
LOAN NUMBER [____]-SRI(SF)
(Additional to Loan No. 1993-SRI[SF],
Loan No. 2275-SRI and Loan No. 2276-SRI[SF])

LOAN AGREEMENT
(Special Operations)

(Secondary Towns and Rural Community-Based Water Supply and Sanitation Project –
Additional Financing)

between

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

and

ASIAN DEVELOPMENT BANK

DATED _____

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated _____ between DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by loan agreement (Loan No. 1993-SRI[SF]) dated 18 August 2003, as amended since ("Initial Loan Agreement"), ADB made a loan to the Borrower from ADB's Special Funds resources in the amount of forty five million six hundred eighty-nine thousand Special Drawing Rights (SDR 45,689,000) for the purposes of the project described in Schedule 1 to the Initial Loan Agreement ("Initial Project");

(B) by loan agreement (Loan No. 2276-SRI[SF]) dated 14 December 2006 ("Supplementary Special Operations Loan Agreement") and by loan agreement (Loan No. 2275-SRI) dated 6 June 2007 ("Supplementary Ordinary Operations Loan Agreement"), ADB made a supplementary loan to the Borrower from ADB's Special Funds resources in the amount of thirty-one million four hundred eighty-one thousand Special Drawing Rights (SDR 31,481,000) and a supplementary loan to the Borrower from ADB's ordinary capital resources in the amount of thirteen million five hundred thousand Dollars (\$13,500,000) respectively, for the purposes of financing cost overruns under Part A of the Initial Project, as amended and described in Schedule 1 to the Supplementary Special Operations Loan Agreement ("Project");

(C) the Borrower has applied to ADB for two additional loans, one from ADB's Special Funds resources and one from ADB's ordinary capital resources, both for the purposes of financing further cost overruns under the Project;

(D) by loan agreement [of even date herewith] ("Ordinary Operations Loan Agreement"), ADB has agreed to make an additional loan to the Borrower from ADB's ordinary capital resources for an amount of four million three hundred thousand Dollars (\$4,300,000) for the purposes of the Project ("Ordinary Operations Loan"), upon the terms and conditions set forth in the Ordinary Operations Loan Agreement;

(E) the Project is carried out by the National Water Supply and Drainage Board ("NWSDB"), and for this purpose the Borrower will make available to NWSDB the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(F) ADB has agreed to make an additional loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement [of even date herewith] between ADB and NWSDB;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Special Operations Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Special Operations Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

(a) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2010, as amended from time to time);

(b) "Consulting Services" means design and construction supervision consulting services to be financed out of proceeds of the Loan and/or the Ordinary Operations Loan;

(c) "Goods" means equipment and materials to be financed out of proceeds of the Loan and/or the Ordinary Operations Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(d) "Initial Loan Agreement" has the meaning given thereto in Recital (A) of this Loan Agreement;

(e) "Initial Project" has the meaning given thereto in Recital (A) of this Loan Agreement;

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

(g) "NWSDB" means the National Water Supply and Drainage Board, established under the NWSDB Act;

(h) "NWSDB Act" means the National Water Supply and Drainage Board Law No. 2, 1974, of the Borrower, as may be amended from time to time;

(i) "Ordinary Operations Loan" has the meaning given thereto in Recital (D) of this Loan Agreement;

(j) "Ordinary Operations Loan Agreement" has the meaning given thereto in Recital (D) of this Loan Agreement;

(k) "Ordinary Operations Loan Regulations" means the Loan Regulations referred to in Section 1.01 of the Ordinary Operations Loan Agreement;

(l) “PAM” means the updated project administration manual relating to the Project dated 5 April 2011 and agreed between the Borrower and ADB, as this manual may be updated further from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(m) “Procurement Guidelines” means ADB’s Procurement Guidelines (2010, as amended from time to time);

(n) “Procurement Plan” means the procurement plan for the Project incorporated in the PAM and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(o) “Project Executing Agency” for the purposes of, and within the meaning of, the Special Operations Loan Regulations and the Ordinary Operations Loan Regulations, means NWSDB or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(p) “Project facilities” means the equipment, materials and supplies as well as facilities provided or to be provided under the Project;

(q) “Special Operations Loan Regulations” has the meaning given thereto in Section 1.01 of this Loan Agreement;

(r) “Subsidiary Financing Agreement” means each of the agreements between the Borrower and NWSDB referred to in Section 3.01 of this Loan Agreement and Section 3.01 of the Ordinary Operations Loan Agreement;

(s) “Supplementary Loan Agreements” means the Supplementary Ordinary Operations Loan Agreement and the Supplementary Ordinary Operations Loan Agreement;

(t) “Supplementary Ordinary Operations Loan Agreement” has the meaning given thereto in Recital (B) of this Loan Agreement;

(u) “Supplementary Special Operations Loan Agreement” has the meaning given thereto in Recital (B) of this Loan Agreement; and

