

PROJECT AGREEMENT

(Sindh Cities Improvement Investment Program – Project 1)

between

ASIAN DEVELOPMENT BANK

and

PROVINCE OF SINDH

NORTH SINDH URBAN SERVICES CORPORATION LIMITED

DATED 6 FEBRUARY 2009

PROJECT AGREEMENT

PROJECT AGREEMENT dated 6 February 2009 between ASIAN DEVELOPMENT BANK (hereinafter called ADB) of the first part and the PROVINCE OF SINDH (hereinafter called Sindh) and the NORTH SINDH URBAN SERVICES CORPORATION LIMITED (hereinafter called NSUSC) of the second part.

WHEREAS

(A) by a Loan Agreement of even date herewith between the Islamic Republic of Pakistan (hereinafter called the Borrower) and ADB, ADB has agreed to make to the Borrower a loan in various currencies equivalent to twenty five million five hundred thirty eight thousand Special Drawing Rights (SDR 25,538,000), on the terms and conditions set forth in the Loan Agreement;

(B) ADB has agreed to make the Loan only on the condition that the proceeds of the Loan be made available to Sindh and NSUSC and that each of Sindh and NSUSC agrees to undertake certain obligations towards ADB as set forth in this Project Agreement; and

(C) Each of Sindh and NSUSC, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth in this Project Agreement;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Definitions

Section 1.01. (a) Wherever used in this Project Agreement, unless the context otherwise requires, the terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

ARTICLE II

Particular Covenants

Section 2.01. (a) Each of Sindh and NSUSC shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental and project management practices.

(b) In the carrying out of the Project and operation of the Project facilities, each of Sindh and NSUSC shall perform all obligations set forth in Schedule 5 to the Loan

Agreement and the Schedule to the Project Agreement to the extent that they are applicable to each of them.

Section 2.02. Each of Sindh and NSUSC shall make available, promptly as needed, the funds, facilities, services, equipment, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, each of Sindh and NSUSC shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) 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 the 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 2.04. Each of Sindh and NSUSC shall carry out the Project in accordance with plans, design standards, specification, work schedules and construction methods acceptable to ADB. Each of Sindh and NSUSC shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) Each of Sindh and NSUSC shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of the Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, each of Sindh and NSUSC undertakes to insure, or cause to be insured, the goods to be imported for the Project and to be financed out of the proceeds of the Loan against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. Each of Sindh and NSUSC shall maintain, or cause to be maintained, records and accounts adequate to identify the Goods, Works, and consulting services and other items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and each of Sindh and NSUSC shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) Each of Sindh and NSUSC shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and each of Sindh and NSUSC shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, Sindh or NSUSC as applicable and the Loan.

Section 2.08. (a) Sindh shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the Goods, Works, and consulting services and other items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of Sindh and NSUSC; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, Sindh shall furnish to ADB quarterly reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the quarter year under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following quarter.

(c) Promptly after physical completion of the Project, but in any event not later than three (3) months thereafter or such later date as ADB may agree for this purpose, Sindh shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by Sindh and NSUSC of their respective obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) Each of Sindh and NSUSC shall (i) maintain separate accounts for the Project; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related 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; and (iii) furnish to ADB, promptly after their preparation but in any event not later than six (6) months after the close of the fiscal year to which they relate, 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 proceeds of the Loan and compliance with the financial covenants of the Loan Agreement as well as on the use of the procedures for the imprest account and statement of expenditures), all in the English language. Each of Sindh and NSUSC shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) Each of Sindh and NSUSC shall enable ADB, upon ADB's request, to discuss the financial statements and its financial affairs related to the Project, from time to time with the auditors, appointed by Sindh and NSUSC pursuant to Section 2.09(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 each of Sindh and NSUSC unless either Sindh or NSUSC shall otherwise agree.

Section 2.10. Each of Sindh and NSUSC 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 2.11. (a) Each of Sindh and NSUSC shall, promptly as required and to the extent such actions are within its control, take all action within its powers to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its business.

(b) Each of Sindh and NSUSC shall at all times conduct its business in accordance with sound administrative, financial, environmental and urban development practices, and under the supervision of competent and experienced management and personnel.

(c) Each of Sindh and NSUSC shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound administrative, financial, environmental, urban development, and maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, each of Sindh and NSUSC and its departments shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, each of Sindh and NSUSC shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all Goods, Works, and consulting services financed out of such proceeds are used exclusively in the carrying out of the Project.

ARTICLE III

Effective Date; Termination

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement shall come into force and effect. ADB shall promptly notify Sindh and NSUSC of such date.

