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GRANT NUMBER 0108-TON (SF)

GRANT AGREEMENT  
(Special Operations)  
(Integrated Urban Development Sector Project)

between

THE KINGDOM OF TONGA

and

ASIAN DEVELOPMENT BANK

DATED 11 JULY 2008

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GAS:TON 38160

**GRANT AGREEMENT  
(Special Operations)**

GRANT AGREEMENT dated 11 July 2008 between Kingdom of Tonga (the "Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Recipient has applied to ADB for a grant for the purposes of the Project described in Schedule 1 to this Grant Agreement;

(B) the Recipient has also applied for a technical assistance grant up to the equivalent of seven hundred thousand dollars (\$700,000) to develop and implement the urban planning and development system and ADB has agreed to provide a technical assistance grant to the Recipient for such purpose; and

(C) ADB has agreed to provide financing by making a grant to the Recipient from ADB's Special Funds resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Grant Regulations; Definitions**

Section 1.01. All provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (the "Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. The definitions set forth in the Grant Regulations are applicable to this Grant Agreement unless the context requires otherwise. In addition, the following terms have the following meanings:

- (a) "Cabinet" means the Cabinet of the Recipient;
- (b) "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);
- (c) "Director of Education" means the Director of Education of the Recipient;
- (d) "Director of Health" means the Director of Health of the Recipient;
- (e) "Director of Works" means the Director of Works of the Recipient;

(f) “Environmental Impact Assessment Act” means the Environmental Impact Assessment Act, 2003 of the Recipient, as amended from time to time;

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

(h) “IEE” means the Initial Environmental Examination to be conducted under the Project;

(i) “LARP” means the Land Acquisition and Resettlement Plan to be prepared under the Project;

(j) “Minister of Finance” means the Minister of Finance of the Recipient;

(k) “Minister of Lands, Survey, and Natural Resources” means the Minister of Lands, Survey and Natural Resources of the Recipient;

(l) “Minister of Works” means the Minister of Works of the Recipient;

(m) “MLSNR” means the Ministry of Lands, Survey, and Natural Resources of the Recipient or any legal successor thereto acceptable to ADB;

(n) “MOW” means the Ministry of Works of the Recipient or any legal successor thereto acceptable to ADB;

(o) “PMU” means the Project Management Unit, as further described in paragraphs 1 and 2 of Schedule 4 to this Grant Agreement;

(p) “Procurement Guidelines” means ADB’s Procurement Guidelines (2007, as amended from time to time);

(q) “Procurement Plan” means the procurement plan for the Project dated 19 November 2007 and agreed between the Recipient and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(r) “Project Executing Agency” means for the purposes of, and within the meaning of, the Grant Regulations means, MOW, which shall be responsible for the carrying out of the Project;

(s) “PSC” means the Project Steering Committee, as further described in paragraph 3 of Schedule 4 to this Grant Agreement;

(t) “PUMD” means the Planning Urban Management Division within MLSNR or any legal successor thereto acceptable to ADB;

(u) “Secretary of Finance” means the Secretary of Finance of the Recipient;

(v) "Secretary of Lands, Survey, and Natural Resources" means the Secretary of Lands, Survey, and Natural Resources of the Recipient;

(w) "Solicitor General" means the Solicitor General of the Recipient; and

(x) "Works" means construction or civil works to be financed out of the proceeds of the Grant, including services such as drilling or mapping, and Project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

## **ARTICLE II**

### **The Grant**

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources on terms and conditions set forth in this Agreement an amount of eleven million three hundred thousand Dollars (\$11,300,000).

## **ARTICLE III**

### **Use of Proceeds of the Grant**

Section 3.01. The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement.

Section 3.02. The goods and services and other items of expenditure to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant among different categories of such goods and services and other items of expenditure shall be in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, all goods and services to be financed out of the proceeds of the Grant shall be procured in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Withdrawals from the Grant Account in respect of goods and services shall be made only on account of expenditures relating to

- (a) goods which are produced in and supplied from and services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and
- (b) goods and services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2013 or such other date as may from time to time be agreed between the Recipient and ADB.

## **ARTICLE IV**

### **Particular Covenants**

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement.

Section 4.02. (a) The Recipient 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 Grant proceeds and compliance with the financial covenants of this Grant Agreement as well as on the use of the procedures for imprest account and the statement of expenditures), 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 Recipient shall enable ADB, upon ADB's request, to discuss the Recipient's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Recipient pursuant to Section 4.02(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 Recipient unless the Recipient shall otherwise agree.

