
LOAN NUMBER 3694-MON
LOAN NUMBER 3695-MON(COL)
LOAN NUMBER 8348-MON(EF)
GRANT NUMBER 0594-MON(EF)
GRANT NUMBER 0595-MON(EF)

PROJECT AGREEMENT

(Ulaanbaatar Green Affordable Housing and Resilient Urban Renewal Sector Project Project)

between

ASIAN DEVELOPMENT BANK

and

MUNICIPALITY OF ULAANBAATAR

DATED 26 December 2018

MON 49169

PROJECT AGREEMENT

PROJECT AGREEMENT dated 26 December 2018 between ASIAN DEVELOPMENT BANK ("ADB") and MUNICIPALITY OF ULAANBAATAR ("MUB") (also known as the Governor's Office of the Capital City Ulaanbaatar).

WHEREAS

(A) by a loan agreement dated 26 December 2018 between Mongolia ("Borrower") and ADB ("Ordinary Operations [Concessional] Loan Agreement"), ADB has agreed to make a concessional loan to the Borrower from its ordinary capital resources in an amount of twenty million Dollars (\$20,000,000) ("Ordinary Operations [Concessional] Loan") on the terms and conditions set forth in the Ordinary Operations [Concessional] Loan Agreement;

(B) by an agreement dated 26 December 2018 between the Borrower and ADB ("Ordinary Operations Loan Agreement"), ADB has agreed to make a loan to the Borrower from its ordinary capital resources in an amount of sixty million Dollars (\$60,000,000) ("Ordinary Operations Loan") upon terms and conditions set forth therein;

(C) by a loan agreement dated 03 April 2019 between the Borrower and ADB, ADB acting in its capacity as an accredited entity of the Green Climate Fund ("GCF") in accordance with the Accredited Master Agreement dated 17 August 2017 ("AMA") and the Funded Activity Agreement dated 28 September 2018 ("FAA") between GCF and ADB ("GCF Loan Agreement"), has agreed to provide from the ADB Green Climate Fund a loan in the amount of ninety-five million Dollars (\$95,000,000) ("GCF Loan") to assist in financing a part of the Project;

(D) by a grant agreement dated 20 December 2018 between the Borrower and ADB ("GCF Grant Agreement"), ADB acting in its capacity as an accredited entity of GCF in accordance with the AMA and FAA between GCF and ADB, has agreed to provide from the ADB Green Climate Fund a grant in the amount of fifty million Dollars (\$50,000,000) ("GCF Grant") to assist in financing a part of the Project;

(E) by a grant agreement dated 20 December 2018 between the Borrower and ADB ("HLTF Grant Agreement"), ADB has agreed to administer a grant from the High-Level Technology Fund ("HLTF") in the amount equivalent to three million Dollars (\$3,000,000) (the "HLTF Grant") for the purpose of cofinancing certain activities under the Project;

(F) ADB has agreed to make the Ordinary Operations [Concessional] Loan, Ordinary Operations Loan, GCF Loan, GCF Grant and HLTF Grant only on the condition that [a portion of] the proceeds of the Ordinary Operations [Concessional] Loan, Ordinary Operations Loan, GCF Loan, GCF Grant and HLTF Grant be made available to MUB and that MUB agrees to undertake certain obligations towards ADB set forth herein; and

(G) MUB, in consideration of ADB entering into the Ordinary Operations [Concessional] Loan Agreement, Ordinary Operations Loan Agreement, GCF Loan Agreement, GCF Grant Agreement and HLTF Grant Agreement, has agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. (a) Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreements and in the Loan Regulations (as defined in each of the Loan Agreements) have the respective meanings therein set forth, except that for purposes of this Project Agreement: the term "Project" means Outputs 1 and 3 of the Project, as described in Schedule 1 to the Ordinary Operations [Concessional] Loan Agreement.

ARTICLE II

Particular Covenants

Section 2.01. (a) MUB shall carry out the Project with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project and operation of the Project facilities, MUB shall perform all obligations set forth in the Ordinary Operations [Concessional] Loan Agreement, Ordinary Operations Loan Agreement, GCF Loan Agreement, GCF Grant Agreement and HLTF Grant Agreement to the extent that they are applicable to MUB, and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. MUB shall make available, promptly as needed, and on terms and conditions acceptable to ADB, the funds, facilities, services, land and other resources as required, in addition to the proceeds of the Ordinary Operations [Concessional] Loan, Ordinary Operations Loan, GCF Loan, GCF Grant and HLTF Grant, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, MUB shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, MUB shall procure all items of expenditures to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to the Ordinary Operations [Concessional] Loan Agreement. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. MUB shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. MUB shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) MUB shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, MUB undertakes to insure, or cause to be insured, the Goods to be imported for the Project against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. MUB shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and MUB shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) MUB shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement or the Subsidiary Loan Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and MUB shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, MUB and the Ordinary Operations [Concessional] Loan, Ordinary Operations Loan, GCF Loan, GCF Grant and HLTF Grant.

