
LOAN NUMBERS 2710/2711(SF)-SRI

PROJECT AGREEMENT

(Jaffna and Kilinochchi Water Supply and Sanitation Project)

between

ASIAN DEVELOPMENT BANK

and

NATIONAL WATER SUPPLY AND DRAINAGE BOARD

DATED 8 February 2011

PAL: SRI 37378

PROJECT AGREEMENT

PROJECT AGREEMENT dated 8 February 2011 between ASIAN DEVELOPMENT BANK ("ADB") and the NATIONAL WATER SUPPLY AND DRAINAGE BOARD ("NWSDB").

WHEREAS

(A) by an agreement of even date herewith between the Borrower and ADB ("Special Operations Loan Agreement"), ADB has agreed to lend to the Borrower an amount in various currencies equivalent to forty four million two hundred eighty six thousand Special Drawing Rights (SDR44,286,000) (Special Operation Loan) for the purposes of the Project;

(B) by an agreement of even date herewith between the Borrower and ADB ("Ordinary Operations Loan Agreement"), ADB has agreed to lend to the Borrower from ADB's ordinary capital resources the amount of twenty million Dollars (\$20,000,000) ("Ordinary Operations Loan") for the purposes of the Project (the Special Operation Loan and the Ordinary Operation Loan shall be referred to as the Loans) ; and

(C) NWSDB, in consideration of ADB entering into the Special Operations Loan Agreement and the Ordinary Operations Loan Agreement (together shall be referred to as the Loan Agreements) with the Borrower, has agreed to undertake the obligations hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Special Operations Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth, except that for purposes of this Project Agreement, the term "the Project" means parts A, B and C of the Project, as described in Schedule 1 to the Special Operations Loan Agreement.

ARTICLE II

Particular Covenants

Section 2.01. (a) NWSDB shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental, management and water supply and sanitation practices.

(b) In the carrying out of the Project and operation of the Project facilities, NWSDB shall perform all obligations set forth in the Loan Agreements to the extent that they are applicable to NWSDB.

Section 2.02. NWSDB 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 Loans, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, NWSDB 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 Loans shall be procured in accordance with the provisions of Schedule 4 to the Special Operations 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. NWSDB shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. NWSDB 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 2.05. (a) NWSDB shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of 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, NWSDB 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 Loans 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. NWSDB 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 Loans, 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 NWSDB shall cooperate fully to ensure that the purposes of the Loans will be accomplished.

(b) NWSDB 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 Loans.

(c) ADB and NWSDB 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, NWSDB and the Loans.

Section 2.08. (a) NWSDB shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loans 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 NWSDB; and (v) any other matters relating to the purposes of the Loans.

(b) Without limiting the generality of the foregoing, NWSDB 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 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 3 months thereafter or such later date as ADB may agree for this purpose, NWSDB 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 NWSDB of its obligations under this Project Agreement and the accomplishment of the purposes of the Loans.

Section 2.09. (a) NWSDB shall (i) maintain separate accounts for the Project and for its overall operations; (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 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 Loan proceeds and compliance with the covenants of the Loan Agreements as well as on the use of the procedures for imprest account/statement of expenditures), all in the English language. NWSDB 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) NWSDB shall enable ADB, upon ADB's request, to discuss NWSDB's financial statements and its financial affairs from time to time with the auditors appointed by NWSDB 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 NWSDB unless NWSDB shall otherwise agree.

Section 2.10. NWSDB shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loans, all other plants, sites, properties and equipment of the NWSDB and any relevant records and documents.

Section 2.11. (a) NWSDB shall, promptly as required, take all action within its powers to maintain its corporate existence, 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) NWSDB shall at all times conduct its business in accordance with sound administrative, financial, environmental, management and water supply and sanitation practices, and under the supervision of competent and experienced management and personnel.

(c) NWSDB 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, engineering, environmental, water supply and sanitation practices.

Section 2.12. Except as ADB may otherwise agree, NWSDB 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, NWSDB shall apply the proceeds of the Loans to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreements 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 Agreements shall come into force and effect. ADB shall promptly notify NWSDB 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 Agreements.

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
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636-2340

For NWSDB

Galle Road
Ratmalana
Sri Lanka

Facsimile Number:

(94-11) 263 – 6449

Section 4.02. 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.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project 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.

ASIAN DEVELOPMENT BANK

By 

RICHARD W. VOKES
Country Director
Sri Lanka Resident Mission

NATIONAL WATER SUPPLY AND
DRAINAGE BOARD

By 

KARUNASENA HETTIARACHCHI
Chairman

By 

K.D. GAMINI GUNARATNE
Vice Chairman