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LOAN NUMBER 3316-MYA(SF)

LOAN AGREEMENT  
(Special Operations)  
(Mandalay Urban Services Improvement Project)

between

REPUBLIC OF THE UNION OF MYANMAR

and

ASIAN DEVELOPMENT BANK

DATED 9 September 2016

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MYA 47127

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**LOAN AGREEMENT  
(Special Operations)**

LOAN AGREEMENT dated 9 September 2016 between REPUBLIC OF THE UNION OF MYANMAR ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) the Borrower has, through ADB, applied to the Urban Climate Change Resilience Trust Fund under the Urban Financing Partnership Facility ("UFPF") for a grant in the amount equivalent to four million Dollars (\$4,000,000), to be financed by the government of the United Kingdom, for the purpose of financing certain activities in Component 3 as described in paragraph 2(c) of Schedule 1 to this Loan Agreement (the "UFPF Grant");

(C) the Borrower has also applied to Agence Française de Développement ("AFD") for a loan ("AFD Loan") in an amount of forty million Euros (€40,000,000) to assist in financing activities under Component 1 as described in paragraph 2(a) of Schedule 1 to this Loan Agreement and certain activities under Component 3 as described in paragraph 2(c) of Schedule 1 to this Loan Agreement, pursuant to an agreement to be entered into between the Borrower and AFD ("AFD Loan Agreement");

(D) the Borrower has also applied to the European Union ("EU") for a grant ("EU Grant") in an amount of five million nine hundred thousand Euros (€5,900,000) to be administered by AFD, to assist in financing certain activities under Component 3 as described in paragraph 2(c) of Schedule 1 to this Loan Agreement, pursuant to an agreement to be entered into between the Borrower and AFD (the "EU Grant Agreement");

(E) ADB has agreed to make the proceeds of the UFPF Grant available to the Borrower upon the terms and conditions set forth in the Externally Financed Grant Agreement between the Borrower and ADB of even date herewith ("Grant Agreement");

(F) the Project will be carried out by the Mandalay Regional Government ("MRG") and Mandalay City Development Committee ("MCDC"), and for this purpose the Borrower will make available to MCDC the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(G) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB, MRG and MCDC;

NOW THEREFORE the parties agree as follows:

**ARTICLE I****Loan Regulations; Definitions**

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

- (a) Section 2.01(25) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement of even date herewith between ADB on the one part, and MRG and MDCD on the other part.

- (b) The term "Project Executing Agency" appearing in Section 6.01(a), 8.01(d), 8.01(f), 8.01(k), 9.01(c) and 9.02(c) of the Loan Regulations shall be substituted by the term "party to the Project Agreement".

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

(a) "Component 3" means the component described in paragraph 2(c) of Schedule 1 to this Loan Agreement;

(b) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(c) "Consulting Services" means the services to be financed out of the proceeds of the Loan as referred to in paragraph 3 of Schedule 1 to this Loan Agreement;

(d) "Environmental Management Plan" or "EMP" means the environmental management plan for the Project, including any update thereto, incorporated in the IEE;

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

(f) "GSIAP" means the gender equity and social inclusion action plan prepared for the Project, including any update thereto, and agreed to between the Borrower and ADB;

(g) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(h) "Initial Environmental Examination" or "IEE" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(i) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;

(j) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);

(k) "MCDC" means the Borrower's Mandalay City Development Committee, or any successor thereto;

(l) "MRG" means the Mandalay Regional Government of the Borrower, or any successor thereto;

(m) "PAM" means the project administration manual for the Project dated 24 September 2015 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(n) "PMO" means the Project Management Office established by MRG under MCDC which is responsible for carrying out detailed implementation of the Project and as described in the PAM;

(o) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);

(p) "Procurement Plan" means the procurement plan for the Project dated 24 September 2015 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(q) "Project facilities" means the equipment to be provided and the facilities to be installed, constructed, operated, upgraded and maintained under the Project;

(r) "Resettlement Plan" or "RP" means the resettlement plan for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(s) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);

(t) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of and compliance with the EMP and the RP (as applicable), including any corrective and preventative actions;

(u) "Subsidiary Loan" means a loan provided under a Subsidiary Loan Agreement;

(v) "Subsidiary Loan Agreement" means a subsidiary loan agreement between the Borrower and MCDC as described in Section 3.01(a) of this Loan Agreement; and

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

## ARTICLE II

### The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to forty-two million five hundred and forty-seven thousand Special Drawing Rights (SDR42,547,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in subsection (a) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 May and 1 November in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be Dollar.

