall identify subprojects for inclusion in the Project based on the following criteria: (i) poverty of the village as demonstrated by the poverty ranking of the commune in which the village is located (priority will be given to villages in the poorest 20% of the communes); (ii) existing water supply coverage in the village as demonstrated by the initial project proposal submitted by the village and confirmed by the commune council (priority will be given to villages in communes where the safe water supply coverage is 20% or less); (iii) geographic coherence and contiguousness of the proposed villages for each year of Project implementation; (iv) village commitment as demonstrated by (a) a request by the village for inclusion in the Project, (b) availability of necessary land, (c) a resolution to form a WSUG, and (d) resolution to meet the required contributions for the Project facilities; (v) health indicators as demonstrated by the incidence of diarrhea; (vi) ethnic balance between proposed villages; and (vii) the proposed village is not receiving duplicative assistance from another donor. A village shall be excluded from the Project if the requested water supply and sanitation (i) will cause significant adverse environmental impacts or (ii) will require significant resettlement or land acquisition.

Water Sanitation User Groups (WSUGs)

9. A WSUG shall be formed for each water system (there may be more than one WSUG in a subproject) in accordance with the revised MRD's *Guidelines on the Establishment of WSUG* as referred to Section 5.01(a) of this Grant Agreement.

10. To the extent possible under the Recipient's laws and practices, and upon approval of the RWSS village plan and WSUG registration with the applicable commune council, the Recipient shall formally recognize the WSUGs as separate entities with beneficial ownership of water supply systems used and maintained by them. In accordance with this recognition, MRD, through its PDRDs, shall issue to each WSUG a certificate recognizing the

WSUG as the beneficial owner of the relevant water supply system. The commune council shall notify the applicable PDRD of each WSUG.

11. Each WSUG shall elect a Board responsible for coordinating Project activities in the village, including collection of local materials contributions, scheduling labor inputs, and managing the O&M for RWSS systems. The WSUG Board shall reflect a proportional representation of the ethnic minority membership of the WSUG.

12. MRD shall ensure that contributions collected from WSUGs are used to maintain piped water systems and other Project facilities.

13. WSUG members shall, as a whole, contribute 10% (ten percent) of the cost for the selected water system, whether a well, piped water or pond. This contribution shall consist of 3% (three percent) in cash and which amount shall be paid to the PIU upon issuance of a receipt by the PIU.

14. The PIU shall identify the poorest households in a village. A maximum of 20% (twenty percent) of village households may be determined as the poorest. The households so identified shall be entitled to make their entire 10% (ten percent) contribution in kind with no cash contribution required, whether or not they are a member of a WSUG, and are desirous of having a RWSS system.

Public Latrines

15. PIUs shall review requests for construction of public latrines by commune councils. The PIU concerned shall enter into an O&M agreement with each commune council requesting assistance for public latrine construction to serve market places, schools, tourist areas, pagodas, health centers and prisons (separate for female and male). For these latrines, a subsidy of 50% (fifty percent) of the base cost shall be paid by the commune council which shall also have the authority to collect this subsidy from the beneficiaries of the public latrines.

Piped Water Systems

16. MRD shall ensure that civil works contracts for piped water systems require a six (6) month guarantee of successful operations after commissioning (with a specified portion of contractual payment due only after a successful guarantee period). The guarantee shall include, but not be limited to, a protection against system breakdown and environmental damage.

Operations and Maintenance

17. PIUs shall be responsible for assessing the availability of spare parts and preparing a spare parts supply plan consistent with the RWSS method being used. As part of the water pump supply contract entered into with private suppliers, the PIUs shall ensure that provisions are included to secure a fixed number of spare parts in a private outlet located in each district served by the Project. The PIUs shall notify the WSUGs of the suppliers' address, price schedule for spare parts and agreed method of payment.

Schedule 5

18. Each WSUG shall enter into a contract with the landowner on whose land Project facilities are being installed to ensure that access to the Project facilities shall be openly available to all WSUG members. When land is donated for use by the Project for Project facilities, MRD shall ensure that the commune council, which shall become entitled to the donated land, grants open access to the Project facilities to all WSUG members.

19. MRD shall ensure that each WSUG selects one WSUG Board member to collect the contribution required of its members to meet, at a minimum, the cost of the O&M for the RWSS system chosen in the subproject area.

Rural Water and Sanitation Sector

20. Within twenty-four (24) months of the Effective Date, MRD shall have promulgated a RWSS Strategy.

21. Within three (3) months of the Effective Date, MRD shall have established RWSS Strategic Unit, chaired by the chair of the PSC and supported with two full-time professional staff to develop the RWSS strategy and guidelines for its effective implementation

22. Within six (6) months of the Effective Date, MRD shall have established a RWSS Development Partner Forum with representatives of key development partners and NGOs active in RWSS sector to support the work of RWSS Strategic Unit.