(v) “Works” means construction or civil works to be financed out of proceeds of the Loan and/or the Ordinary Operations Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

ARTICLE II

The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to eight million three hundred eighty-nine thousand Special Drawing Rights (SDR 8,389,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum thereafter on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 1 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 May and 15 November in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 1 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Special Operations Loan Regulations shall be the Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall make available the proceeds of the Loan to NWSDB as a loan and a grant under a Subsidiary Financing Agreement upon terms and conditions satisfactory to ADB. Except as ADB may otherwise agree, the Borrower shall make available the proceeds of the Loan to NWSDB as follows:

- (i) eighty-five percent (85%) of funding for water supply schemes in Pradeshiya Sabhas as a grant and fifteen percent (15%) as a loan;
- (ii) for urban councils and municipal councils, fifty percent (50%) of funding as a grant and fifty percent (50%) as a loan; and
- (iii) for rural water supply and sanitation systems implemented by communities, one hundred percent (100%) of funding as a grant.

(b) Except as ADB may otherwise agree, the terms for the loan from the Borrower to NWSDB under the Subsidiary Financing Agreement shall include interest at the rate of 6% per annum (inclusive of foreign exchange risk) and a repayment period of 24 years, inclusive of a grace period of 5 years.

(c) The Borrower shall cause NWSDB to apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 2 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 3 to this Loan Agreement.

Section 3.04 Withdrawals from the Loan Account in respect of Goods, Works and Consulting Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Works and Consulting 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, Works and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Special Operations Loan Regulations shall be 30 June 2014 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants; Amendment to Supplementary Special Operations Loan Agreement

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

(b) Paragraph 3 of Schedule 1 to the Supplementary Special Operations Loan Agreement is hereby amended as follows: "The Project is expected to be completed by 31 December 2013."

Section 4.02. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.03. The Borrower shall take all actions which shall be necessary on its part to enable NWSDB to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.04. (a) The Borrower shall exercise its rights under the Subsidiary Financing Agreements in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Financing Agreements shall be assigned, amended, or waived without the prior concurrence of ADB.

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Special Operations Loan Regulations:

- (a) the Initial Loan Agreement, either of the Supplementary Loan Agreements, or the Ordinary Operations Loan Agreement shall have become liable for suspension or cancellation or shall have become repayable prior to the agreed maturity date; and
- (b) the Borrower or NWSDB shall have failed to perform any of their obligations under the Subsidiary Financing Agreements.

Section 5.02. The following are specified as additional events for acceleration of maturity for the purposes of Section 8.07(d) of the Special Operations Loan Regulations: any of the events specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Special Operations Loan Regulations:

- (a) the execution and delivery of the Ordinary Operations Loan Agreement on behalf of the Borrower shall have been duly authorized or ratified by all necessary corporate and governmental action; and
- (b) the Subsidiary Financing Agreements, in form and substance acceptable to ADB, shall have been duly authorized or ratified, executed and delivered on behalf of the Borrower and NWSDB, and shall have become legally binding upon them in accordance with their terms.

Section 6.02. The following are specified as additional matters, for the purposes of Section 9.02(d) of the Special Operations Loan Regulations, to be included in the opinion or opinions to be furnished to ADB:

- (a) that the Ordinary Operations Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of the Borrower and is legally binding upon the Borrower in accordance with its terms; and
- (b) that the Subsidiary Financing Agreements have been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and NWSDB, and are legally binding upon them in accordance with their terms.

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

ARTICLE VII

Delegation of Authority

Section 7.01. The Borrower hereby designates NWSDB as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02, 3.03 and 3.05 of this Loan Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Special Operations Loan Regulations.

Section 7.02. Any action taken or any agreement entered into by NWSDB pursuant to the authority conferred under Section 7.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 7.03. The authority conferred on NWSDB under Section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

ARTICLE VIII**Miscellaneous**

Section 8.01. The Secretary, Ministry of Finance and Planning of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Special Operations Loan Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the Special Operations Loan Regulations:

For the Borrower

The Secretary
Ministry of Finance and Planning
Secretariat
Colombo 1, Sri Lanka

Copy: Deputy Secretary to the Treasury
Director General, External Resources Department

Facsimile Numbers:

(9411) 244-9823
(9411) 244-7633.

