

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ROYAL GOVERNMENT OF CAMBODIA (RGC)
REPRESENTED BY ITS NATIONAL COMMITTEE FOR SUB-NATIONAL DEMOCRATIC DEVELOPMENT-
SECRETARIAT
(NCDD-S) AND THE UN CAPITAL DEVELOPMENT FUND
ON THE ESTABLISHMENT, FINANCING AND MANAGEMENT OF
WATER RESILIENCE FUND IN CAMBODIA

This Memorandum of Understanding (“MOU”) is entered into by the UN Capital Development Fund (“UNCDF”), a subsidiary organ of the United Nations, an intergovernmental organization established by its Member States with its headquarters in New York, NY (USA), and the National Committee for Sub-National Democratic Development-Secretariat (NCDD-S), The Royal Government of Cambodia (RGC). are hereinafter jointly referred to as the “Parties”.

WHEREAS, the purpose of UNCDF is “to assist developing countries in the development of their economies by supplementing existing sources of capital assistance by means of grants and loans” as per General Assembly Resolution No. 2186 (XXI);

WHEREAS, under this MOU, the NCDD-S is committed to support the implementation of Scaling Up Climate Resilience Grants in Cambodia: the Innovative Decentralized Water Solutions to Provide Safety and Resilience for Residential Water Systems Project in Cambodia, the activities which are under the fund management arrangements, and in the overall coordination of the Local Climate Adaptive Living Facility (LoCAL) programme.

WHEREAS, the Parties share common objectives and wish to cooperate in areas of mutual concern to enhance the effectiveness of their development efforts;

WHEREAS, the Royal Government of Cambodia and UNCDF have entered into a Basic Agreement that sets the general conditions and terms under which UNCDF could provide assistance to the government for its development activities;

WHEREAS the establishment and financing of Water Resilience Fund for Cambodia is part of the LoCAL Programme’ s planned activities, as per project document signed by UNCDF;

NOW, THEREFORE, the Parties of this Memorandum of Understanding agree as follows:

Article I
Purpose of the MoU

1.1. The purpose of this Memorandum of Understanding is to define the conditions for the establishment, financing and management of the Water Resilience Fund under LoCAL Programme for Scaling Up Climate Resilience Grants in Cambodia: the Innovative Decentralized Water Solutions to Provide Safety and Resilience for Residential Water Systems Project in Cambodia , including, inter alia, conditions pertaining to financial control, reporting and auditing arrangements.

Article II

Purpose of the Water Resilience Fund

2.1. The purpose of the Water Resilience Fund is to provide supplementary capital to finance local water public investment in Sangke District, Wat Tamim Commune, Battambang Province of Cambodia. Such assistance will be governed by the terms and conditions defined in Articles III to X of this MoU;

2.2. In concomitance with the purpose referred to under 2.1., the Fund will also seek to provide capacity development for technical design of climate-resilient investments on water supply infrastructure, improve service delivery, increase institutional capacity and coordination for integrated water management to support uses of water resources especially for the diversification of livelihoods by local communities.

Article III.

Establishment of the Water Resilience Fund

3.1. NCDD-S, through the Ministry of Economic and Finance, has made available a dedicated Water Resilience Fund account to receive this fund and established a special source of revenue code in the National's system of intergovernmental fiscal transfers to be able to track Water Resilience -related funding throughout the system.

3.2. The account is part of the National's system of intergovernmental fiscal transfers system, and funds transferred and mobilized by UNCDF to this account will be duly and timely recorded in the Government's official budget and financial records as funds under the NCDD-S budget, in line with relevant regulations. Information will be provided by UNCDF to NCDD-S prior to the fiscal year to ensure that funds are included in the government development budget.

3.3. NCDD-S, through the Ministry of Economy and Finance, is the owner of the special dedicated account and will manage the funding flows using its internal control system. NCDD-S, through the Ministry of Economy and Finance and the Department of Economy and Finance in Battambang province, is responsible for the management functions related to the LoCAL funding arrangement, including accounting and reporting on transactions, and the preparation and submission of quarterly statements, including Bank Reconciliations on the Account's position to UNCDF, based on information from the Commercial Bank and Department of Economy and Finance in Battambang province. .

3.4. UNCDF shall transfer its contribution to the Water Resilience Fund special dedicated account (in US dollars) upon request by NCDD-S, in accordance with the disbursement schedule and conditions set out in this MoU, article 4.1.

Article IV Funding Arrangements

4.1. Subject to receipt of funds from Ministry of Environment of the Republic of Korea , compliance with the Minimum Conditions as indicated in article V, the maximum contribution to the Water Resilience Fund related account under this MOU as described in article 3.1. will be up to a total amount of US\$400,000 to deliver to NCDD-S for Sangke District, Tamim Commune, Battambang Province, with the possibility of up-scaling based on agreement among the Parties. The budget structure is as follows:

1. Financial Year 1: US\$ 200,000
2. Financial Year 2: US\$ 200,000

4.2. Additional financial resources will be provided to support costs for capacity-building and technical assistance, support for procedures and system development, and programme support operations in the agreed workplan and budget. These resources will be directly managed by UNCDF, will be addressed to support water management capacity-building interventions at the central, provincial and district level.