23. Within thirty-six (36) months of the Effective Date, and pursuant to the RWSS Strategy referred to in paragraph 20 above, MRD shall have promulgated the guidelines on (i) mainstreaming gender in RWSS sector; (ii) community participation in RWSS systems; (iii) contributions and subsidies for RWSS systems; (iv) private sector participation in RWSS systems; (v) planning for the RWSS sector; (vi) water monitoring and water quality testing; (vii) participatory monitoring and evaluation; and (viii) O&M of RWSS systems; and (ix) shall have updated the Guidelines on Water Use and Hygiene Education. The relevant guidelines will take into account the integration of vulnerable groups, including disabled persons, into RWSS systems.

24. The Recipient shall keep ADB informed of all RWSS studies undertaken in its territory, provide ADB with copies of all available documents relevant to such studies, including consultants' reports, and ensure that ADB has the opportunity to comment on the recommendations contained therein.

25. The Recipient and ADB shall, from time to time, exchange views on progress in carrying out the policies and actions stated in the Strategy and guidelines referred to in paragraphs 20 and 23 above.

Ethnic Minorities

26. The Recipient shall ensure that all activities are consistent with the ADB *Policy on Indigenous Peoples* (1998) and that participation in the Project is appropriately adapted to meet the particular needs of areas with a high proportion of ethnic minority peoples. The Recipient shall ensure that ethnic minorities and indigenous peoples participate fully in Project

activities, including, among other things, developing mechanisms to include them in capacity building and training under the Project. The PPMS system, as described in paragraph 43 of this Schedule, will include indicators that facilitate the monitoring of their participation in Project activities.

Environmental Management

27. The Recipient shall ensure that its laws and regulations governing environmental impact assessments, as well as ADB's *Environment Policy* (2002), are followed. If there is any discrepancy between the Recipient's laws and regulations, and ADB's *Environment Policy*, then the ADB Policy requirements shall apply.

28. Each PIU shall prepare an IEE based on a cluster of subprojects. MRD shall ensure that IEEs: (a) are based on the sample IEE prepared during Project preparation; (b) meet ADB's *Environment Policy* requirements; (c) include details of local consultation carried out; and (d) are submitted to ADB for approval prior to civil works contracts being awarded for the subproject if any critical environmental issues are identified. MRD shall certify that clearance of unexploded ordnance has been completed prior to submission of an IEE to ADB for approval or, if an IEE has already been approved, prior to commencement of civil works..

29. MRD shall ensure that the contract documents for all civil works under the Project include specific measures in accordance with ADB's *Environment Policy* to mitigate negative environmental impacts caused by the construction and to give due consideration to prevention of damage to the natural environment in the design, construction, operation and maintenance of Project facilities.

30. MRD shall utilize the previously agreed upon Environmental Assessment Review Framework (EARF) to implement the Project. MRD shall further monitor the contractors' implementation of civil works, including environmental mitigation measures identified in the IEE. The environmental officers in the PIUs shall be responsible for IEE preparation and EARF implementation.

Land Acquisition and Resettlement

31. Persons affected in their land or business by the Project shall be compensated for any losses in accordance with any LARP or LARF prepared in accordance with the Recipient's laws, regulations, and procedures, and ADB's requirements as defined in ADB's *Policy on Involuntary Resettlement (1995)*. In case of discrepancies between the Recipient's laws, regulations, and procedures and ADB's requirements, ADB's requirements shall apply.

32. Each PIU shall prepare a LARP based on a cluster of subprojects and in accordance with the LARF. MRD shall ensure that each LARP is submitted to, and approved by, ADB prior to civil works contracts being awarded for the subproject.

33. The relevant PDRD shall provide MRD with monthly reports on any required land acquisition or resettlement. MRD shall provide ADB with quarterly status reports on any land acquisition and resettlement process as part of the progress reports required by this Grant Agreement and shall provide a report immediately following completion of LARP implementation.

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34. Site selection for RWSS systems shall be made in full consultation with any people living on land (whether or not holding a title to the land) which is deemed suitable for use by a water supply system, latrine or other Project benefit. If it is necessary to use land on which titled or non-titled persons are living or operating a business, then any donation use of the land shall not severely affect the affected persons' living standards and such use shall be linked directly to benefits for the affected persons. In the event of a voluntary donation of land for use by the Project, then the voluntary nature of the donation shall be documented by written record and verified by an independent third party.

35. The Recipient shall ensure that an adequate grievance mechanism system is in place for disputes regarding compensation or other matters as a result of land acquisition or resettlement.