Section 2.08. (a) MUB shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Ordinary Operations [Concessional] Loan, Ordinary Operations Loan, GCF Loan, GCF Grant and HLTF Grant and the expenditure of the proceeds thereof; (ii) the items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of MUB; and (v) any other matters relating to the purposes of the Ordinary Operations [Concessional] Loan, Ordinary Operations Loan, GCF Loan, GCF Grant and HLTF Grant.

(b) Without limiting the generality of the foregoing, MUB shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after physical completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, MUB shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by MUB of its obligations under this Project Agreement and the accomplishment of the purposes of the Ordinary Operations [Concessional] Loan, Ordinary Operations Loan, GCF Loan, GCF Grant and HLTf Grant.

Section 2.09. (a) MUB shall (i) maintain separate accounts and records for the Project and the Green Building Facility; (ii) prepare annual financial statements for the Project and the Green Building Facility in accordance with financial reporting standards 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 auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements, use of the proceeds of the Ordinary Operations [Concessional] Loan, Ordinary Operations Loan, GCF Loan, GCF Grant, HLTf Grant and the Green Building Facility and compliance with the covenants of the Ordinary Operations [Concessional] Loan Agreement, Ordinary Operations Loan Agreement, GCF Loan Agreement, GCF Grant Agreement, HLTf Grant Agreement and this Project Agreement, 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 close of the fiscal year to which they relate, 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 Green Building Facility and the opinion of the auditors on the financial statements for the Project and the Green Building Facility, all within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) MUB shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Green Building Facility and their financial affairs where they relate to the Project with the auditors appointed by MUB 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 MUB, unless MUB shall otherwise agree.

Section 2.10. MUB shall enable ADB's representatives to inspect the Project, the Goods and Works and any relevant records and documents.

Section 2.11. (a) MUB shall, promptly as required, take all action within its powers to maintain its existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its operations.

(b) MUB shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

(c) MUB shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 2.12. Except as ADB may otherwise agree, MUB shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, MUB shall apply the proceeds of the Ordinary Operations [Concessional] Loan, Ordinary Operations Loan, GCF Loan, GCF Grant and HLTF Grant to the financing of expenditures on the Project in accordance with the provisions of the Ordinary Operations [Concessional] Loan Agreement, Ordinary Operations Loan Agreement, GCF Loan Agreement, GCF Grant Agreement and HLTF Grant Agreement and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, MUB shall duly perform all its obligations under the Subsidiary Loan Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Subsidiary Loan Agreement.

Section 2.15. MUB shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its constitutional documents, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. MUB shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

ARTICLE III

Effective Date; Termination

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Ordinary Operations [Concessional] Loan Agreement comes into force and effect. ADB shall promptly notify MUB of such date.

Section 3.02. (a) This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the Ordinary Operations [Concessional] Loan Agreement shall terminate in accordance with its terms.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Ordinary Operations [Concessional] Loan Agreement, Ordinary Operations Loan Agreement, GCF Loan Agreement, GCF Grant Agreement and HLTF Grant Agreement.

ARTICLE IV**Miscellaneous**

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2407.

For MUB

Governor's Office of the Capital city
D.Sukhbaatar square-7
Chingeltei District
Ulaanbaatar 15160
Mongolia

Facsimile Number:

(976) 11 315347.

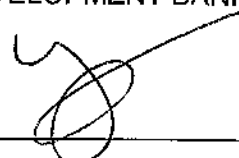
Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of MUB may be taken or executed by its Governor or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) MUB shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

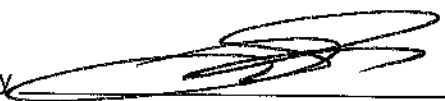
Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

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

ASIAN DEVELOPMENT BANK

By 
YOLANDA FERNANDEZ LOMMEN
Country Director
Mongolia Resident Mission

MUNICIPALITY OF ULAANBAATAR

By 
BATBAYASGALAN JANTSAN
Acting Governor
Municipality of Ulaanbaatar

SCHEDULE

Execution of Project; Financial Matters

Implementation Arrangements

1. MUB shall ensure and shall cause the DBM and AMC to 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 Borrower, MUB, DBM and ADB. In the event of any discrepancy between the PAM and this Project Agreement, the provisions of this Project Agreement shall prevail.

2. MUB shall ensure that the PMO has the adequate capacity and staff to implement the Project, including providing training on funds flow arrangements and ADB guidelines on project disbursements, accounting and reporting and ensure that systems they have are more tailored for the Project.

Interagency Coordination

3. The MUB shall ensure adequate coordination with relevant government agencies, especially the Urban Planning and Master Planning Agency and Land Agency, GADIP PMO, Capital City Housing Corporation and Urban Planning and Design Institute.

During Construction Period

4. MUB shall ensure that the Works contractors take necessary actions to avoid interruptions to water supply, heating, and other utility services during the Project construction period.

Counterpart Funds

5. MUB shall provide counterpart funds necessary for the Project in a timely manner, including any additional counterpart funds required for any shortfall of funds or cost overruns during Project implementation. Additionally, MUB shall provide funds and resources necessary for the operation and maintenance of the Project facilities after completing of the Project.

6. In addition to the foregoing, MUB shall ensure sufficient funds to satisfy its liabilities from any Works, Goods and/or Consulting Services contract.