4.3. The financial figure for capital transferred shall be captured in the annual State Budget prepared by the NCDD-S in order to complement the funds allocated for investments to the targeted district enrolled in the programme. Funds from the Water Resilience Fund will be added to the general funding available for the district and should not lead to any reduction of these funds.

4.4. When funds are allocated from UNCDF to NCDD-S for disbursement, the target district can withdraw funds for eligible expenditures (as indicated in article VIII) provided that general conditions for planning, budgeting and accounting are complied with as per the state's regulations and procedures.

Article V Eligibility and Minimum Conditions of Access

5.1. Battambang Province's access to its allocations under this MOU shall be dependent upon compliance with the following Minimum Conditions of Access (MCAs):

- a. The Provincial and District Council have approved the Annual Investment Plan for this grant fund, in compliance with national and local laws and regulations
- b. The Local Authority of Battambang Province has complied with the following conditions
 - Compliance with conditions set out in Article III

- Submission of work plan for rehabilitation of the water system in Battambang to UNCDF. The work plan should include activities, timeline and responsible government units.
- Compliance in the use of funds with government systems and procedures of public finance management- including disbursement procedures, grant utilization, accounting and implementation
- Consultation with local communities concerning the investment;

The second-year transfer will be subject to the following conditions

- Submission of progress report
- Completion of the procurement of the EPC (Engineering, Procurement, and Construction) contracts in relation to the construction and repair of the small-scale water supply system
- Submission of the financial statement of the first-year transfer

The NCDD-S shall consolidate the financial reports and progress reports from target district's account on use of funds on a quarterly basis and submit these to UNCDF for review. The district's responsibility will be to report on progress – financial and physical (output reporting) – on a quarterly basis to NCDD-S within two weeks after the end of the quarter.

5.2. Failure to comply with conditions as set under Article 5.1 will automatically lead to disqualification from access to the grants for the fiscal year, for which the assessment applies.

5.3. Assessments and subsequent determination of eligibility will be concluded in a timely manner, to allow the District to program and budget against known resources.

Article VI

Allocation Criteria

6.1. The total grant funds under this MOU will be provided to NCDD-S. The full allocation for the grant funds will be allocated to Wat Tamim Commune, Sangke District in Battambang Province. The selection of Wat Tamim Commune is based on a joint decision between UNCDF and the Korean government during the joint scoping mission where the partners have agreed to support this community water project.

Article VII

Funding Flow and Reporting

7.1. Funds from UNCDF will be transferred from the NCDD-S through the NCDD-S Bank Account to the targeted district as indicated under article 6.1 through following the well-established financial management procedures. This means that funds will be available for the district when it needs them in accordance with the planning, budgeting, financial management and procurement procedures.

7.2. UNCDF will release the annual tranche of the annual committed funding to the dedicated Water Resilience Fund account in the NCDD-S Bank Account on the basis of a request from NCDD-S to UNCDF in writing and in due compliance with the procedures below, and supported by:

- i. A copy of the approved district plan and budget for Sangke district for the following fiscal year, formulated in accordance with the national guidelines that govern the public expenditure management of Sangke district;
- ii. An overview of the use of LoCAL funds from previous years (from year two and onwards), and progress reports;
- iii. Documentation that the Minimum Conditions are complied with in minutes from the relevant decision-making body.

7.3. The request from NCDD-S for release of funds to Sangke district (once a year) will be submitted only if the reports and/or accountability from the district are satisfactory and if the participating district for which funding is being requested has complied with all minimum access conditions.

7.4. The NCDD-S shall provide UNCDF with a copy of the request and supporting documents, and with an updated bank statement no later than two weeks after the instalment has been made effective.

7.5. Based on the above procedures, NCDD-S will ensure that the funds stipulated in art. 7.3 are available to the Sangke district enrolled for execution of activities within the budget. Funds will be used by the district in accordance with plans and budgets inscribed into the approved district's plan.

7.6. The Sangke district is required to report to NCDD-S through Battambang Provincial Administration on the use of the Water Resilience Fund on a quarterly basis, and the reports should be submitted no later than two weeks after the end of every quarter, including:

- i. Financial and output report as per reporting format agreed under the planning and Grant Guidelines for LoCAL and physical progress status of the districts' investments and/or activities on LoCAL (to be certified by Battambang Provincial Administration);
- ii. District's financial reporting and bank account reconciliation and other documents as required

7.7. As per art. 7.5, in addition to the Minimum Conditions under article V for access to the grants, Sangke district will have to comply with clear rules for reporting and accountability on a quarterly basis. Quarterly reporting should also take place even if no new funds have been allocated for the quarter and even if there is no spending. If reports from the last quarter have not been submitted,

UNCDF will provide technical assistance to support local authorities in this regard, prior to the release of funds.