Section 4.03. The Recipient shall enable ADB's representatives to inspect the Project, the goods financed out of the proceeds of the Grant, and any relevant records and documents.

## **ARTICLE V**

### **Effectiveness**

Section 5.01. The following are specified as additional conditions to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations:

(a) the Recipient shall have appointed the Project manager to the satisfaction of ADB; and

(b) the Recipient shall have established the Project Steering Committee to the satisfaction of ADB.

Section 5.02. A date ninety (90) days after the date of this Grant Agreement is specified for the effectiveness of the Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

## **ARTICLE VI**

### **Miscellaneous**

Section 6.01. The Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

#### For the Recipient

Ministry of Finance  
PO Box 87  
Vuna Road  
Nuku'alofa  
Kingdom of Tonga

Facsimile Number:

(676) 26011

#### For ADB

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

Cable Address:

ASIANBANK  
MANILA

Telex Numbers:

29066 ADB PH (RCA)  
42205 ADB PM (ITT)  
63587 ADB PN (ETPI)

Facsimile Numbers:

(632) 636-2444  
(632) 636-2446

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

THE KINGDOM OF TONGA

By   
AFU'ALO MATOTO  
Minister of Finance

ASIAN DEVELOPMENT BANK

By   
HARUHIKO KURODA  
President

## SCHEDULE 1

### Description of the Project

1. The Project impact shall be to contribute to improved living standards in Nuku'alofa, including low income residential areas through the improvement in urban infrastructure.
2. The Project has the following components:
  - Roads: (i) Rehabilitation of approximately 10 km of primary roads including road drainage, (ii) construction of 4 kilometers (km) of all-weather access roads in low income residential areas, and (iii) development of a preventative road maintenance program;
  - Drainage: (i) Rehabilitation of existing drains in Nuku'alofa's central business areas, (ii) construction of 2.1 km of flood relief drains, and (iii) development of a storm-water drainage maintenance program;
  - Sanitation: Construction of 8 groundwater monitoring wells and monitoring of groundwater quality;
  - Candidate subprojects to be selected by the PMU with the approval of the PSC and ADB using the selection criteria set out in paragraphs 5 and 6 of Schedule 5 to this Agreement.
3. The Project is expected to be completed by 31 December 2012.

## SCHEDULE 2

### Allocation and Withdrawal of Grant Proceeds

#### General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, services and other items to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant 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 Grant on the basis of the percentages set forth in the Table.

#### Reallocation

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

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

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

#### Disbursement Procedures

4. Except as ADB may otherwise agree, the Grant proceeds for financing Goods, Works, and consulting services and other items shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Imprest Account; Statement of Expenditures

5. (a) Except as ADB may otherwise agree, the Recipient shall establish immediately after the Effective Date, an imprest account at the National Reserve Bank. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Recipient and ADB. The currency of the imprest account shall be Dollar. The initial amount to be deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure for the first six months of Project implementation, or (ii) the equivalent of ten (10) percent of the Grant account.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Recipient and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$100,000.

Retroactive Financing

6. Withdrawals from the Grant 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 Grant Agreement in connection with the cost related to the fielding of the Project implementation consultants, subject to a maximum amount equivalent to 20 percent of the Grant amount.

Condition of Withdrawals from Grant Account

7. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from:

(a) the entire Grant Account except for withdrawals related to the fielding of the Project implementation consultants, until the Project implementation consultants shall have been recruited; and

(b) category 1(f) of the Grant Account, until the urban sector development plan shall have been endorsed by the Cabinet.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Tonga Integrated Urban Development Sector Project)				
CATEGORY				ADB FINANCING
Number	Item	Amount Allocated		Percentage and Basis for Withdrawal from the Grant Account
		Category	\$ Subcategory	
1	Civil Works	6,280,000		100 percent of total expenditure*)
1a	Upgrading of primary roads		1,859,000	100 percent of total expenditure*)
1b	Upgrading of Popua and Sopus secondary and access roads		1,078,000	100 percent of total expenditure*)
1c	Drainage Rehabilitation		102,000	100 percent of total expenditure*)
1d	Sopus Drainage Channel		1,919,000	100 percent of total expenditure*)
1e	Groundwater monitoring wells		141,000	100 percent of total expenditure*)
1f	Candidate subprojects		1,181,000	100 percent of total expenditure*)
2	Equipment	716,000		100 percent of total expenditure*)
3	Environment and Social Mitigation	20,000		40 percent of total expenditure
4	Consultancy Services	2,956,000		100 percent of total expenditure*)
5	Unallocated	1,328,000		60 percent of total expenditure
	Total	11,300,000		