36. Without limitation to the overall application of ADB's Policy on *Involuntary Resettlement* the following principles shall apply in respect of compensation of Project affected people:

- (a) Project affected people shall be compensated and assisted in such a way that generally their economic and social future shall not be unfavorably affected by the Project and, in particular, that they shall not face a material reduction in income, deterioration of living standards or unnecessary social and cultural dislocation as a result of the Project;
- (b) Project affected people shall not be required to have legal title to the land used by them to be eligible for compensation;
- (c) The amount of compensation in respect of land acquisition shall be at a level sufficient to cover the full replacement cost (at market value) of the land and the structures built thereon; and
- (d) All compensation and resettlement activities shall be satisfactorily completed and income restoration measures in place before commencement of civil works.

Gender

37. MRD shall ensure that the Gender Action Plan agreed upon by the Recipient and ADB is fully implemented. This includes, but is not limited to, ensuring that (i) at least 40% of the membership in each WSUG Board are female and (ii) 50% of those from the WSUG Board who are trained in water supply O&M are female.

38. MRD shall ensure that the contract documents with NGOs carrying out community mobilization require that: (i) at least 25% of the NGO's community mobilization team are female; (ii) the training carried out by NGOs as part of the community mobilization is directed at the poor and vulnerable, and that at least 40% of those being trained are female; and (iii) at least 40% of all hygiene and sanitation education participants are male.

Counterpart Funding

39. The Recipient shall ensure timely provision of counterpart funds in the form of exemption from taxes and duties and land acquisition for the Project. Counterpart funding may also be used, as needed, for clearance of unexploded ordnance in the Project area.

Reporting

40. Each PIU shall prepare quarterly progress reports for submission to the PMU for consolidation and reporting to ADB. The PIUs shall submit quarterly reports and data to the PMU within fifteen (15) days of the end of each quarter. The PMU shall (i) collect and consolidate all Project progress reports, site reports, technical and financial reports and submit them to ADB; and (ii) prepare quarterly progress reports, a midterm Project evaluation report and an overall Project completion report. The quarterly report shall include: (i) a narrative description of progress made during the reporting period; (ii) modifications, if any, to the implementation schedule; (iii) details of land use and resettlement; (iv) implementation of the EARF; (v) major Project activities by PMU, PIUs and NGOs; (vi) financial and procurement-related information; (vii) problems experienced and remedial actions proposed; and (viii) the work to be carried out during the upcoming reporting period. Quarterly reports shall be submitted to ADB within thirty (30) days of the end of each quarter.

Accounts and Audit

41. Without prejudice to the generality of Section 4.02 of this Grant Agreement, for purpose of audit of accounts and financial statements of the Project carried out pursuant thereto, the Recipient shall ensure that any independent auditors financed from proceeds of the Grant shall be selected and engaged in accordance with competitive selection procedures acceptable to ADB.

42. Without prejudice to the generality of Section 4.02 of this Grant Agreement, the Recipient shall ensure that a separate accounting system for Project expenditures is maintained in accordance with sound accounting principles. All Project accounts, including financial statements, statements of expenditures and account records, shall be audited annually as part of the regular audit accounts and financial statements by a single audit firm. The consolidated audit reports (in English) shall be submitted to ADB in accordance with the requirements and within the deadlines stated in Section 4.02(a) of this Grant Agreement. The audit opinion shall include: (i) an assessment of the adequacy of accounting and internal controls systems with respect to Project expenditures and other financial transactions, and to ensure safe custody of Project financed assets; (ii) a determination as to whether the Recipient, EA and implementing agencies have maintained adequate documentation for all financial transactions, specifically including the SOE and imprest account procedures; and (iii) confirmation of compliance with this Grant Agreement's financial covenants and ADB requirements for management.

Project Performance Monitoring System (PPMS)

43. MRD shall ensure that PPMS system shall be operated throughout Project implementation to: (i) examine the Project's technical performance; (ii) evaluate delivery of Project facilities; (iii) assess achievement of the Project's objectives; and (iv) measure the

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Project's social, economic, financial, and institutional impacts. Socioeconomic data shall be disaggregated by income group, gender and, where applicable, ethnic group. PIUs shall be responsible for carrying out PPMS activities. Each PIU shall establish a PPMS baseline based on pre-Project surveys and data. Annual PPMS reports shall be prepared by each PIU for consolidation by the PMU and submission to ADB.

External Monitor

44. Within twenty-four (24) months of the Effective Date and again, within forty-eight (48) months of the Effective Date, MRD shall ensure that an external monitor engaged under a Terms of Reference as agreed upon by MRD and ADB, shall complete an independent assessment of Project effectiveness, specifically including, but not limited to, an examination of the subproject selection and implementation process.