Section 3.02. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

ARTICLE IV
Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex, facsimile or radiogram to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2293.

For Sindh

Planning and Development Department
Sindh Secretariat
Karachi

Telephone Numbers:

(92-21) 921-1405
(92-21) 921-1921

Facsimile Number:

(92-21) 921-1922

For NSUSC

North Sindh Urban Services Corporation Limited
c/o Sindh Cities Improvement Investment Program
Program Support Unit
Planning and Development Department
Sindh Secretariat
Karachi

Telephone Numbers:

(92-21) 925-1261
(92-21) 925-1263

Facsimile Number:

(92-21) 925-1265.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or under Section 6.01 of the Loan Agreement by or on behalf of each of Sindh and NSUSC may be taken or executed in the case of Sindh, by Additional Chief Secretary (Development) or by such other person or persons he or she shall so designate in writing and notified to ADB; and in the case of NSUSC, by its managing director or such other person or persons he or she shall so designate in writing and notified to ADB.

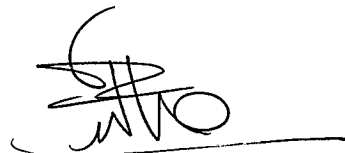
(b) Each of Sindh and NSUSC shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) of this Section, together with the authenticated specimen signature of each such person.

Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

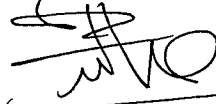
ASIAN DEVELOPMENT BANK

By 
RUNE STROEM
Country Director
Pakistan Resident Mission

PROVINCE OF SINDH

By 
ZAFAR HASAN REZA
Authorized Representative

NORTH SINDH URBAN SERVICES
CORPORATION LIMITED



By _____

ZAFAR HASAN REZA
Authorized Representative

SCHEDULE

Execution of Project; Financial Matters

Program Steering Committee

1. Sindh shall establish a Program Steering Committee (PSC) to provide policy direction and strategic oversight and service as a focal point for inter-agency coordination. The PSC shall and be responsible to (a) advise on key sector reform milestones; (b) review annual and quarterly performance reports on reform and implementation progress of the Project and the Investment Program; and (c) advise on, or make policy-level decisions required to facilitate timely execution of, the Project and Investment Program.
2. Sindh shall ensure that the PSC shall be chaired by the additional chief secretary, P&DD with the Program director being the member-secretary. The members of the PSC will comprise, among others, members consisting of: (a) secretary, Local Government Department; (b) additional chief secretary/secretary, Finance Department; (c) secretary, Public Health and Engineering Department; (d) district coordination officers whose coverage areas include the participating talukas; (f) one of the taluka nazims of the participating TMAs; (g) head of the urban unit; (h) Program director; (i) managing director, NSUSC; and (j) three (3) representatives from civil society, acceptable to ADB. The chair of the PSC may invite other persons as necessary either to become a member of the PSC or to attend its meetings. The PSC shall meet at least on a quarterly basis.

Program Support Unit

3. Sindh shall establish a Program Support Unit (PSU) to support the implementation of the Project, including to: (a) promote agreed urban and related sector reforms; (b) support roll-out of the USC model to new town clusters; (c) facilitate, through the Program Steering Committee, inter-departmental and provincial coordination; (d) carry out monitoring and evaluation of the Project through the Investment Program Performance Monitoring System (IPPMS); (e) prepare quarterly and annual performance reports on the progress of the Project implementation; (f) ensure quality of the social and environmental safeguards documentation prepared by NSUSC; and (g) engage an independent verifier, which shall be recruited from one of the accounting firms based on criteria acceptable to ADB, to assess NSUSC and the participating TMAs compliance with the Service and Asset Management Agreements, and the Tripartite Operational Support and Capital Investment Grant Agreements. The PSU shall establish regional office(s), as required.
4. Sindh shall ensure that the Program director, who shall head the PSU, shall be recruited by P&DD through competitive processes acceptable to ADB, and criteria mutually agreed between Sindh and ADB. The Program director shall be supported by competitively recruited professional and support staff, including specialists in municipal services engineering, municipal finance, program implementation, monitoring and evaluation, finance and accounting, urban development and information technology. The Program director shall be responsible to ensure that the Project implementation is consistent with its environmental and social safeguards frameworks.

