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LOAN NUMBER \_\_\_\_\_-FIJ

LOAN AGREEMENT  
(Ordinary Operations)

(Suva-Nausori Water Supply and Sewerage Project - Supplementary)

between

REPUBLIC OF THE FIJI ISLANDS

and

ASIAN DEVELOPMENT BANK

DATED \_\_\_\_\_

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LAL:FIJ 32200

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated \_\_\_\_\_ between REPUBLIC OF THE FIJI ISLANDS (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

WHEREAS

(A) by a loan agreement (Loan No. 2055-FIJ: Suva-Nausori Water Supply and Sewerage Project) dated 5 August 2004 between the Borrower and ADB (hereinafter called the Initial Loan Agreement), ADB had made a loan (hereinafter called the Initial Loan) in the amount of forty-seven million Dollars (\$47,000,000) to the Borrower from ADB's ordinary capital resources for the purpose of the Project described in Schedule 1 to the Initial Loan Agreement (hereinafter called the Initial Project);

(B) the Borrower has applied to ADB for a supplementary loan for the purposes of financing cost overruns under the Initial Project as described in Schedule 1 to the Loan Agreement (hereinafter called the Project); and

(C) ADB has agreed to make a supplementary loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001, 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 thereof (said Ordinary Operations Loan Regulations as so modified being hereinafter called the Loan Regulations):

(a) Section 3.03 is deleted and the following is substituted therefor:

**Commitment Charge; Credit.** (a) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(b) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall

remain fixed for the term of the Loan. ADB shall apply the amount of the credit against the interest payable by the Borrower.

(b) Section 3.06 is deleted and the following is substituted therefor:

(a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(c) Section 3.07 is deleted and the following is substituted therefor:

(a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

Section 1.02. Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the Loan Regulations and in the Initial Loan Agreement have the respective meanings therein set forth as if they were fully set forth herein, and the following additional terms have the following meanings:

(a) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2007, as amended from time to time);

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

(c) "HIV/AIDS" means human immunodeficiency virus/acquired immune deficiency syndrome;

(d) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook dated January (2007, as amended from time to time);

(e) "MPU" means the Borrower's Ministry of Public Utilities, or any successor thereto;

(f) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);

(g) "Procurement Plan" means the procurement plan for the Project dated 22 October 2009 and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(h) "Project" means the Project as referred to under Schedule 1 to this Loan Agreement;

(i) "Project facilities" means any facilities to be constructed, provided and maintained under the Project; and

(j) "Works" means construction or civil works to be financed out of the proceeds of the Loan, and 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. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of twenty-three million Dollars (\$23,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 20 years, and a grace period as defined in paragraph (c) of this Section.

(c) The term "grace period" as used in paragraph (b) of this Section 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 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations, less a credit of 0.40% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing sixty (60) days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 February and 15 August in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and

outstanding from a Floating Rate to a Fixed Rate, or vice versa;  
and

- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

### **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 Goods, Works, consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Goods, Works, consulting services and other items of expenditure shall be 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, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement. ADB may refuse to finance a contract where Goods, Works or consulting services have not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all Goods, Works and consulting services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 31 December 2012 or such other date as may from time to time be agreed between the Borrower and ADB.

## ARTICLE IV

### Particular Covenants

Section 4.01. (a) The Borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental and water supply and sewerage practices.

(b) 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. The Borrower shall make available, promptly as needed, the funds, facilities, services, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project and for the operation and maintenance of the Project facilities.

Section 4.03. (a) In the carrying out of the Project, the Borrower shall cause competent and qualified consultants and contractors, acceptable to ADB, to be employed to an extent and upon terms and conditions satisfactory to the Borrower and ADB.

(b) The Borrower shall cause the Project to be carried out in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The Borrower shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 4.04. The Borrower shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.05. (a) The Borrower shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Borrower pursuant to Section 4.05(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be

conducted only in the presence of an authorized officer of the Borrower unless the Borrower shall otherwise agree.

Section 4.06. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, and any relevant records and documents.

Section 4.07. The Borrower shall ensure that the Project facilities are operated, maintained and repaired in accordance with sound administrative, financial, engineering, environmental, water supply and sewerage and maintenance and operational practices.

## **ARTICLE V**

### **Suspension; Acceleration of Maturity**

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 9.01(l) of the Loan Regulations: the Initial Loan Agreement shall have been suspended and/or cancelled.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 9.07(a)(iv) of the Loan Regulations: the event specified in Section 5.01 of this Loan Agreement shall have occurred.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

## **ARTICLE VII**

### **Miscellaneous**

Section 7.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

Ministry of Finance  
Government Buildings  
Suva, Fiji

Facsimile Number:

(679) 330-0834.

For ADB

Asian Development Bank  
P.O. Box 789  
0980 Manila, Philippines

Facsimile Numbers:

(632) 636-2444  
(632) 636-2445.