## ARTICLE III

### Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan to MCDC under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB.

(b) The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 September 2023 or such other date as may from time to time be agreed between the Borrower and ADB.

## ARTICLE IV

### Particular Covenants

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

Section 4.02. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.03. (a) The Borrower shall ensure that MRG and MCDC: (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 Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for imprest fund) 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 Borrower shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Borrower'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 Borrower, unless the Borrower shall otherwise agree.

Section 4.04. The Borrower shall take all actions which shall be necessary on its part to enable MRG and MCDC to perform their respective obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

## ARTICLE V

### Suspension; Acceleration of Maturity

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations:

(a) MCDC shall have failed to perform any of its obligations under the Subsidiary Loan Agreement;

(b) MRG or MCDC shall have failed to perform any of their respective obligations under the Project Agreement; and

(c) the Borrower shall have failed to perform any of its obligations under the Grant Agreement; and

(d) the AFD Loan shall have become liable for suspension or cancellation or the AFD Loan shall have become repayable prior to its agreed maturity date.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: either of the events specified in Section 5.01 of this Loan Agreement shall have occurred.

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## ARTICLE VI

### Effectiveness

Section 6.01. The following conditions are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

(a) the Grant Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Borrower, and shall have become legally binding upon the Borrower in accordance with its terms, subject only to the effectiveness of this Loan Agreement; and

(b) the following staff shall have been appointed: (i) Project Manager of the PMO, who shall have received all necessary internal authorizations to sign contracts on behalf of MCDC for the procurement of Works, Goods and Consulting Services under the Project; and (ii) Finance Officer and Senior Engineer of the PMO.

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

Section 6.03. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

## ARTICLE VII

### Miscellaneous

Section 7.01. The Ministry of Planning and Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

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

#### For the Borrower

Ministry of Planning and Finance  
Building No. 26 Nay Pyi Taw  
Republic of the Union of Myanmar



Facsimile Number:

+95-67-410198.

For ADB

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

Facsimile Numbers:

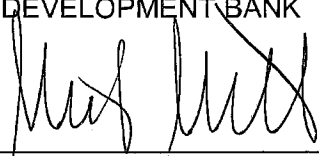
(632) 636-2444  
(632) 636-2336.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan 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.

REPUBLIC OF THE UNION OF  
MYANMAR

By   
\_\_\_\_\_  
DAW NWE NWE WIN  
Director General  
Treasury Department  
Ministry of Planning and Finance

ASIAN DEVELOPMENT BANK

By   
\_\_\_\_\_  
WINFRIED WICKLEIN  
Country Director  
Myanmar Resident Mission

## SCHEDULE 1

### Description of the Project

1. The objective of the Project is to improve access to sustainable urban services in Mandalay.
2. The Project shall comprise:
  - (a) Component 1: improved water supply systems through increased water production capacity by rehabilitating a treatment plant and reservoirs, construction of a new water treatment plant and main transmission lines and distribution systems, rehabilitation and extension of an existing network and replacement of connections including meters.
  - (b) Component 2: improved wastewater and drainage management through construction of sewerage networks, construction of interceptor networks and a pumping station at Thingazar Creek, construction of a wastewater treatment plant, piloting of wastewater connections, provision of septage collection vehicles, dredging and rehabilitation of main canals and increased stormwater pumping capacity.
  - (c) Component 3: strengthened urban services management capacity through support for detailed engineering designs, procurement, construction supervision, disbursement, financial management, social and environmental safeguards and operations and maintenance, provision of training to the staff of MRG and MCDC on municipal financing, non-revenue water reduction, cost recovery and corporatization of water and wastewater operations and conducting awareness programs on public health and environmental protection.
3. The Project includes Consulting Services to support Project implementation, capacity development in urban planning, external monitoring and auditing activities.
4. The Project is expected to be completed by 31 March 2023.

