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LOAN NUMBER 3311-CAM (SF)

LOAN AGREEMENT  
(Special Operations)

(Integrated Urban Environmental Management in the Tonle Sap Basin Project)

between

KINGDOM OF CAMBODIA

and

ASIAN DEVELOPMENT BANK

DATED 22 December 2015

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CAM 42285

**LOAN AGREEMENT  
(Special Operations)**

LOAN AGREEMENT dated 22 December 2015 between KINGDOM OF CAMBODIA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a loan agreement of even date herewith between the Borrower and ADB ("SCF Loan Agreement"), ADB has agreed to provide from the ADB Strategic Climate Fund a loan in the amount of five million Dollars (\$5,000,000) ("SCF Loan") for the purposes of the Integrated Urban Environmental Management in the Tonle Sap Basin Project ("Project"), described in Schedule 1 to this Agreement;

(B) by a grant agreement of even date herewith between the Borrower and ADB ("SCF Grant Agreement"), ADB has agreed to provide from the ADB Strategic Climate Fund a grant in an amount of five million Dollars (\$5,000,000) ("SCF Grant") for the purposes of the Project;

(C) the Borrower has applied to ADB for a loan for the purposes of the Project; and

(D) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All 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:

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) "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 Loan as described in paragraph 3 of Schedule 1 to this Loan Agreement;

(c) "Environment Sanitation Fees" means collectively, the garbage collection fees and drainage and/or flood control service charges;

(d) "Environmental Assessment and Review Framework for the Community Mobilization and Environmental Improvements Output" or "EARF" means the environmental assessment and review framework for Output 2(c) of the Project described in Schedule 1 hereto, including any update thereto;

(e) "Environmental Management Plan" or "EMP" means each environmental management plan prepared for the Project, including any update thereto, incorporated in each relevant IEE (collectively, "Environmental Management Plans" or "EMPs");

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

(g) "Ethnic Minorities" means indigenous peoples within the meaning of the SPS and as described in the PAM;

(h) "Gender Action Plan" or "GAP" means the gender action plan for the Project, including any updates thereto, prepared and submitted by the Project Executing Agency and cleared by ADB;

(i) "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;

(j) "Identification of Poor Households Program" means a nationwide targeting means for the poor based on poverty levels and poverty rates in different areas;

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

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

(n) "IRC" means the Inter-ministerial Resettlement Committee within the Ministry of Economy and Finance of the Borrower or any successor thereto;

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

(p) "MPWT" means the Ministry of Public Works and Transport of the Borrower or any successor thereto;

(q) "PAM" means the project administration manual for the Project dated 15 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;

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

(s) "Procurement Manual" means the Procurement Manual under the Standard Operating Procedures prepared by the Borrower and endorsed by ADB, which sets forth procurement-related policies and procedures for externally-financed projects and programs;

(t) "Procurement Plan" means the procurement plan for the Project dated 15 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 (which include the Standard Operating Procedures and Procurement Manual as updated from time to time);

(u) "Project Executing Agency" means the MPWT or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(v) "Project facilities" means any facilities to be constructed, provided, rehabilitated, operated and/or maintained under the Project;

(w) "Project Implementing Agencies" means the Kampong Chhnang provincial department of public works and transport, Pursat provincial department of public works and transport, the Kampong Chhnang municipality and the Pursat municipality (each a "Project Implementing Agency");

(x) "Project Implementation Units" or "PIUs" means the project implementation units established within the Kampong Chhnang provincial department of public works and transport and Pursat provincial department of public works and transport, responsible for the day-to-day management and implementation of the Project activities (each a "Project Implementation Unit" or "PIU");

(y) "Project Management Unit" or "PMU" means the project management unit established within the Project Executing Agency, responsible for the coordination and management of detailed preparation and implementation of Project activities;

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

(aa) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of and compliance with the EARF, EMPs, the RPs and any IPP (if it becomes applicable), including any necessary corrective and preventative actions in compliance with EARF, EMPs, RPs and any IPP (if it becomes applicable);

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

(cc) "Standard Operating Procedures" means the standard operating procedures of the Borrower dated 22 May 2012 (as amended from time to time) providing procedures applicable to all externally-financed projects and programs;

(dd) "Urban Service Unit" or "USU" means each semi-autonomous urban service unit established in the Kampong Chhnang provincial department of public works and transport and the Pursat provincial department of public works and transport, for the sustainable operations and maintenance of urban infrastructure and delivery of reliable urban services in their respective municipality or any successor thereto acceptable to ADB (collectively, "Urban Service Units" or "USUs"); and

(ee) "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 twenty-six million three hundred eighty-two thousand Special Drawing Rights (SDR26,382,000).

