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GRANT NUMBER 0285-CAM(EF)

GRANT AGREEMENT

(Flood Damage Emergency Reconstruction Project – Additional Financing)

between

KINGDOM OF CAMBODIA

and

ASIAN DEVELOPMENT BANK

DATED 23 APRIL 2014

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CAM 46009

## **GRANT AGREEMENT**

GRANT AGREEMENT dated 23 April 2014 between KINGDOM OF CAMBODIA (the "Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

### **WHEREAS**

(A) by a loan agreement (Loan No. 2852-CAM(SF): Flood Damage Emergency Reconstruction Project) dated 4 April 2012 between the Recipient and ADB (Initial Loan Agreement), ADB agreed to make a loan in the amount equivalent to SDR35,347,000 (Initial Loan) to the Recipient from ADB's Special Funds resources and by a grant agreement (Grant No.0285-CAM(EF)) dated 4 April 2012 between the Recipient and ADB (Initial Grant Agreement), ADB agreed to make a grant funded from the Government of Australia in the amount not exceeding \$5,250,000 (Initial Grant) to the Recipient, both the Initial Loan and the Initial Grant for the purposes of the project described in Schedule 1 to the initial Loan Agreement;

(B) the Recipient has requested ADB to apply on its behalf to the Government of Australia, represented by Department of Foreign Affairs and Trade, (the Government of Australia) for a grant to finance Works of the Project described in Schedule 1 to the Loan Agreement (such expression as defined in Recital C below);

(C) the Recipient has also applied to ADB for a loan for the purposes of the Project and by a loan agreement, dated 23 April 2014, between the Recipient and ADB (hereinafter called the "Loan Agreement"), ADB has agreed to provide to the Recipient, from its Special Funds resources a loan in the amount of forty eight million five hundred forty five thousand Special Drawing Rights (SDR48,545,000) for the purposes of the Project; and

(D) ADB has agreed to administer the Grant from the Government of Australia to the Recipient 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 Externally Financed Grant Regulations of ADB, dated 8 April 2009 (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 and the Loan Agreement are applicable to this Grant Agreement unless the context requires otherwise.

## **ARTICLE II**

### **The Grant**

Section 2.01. (a) ADB agrees to make available to the Recipient a grant from the Government of Australia in the amount of six million six hundred eighty-three thousand Dollars (\$6,683,000), as such amount may be adjusted from time to time in accordance with subsection (b) hereinafter.

(b) The amount of the Grant shall be adjusted from time to time to account for currency fluctuations, such that the amount of the Grant, denominated in Dollars, shall be equivalent to A\$7,600,000 at the time that ADB converted the resources made available to ADB by the Government of Australia for the purposes of the Grant.

## **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. The Works to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant among different categories shall be in accordance with the provisions of Schedule 1 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, all Works to be financed out of the proceeds of the Grant shall be procured in accordance with the provisions of Schedule 2 to this Grant Agreement.

Section 3.04. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 September 2017 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 3 to this Grant Agreement and Schedule 5 to the Loan Agreement.

Section 4.02. (a) The Recipient shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, 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 statement of expenditures) and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) The Recipient shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Recipient's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions 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 and Works, and any relevant records and documents.

Section 4.04. The Recipient acknowledges and agrees that this Grant Agreement is entered into by ADB, not in its individual capacity, but as grant administrator for Government of Australia. Accordingly, the Recipient agrees that (i) it may only withdraw Grant proceeds to the extent that ADB has received proceeds for the Grant from Government of Australia, and (ii) that ADB does not assume any obligations or responsibilities of Government of Australia in respect of the Project or the Grant other than those set out in this Grant Agreement.

## **ARTICLE V**

### **Suspension and Cancellation**

Section 5.01. The following is specified as an additional event for suspension of the right of the Recipient to make withdrawals from the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations or cancellation of the Grant pursuant to Section 8.02 of the Grant Regulations: the loan financed under the Loan Agreement shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following is specified as an additional condition to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations: the Loan Agreement shall have been duly executed and delivered, and all conditions precedent to its effectiveness, other than a condition requiring the effectiveness of this Grant Agreement, shall have been fulfilled or arrangements satisfactory to ADB shall have been made for the fulfillment thereof within a period of time satisfactory to ADB.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(c) of the Grant Regulations, to be included in the opinion or opinions to be furnished to ADB: the Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of the Recipient, and is legally binding upon the Recipient in accordance with its terms, subject only to the effectiveness of this Grant Agreement.

Section 6.03. A date 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 VII**

### **Miscellaneous**

Section 7.01. The Minister of Economy and Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Ministry of Economy and Finance  
St. 92 Sangkat Wat Phnom  
Khan Daun Penh  
Phnom Penh, Cambodia

Facsimile Numbers:

+855 23 427 798  
+855 23 428 424.