\*) Exclusive of local taxes and duties

### SCHEDULE 3

#### Provisions on Procurement and Services of Consultants

**A. General**

1. All Goods and Works, and consulting services, to be financed out of the proceeds of the Grant 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 Grant 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
Limited International 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 Recipient may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

**C. Conditions for Award of Contract**

4. The Recipient shall not award any Works contracts for the subprojects financed under the Grant until, where appropriate, the IEE or LARPs for the relevant subproject shall have been approved by ADB and the Recipient.

**D. Selection of Consulting Services**

5. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, the Recipient shall apply quality- and cost-based selection for selecting and engaging consulting services.
6. At the request of the Recipient, the selection of the Project implementation consulting services shall be done by ADB in coordination with the Recipient.

**E. Industrial or Intellectual Property Rights**

7. (a) The Recipient shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Recipient shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

8. The Recipient shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

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

9. 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 Recipient and ADB and set forth in the Procurement Plan.

## SCHEDULE 4

### Execution of Project and Operation of Project Facilities; Financial Matters

#### Project Implementation

1. The Recipient shall appoint Ministry of Works (MOW) as the Project Executing Agency to be responsible for overall Project implementation. Within three months of the Effective Date, the Recipient shall ensure that MOW shall have established the PMU, which shall (a) serve as the secretariat for the Project Steering Committee (PSC); (b) undertake Project management, administration, and interagency coordination at the executive level; (c) maintain Project accounts; (d) oversee the procurement process; (e) prepare quarterly progress updates and other reporting requirements; and (f) prepare the Project completion report. The Recipient shall provide adequate office space, utilities and telecommunication facilities for the PMU.

2. The Recipient shall ensure that the PMU shall be headed by a Project manager, which shall be the Director of Works. The Recipient shall ensure that the Project manager shall be responsible for (a) interagency communications and participation, including ensuring that the various Project participants are working together effectively and efficiently; and (b) the daily tasks associated with Project delivery and control. The Recipient shall ensure that the PMU shall be supported by the Project implementation assistance consultants who shall provide Project planning, design, monitoring, and reporting, and cost and quality control services.

3. The Recipient shall ensure that the PSC shall be established to provide overall Project direction and that the PSC shall be chaired by the Minister of Finance with members consisting of the Minister of Works; the Minister of Lands, Survey, and Natural Resources; the Secretary of Lands, Survey, and Natural Resources; the Solicitor General; the Secretary of Finance; the Director of Education; the Director of Health; and the district officers of Kolomotu'a and Kolofo'ou. The Recipient shall ensure that the Project manager shall serve as the secretary-member of the PSC.

4. The Recipient shall ensure that counterpart staff is employed on a timely basis and from its ordinary budgetary allocations, and ensure that the PMU has adequate budget to support its routine operations.

#### Subprojects Selection Criteria

5. The Recipient shall ensure that each candidate subproject shall have undergone a feasibility study, which shall address technical analysis and description, subproject rationale, scope and components, cost estimates and financing plan, implementation arrangements, financial and economic analysis, environment impact assessment, and social and poverty impact assessment. Each feasibility study shall be submitted initially for review and approval by ADB. After ADB has endorsed the feasibility study, the PMU shall submit the feasibility study to the PSC for final review and approval.

6. Based on the approved feasibility study, the Recipient shall only finance candidate subprojects which meet the following criteria:

- (a) The candidate subproject shall be identified in the urban sector development plan.
- (b) The candidate subproject shall be considered as a high priority urban development project within the urban or peri-urban area of Nuku'alofa and of high benefit to the people.
- (c) The candidate subproject shall be technically feasible and meets the Recipient's technical standards and requirements.
- (d) The candidate subproject shall be justified as the most feasible subproject to achieve the stated objectives and is shown to be designed to minimize costs.
- (e) The candidate subproject's social and poverty impact assessment assesses that the proposed subproject (i) shall have a net positive impact on stakeholders' social welfare; (ii) shall reduce poverty; and (iii) can have its impacts monitored.
- (f) The candidate subproject shall be designed to minimize social impacts and ensure that (i) people adversely affected by Works under the subproject are compensated in compliance with the laws of the Recipient and ADB involuntary resettlement safeguard policies; (ii) due consultation and process is carried out in line with land acquisition and resettlement plans agreed upon with ADB and disclosed to affected persons; and (iii) the EA has submitted written confirmation to ADB that all affected persons of the subproject have consented to the terms and conditions under the land acquisition and resettlement plan. The candidate subprojects shall not be selected if there is opposition from affected persons and the community to the candidate subprojects.
- (g) All candidate subprojects shall be subject to a first level of screening in accordance with the environmental laws and policy and are not found to have: (i) significantly impact on ecologically sensitive areas of the Fanga'uta lagoon national marine reserve arising from its design, location, construction or operation; (ii) significant impacts on coral reefs and natural vegetation as specified in the schedule of the Environmental Impact Assessment Act, 2003; (iii) permanent negative effect on known rare or endangered species; and (iv) permanent damage to irreplaceable cultural relics and archaeological sites.
- (h) The candidate subproject's implementation timeframe shall be reasonable, and surveys and design can be prepared, reviewed, and safeguard processes and procedures followed, and implemented within the Project implementation period.
- (i) The Recipient can afford the candidate subproject cost and provides commitment to the investment through provision of budgetary resources to meet counterpart funding requirements for capital expenditures during the construction phase, resettlement costs, environment management costs, loan repayment, and routine operations and maintenance.
- (j) The economic internal rate of return (EIRR) shall be 12% or greater in accordance with the ADB *Guidelines for Economic Analysis*. Subprojects which have an EIRR of less than 12% may only be selected where a strong justification on the basis of social inclusiveness and equity is provided.

Financial

7. In order to mitigate any financial risks, The Recipient shall ensure that the PMU shall (a) use conservative cost estimates; (b) use strict and effective contract conditions to mitigate slow contractor performance; (c) develop measures to mitigate uninsurable risks during preparation of the contract documentation to limit the employer's exposure; and (d) require a guarantee by the contractor for one year following the completion of the Works to ensure construction quality.

Counterpart Financing

8. The Recipient shall make available counterpart financing on a timely basis from its ordinary budgetary allocations to ensure smooth implementation of the Project. The Recipient shall also progressively increase recurrent budgets for maintenance to protect investments in road and other infrastructure.

Rehabilitation Quality

9. The Recipient shall, through the PMU, ensure that the physical components of the Project are constructed or rehabilitated in accordance with the design technical specifications, and that construction supervision, quality control, and contract management are carried out in accordance with internationally accepted standards.

Physical component maintenance policy

10. Within six months prior to Project completion date, the Recipient through the PMU shall confirm maintenance policies for the physical components constructed under the Project, including budget and implementation arrangements, and submit them to ADB for review and concurrence.

Road safety

11. The Recipient shall ensure that appropriate road safety facilities are provided during Project implementation as necessary, including pavement markings, traffic signs and signals, warning signs, and hazard barriers.

Land acquisition and resettlement

12. The Recipient shall ensure that (a) land acquisition and involuntary resettlement activities under the Project are minimized; (b) all land and rights-of-way required by the Project are made available in a timely manner; (c) *ADB's Involuntary Resettlement Policy (1995)* are complied with; (d) the Land Acquisition and Resettlement Plans (LARPs) prepared by the Recipient and deemed acceptable by ADB are implemented according to their terms; and (e) the LARPs shall be updated based on detailed design, and submitted to ADB for approval and disclosed to the affected persons. The LARPs shall be prepared for the subprojects which require land acquisition or have resettlement impacts, in accordance with (a) the Land Acquisition and Resettlement Framework; (b) the Recipient's relevant laws and regulations; and (c) ADB's Involuntary Resettlement Policy.

13. The Recipient shall ensure that all Works related to the road subprojects shall be undertaken within rights-of-way. In the event of any unforeseen land acquisition or resettlement needs arise in any subproject, the Recipient shall inform ADB and prepare an updated LARP plan in accordance with (a) the Land Acquisition and Resettlement Framework; (b) the Recipient's relevant laws and regulations; and (c) ADB's Involuntary Resettlement Policy. During the preparation of the updated LARP plan and until ADB has reviewed and approved such LARP, the Recipient shall ensure that no construction activities related to that subproject shall continue.