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 April and 1 October 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 the Dollar.

### ARTICLE III

#### Use of Proceeds of the Loan

Section 3.01. 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.

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 April 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 of 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.

Section 4.02. (a) The Borrower 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 on 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(s) and statement of expenditures) and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other

information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

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

(c) The 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 4.03. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

## 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) the SCF Loan shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date; and
- (b) the SCF Grant shall have become liable for suspension or cancellation.

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: any of the events specified in Section 5.01 of this Loan Agreement shall have occurred.

**ARTICLE VI****Effectiveness**

Section 6.01. The following 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 SCF Loan Agreement shall have been duly authorized, executed and delivered on behalf of the Borrower and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled; and
- (b) the SCF Grant Agreement shall have been duly authorized, executed and delivered on behalf of the Borrower and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled.

Section 6.02. The following are specified as additional matters, 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:

- (a) the SCF Loan Agreement has been duly authorized, executed and delivered on behalf of the Borrower, and is legally binding upon the Borrower in accordance with its terms; and
- (b) the SCF Grant Agreement has been duly authorized, executed and delivered on behalf of the Borrower, and is legally binding upon the Borrower in accordance with its terms.

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

**ARTICLE VII****Miscellaneous**

Section 7.01. The Minister of Economy 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

The Ministry of Economy and Finance  
Street 92, Sangkat Wat Phnom  
Khan Daun Penh, Phnom Penh  
Cambodia

Facsimile Numbers:

(855-23) 427 798  
(855-23) 428 424

For ADB

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

Facsimile Numbers:

(632) 636-2444  
(632) 636-2018.

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.

KINGDOM OF CAMBODIA

By 

H.E. DR. AUN PORNMONIROTH

Minister

Ministry of Economy and Finance

ASIAN DEVELOPMENT BANK

By 

JANUAR HAKIM

Authorized Representative

**SCHEDULE 1****Description of the Project**

1. The objective of the Project is improved urban services and enhanced climate change resilience in Kampong Chhnang and Pursat municipalities.
2. The Project shall comprise of the following outputs:
  - (a) **Kampong Chhnang urban area environmental improvements** consisting of flood protection along Tonle Sap riverbank through improvement of the existing embankment and construction of any necessary new embankment, construction of a new controlled landfill site located at Phnom Tauch village (Pongro commune, Rolea Bier district), with increased capacity, provision of equipment for solid waste collection, and landfill management which includes the supervised closure of two open dumpsites in Kul Kuk village and Trork village (Sre Thmei commune, Rolea Bier district) (“Output 1”);
  - (b) **Pursat urban area environmental improvements** consisting of the construction of primary and secondary drains in the town center with associated road improvements and improved wastewater treatment, riverbank erosion protection in select locations along the Pursat River, development of new controlled landfill located at Toul Mkak village (Roleap Sangkat, Pursat town), provision of equipment for solid waste collection and landfill management, including equipment and supervised closing of two open dumpsites in Tuol Mkak village (Roleap Sangkat, Pursat town) and Sras Srang village (Prey Gny Sangkat, Pursat town) (“Output 2”);
  - (c) **Community mobilization and environmental improvements** to address the climate change and environmental needs of the urban poor and vulnerable in Kampong Chhnang and Pursat, including improved household sanitation for identified poor households 1 and 2 under the Identification of Poor Households Program, climate change and hygiene awareness and action, and community small-scale infrastructure improvements in pre-identified poor and vulnerable areas in each municipality (“Output 3”);
  - (d) **Strengthened Sector Coordination and Operations** consisting of (i) support to the MPWT to convene national urban development task force meetings in the urban sector, (ii) strengthening climate change regulations focusing on improved building codes in provincial towns around the Tonle Sap, including appropriate sanitation, and (iii) initial support for the establishment of pilot urban service units for improved delivery and management of decentralized urban services (“Output 4”); and

- (e) **Strengthened Capacity for Project Implementation and Operations and Maintenance** consisting of project implementation support services for the project management unit and project implementation units in design, supervision, safeguards, project and climate resilience monitoring, gender mainstreaming and community development, accounting and financial management, procurement, disbursement, review and expansion of existing strategies (flood mitigation, storm water drainage, solid waste management, and disaster risk management), and skills enhancement and on-the-job training in urban planning and development, solid waste management, and operations and maintenance ("Output 5").

3. The Project shall finance consulting services for project management and implementation support, climate change adaptation in urban development, sector strengthening and capacity development and a non-governmental organization to implement Output 3.