**SCHEDULE 2****Amortization Schedule****(Mandalay Urban Services Improvement Project)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
1 May 2024	886,396
1 November 2024	886,396
1 May 2025	886,396
1 November 2025	886,396
1 May 2026	886,396
1 November 2026	886,396
1 May 2027	886,396
1 November 2027	886,396
1 May 2028	886,396
1 November 2028	886,396
1 May 2029	886,396
1 November 2029	886,396
1 May 2030	886,396
1 November 2030	886,396
1 May 2031	886,396
1 November 2031	886,396
1 May 2032	886,396
1 November 2032	886,396
1 May 2033	886,396
1 November 2033	886,396
1 May 2034	886,396
1 November 2034	886,396
1 May 2035	886,396
1 November 2035	886,396
1 May 2036	886,396
1 November 2036	886,396
1 May 2037	886,396
1 November 2037	886,396
1 May 2038	886,396
1 November 2038	886,396
1 May 2039	886,396
1 November 2039	886,396
1 May 2040	886,396
1 November 2040	886,396
1 May 2041	886,396
1 November 2041	886,396
1 May 2042	886,396
1 November 2042	886,396

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
1 May 2043	886,396
1 November 2043	886,396
1 May 2044	886,396
1 November 2044	886,396
1 May 2045	886,396
1 November 2045	886,396
1 May 2046	886,396
1 November 2046	886,396
1 May 2047	886,396
1 November 2047	886,388
<b>TOTAL</b>	<b>42,547,000</b>

\* The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

**SCHEDULE 3****Allocation and Withdrawal of Loan Proceeds**General

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

Basis for Withdrawal from the Loan Account

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

Interest Charge

3. The amount allocated to Category 7 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan 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 Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

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

Condition for Withdrawals from Loan Account

6. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account until:

(a) the Subsidiary Loan Agreement has been duly authorized by or ratified by, and executed and delivered on behalf of MCDL and is legally binding upon MCDL in accordance with its terms; and

(b) the PMO has been established and staffed as required under the Project and as set out in the PAM.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Mandalay Urban Services Improvement Project)</b>			
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (SDR)  Category</b>	<b>Basis for Withdrawal from the Loan Account</b>
1	Works	20,884,000	94.3% of total expenditure claimed
2	PPP Contract	8,070,000	94.3% of total expenditure claimed
3	Equipment	4,191,000	86.6% of total expenditure claimed
4	Vehicles	525,000	86.6% of total expenditure claimed
5	Consulting Services	1,759,000	95.2% of total expenditure claimed
6	Environmental Protection	168,000	100% of total expenditure claimed
7	Interest Charge	1,596,000	100% of amounts due
8	Unallocated	5,354,000	
	<b>Total</b>	<b>42,547,000</b>	

Subject to the conditions for withdrawal described in paragraph 6 of Schedule 3.



**SCHEDULE 4****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 Loan 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 International Competitive Bidding.
4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower 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. MRG may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

National Competitive Bidding

6. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower 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 Borrower and ADB.

Conditions for Award of Contract

7. The Borrower shall not award any Works contracts until:
  - (a) the Ministry of Natural Resources and Environmental Conservation has provided the final environmental approval for the Project;
  - (b) MCDC has received and approved the Construction Contractor's Environmental Management Plan which shall be consistent with the IEE and EMP; and

- (c) MCDC has prepared and submitted to ADB the final RP based on the Project's detailed design, and obtained ADB's clearance of such RP.