For ADB

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

Facsimile Numbers:

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

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

DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA

By _____
[Name and Designation]

ASIAN DEVELOPMENT BANK

By _____
[Name and Designation]

SCHEDULE 1**Amortization Schedule****(Secondary Towns and Rural Community-Based Water Supply and Sanitation Project – Additional Financing)**

| <u>Date Payment Due</u> | <u>Payment of Principal</u> (expressed in Special Drawing Rights)* |
|-------------------------|--|
| 15-November-2019 | 174,771 |
| 15-May-2020 | 174,771 |
| 15-November-2020 | 174,771 |
| 15-May-2021 | 174,771 |
| 15-November-2021 | 174,771 |
| 15-May-2022 | 174,771 |
| 15-November-2022 | 174,771 |
| 15-May-2023 | 174,771 |
| 15-November-2023 | 174,771 |
| 15-May-2024 | 174,771 |
| 15-November-2024 | 174,771 |
| 15-May-2025 | 174,771 |
| 15-November-2025 | 174,771 |
| 15-May-2026 | 174,771 |
| 15-November-2026 | 174,771 |
| 15-May-2027 | 174,771 |
| 15-November-2027 | 174,771 |
| 15-May-2028 | 174,771 |
| 15-November-2028 | 174,771 |
| 15-May-2029 | 174,771 |
| 15-November-2029 | 174,771 |
| 15-May-2030 | 174,771 |
| 15-November-2030 | 174,771 |
| 15-May-2031 | 174,771 |
| 15-November-2031 | 174,771 |
| 15-May-2032 | 174,771 |
| 15-November-2032 | 174,771 |
| 15-May-2033 | 174,771 |
| 15-November-2033 | 174,771 |
| 15-May-2034 | 174,771 |
| 15-November-2034 | 174,771 |
| 15-May-2035 | 174,771 |
| 15-November-2035 | 174,771 |
| 15-May-2036 | 174,771 |
| 15-November-2036 | 174,771 |
| 15-May-2037 | 174,771 |
| 15-November-2037 | 174,771 |

| <u>Date Payment Due</u> | <u>Payment of Principal</u> (expressed in Special Drawing Rights)* |
|-------------------------|--|
| 15-May-2038 | 174,771 |
| 15-November-2038 | 174,771 |
| 15-May-2039 | 174,771 |
| 15-November-2039 | 174,771 |
| 15-May-2040 | 174,771 |
| 15-November-2040 | 174,771 |
| 15-May-2041 | 174,771 |
| 15-November-2041 | 174,771 |
| 15-May-2042 | 174,771 |
| 15-November-2042 | 174,771 |
| 15-May-2043 | 174,763 |
| Total | <u>8,389,000</u> |

*
The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Special Operations Loan Regulations.

SCHEDULE 2

Allocation and Withdrawal of Loan Proceeds

General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, each item of expenditure shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

Interest Charge

3. The amount allocated to Category 4 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

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

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

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Imprest Account and Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish, and cause to be established, immediately after the Effective Date, (i) a first generation imprest account at the Central Bank of Sri Lanka, and (ii) a second generation imprest account for NWSDB at a commercial bank acceptable to ADB (collectively, imprest

accounts). The imprest accounts shall be established, managed, replenished and liquidated in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. The imprest accounts shall only be used for the purposes of the Project. The currency of the first generation imprest account shall be the Dollar and the currency of the second generation imprest accounts shall be Sri Lankan rupees. The aggregate amount to be deposited into the imprest accounts shall not exceed the lower of (i) the estimated expenditure to be financed from the imprest accounts for the first 6 months of Project implementation, or (ii) the equivalent of 10% of the Loan amount.

(b) The statement of expenditures procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest accounts, in accordance with Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed shall not exceed the equivalent of \$100,000.

Retroactive Financing

7. Withdrawals from the Loan Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

| ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Secondary Towns and Rural Community-Based Water Supply and Sanitation Project – Additional Financing) | | | |
|--|---------------------|---|---|
| CATEGORY | | | ADB FINANCING |
| Number | Item | Total Amount Allocated for ADB Financing (SDR) Category | Percentage and Basis for Withdrawal from the Loan Account |
| 1 | Civil Works | 6,749,000 | 89 percent of total expenditure claimed |
| 2 | Consulting Services | 505,000 | 100 percent of total expenditure claimed* |
| 3 | Incremental | 189,000 | 100 percent of total expenditure claimed* |
| 4 | Interest Charge | 189,000 | 100 percent of amounts due |
| 5 | Unallocated | 757,000 | |
| | Total | 8,389,000 | |

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

SCHEDULE 3

Procurement of Goods, Works and Consulting Services

General

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

Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of international competitive bidding procedures.
4. The method of procurement is subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the method of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

National Competitive Bidding

5. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Borrower and ADB.

Consulting Services

6. Except as ADB may otherwise agree, NWSDB shall apply quality- and cost-based selection for selecting and engaging the Consulting Services.

Industrial or Intellectual Property Rights

7. (a) NWSDB 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) NWSDB 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. NWSDDB shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the Consulting Services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

ADB's Review of Procurement Decisions

14. Contracts procured under international competitive bidding procedures 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 4**Execution of Project and Operation of
Project Facilities**

1. The Borrower and NWSDB shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

2. The Borrower and NWSDB shall continue to implement the Project in accordance with the provisions set forth in Schedule 6 to the Initial Loan Agreement and Schedule 5 to the Supplementary Special Operations Loan Agreement.