4. The Project is expected to be completed by 31 October 2022.

**SCHEDULE 2****Amortization Schedule****(Integrated Urban Environmental Management in the Tonle Sap Basin Project)**

<b>Date Payment Due</b>	<b>Payment of Principal (expressed in Special Drawing Rights)*</b>
1 October 2023	549,625
1 April 2024	549,625
1 October 2024	549,625
1 April 2025	549,625
1 October 2025	549,625
1 April 2026	549,625
1 October 2026	549,625
1 April 2027	549,625
1 October 2027	549,625
1 April 2028	549,625
1 October 2028	549,625
1 April 2029	549,625
1 October 2029	549,625
1 April 2030	549,625
1 October 2030	549,625
1 April 2031	549,625
1 October 2031	549,625
1 April 2032	549,625
1 October 2032	549,625
1 April 2033	549,625
1 October 2033	549,625
1 April 2034	549,625
1 October 2034	549,625
1 April 2035	549,625
1 October 2035	549,625
1 April 2036	549,625
1 October 2036	549,625
1 April 2037	549,625
1 October 2037	549,625
1 April 2038	549,625
1 October 2038	549,625
1 April 2039	549,625
1 October 2039	549,625
1 April 2040	549,625
1 October 2040	549,625
1 April 2041	549,625
1 October 2041	549,625
1 April 2042	549,625
1 October 2042	549,625
1 April 2043	549,625
1 October 2043	549,625

Schedule 2

1 April 2044	549,625
1 October 2044	549,625
1 April 2045	549,625
1 October 2045	549,625
1 April 2046	549,625
1 October 2046	549,625
1 April 2047	549,625
<b>TOTAL</b>	<b>26,382,000</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 6 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 Disbursement from Loan Account

6. Notwithstanding any other provision of this Loan Agreement, no disbursements shall be made from the Loan Account for Category 1B or Category 1E relating to the solid waste management contracts for the Project until each relevant USU meets the

following condition: the adoption of Environmental Sanitation Fees by 1 January 2019, determined by ADB to be sufficient to recover full operations and maintenance costs and gradual depreciation over time of solid waste management, flood control and drainage as further stated in the PAM (the "Disbursement Condition"). For the avoidance of doubt, the Disbursement Condition required to be met by each USU shall not be conditional or dependent on the other USU meeting the Disbursement Condition and if one USU meets the Disbursement Condition, then disbursements from the Loan Account shall be permitted as to that relevant USU according to the terms set forth herein. Each USU shall undertake an annual assessment and will implement the aforesaid fee adjustments by January 1 of each year, starting 2019.



TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS</b> <b>(Integrated Urban Environmental Management in the Tonle Sap Basin)</b>				
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing SDR</b>		<b>Percentage and Basis for Withdrawal from the Loan Account</b>
		<b>Category</b>	<b>Subcategory</b>	
<b>1</b>	<b>Works</b>	<b>16,079,000</b>		
1A	Kampong Chhnang Flood Protection		10,087,000	100% of total expenditure claimed* **
1B	Kampong Chhnang Solid Waste Management+		308,000	100% of total expenditure claimed*
1C	Pursat Flood Protection		429,000	100% of total expenditure claimed*
1D	Pursat Drainage		3,475,000	100% of total expenditure claimed* **
1E	Pursat Solid Waste Management+		730,000	100% of total expenditure claimed*
1F	Kampong Chnnang Small-scale Infrastructure Development		525,000	80% of total expenditure claimed*
1G	Pursat Small-scale Infrastructure Development		525,000	80% of total expenditure claimed*
<b>2</b>	<b>Equipment</b>	<b>1,184,000</b>		
2A	Kampong Chhnang Solid Waste Management		523,000	100% of total expenditure claimed*
2B	Pursat Solid Waste Management		583,000	100% of total expenditure claimed*
2C	Kampong Chhnang Embankment Manual Equipment for Maintenance		26,000	100% of total expenditure claimed*
2D	Pursat Flood Protection Manual Equipment for Maintenance		26,000	100% of total expenditure claimed*
2E	Pursat Drainage Manual Equipment for Maintenance		26,000	100% of total expenditure claimed*
<b>3</b>	<b>Workshops</b>	<b>422,000</b>		
3A	Project Management and Implementation Support		415,000	100% of total expenditure claimed
3B	Sector Strengthening and Capacity Development		7,000	100% of total expenditure claimed
<b>4</b>	<b>Consulting Services</b>	<b>2,554,000</b>		
4A	Project Management and Implementation Support		2,437,000	100% of total expenditure claimed*

4B	Sector Strengthening and Capacity Development		69,000	100% of total expenditure claimed*
4C	Surveys and Investigations		48,000	100% of total expenditure claimed* **
5	<b>Incremental Administration</b>	<b>404,000</b>		
5A	Office and Travel Expenses		285,000	100% of total expenditure claimed
5B	Vehicles		108,000	100% of total expenditure claimed*
5C	Equipment		11,000	100% of total expenditure claimed
6	<b>Interest during Implementation</b>	<b>995,000</b>		100% of total amounts due
7	<b>Unallocated</b>	<b>4,744,000</b>		
	<b>Total</b>	<b>26,382,000</b>		

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

\*\* ADB SCF Grant and Loan will be front-loaded.