#### Consulting Services

8. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

#### Industrial or Intellectual Property Rights

9. (a) The Borrower 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 Borrower 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.

10. The Borrower 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

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

**SCHEDULE 5****Execution of Project; Financial Matters; Operations**Implementation Arrangements

1. The Borrower, MRG and MCDC 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 Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.
2. The Borrower shall ensure that MRG and MCDC are equipped with qualified staff, reasonable office space, equipment, and adequate financial resources required for implementation of the Project throughout Project implementation.
3. The Borrower, through MRG and MCDC shall ensure that all Works carried out under the Project are designed and constructed in accordance with all relevant national, municipal and local design codes and standards of the Borrower and that the construction supervision, quality control, contract management, and completion inspection and acceptance procedures shall be in accordance with all applicable laws, and municipal and local regulations of the Borrower.
4. The Borrower shall ensure that adequate funding and human resources are allocated to MRG and MCDC so that any Project facilities are maintained and operated in good condition, and in strict conformity with all applicable laws, regulations and standards of the Borrower.

Water Supply and Sanitation Development Plan

5. The Borrower, through MRG and MCDC, shall inform ADB of key water supply and sanitation policy and restructuring reforms for the city of Mandalay including: (a) reforms and any other changes pertaining to the water tariff policy and institutional reforms of MCDC; (b) proposals to regulate the water supply and sanitation sector and shall notify ADB in advance of any proposals to establish other authorities or bodies which will have an impact on the regulation or operation of the water supply and sanitation sector and its participants; and (c) reform or restructuring proposals proposed or prepared by other multilateral and bilateral development agencies pertaining to the water sector and to the maximum extent permissible, share all such documents of development agencies with ADB.
6. The Borrower, through MRG and MCDC, shall ensure that within 2 years of the Effective Date, a water supply and sanitation development plan for the city of Mandalay, covering the matters described in paragraph 5(a) above, has been developed and discussed with ADB, setting forth the water supply and sanitation development plans and investment requirements for the medium to long term.

Water Supply and Wastewater Cost Recovery Covenants, Wastewater Treatment Standards

7. Within one year of the Effective Date, the Borrower shall ensure that MRG and MCDC review the current water tariff level and structure for the city of Mandalay and start to

implement a tariff and sector roadmap which aims to gradually ensure cost recovery, including recovery of operations and maintenance costs, and interest expense under the Subsidiary Loan Agreement. The roadmap shall establish baselines for non-revenue water, collection efficiency and effectiveness and metered connections, and set annual targets for each of these, in consultation with ADB until 2023. The roadmap shall also incorporate measures to reduce non-revenue water levels, to increase metered usage to encourage consumers to use water wisely, and to corporatize water supply and sanitation operations. The roadmap shall also take into account the affordability of the tariffs to households belonging to low-income groups and in particular, shall include initiatives to provide low-income households with affordable access to piped, metered water supply such as (amongst others) socialized fee schemes or lifeline tariffs, flexible installment payment options, waiving of connection fees. The Borrower shall ensure that MRG and MCDC consult with ADB on the preparation of the tariff roadmap and provide ADB with a final copy of such roadmap.

8. Within one year of the Effective Date, the Borrower shall ensure that MRG and MCDC prepare and start to implement a wastewater tariff roadmap which aims to gradually ensure recovery of operating expenditures for wastewater treatment. The roadmap shall take into account the affordability of the tariffs to households belonging to low-income groups and in particular, shall include initiatives to provide low-income households with affordable access to wastewater services such as (amongst others) socialized fee schemes or lifeline tariffs and flexible installment payment options. The Borrower shall ensure that MRG and MCDC provide ADB with a copy of the wastewater tariff roadmap.

9. The Borrower, through MRG and MCDC, shall ensure that within one month of the Effective Date, wastewater treatment standards are developed and approved by the relevant Mandalay authority for use on wastewater treatment projects in the city of Mandalay.