For ADB


Asian Development Bank  
6 ADB Avenue  
Mandaluyong City  
1550 Metro Manila  
Philippines

Facsimile Number:

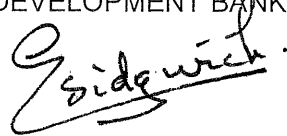
(632) 636-2444.

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   
H.E. DR. AUN PORNMONIROTH  
Minister  
Ministry of Economy and Finance

ASIAN DEVELOPMENT BANK

By   
ERIC SIDGWICK  
Country Director  
Cambodia Resident Mission

## **SCHEDULE 1**

### **Allocation and Withdrawal of Grant Proceeds**

#### General

1. The table attached to this Schedule sets forth the Categories of items of expenditures to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table.)

#### Percentages of Grant Financing

2. Except as ADB may otherwise agree, the items of the Categories listed in the Table shall be financed out of the proceeds of the Grant on the basis of the percentages set forth in the Table.

#### Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, in consultation with the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Grant which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Grant then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, in consultation with the Recipient, reallocate such excess amount to any other Category.

#### Disbursement Procedures

4. Except as ADB may otherwise agree, the Grant proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

#### Retroactive Financing

5. Withdrawals from the Grant Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date, subject to a maximum amount equivalent to 30% of the Grant amount; provided that the expenditures have been incurred and paid for after 30 September 2013 but not earlier than 12 months before the date of this Grant Agreement.



TABLE

Allocation and Withdrawal of Grant Proceeds (Flood Damage Emergency Reconstruction Project - Additional Financing)				
No.	Items	Amount Allocated (\$)		GOVERNMENT OF AUSTRALIA FINANCING
		Category	Subcategory	Percentage and Basis for Withdrawal from the Grant Account
<b>1</b>	<b>Works</b>	<b>6,000,000</b>		
1A	National and Provincial Roads		1,500,000	100% of total expenditure claimed*
1B	Rural Roads		3,000,000	100% of total expenditure claimed*
1C	Irrigation and Flood Management		1,500,000	100% of total expenditure claimed*
<b>2</b>	<b>Unallocated**</b>	<b>683,000</b>		
	<b>Total</b>	<b>6,683,000</b>		

\* Exclusive of local taxes and duties imposed within the territory of the Recipient.

\*\* This amount shall have deducted from it ADB's administration fee, audit cost, bank charges, and a provision for foreign exchange fluctuations (if any), to the extent that these items are not covered by interest and investment income earned by ADB on this or any additional Grant from the Government of Australia.

## **SCHEDULE 2**

### **Procurement of Works**

#### General

1. The procurement of Works shall be subject to and governed by the Procurement Guidelines.
2. All terms used in this Schedule and not otherwise defined in this Grant Agreement have the meanings provided in the Procurement Guidelines.

#### Works

3. Except as ADB may otherwise agree, Works shall only be procured on the basis of the methods of procurement set forth below:
  - (a) International Competitive Bidding
  - (b) National Competitive Bidding;
  - (c) Shopping; and
  - (d) Direct Contracting.
4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

#### Domestic Preference

5. The Recipient may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

#### National Competitive Bidding

6. The Recipient and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Recipient's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Recipient and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Recipient and ADB.

#### Conditions for Award of Contract

7. The Recipient shall not award any Works contracts for a Subproject which involves environmental impacts until MPWT, MRD or MOWRAM, as the case may be, has:

- (a) obtained all required government approvals, and prepared and submitted to ADB the final IEE and EMP based on the Subproject's detailed design, and obtained ADB's clearance of such IEE and EMP; and
- (b) incorporated the relevant provisions from the Environmental Management Plan into the Works contract.

8. The Recipient shall not award any Works contract involving involuntary resettlement impacts for a Subproject until MPWT, MRD or MOWRAM, as the case may be, has prepared and submitted to ADB the final RP for such Subproject based on the Subproject's detailed design, and obtained ADB's clearance of such RP.

9. The Recipient shall not award any Works contract for a Subproject which involves impacts on indigenous peoples.

#### Industrial or Intellectual Property Rights

10. (a) The Recipient shall ensure that all Works 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 contracts for the procurement of Works 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.

#### ADB's Review of Procurement Decisions

11. Contracts procured under international competitive bidding procedures shall be subject to prior review by ADB, unless otherwise agreed between the Recipient and ADB and set forth in the Procurement Plan.

**SCHEDULE 3****Execution of Project**Implementation Arrangements

1. The Recipient and the Project Executing Agency shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Recipient and ADB. In the event of any discrepancy between the PAM and this Grant Agreement, the provisions of this Grant Agreement shall prevail.