+ Subject to the disbursement condition under paragraph 6, Schedule 3 of this Loan Agreement.

**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 the methods of procurement set forth below:
  - (a) International Competitive Bidding;
  - (b) National Competitive Bidding; and
  - (c) 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 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. The Borrower 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 cause the Project Executing Agency and each Project Implementing Agency not to award any Works contract:
  - (a) which involves environmental impacts until: (i) the Ministry of Environment has granted the final approval of the IEEs; and (ii) the

Project Executing Agency has incorporated the relevant provisions from the EMPs into the Works contracts; and

- (b) which involves involuntary resettlement impacts, until the Borrower has prepared and submitted to ADB the final RPs based on the Project's detailed design, and obtained ADB's clearance of such RPs.

8. The Borrower shall cause the Project Executing Agency and each Project Implementing Agency not to award any landfill or solid waste management Works contract for the Project until the following shall have occurred:

- (a) the PIUs in Kampong Chhnang and Pursat have been converted and established as fully-operational, semi-autonomous USUs for the sustainable operations and maintenance of urban infrastructure and delivery of reliable urban services in their respective municipalities;
- (b) each USU is established as a special operating agency with a committee (or equivalent) with the authority to levy and increase the Environmental Sanitation Fees;
- (c) each USU comprises at least 20% women and the committee (or its equivalent) includes provincial governors and representatives from MPWT, MEF and Ministry of Women's Affairs;
- (d) each USU approves a business plan, acceptable to MPWT and ADB and commences the implementation of its three-year rolling business plan with specific mandates, objectives, targets and more commercial focus; and
- (e) each USU opens a special account solely for the purpose to deposit revenue collected from the environment sanitation fee levied.

#### Consulting Services

9. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply Quality- and Cost-Based Selection for selecting and engaging Consulting Services.

10. The Borrower shall apply the methods for selecting and engaging the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan.

11. The Borrower shall recruit any individual consultants for such services as agreed with ADB in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

12. (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.

13. 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

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

## SCHEDULE 5

### Execution of Project; Environmental, Social, Financial and Other Matters

#### Implementation Arrangements

1. The Borrower 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.

#### Tonle Sap Urban Areas Development Framework

2. Within 18 months of the Effective Date, the Borrower shall ensure the adoption of the Tonle Sap Urban Areas Development Framework, an urban planning document that guides sustainable and climate resilient infrastructure development and growth of urban areas in the Tonle Sap basin.

#### Roadmap for Establishing Urban Service Units

3. Within 12 months of the Effective Date, the Borrower shall ensure, and cause the Project Executing Agency to ensure, that the plans for establishing semi-autonomous USUs within the municipalities of Kampong Chhnang and Pursat are in place, including relevant draft ministerial *prakas* (or ministerial decisions) to be signed by MPWT for the establishment of USUs, its board of directors (or its equivalent), staffing requirements, human resource recruitment plan, office location, reporting responsibilities, financial management and audit requirements, good governance actions, assets transfer, and timeline and process of conversion from a PIU to a USU.

#### Environmental Sanitation Fees

4. Within 18 months of the Effective Date, the Borrower shall ensure, and cause the Project Executing Agency to ensure, that each USU conducts a review of existing Environmental Sanitation Fees levied in the municipalities of Kampong Chhnang and Pursat and completes a feasibility study on levying Environmental Sanitation Fees that recovers operations and maintenance costs and gradual depreciation of solid waste management, flood control and drainage, taking into account affordability for the poor.

#### Project Performance Monitoring and Evaluation

5. Within 18 months of the Effective Date, the Borrower shall ensure, and cause the Project Executing Agency to ensure, that a project performance monitoring and evaluation is established, acceptable to ADB, to monitor and evaluate the Project performance during implementation.

#### Environmental Decommissioning of Open Dumpsites

6. The Borrower shall ensure and cause the Project Executing Agency to ensure that the open dumpsites in Kampong Chhnang and Pursat relating to the Project shall be closed

and properly decommissioned according to the plans set forth in the IEEs and finally in the IEEs updated during detailed design.