Urban Unit

5. Sindh, through P&DD, shall establish an Urban Unit, within six (6) months of the Effective Date. The Urban Unit shall provide strategic urban planning and policy support for urban development in Sindh. Under the Project, the Urban Unit shall collaborate with the PSU as a “change manager,” supporting roll-out of the USC model to new town clusters. The head of the Urban Unit shall be recruited through competitive processes acceptable to ADB, open to government and market applicants, and against criteria mutually agreed between Sindh and ADB. The head of the Urban Unit shall be supported by competitively recruited professional and support staff, including specialists in urban policy and economics, regional and urban planning, statistics and mapping, and information technology.

NSUSC

6. Sindh shall allow NSUSC to operate as a limited liability company in accordance with (a) the prevailing laws and regulations of the Borrower, including the Companies Ordinance; and (b) its constitutional documents.

7. Sindh shall provide the necessary resources needed to ensure that (a) NSUSC shall be an effective and sustainable vehicle for the delivery of water supply, wastewater and solid waste management services; and (b) the Project facilities shall continue to be in good condition during and after the completion of the Project and the Investment Program.

8. Within six (6) months of the Effective Date, Sindh shall ensure that the participating TMAs shall have deputed their relevant staff members to NSUSC, in a manner acceptable to ADB.

9. Sindh shall provide NSUSC with timely assistance and support through the provision of capital investment and Operational Support Funding under the Tripartite Operational Support and Capital Investment Grant Agreements.

10. Within six (6) months of the Effective Date, Sindh shall ensure that NSUSC shall have adequate enforcement mechanism to effectively collect service fees and penalize defaulters in order to improve the collection efficiency, deter non-payment and ensure sustainability of USC operations.

11. NSUSC shall ensure that its managing director of NSUSC shall (a) be recruited from the open market and on a competitive basis in a manner acceptable to ADB; and (b) have a minimum of ten (10) years of work experience in managing service delivery and other relevant qualifications to be agreed upon between ADB and Sindh.

12. NSUSC shall ensure that its board of directors shall have no more than seventeen (17) directors and that its composition shall include (a) the six (6) taluka nazims of the participating TMAs; (b) two (2) district coordination officers whose coverage areas include the participating talukas or other Sindh government officials; (c) the Program director, (d) a representative from the Finance Department; (e) the managing director of the NSUSC; and (f) at least six (6) independent directors, selected based upon skills-based criteria and in accordance with a process acceptable to ADB. NSUSC shall ensure that its independent

Schedule

directors shall be drawn from civil society, including representatives from the business community and that one-third of the independent directors shall be women.

13. NSUSC shall be responsible for (a) the procurement process, including the award and implementation of contracts related to subprojects under Parts B and C; (b) the preparation of annual plans and budgets for submission to its board; (c) the provision of immediate oversight for environmental and social safeguards related to subprojects under Parts B and C; and (d) the preparation of the periodic financing requests with respect to the subprojects under Parts B and C.

14. Within one (1) month of the Effective Date, NSUSC shall have appointed its director of finance and director of operation and services, in a manner acceptable to ADB. Within three (3) months of the Effective Date, NSUSC shall have established its safeguards and capital works units, to the satisfaction of ADB.

15. Within three (3) month of the Effective Date, Sindh shall have appointed an escrow agent, acceptable to ADB, to manage the escrow account to be established at the National Bank of Pakistan, for the deposit and disbursement of the Operational Support Funding proceeds to NSUSC.

16. Within six (6) months of the Effective Date, NSUSC shall have appointed its technical managers and assistant managers for finance in accordance with the staffing requirement set out in the organogram in Appendix 7 of the RRP. Within twelve (12) months of the Effective Date, NSUSC shall ensure that it has been fully staffed in accordance with the staffing requirement set out in the organogram in Appendix 7 of the RRP.

Taluka Municipal Administration

17. Sindh shall ensure that the participating TMAs shall be adequately staffed.

18. Sindh shall ensure that (a) the necessary budgetary resources to fund the TMA staff deputed to NSUSC and other budgetary requirements pursuant to the Service and Asset Management Agreement shall be fulfilled; and (b) these funds shall be channeled into the escrow account referred to in paragraph 15 of this Schedule.

Subproject Selection Process

19. Sindh and NSUSC shall ensure that all subprojects are selected in accordance with the agreed criteria set out in Schedule 4 to the FFA and other applicable requirements and guidelines for subproject implementation. Both Sindh and NSUSC shall monitor the implementation of subprojects until their completion.

Counterpart Funding

20. Sindh shall ensure the availability and timely release of counterpart funding for the timely implementation of the subprojects under the Project. The counterpart funds to be provided by Sindh shall include, but not be limited to, in-kind contributions of land, counterpart staff, office space, and vehicles.