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

REPUBLIC OF FIJI ISLANDS

By \_\_\_\_\_  
Authorized Representative

ASIAN DEVELOPMENT BANK

By \_\_\_\_\_

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

1. The Project will assist in achieving the objectives of the Initial Project by financing costs overruns under the parts and components of the Initial Project as follows:
  - (a) Construction of backwash treatment and sludge disposal facilities at the Waila and the Tamavua Water Treatment Plant;
  - (b) Implementation of water loss reduction program;
  - (c) Provision of leak detection training including provision of specialist leak detection equipment;
  - (d) Rehabilitation of sewers in Suva Central Business District Nausori Town and the Great Eastern Sewer;
  - (e) Implementation of backlog sewerage program; and
  - (f) Implementation of environmental monitoring program.
  
2. The Project includes the provision of consulting service for the PMU technical support. The Project is expected to be completed by 30 June 2012

## SCHEDULE 2

### Amortization Schedule

#### (Suva-Nausori Water Supply and Sewerage Project - Supplementary)

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

Date Payment	Installment Share
Due	(Expressed as a % based on 10% annuity)
15 Feb 2015	0.827816
15 Aug 2015	0.869207
15 Feb 2016	0.912667
15 Aug 2016	0.958301
15 Feb 2017	1.006216
15 Aug 2017	1.056526
15 Feb 2018	1.109353
15 Aug 2018	1.164820
15 Feb 2019	1.223061
15 Aug 2019	1.284214
15 Feb 2020	1.348425
15 Aug 2020	1.415846
15 Feb 2021	1.486639
15 Aug 2021	1.560971
15 Feb 2022	1.639019
15 Aug 2022	1.720970
15 Feb 2023	1.807019
15 Aug 2023	1.897369
15 Feb 2024	1.992238
15 Aug 2024	2.091850
15 Feb 2025	2.196442
15 Aug 2025	2.306264
15 Feb 2026	2.421578
15 Aug 2026	2.542657
15 Feb 2027	2.669789
15 Aug 2027	2.803279
15 Feb 2028	2.943443

15 Aug 2028	3.090615
15 Feb 2029	3.245146
15 Aug 2029	3.407403
15 Feb 2030	3.577773
15 Aug 2030	3.756662
15 Feb 2031	3.944495
15 Aug 2031	4.141720
15 Feb 2032	4.348806
15 Aug 2032	4.566246
15 Feb 2033	4.794558
15 Aug 2033	5.034286
15 Feb 2034	5.286000
15 Aug 2034	5.550311
Total	100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating

Schedule 2

to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

### SCHEDULE 3

#### Allocation and Withdrawal of Loan Proceeds

##### General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, consulting services and other items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table and reference to "Subcategory" or "Subcategories" in this Schedule is to a Subcategory or Subcategories of a Category.)

##### Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories and Subcategories listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

##### Interest and Commitment Charge

3. The amount allocated to Category 4 is for financing interest and commitment charge on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charge.

##### 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 then 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 for financing Goods, Works, consulting services and other items shall be disbursed in accordance with the Loan Disbursement Handbook.

Retroactive Financing

6. Withdrawals from the Loan Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with civil works and consulting services, subject to a maximum amount equivalent to 20 percent of the Loan amount.

Condition for Withdrawals from Loan Account

7. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account unless the PMU will remain in force within MPU, and be adequately staffed with qualified and experienced personnel acceptable to ADB.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS</b> <b>(Suva-Nausori Water Supply and Sewerage Project – Supplementary)</b>				
<b>CATEGORY</b>				<b>ADB FINANCING BASIS</b>
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing</b>		<b>Percentage of ADB Financing from the Loan Account</b>
		<b>\$</b>	<b>\$</b>	
		<b>Category</b>	<b>Subcategory</b>	
1	Water Supply Civil Works including equipment and materials	2,800,000		83 percent of total expenditure
2	Sewerage Civil Works including equipment and materials	16,460,000		
2A	Rehabilitation of sewers in Suva Central Business District, Nausori Town, and the Great Eastern Sewer		1,430,000	83 percent of total expenditure
2B	Backlog sewerage Program		15,030,000	83 percent of total expenditure
3	Consulting Services	3,310,000		83 percent of total expenditure
4	Interest and Commitment Charge	430,000		100 percent of amounts due
	Total	23,000,00		

## SCHEDULE 4

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

#### A. General

1. All Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

#### B. Procurement for 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:

International Competitive Bidding
Shopping

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.

4. Domestic Preference. 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.

#### C. Selection of Consulting Services

5. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.

#### D. Industrial or Intellectual Property Rights

6. (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.

7. 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.

**E. ADB's Review of Procurement Decisions**

8. All 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 and Operation  
of Project Facilities; Financial Matters**

1. The Borrower shall ensure that the Project is implemented in accordance with all the provisions in Schedule 6 to the Initial Loan Agreement and the provisions of this Schedule. If there are any discrepancies between a provision in the Initial Loan Agreement and a provision in this Loan Agreement, the provision of this Loan Agreement shall govern.

2. MPU shall continue to act as the Project Executing Agency and shall be responsible for the overall Project execution and implementation.

