
GRANT NUMBER 0455-MYA(EF)

GRANT AGREEMENT
(Externally Financed)

(Mandalay Urban Services Improvement Project)

between

REPUBLIC OF THE UNION OF MYANMAR

and

ASIAN DEVELOPMENT BANK

DATED 9 September 2016

MYA 47127

**GRANT AGREEMENT
(Externally Financed)**

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

WHEREAS

(A) by a loan agreement of even date herewith between the Recipient and ADB ("ADB Loan Agreement"), ADB has agreed to make a loan to the Recipient from ADB's Special Funds resources in the amount of forty-two million five hundred and forty-seven thousand Special Drawing Rights (SDR42,547,000) for the purposes of the Project described in Schedule 1 to the ADB Loan Agreement;

(B) the Recipient, through ADB, has applied to the Urban Climate Change Resilience Trust Fund under the Urban Financing Partnership Facility for a grant, administered by ADB, 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 cofinancing certain activities in Component 3 as described in paragraph 2(c) of Schedule 1 to the Loan Agreement (the "Grant");

(C) it has been resolved that the Urban Financing Partnership Facility will extend the Grant, administered by ADB, for the purposes of cofinancing certain expenditures under the Project; and

(D) ADB has agreed to make the proceeds of the Grant from the Urban Climate Change Resilience Trust Fund, to be financed by the government of the United Kingdom, under the UFPF 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 Borrowers (2013, as amended from time to time);

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

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

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

(e) "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;

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

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

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

(i) "PAM" means the project administration manual for the Project dated 24 September 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;

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

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

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

(m) "Project Agreement" means the Project Agreement of even date herewith between ADB on the one part, and MRG and MCDC on the other part;

(n) "Subsidiary Loan Agreement" means a subsidiary loan agreement between the Recipient and MCDC as described in Section 3.01(a) of the ADB Loan Agreement; and

(o) "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 contract, but excluding Consulting Services.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient a grant from Urban Climate Change Resilience Trust Fund, to be financed by the government of the United Kingdom, under the Urban Financing Partnership Facility in the amount of four million Dollars (\$4,000,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall make the proceeds of the Grant available to MCDC through MRG upon terms and conditions satisfactory to ADB and shall cause MCDC to apply such proceeds to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement and the Project Agreement.

Section 3.02. The proceeds of the Grant shall be allocated and withdrawn in accordance with the provisions of Schedule 1 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, 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 2 to this Grant Agreement.

Section 3.04. Except as ADB may otherwise agree, the Recipient shall cause all items of expenditure finance out of the Grant to be used exclusively in the carrying out of the Project.

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

ARTICLE IV

Particular Covenants

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

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

Section 4.03 (a) The Recipient shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Grant proceeds and compliance with the financial covenants of this Grant Agreement as well as on the use of the procedures for 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 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 4.04. The Recipient 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 Recipient shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Recipient and ADB and to accomplish the purposes of the Grant.

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

Section 4.06. The Recipient acknowledges and agrees that this Grant Agreement is entered into by ADB, not in its individual capacity, but as grant administrator for the Urban Climate Change Resilience Trust Fund under the Urban Financing Partnership Facility. Accordingly, the Recipient agrees that (i) it may only withdraw Grant proceeds to the extent that ADB has received proceeds for the Grant from Urban Climate Change Resilience Trust Fund under the Urban Financing Partnership Facility, and (ii) that ADB does not assume any obligations or responsibilities of the Urban Climate Change Resilience Trust

Fund under the Urban Financing Partnership Facility in respect of the Project or the Grant other than those set out in this Grant Agreement.

ARTICLE V

Suspension

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

- (a) the Recipient shall have failed to perform any of its obligations under the ADB Loan Agreement;
- (b) MRG or MCDC shall have failed to perform any of their respective 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
- (d) the AFD Loan or the EU Grant shall have become liable for suspension or cancellation or the AFD Loan shall have become repayable prior to its agreed maturity date.

ARTICLE VI

Effectiveness

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

- (a) the ADB Loan Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Recipient, and shall have become legally binding upon the Recipient in accordance with its terms, subject only to the effectiveness of this Grant Agreement;
- (b) the Project Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of MRG and MCDC, and shall have become legally binding upon MRG and MCDC in accordance with its terms, subject only to the effectiveness of this Loan Agreement; and
- (c) 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; (ii) Finance Officer and Senior Engineer of the PMO.

Section 6.02. The following are specified as additional matters, for the purposes of Section 9.02(c) of the Grant Regulations, to be included in the opinion or opinions to be furnished to ADB:

(a) the ADB Loan Agreement has been duly authorized by or ratified by, and executed and delivered on behalf of, the Recipient, and is legally binding upon the Recipient in accordance with its terms, subject only to the effectiveness of this Grant Agreement; and

(b) the Project Agreement has been duly authorized by or ratified by, and executed and delivered on behalf of, MRG and MCDC, and is legally binding upon the MRG and MCDC in accordance with its terms, subject only to the effectiveness of this Grant Agreement.

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

ARTICLE VII

Miscellaneous

Section 7.01. For the purposes of Section 11.02 of the Grant Regulations, the Recipient shall designate the relevant representatives and inform ADB in writing.

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

For the Recipient

To be provided separately to ADB in writing.

For ADB

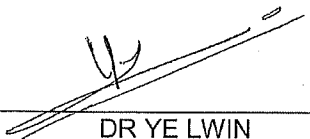
Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:


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

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

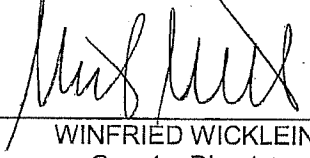
REPUBLIC OF THE UNION OF MYANMAR

By 
DR YE LWIN
Mayor, Mandalay City
Minister, Ministry of Development Affairs,
Mandalay Regional Government

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





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SCHEDULE 1

Allocation and Withdrawal of Grant 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 Grant and the allocation of the Grant 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 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.

Reallocation

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

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

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

Disbursement Procedures

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

Condition for Withdrawals from Grant Account

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

(a) the Subsidiary Loan Agreement has been duly authorized by or ratified by, and executed and delivered on behalf of MCDC and is legally binding upon MCDC 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.

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TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Mandalay Urban Services Improvement Project)			
Number	Item	Total Amount Allocated for financing under Urban Climate Change Resilience Trust Fund under the Urban Financing Partnership Facility* (\$)	Basis for Withdrawal from the Grant Account
		Category	
1	Works	600,000	100% of total expenditure claimed
2	Equipment	150,000	100% of total expenditure claimed
3	Consulting Services	2,770,000	100% of total expenditure claimed
4	Unallocated	480,000	
	Total	4,000,000	

Subject to the conditions for withdrawal described in paragraph 5 of Schedule 1.

* Financing partners: the Rockefeller Foundation and the governments of the United Kingdom and the United States of America. For the purpose of the Project, only financing from the government of the United Kingdom will be utilized.

SCHEDULE 2

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 National 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 Recipient may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Domestic Preference

5. The Recipient may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(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 Recipient and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Recipient's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Recipient and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Recipient and ADB.

Conditions for Award of Contract

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

Consulting Services

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

Industrial or Intellectual Property Rights

9. (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.

10. 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

11. Contracts procured under national competitive bidding procedures and 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 3

Execution of Project

Implementation Arrangements

1. The Recipient, 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 Recipient and ADB. In the event of any discrepancy between the PAM and this Grant Agreement, the provisions of this Grant Agreement shall prevail.