Environment

21. Sindh and NSUSC shall ensure that the environmental management and monitoring plan prepared under the Project shall be strictly implemented. Sindh, NSUSC and ADB shall review the progress in the implementation of the environmental management and monitoring plan covering the subprojects financed under the Loan prior to processing the follow-up loans under the Investment Program. Sindh and NSUSC shall submit to ADB annual monitoring reports on subprojects' environmental performance in accordance with the EARF. Sindh and NSUSC shall also ensure that prior to the issuance of the bidding document, ADB shall have reviewed and cleared, as applicable, the initial environmental examinations or environmental impact assessments of the subproject including the environmental management plan or their revised versions, and receipt of the Borrower's clearances, approvals or permits for such documents.

Land Acquisition and Resettlement

22. Prior to issuance of notice for mobilization for civil works activities under a subproject, Sindh shall ensure that (a) the Land Acquisition and Resettlement Plan (LARP) has been disclosed to the affected people and submitted to ADB for review and approval; (b) the negotiations on the resettlement entitlements with the affected people have been completed; and (c) the affected people have been satisfactorily compensated for their loss through cash payment or land replacement or other forms of agreed entitlement.

23. In the event of any changes to the agreed LARPs, including on the agreed compensation to the affected people, Sindh shall inform ADB and update the LARPs accordingly, and submit the updated resettlement plans to ADB for review and approval

Gender and Child Labor

24. Sindh and NSUSC shall monitor the impact of the subproject on women during implementation of each subproject, including where relevant, with gender-disaggregated data collected pursuant to the monitoring and evaluation system referred to in the IPPMS and the Gender Action Plan.

25. Sindh and NSUSC shall ensure that (a) there is no differential payment between men and women for work of equal value; and (b) civil works contractors do not employ child labor in the construction and maintenance activities in accordance with the relevant laws and regulations of the Borrower.

Governance

26. Sindh shall disclose basic information concerning activities and progress of the Project, as appropriate, including procurement-related information, financial statements, and physical progress and that the disclosure shall be done through websites and the bulletin boards at the offices of the participating TMAs, the regional office(s) of the PSU and NSUSC customer service units at town-level.

27. Sindh shall ensure that the procurement-related information to be disclosed shall include the lists of participating bidders, names of winning bidders, basic details of the bidding procedures adopted, contract values, and lists of goods and services to be procured.

Project Review, Accounts and Audits

28. ADB, Sindh and NSUSC shall conduct a quarterly review of the implementation of the Project. The review shall discuss the progress of the Project and any changes to implementation arrangements or remedial measures required to be undertaken towards achieving the objectives of the Project. Within eighteen (18) months of the Effective Date, ADB, Sindh and NSUSC shall conduct mid-term review. The review shall examine the summary of contracts awards and disbursement, implementation progress including progress against service delivery performance, reform, institutional development and capacity building milestones. The mid-term review shall also identify problems or weaknesses in implementation arrangements, and agree on any changes needed.

29. Sindh shall submit a Project completion report to ADB within three (3) months of the completion of the Project. This report shall contain detailed evaluation of the Project covering the design, costs, contractors' and consultants' performance, social, environmental and economic impact, economic rate of return, and other details as may be requested by ADB.

30. Sindh shall ensure that the PSU (including its regional offices), Urban Unit, and NSUSC shall maintain separate records and accounts adequate to identify financing resources received and expenditures made under the Loan.

31. Without limiting the generality of Section 2.09 of this Project Agreement, NSUSC shall (a) maintain separate accounting records for each of the participating TMAs, and (b) provide ADB with its audited financial statements, within six (6) months after the end of its financial year, which shall be audited in accordance with sound auditing standards by an independent external auditor pursuant to the Companies Ordinance.

Program Performance Monitoring System

32. Sindh shall cause the PSU to establish, within three (3) months of the Effective Date, the IPPMS in form and substance acceptable to ADB. The IPPMS shall incorporate a set of performance monitoring indicators relating to outputs and outcomes, including service delivery performance, physical implementation, institutional reform and capacity-development milestones. The PSU shall establish baseline data for each of the selected indicators and conduct annual surveys with the assistance of consultants, and update ADB on the progress against each indicator.

33. Sindh shall cause the PSU to prepare quarterly progress reports on the Program, including progress against reform and service delivery objectives, and implementation progress of the subprojects. The reports shall be prepared based on information provided by NSUSC and submitted to ADB within thirty (30) days after the close of each quarter. The reports shall discuss progress made during the period of review, changes if any on implementation schedule, problems or difficulties encountered and remedial actions taken, and work to be undertaken in the coming quarter. NSUSC shall also be responsible for providing information as required to the independent verifier.