**A. Institutional Reform of WAF**

3. By 30 September 2010, the Borrower shall:

- (a) cause WAF to have developed and commenced a staffing plan for WAF with position descriptions for senior staff, resourcing strategies, position evaluations, and redeployment plans,
- (b) have completed the separation of units, staff, assets, and records currently within WSD and MPU that will make up WAF; and
- (c) have submitted to the Cabinet a memorandum reviewing the progress of reorganization to that date and outlining further steps to corporatization.

4. By 31 December 2010, the Borrower shall cause WAF to have submitted to the Cabinet, a memorandum presenting for approval the charter, organization plan, staffing plan, outline chart of accounts, management information system, and financial regulatory arrangements for WAF.

5. The Borrower shall finance any gap between WAF's actual tariff revenues and those required to achieve full cost recovery including operations and maintenance costs, depreciation, and debt servicing.

6. The Borrower shall ensure that WAF, once fully operational, will operate within a social policy and regulatory framework established by the Borrower. To the extent that WAF agrees to undertake social services which require subsidization, the Borrower shall provide such subsidies to WAF in a timely manner.

7. The Borrower shall ensure, and shall cause WSD and/or WAF, as the case maybe, to install and operate sludge treatment and disposal facilities acceptable to ADB at the Waila and Tamavua water treatment plants by 31 December 2011.

**B. Land Acquisition and Resettlement**

8. The Borrower shall ensure that all land and rights-of-way required for the Project will be made available in a timely manner, and that the implementation of land acquisition and resettlement plan is monitored and updated in compliance with (a) the Borrower's relevant laws and regulations, and (b) ADB's *Involuntary Resettlement Policy* (1995). In case of any discrepancy between the Borrower's laws and regulations, and ADB's policy, the ADB's policy requirements shall apply.

**C. Labor, Health and Safety Laws**

9. The Borrower shall ensure that all consultants' and Works contracts financed under the Project incorporate provisions and allocate sufficient budget to require that all consultants and contractors: (a) comply with all the Borrower's applicable labor laws and related international treaty obligations and do not employ child labor; (b) do not provide differential wages or benefits to men and women for work of equal value; (c) comply with all applicable health, and safety laws and regulations, including access to basic water and sanitation facilities for men and women on the work sites as well as access on the work sites to separate toilet facilities for men and women; (d) provide day care service for the children of women employed in connection with the Project, if so requested; and (e) carry out HIV/AIDS prevention and awareness campaigns at the workers' campsites and/or residences and social halls (in the case of non-local workers), and include community heads and women leaders, with such campaigns being held in coordination with the Borrower's existing programs and other initiatives.

**D. Environment**

10. The Borrower shall ensure that all Project facilities are designed, constructed, operated, maintained and monitored in compliance with the Borrower's applicable environmental laws and regulations, and ADB's *Environment Policy* (2002). In case of any discrepancy between the Borrower's laws and regulations, and ADB's *Environment Policy*, the ADB's policy requirements shall apply.

11. The Borrower, through the PMU, shall ensure that (a) contractors engaged under the works contracts comply strictly with all environmental impact mitigation and monitoring requirements set out in the contract documents, and (b) consultants engaged for construction supervision closely monitor compliance of the contractors with the environmental impact mitigation and monitoring requirements and reporting requirements.

**E. Gender**

12. The Borrower shall take all reasonable and necessary steps to encourage women living in the Suva-Nausori Region to participate in the implementation of the Project, including, but not limited to, (a) advertising job opportunities in women community centers, and (b) publishing newspaper advertisements stressing that women are encouraged to apply. The Borrower shall ensure that the PMU, as well as contractors and consultants engaged under the Project do not discriminate against female applicants, and the Borrower shall expressly encourage them to employ women for both skilled and unskilled labor needs.

**F. Governance and Anti-corruption**

13. The Borrower shall ensure that PMU staff, contractors and consultants are fully knowledgeable of and comply with the Borrower and ADB's procedures, including, but not limited to, procedures for (i) implementation, (ii) procurement, (iii) use of consultants, (iv) disbursement, (v) reporting, (vi) monitoring, and (vii) prevention of fraud and corruption.

14. The Borrower shall cause MPU to (a) conduct periodic inspections on the contractors' activities relating to fund withdrawals and settlements; and (b) ensure that all contracts financed under the Project include provisions specifying the right of ADB to audit and examine the Project records and accounts of all contractors, suppliers, consultants and other service providers of the Project.

15. Within two (2) months of the Effective Date, MPU shall create a Project website, accessible by the general public, to disclose information about various matters concerning the Project, including general project information, procurement, project progress, and contact details in the English, Fijian, and Hindi languages. The website shall 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. With regard to procurement, the website shall include information on 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 and Works procured.

**G. Operation and Maintenance**

16. Within six (6) months prior to the Project completion, the Borrower, through the PMU, shall have developed and approved operation and maintenance plans for the Project facilities including budget and implementation arrangements, and submit them to ADB for approval.