7.10. By the end of the fiscal year, the last quarterly report will show the full spending of the funds. Funds which are not spent and not committed (in terms of completed procurement processes) will not be added to the budget for the subsequent year for the respective district (i.e. will not be carried forward as additional spending for this district), but will be available for the general funding of LoCAL for future grants in the Sangke district from the new fiscal year.

Article VIII
Use of the Water Resilience fund-

8.1. Funds under this MOU can only be used on capital investment expenditures, such as investments in new structures, buildings, facilities and rehabilitation and/or upgrading of existing infrastructures- including social service and economic infrastructure.

8.2. The District shall carry out its procurement in accordance with the government procurement regulations promulgated in accordance with the respective manuals and guidelines provided by NCDD-S.

Article IX
Audit

9.1. All funds disbursed from the this special account shall undergo annual inspection and control on a regular basis by NCDD-S. The funds may also be subject to an independent external audit, covering the concerned central as well as local government institutions. The independent auditor identified through UNCDF should be approved by the Auditor General prior to this audit.

Article X
Term, Termination, Amendment

10.1. The proposed cooperation under this MOU is non-exclusive and shall have an initial term of 3 years from the Effective Date, as defined in Article XII, unless termination is requested earlier by either party upon two-month notice in writing to the other party. The Parties may agree to extend this MoU in writing for a subsequent period and to extend the LoCAL grants to additional districts in existing or new provinces and to extend the duration of involved districts.

10.2. In the event of a party requesting the termination of the MOU, the Parties shall take the necessary steps to ensure that any funds remaining in the account, will be disbursed in a prompt and orderly manner, as per terms of the MoU, and that the due reports will be submitted in a timely manner,

as per condition V and VII of this MoU. The termination will also be accompanied by a final audit, which shall be expedited.

10.3. This MOU may be amended only by mutual written agreement of the Parties.

Article XI Notices and Addresses

11.1. All official documents, written requests and other notices required or permitted to be given or made under this MOU shall be deemed to have been duly given or made when it shall have been delivered by hand, certified mail, overnight courier, telex, or cable to the party to which it is required to be given or made at the address specified below or such other address as shall be hereafter notified.

For [Name of Partner]:

Ngan Chamroeun
Building T, inside Ministry of Interior,
Norodom Blv., Tonle Basac, Chamkar Morn,
Phnom Penh, Cambodia
Ngan.chamroeun@ncdd.gov.kh

For [UNCDF/LoCAL]:

Sophie De Coninck
Programme Manager, LoCAL Programme
UN House building
37-40, Boulevard du Regent Building,
1000 Brussels, Belgium
sophie.de.coninck@uncdf.org

Article XII Settlement of Disputes

12.1. The Parties shall use good faith efforts to settle amicably any dispute, controversy or claim arising out of this MoU. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with procedures as may be agreed between the Parties.

12.2 Any controversy or claim arising out of, or in accordance with this Agreement or any breach thereof, shall unless it is settled by direct negotiation, be settled in accordance with the UNCITRAL Arbitration Rules as at present in force. Where, in the course of such direct negotiation referred to above, the parties wish to seek an amicable settlement of such dispute, controversy or claim by conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules as at present in force. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy or claim.

**Article XIII
Privileges and Immunities**

13.1. Nothing in or relating to this MOU shall be deemed a waiver, express, or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

**Article XIV
Miscellaneous**

14.1. This MOU and any related manuals, sub-agreements and project document comprise the complete understanding of the Parties in respect of the subject matter in this MOU and supersede all prior agreements relating to the same subject matter. Failure by either Party to enforce a provision of this MOU shall not constitute a waiver of that or any other provision of this MOU. The invalidity or unenforceability of any provision of this MOU shall not affect the validity or enforceability of any other provision of the MOU.

**Article XV
Entry into Force**

15.1. This MOU may be signed in counterparts, each of which shall be deemed an original and both of which duly executed shall constitute one entire document, and shall enter into force and effect on the date ("Effective Date") in which it is duly signed by both parties.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties affix their signatures below.

FOR UNCDF:

Judith Karl

Name Judith Karl

Title UNCDF Executive Secretary

Date 18-Mar-2020

FOR NCDD-S, RGC

Ngan Chamroeun

Name Ngan Chamroeun

Title Head of NCDD Secretariat,
and Secretary of State of MOI

Date 14 - April - 2020

CLOSE

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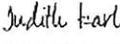
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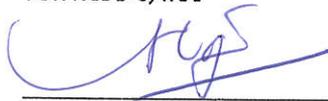
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FOR UNCDF:


Name Judith Karl
Title UNCDF Executive Secretary

Date 18-Mar-2020

FOR NCDD-S, RGC


Name Ngan Chamroeun
Title Head of NCDD Secretariat,
and Secretary of State of MOI

Date 14-April-2020

YM