#### Annual Review, Budget and Plan

10. The Borrower shall ensure that MCDC undertakes the following: (a) an annual review of the current water tariff level and structure and a recommendation for the adjustment of the tariff, if any, in line with the tariff and sector roadmap which aims to gradually ensure cost recovery, including recovery of operations and maintenance costs of its water supply operations and at least interest expense under the Subsidiary Loan Agreement; (b) an annual review of the current wastewater tariff level and structure and a recommendation for the adjustment of the tariff, if any, in line with the tariff and sector roadmap which aims to gradually ensure at least recovery of operations and maintenance costs of its wastewater management operations; and (c) an annual review of the current level and structure of other sources of revenues such as housing tax, lighting tax, solid waste fee, and license fees and a recommendation for the adjustment, if any, of such rates, to gradually improve cost recovery of operations and maintenance costs for its water supply and wastewater management operations. The Borrower, through MRG and MCDC, shall provide ADB with documents providing details of the revised water tariffs and wastewater tariffs.

11. The Borrower shall ensure: (a) an annual budget plan of MCDC is prepared and approved for submission to MRG by December each year, including in such annual budget for each fiscal year the Project's costs, including any other counterpart funds required during Project implementation (including for land acquisition and resettlement activities), operations and maintenance costs, and debt service under the Subsidiary Loan Agreement; and (b) that MRG and MCDC consult with each other and the Borrower to ensure that MCDC

secures in a timely manner a subsidy, fiscal transfer, or any other financial support from MRG or the Borrower sufficient to cover the shortfall, if any, in any period that the revenues projected to be generated by MCDC from water supply and wastewater management tariffs, taxes, fees, and capital investment activities are expected to be insufficient to cover MCDC's projected annual costs including operating expenditure costs including debt service, and capital investment costs.

#### Roadmap for Corporatization of Water Supply and Sanitation Operations

12. The Borrower shall ensure that MRG and MCDC prepare and implement the revised accounting and financial management procedures developed under Component 3. This initiative shall facilitate greater effectiveness and efficiency, including: (a) ring fencing of the budgets, financial accounts and financial projections for water supply and sanitation separately, in order to determine the financial position of each of MCDC's water supply and sanitation operations; and (b) enhancing management autonomy, responsibility and governance of the MCDC's water supply and sanitation operations.

#### Billing, Collection, Non-revenue Water

13. The Borrower shall ensure that MRG and MCDC take appropriate measures to: (a) accurately calculate levels of water production and consumption and nonrevenue water; (b) ensure water bills accurately reflect actual water consumption, including by repairing broken meters; (c) meet the annual targets set in the water supply roadmap in order to ensure that by the year 2023: (i) non-revenue water due to physical and commercial losses is reduced to the target set following detailed surveys conducted during Project implementation; (ii) the percentage of metered connections is increased to the target set following detailed surveys conducted during Project implementation; and (iii) effectiveness in collecting outstanding water bills is improved to the target set following detailed diligence conducted during Project implementation; and (d) protect their water resources and facilities through various prosecution for violations such as water meter tampering or water theft.

#### Governing Laws, Ownership, Corporatization, Development Coordination

14. The Borrower shall ensure that MRG and MCDC promptly notify ADB of any proposal to amend, suspend or repeal any provision of any law, regulation, decree, resolution, notification or other instrument: (a) which governs or regulates the water supply and sanitation sector including water tariffs and shall afford ADB an adequate opportunity to comment on such proposal prior to taking any action thereon; or (b) under which the MCDC was established or operationalized or which may from time to time govern, control or regulate the operations of MCDC.

15. The Borrower shall ensure that: (a) in the event of any change in ownership, control, operation or management of the Project facilities; or (b) if any sale, transfer, assignment or issuance of any interest in the Project facilities is proposed; or (c) if any corporatization of MCDC's water supply operations is proposed, MRG and MCDC shall consult with ADB at least 6 months prior to the implementation of such change. The Borrower, through MRG and MCDC, shall further ensure that concurrent with any of the changes described above, the rights and obligations of MCDC under the Project are assumed by the acquiring entity and all such changes are carried out in a lawful and transparent manner.

