

---

GRANT NUMBER 9181-VAN (EF)

GRANT AGREEMENT  
(Externally Financed)  
(Cyclone Pam School Reconstruction Project)

between

VANUATU

and

ASIAN DEVELOPMENT BANK

DATED 20 NOVEMBER 2015

---

VAN 49320

**GRANT AGREEMENT  
(Externally Financed)**

GRANT AGREEMENT dated 20 November 2015 between VANUATU (“Recipient”) and ASIAN DEVELOPMENT BANK (“ADB”).

WHEREAS

(A) On 24 August 2015 the Recipient has, through ADB, applied to Japan Fund for Poverty Reduction (“JFPR”) for an emergency assistance grant, to be administered by ADB, for the purpose of financing the Project described in Schedule 1 to this Grant Agreement; and

(B) ADB has agreed to make the proceeds of the grant from JFPR available to the Recipient upon the terms and conditions set forth herein.

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 (“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. Wherever used in this Grant Agreement, the several terms defined in the Grant Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Grant Agreement have the following meanings:

(a) “Consulting Guidelines” means the Guidelines on the Use of Consultants by Asian Development Bank and its Recipients (2013, as amended from time to time);

(b) “Consulting Services” means the services to be financed out of the proceeds of the Grant as described in paragraph 3 of Schedule 1 to this Grant Agreement;

(c) “EA” or “Project Executing Agency” for the purposes, and within the meaning, of the Grant Regulations means MFEM, or any successor thereto acceptable to ADB;

(d) “EARF” or “Environmental Assessment and Review Framework” means the environmental assessment and review framework for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;

(e) “Environmental Assessment” means each environmental assessment, as per EARF, including any update thereto, prepared and submitted by the Recipient

pursuant to the requirements set forth in the EARF, and cleared by ADB;

(f) “EMP” or “Environmental Management Plan” means each environmental management plan, including any update thereto, incorporated in an Environmental Assessment;

(g) “Environmental Safeguards” means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

(h) “GAP” means the gender action plan prepared for the Project, including any update thereto, and agreed to between the Recipient and ADB;

(i) “Goods” means equipment and materials to be financed out of the proceeds of the Grant, including related services such as installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(j) “IA” or “Project Implementing Agency” means MOET, or any successor thereto acceptable to ADB;

(k) “Indigenous Peoples Safeguards” means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;

(l) “Involuntary Resettlement Safeguards” means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) on the SPS;

(m) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2015, as amended from time to time);

(n) “MFEM” means the Recipient’s Ministry of Finance and Economic Management, or any successor thereto acceptable to ADB;

(o) “MOET” means the Recipient’s Ministry of Education and Training, or any successor thereto acceptable to ADB;

(p) “PAM” means the project administration manual for the Project dated October 2015 and agreed between the Recipient and ADB, as updated from time to time in accordance with the respective administrative procedures of the Recipient and ADB;

(q) “Procurement Guidelines” means the ADB’s Procurement Guidelines (2015, as amended from time to time);

(r) “Procurement Plan” means the procurement plan for the Project dated October 2015 and agreed between the Recipient and ADB, as updated from time to time in accordance with the Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(s) “Project facilities” means the facilities, equipment and vehicles provided under the Project;

(t) “Safeguard Policy Statement” or “SPS” means ADB’s Safeguard Policy Statement (2009);

(u) "Safeguards Monitoring Report" means each report prepared and submitted by the Recipient to ADB that describes progress with implementation of, and compliance with, the EMPs, including any corrective and preventative actions; and

(v) "Works" means construction or civil works to be financed out of the proceeds of the Grant, including services such as drilling or mapping, and Project related services that are provided as part of a single responsibility or turnkey contracts but excluding Consulting Services.

## **ARTICLE II**

### **The Grant**

Section 2.01. ADB agrees to make available to the Recipient a grant from Japan Fund for Poverty Reduction in the amount of five million Dollars (\$5,000,000).

## **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. The proceeds of the Grant shall be allocated and withdrawn in accordance with the provisions of Schedule 2 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, the Recipient shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Grant in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Withdrawals from the Grant Account in respect of Goods, Works and Consulting Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Works and Consulting 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, Works and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2018 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 4 to this Grant 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 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, the Goods 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

JFPR. Accordingly, the Recipient agrees that (i) it may only withdraw Grant proceeds to the extent that ADB has received proceeds for the Grant from the JFPR, and (ii) that ADB does not assume any obligations or responsibilities of JFPR in respect of the Project or the Grant other than those set out in this Grant Agreement.

## **ARTICLE V**

### **Effectiveness**

Section 5.01. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of this Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

## **ARTICLE VI**

### **Miscellaneous**

Section 6.01. The Director General of the MFEM 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

Director General  
Ministry of Finance and Economic Management  
Private Mail Bag 9031  
Port Vila  
Vanuatu

Facsimile Number:

+678 26884.

#### For ADB

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


Facsimile Numbers:

(632) 636-2444  
(632) 636-2388.

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 as of the day and year first above written and to be delivered at the principal office of ADB.

VANUATU



  
TOARA DANIEL KALO (MP)  
Acting Minister for  
Finance and Economic Management

ASIAN DEVELOPMENT BANK

By   
ANDREA IFFLAND  
Regional Director  
Pacific Liaison and Coordination Office



## **SCHEDULE 1**

### **Description of the Project**

1. The objective of the Project is to resume critical social services with disaster-resilient infrastructure.
2. The Project shall comprise:  
  
PART A: At least five junior secondary schools in Tafea Province are rebuilt and/or upgraded.  
  
PART B: Community and MOET management capacities for disaster risk reduction and preparedness are strengthened.
3. Consulting services will be provided to support the above activities.
4. The Project is expected to be completed by 31 December 2017.