#### Environment

14. The Recipient shall ensure that the Project is carried out following the Environmental Assessment and Review Procedure (EARP) prepared in accordance with, and all Project facilities are designed, constructed, operated, maintained and monitored in compliance with all applicable Recipient's environmental laws and regulations, and *ADB's Environment Policy (2002)*.

15. The Recipient shall (a) establish within 3 months of the Effective Date, an environment and social unit within MOW that shall be responsible for environmental/social compliance requirements and monitoring; (b) minimize any adverse environmental impacts arising from the Project by (i) implementing the environmental mitigation measures recommended in the Environmental Management Plan (EMP), (ii) ensuring that such mitigation measures are included in contract documents with contractors and that the contractors implement the required mitigation measures as described in the EMP in a satisfactory manner; (c) ensure that the EMP is updated following the award of works contract but prior to commencement of works, and undertake regular monitoring to ensure that all negative environmental impacts related to the Works are mitigated properly; (d) submit the monitoring report to ADB, and other relevant agencies, including but not limited to MLSNR; (e) report to MLSNR and ADB in case of unanticipated negative environmental impacts, and take proper action to mitigate the impacts; (f) provide remedial mitigation measures to affected people; and (g) ensure that the contractors report implementation of the EMP on a regular basis.

#### Gender and employment

16. The Recipient shall require contractors not to differentiate wages between men and women for work of equal value. The Recipient shall take all reasonable and necessary steps to encourage women living within the Project areas to participate in the implementation of the Project. This includes encouraging contractors to employ women in Project-related activities.

#### Labor, Health and Safety Laws

17. The Recipient shall ensure that the Works contractors comply with all applicable health, and safety laws and regulations of the Recipient, including the provision of appropriate facilities.

18. The Recipient shall, through the PMU, ensure that Works contractors shall comply with all applicable labor laws and related international treaty obligations.

#### Urban Planning Management System

19. The Recipient shall continue the efforts in implementing the recommendations in the urban planning management system, including continued support to the recently established PUMD.

#### Anti-Corruption

20. The Recipient shall comply with ADB's *Anticorruption Policy* (1998, as amended to date). The Recipient agrees (a) that ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; and (b) to cooperate fully with any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation. In particular, the Recipient shall (a) conduct periodic inspections on the contractors' activities related to fund withdrawals and settlements; and (b) ensure that, all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of the EA, all contractors, suppliers, consultants and other service providers as they relate to the Project.

#### Project Performance Management System

21. Within six months of the Effective Date, the Recipient shall ensure that the PMU shall establish the Project Performance Management System (PPMS) satisfactory to ADB. The Recipient shall ensure that the PPMS shall incorporate a cause-and-effect relationship between the Project and its impact. The PPMS shall comprise (a) a comprehensive list of implementation-related performance indicators duly collected, monitored, and recorded by the PMU and semi-annually assessed by MOW; and (b) post-completion performance and impact data collected by the PMU. The PPMS shall ensure that the baseline and impact data shall be disaggregated by city, town, and local area and by other dimensions to be discussed at Project inception. The PPMS shall ensure that the analysis of social impacts shall be gender disaggregated and take into account (a) the different Project impacts and risks facing women; (b) gender-specific measures to mitigate adverse impacts and manage risks; and (c) the interests and capacities of women to contribute to the Project. The implementation of performance monitoring shall also integrate financial and other aspects.

Project Review and Reporting

22. ADB and the Recipient shall undertake semi-annual review missions to evaluate the Project scope and costs, implementation arrangements, resettlement, achievement of scheduled targets and identification of Project risks. ADB shall also assess the Recipient's compliance with covenants. ADB and the Recipient shall undertake mid-term review mission within two years of the Effective Date. The mid-term review shall undertake comprehensive evaluation of (a) the Project scope, design, and implementation arrangements; (b) the progress of the Project against projections and performance indicators; and (c) the compliance of the covenants. The mid term review shall also recommend changes deemed necessary to the Project scope and implementation arrangements. The Project manager shall represent the Recipient during the review missions.

23. The Recipient shall provide ADB with copies of the audited Project accounts and financial statements no later than 6 months after the end of the fiscal year to which they relate. The Recipient shall also provide ADB with quarterly progress reports on Project implementation. Within 3 months of the physical completion of the Project, the Recipient shall provide ADB with a Project completion report.