16. The Borrower shall ensure that MRG and MCDC keep ADB informed of discussions with other multilateral and bilateral aid agencies that may have implications for the implementation of the Project including relating to any institutional and sector restructuring and shall share all such related documents with ADB including to the maximum extent permissible, all such documents of development partners. The Borrower shall ensure that MRG and MCDC provide ADB with an opportunity to comment on any resulting policy reforms which could affect the Project, and shall take into account ADB's views before finalizing and implementing any such proposals.

#### Parallel Cofinancing

17. The Borrower shall ensure that within one year of the Effective Date, each of the AFD Loan Agreement and the EU Grant Agreement have been duly authorized by or ratified by, and executed and delivered on behalf of, the Borrower, and are legally binding upon the Borrower in accordance with their respective terms.

#### Environment

18. The Borrower, through MRG and MCDC, shall ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health, and safety; (b) the Environmental Safeguards set out in the ADB Safeguards Policy Statement; and (c) all measures and requirements set forth in the IEE and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

#### Land Acquisition and Involuntary Resettlement

19. The Borrower, through MRG and MCDC, shall ensure that all land and all rights-of-way required for the Project and all Project facilities are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; and (c) all measures and requirements set forth in the RP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

20. Without limiting the application of the Involuntary Resettlement Safeguards or the RP, the Borrower shall ensure that no physical or economic displacement takes place in connection with the Project until the following has been completed at least one month prior to the commencement of Works, and as confirmed in a report to be provided by the Project implementation consultant engaged under the Project:

- (a) compensation and other entitlements have been provided to affected people in accordance with the approved RP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the RP.

Indigenous Peoples

21. The Borrower, through MRG and MCDC, shall ensure that the Project does not have any indigenous peoples impacts, within the meaning of the SPS. In the event that the Project does have any such impact, the Borrower shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with the SPS.

Human and Financial Resources to Implement Safeguards Requirements

22. The Borrower shall make available necessary budgetary and human resources to fully implement the EMP and the RP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts.

23. The Borrower, through MRG and MCDC, shall 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 IEE, EMP and RP (to the extent they concern impacts on affected people during construction), 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 MRG and MCDC with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE, EMP or RP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction;
- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction; and
- (f) implement a comprehensive environmental, health and safety (EHS) program that will, among others, ensure that all workers use the appropriate personal protective equipment (PPE) such as safety boots, hard hats, overalls, insulating gloves, safety glasses, ear muffs during project construction/implementation and provide training to workers on EHS as well as the proper use of PPEs.

24. The Borrower shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to comply with the Labor, Health and Safety, Gender and Social Inclusion and Governance and Anticorruption covenants set out in paragraphs 26 to 29 (inclusive) and paragraphs 31-33 (inclusive).

Safeguards Monitoring and Reporting

25. The Borrower shall 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 and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE, EMP or RP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;
  - (c) no later than the date of award of the Works contract, engage qualified and experienced external experts or qualified NGOs under a selection process and terms of reference acceptable to ADB, to verify information produced through the Project monitoring process, and facilitate the carrying out of any verification activities by such external experts; and
  - (d) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP or RP promptly after becoming aware of the breach.

Labor

26. The Borrower shall ensure that MRG and MCDC comply with the following labor requirements in respect of workers carrying out Works under the Project: (a) provide such workers with equal pay for work of equal value, regardless of age, gender, ethnicity, religion, caste or any other factors; (b) ensure the timely payment of wages to such workers; (c) not discriminate against people based on age, gender, ethnicity, religion or caste, provided they are capable of performing the work; (d) advertise labor requirements in a timely manner prior to recruitment, in a venue that can reasonably be expected to be seen by interested men and women, regardless of age, ethnicity, religion or caste; (e) provide such workers with a written contract; (f) provide such workers with adequate on-the-job training and safety training; (g) do not restrict freedom of association of such workers; (h) comply with core labor standards and the applicable national and local labor laws and regulations, including stipulations related to employment; (i) not employ, use or benefit from children in any capacity on the Project; and (j) not employ, use or benefit from forced labor, which consists of any work or service not voluntarily performed that is exacted from an individual under threat or force or penalty including any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor-contracting arrangements.