#### Plan for Climate Change Adaptation

7. Within 36 months of the Effective Date, the Borrower shall ensure that the Project Executing Agency has adopted the plan for climate change adaptation in urban areas around the Tonle Sap and revised building codes.

#### Counterpart Funds

8. The Borrower shall ensure that all counterpart funds necessary for the Project is provided on a timely basis.

#### Environment

9. The Borrower shall ensure, and cause the Project Executing Agency to 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; and (c) all measures and requirements set forth in the EARF, IEEs, the EMPs, and any corrective or preventative actions set forth in a Safeguards Monitoring Report. The Borrower shall ensure, and cause the Project Executing Agency to ensure, that the foregoing is applied and implemented for all outputs of the Project described in Schedule 1, regardless of the financing source.

#### Land Acquisition and Involuntary Resettlement

10. The Borrower shall ensure, and cause the Project Executing Agency to ensure, that all land and all rights-of-way required for the Project 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 the RPs based on (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the applicable principles and requirements set forth in the SPS; and (c) any necessary corrective or preventative actions as agreed by the IRC set forth in a Safeguards Monitoring Report.

11. Without limiting the application of the SPS or the RPs, the Borrower shall ensure or cause the Project Executing Agency to ensure that no physical or economic displacement takes place in connection with the Project until:

- (a) prior to the award of any Works contract which involves involuntary resettlement impacts, the Borrower has (i) updated the agreed RPs following completion of detailed design; and (ii) prepared, disclosed to affected persons and submitted to ADB the final RPs based on the Project's detailed design and obtained ADB's concurrence with such RPs;

- (b) compensation and other entitlements have been provided to affected people in accordance with the RPs; and
- (c) a comprehensive income and livelihood improvement program has been put in place in accordance with the RPs.

#### Indigenous Peoples

12. The Project, including Output 3 described in Schedule 1 hereto, shall benefit Ethnic Minorities. The Borrower shall ensure and cause the Project Executing Agency to ensure, that it adheres to applicable laws and regulations of the Borrower relating to indigenous peoples, and the Indigenous Peoples Safeguards and any corrective or preventative actions set forth in a Safeguard Monitoring Report.

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

13. The Borrower shall ensure, and cause the Project Executing Agency to ensure, to make available the necessary budgetary and human resources to fully implement the EARF, EMPs and the RPs.

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

14. The Borrower shall ensure, and cause the Project Executing Agency to ensure, that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the EARF, IEEs, the EMPs and the RPs (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures; and
- (c) provide the Borrower 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 EARF, IEEs, the EMPs and the RPs.

#### Safeguards Monitoring and Reporting

15. The Borrower shall ensure, and cause the Project Executing Agency to do the following:

- (a) no later than the commencement of land acquisition and resettlement activities, engage qualified and experienced external monitoring organization(s) (EMO), under the terms of reference(s) acceptable to the Borrower and ADB to verify information produced through the



Project monitoring process and facilitate the carrying out of any verification activities;

- (b) submit quarterly Safeguards Monitoring Reports relating to implementation of and compliance with the RPs and submit semi-annual Safeguards Monitoring Reports relating to the implementation of and compliance with the EARF, EMPs, and any IPP (if it becomes applicable), in each case to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (c) 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 EARF, IEEs, the EMPs and the RPs, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (d) report any actual or potential breach of compliance with the measures and requirements set forth in the EARF, EMPs or the RPs promptly after becoming aware of the breach.

#### Gender and Development

16. The Borrower shall ensure, and cause the Project Executing Agency to ensure, that (a) the GAP 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 GAP; (c) adequate resources are allocated for implementation of the GAP; (d) progress on implementation of the GAP, 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 including, but not limited to, 30% of staff in the PMU and PIUs and 20% of staff of USUs shall be composed of women.

#### Labor

17. The Borrower shall ensure, and cause the Project Executing Agency to ensure (i) compliance with all applicable labor laws of the Borrower on the prohibition of child and forced labor; (ii) giving of equal pay for equal work regardless of gender, ethnicity or social group; and (iii) dissemination of information on sexually transmitted diseases (including HIV/AIDS) and human trafficking to sub-contractors/employees and local communities surrounding the Project construction sites.

#### Governance and Anticorruption

18. The Borrower, the Project Executing Agency and the Project Implementing Agencies 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.

19. The Borrower, the Project Executing Agency and the Project Implementing Agencies 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.

Prohibited List of Investments

20. The Borrower shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.