**SCHEDULE 2****Allocation and Withdrawal of Grant Proceeds**General

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

Basis for Withdrawal from the Grant Account

2. Except as ADB may otherwise agree, the proceeds of the Grant shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Disbursement Procedures

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

TABLE

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Cyclone Pam School Reconstruction Project)</b>			
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for JFPR Financing (\$)</b>	<b>Basis for Withdrawal from the Grant Account</b>
		<b>Category</b>	
1	Civil Works and Consulting Services	5,000,000	100% of total expenditures claimed*
	Total	5,000,000	

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

### SCHEDULE 3

#### Procurement of Goods, Works and Consulting Services

##### General

1. The procurement of Goods, Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used in this Schedule and not otherwise defined in this Grant Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

##### Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:
  - (a) International Competitive Bidding; and
  - (b) Shopping.
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.

##### Conditions for Award of the Contract

5. The Recipient shall not award any Works contract which involves environmental impacts until the EA has:
  - (a) obtained the final approval of the Environmental Assessment, and the issuance of the environmental permit, from the Department of Environmental Protection and Conservation of the Recipient;
  - (b) updated the EMP based on the detailed design; and
  - (c) incorporated the relevant provisions from the EMP into the Works contract.

##### Consulting Services

6. The Recipient shall apply the following method for selecting and engaging the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

Single Source Selection for Design and Supervision Consultants.

Industrial or Intellectual Property Rights

7. (a) The Recipient shall ensure that all Goods and 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 Goods and 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.

8. 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.

ADB's Review of Procurement Decisions

9. Contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Recipient and ADB and set forth in the Procurement Plan.

## **SCHEDULE 4**

### **Execution of Project; Financial Matters**

#### Implementation Arrangements

1. The Recipient and the EA 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.

#### Counterpart Support

2. The Recipient shall make available adequate and timely budgetary allocations of the required counterpart funds in respect of the Project, including for taxes and duties. The Recipient shall meet any financing shortfall to ensure that the Project is fully implemented.

#### Safeguards

##### Environment

3. The Recipient shall ensure, or cause the EA to ensure, that the preparation, design, construction, implementation, operation and decommissioning of the Project comply with (a) all applicable laws and regulations of the Recipient relating to environment, health, and safety; (b) the Environmental Safeguards; (c) the EARF; and (d) all measures and requirements set forth in the respective Environmental Assessment and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

##### Land Acquisition and Involuntary Resettlement

4. The Recipient shall ensure, or cause the EA to ensure, that the Project shall not result in involuntary resettlement impacts.

##### Human and Financial Resources to Implement Safeguards Requirements

5. The Recipient shall make available, or cause the EA to make available, necessary budgetary and human resources to fully implement the EMPs.

##### Safeguards – Related Provisions in Bidding Documents and Works Contracts

6. The Recipient shall ensure, or cause the EA to ensure, that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures and requirements relevant to the contractor set forth in the relevant Environmental Assessment, EMP and environmental permit, and any corrective or preventative actions set out in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;

- (c) provide the Recipient with a written notice of any unanticipated environmental risks or impacts that arise during construction under the Project that were not considered in the relevant Environmental Assessment and EMP; and
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction.

#### Safeguards Monitoring and Reporting

7. The Recipient shall do the following, or shall cause the EA to do the following:
- (a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
  - (b) if any unanticipated environmental risks and impacts arise during construction, implementation or operation of the Project that were not considered in the relevant Environmental Assessment and EMP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
  - (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMPs promptly after becoming aware of the breach.

#### Prohibited List of Investments

8. The Recipient shall ensure, or cause the EA to ensure, that no proceeds of the Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

#### Labor Standards, Health and Safety

9. The Recipient shall ensure that the core labor standards and the Recipient's applicable laws and regulations are complied with during Project implementation. The Recipient shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Recipient's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women.

Gender and Development

10. The Recipient shall ensure that (a) the GAP is implemented in accordance with its terms; (b) adequate resources are allocated for implementation of the GAP; (c) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; and (d) progress on implementation of the GAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

Governance and Anticorruption

11. The Recipient, the EA and the IA shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

12. The Recipient, the EA and the IA shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

Grievance Redress Mechanism

13. Within six months after the Effective Date, the Recipient shall prepare a grievance redress mechanism, acceptable to ADB, and establish a special committee to receive and resolve complaints/grievances or act upon reports from stakeholders on misuse of funds and other irregularities, including grievances due to resettlement. The special committee will (a) make public of the existence of this grievance redress mechanism, (b) review and address grievances of stakeholders of the Project, in relation to either the Project, any of the service providers, or any person responsible for carrying out any aspect of the Project; and (c) proactively and constructively responding to them.

Operation and Maintenance

14. The Recipient shall allocate and make available, on a timely basis, sufficient funds for the operation and maintenance of the Project facilities, and shall ensure that the Project facilities are adequately maintained in accordance with the applicable standards and best international practices.

Project Performance Monitoring System

15. Within six months after the Effective Date, the IA shall develop a project performance monitoring and reporting system, which shall monitor the Project implementation, and evaluate the impact, outcome, outputs and activities in relation to the targets and milestones established for the Project and the overall rehabilitation and reconstruction of the cyclone affected areas on Tanna island.



Grant Refund

16. If ADB determines that an amount of the Grant has been used in a manner inconsistent with the provisions of this Grant Agreement, the Recipient shall, upon notice by ADB to the Recipient, promptly refund such amount to ADB. Except as ADB may otherwise determine, ADB shall cancel all amounts refunded pursuant to this provision.

Donor-Specific Covenant

17. The Recipient shall comply with the Communication and Visibility Guidelines of JFPR; and in particular, the Recipient shall include JFPR logos in all relevant Project publications and on any equipment or facility funded by JFPR.