27. The Borrower shall ensure that MRG and MCDC strictly monitor compliance with the requirements set forth in paragraph 26 above and provide ADB with regular reports.



Health and Safety

28. The Borrower, through MRG and MCDC, shall ensure that the preparation, construction, operation and maintenance of the Project facilities comply with all applicable laws and regulations of the Borrower relating to health and safety.

Gender and Social Inclusion

29. The Borrower, through MRG and MCDC shall ensure that: (a) the GSIAP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GSIAP; (c) adequate resources are allocated for implementation of the GSIAP; and (d) progress on implementation of the GSIAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB; and (e) key gender outcome and output targets include, but not limited to: (i) meeting the relevant targets for the involvement and participation of women in Project activities; (ii) training stakeholders on gender issues related to the urban water supply and sanitation sector; and (iii) collecting sex-disaggregated data for the purposes of monitoring Project implementation.

Stakeholder Communications Plan

30. The Borrower, through MRG and MCDC, shall ensure that: (a) the Stakeholder Communications Plan (SCP) set out in the PAM is implemented in accordance with its terms; (b) adequate resources are allocated for implementation of the SCP; and (c) progress on implementation of the SCP are regularly monitored and reported to ADB.

Governance and Anticorruption

31. The Borrower, MRG and MCDC 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 fully with any such investigation and extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for satisfactory completion of such investigation.

32. The Borrower, through MRG and MCDC, shall ensure that 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 MRG and MCDC and all contractors, suppliers, consultants, and other service providers as they relate to the Project. Individuals/entities on ADB's anticorruption debarment lists are ineligible to participate in ADB-financed activity and may not be awarded any contracts under the Project. If any of MRG, MCDC or ADB is or becomes aware or has a reasonable suspicion that any member of MRG or MCDC has engaged in corrupt or fraudulent practices (as defined in ADB's Anticorruption Policy under or in connection with the Project or the loan, MRG and MCDC shall take such timely and appropriate action satisfactory to ADB to investigate and/or remedy the situation.

33. In addition to these requirements, to deter corruption and increase transparency, the Borrower shall ensure that MCDC creates a Project website within 3 months of the Effective Date, accessible by the public, to disclose various information

concerning the Project including general information about the Project, public procurement related to the Project, Project progress and contact details in English and Myanmar language. The website will also provide a link to ADB's Integrity Unit (<http://www.adb.org/Integrity/complaint.asp>) for reporting to ADB any grievances or allegations of corrupt practices arising out of the Project and Project activities. For each contract, the website will include information on, among others, the list of participating bidders, name of the winning bidder, basic details on bidding procedures adopted, amount of contract awarded, and the list of Goods, Works and Consulting Services. MCDC shall permit any bidder to request an explanation as to why a bid was unsuccessful and MCDC shall respond promptly. The website will be updated regularly. In addition to the web-based disclosure, stakeholders will be provided by MCDC with detailed information on procurement on public notice boards in their respective areas.

#### Grievance Redress Mechanism

34. The Borrower shall ensure that within three months of the Effective Date, a grievance redress mechanism, acceptable to ADB and in accordance with the PAM, is established and functioning effectively to (a) review and document eligible complaints of Project stakeholders; (b) proactively address grievances; (c) provide the complainants with notice of the chosen mechanism/action; and (d) prepare periodic reports to summarize (i) the number of complaints received and resolved, (ii) chosen actions, and (iii) final outcomes of the grievances and make these reports available to ADB. Eligible complaints will include (a) those related to the Project, (b) any of the service providers, (c) any person responsible for carrying out the Project, (d) complaints on misuse of funds and other irregularities, and (e) grievances due to any safeguards and gender issues.