
LOAN NUMBER 2711-SRI (SF)

LOAN AGREEMENT
(Special Operations)

(Jaffna and Kilinochchi Water Supply and Sanitation Project)

between

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

and

ASIAN DEVELOPMENT BANK

DATED 8 February 2011

LAS:SRI 37378

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 8 February 2011 between DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(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 its ordinary capital resources an amount of twenty million Dollars (\$20,000,000) ("Ordinary Operations Loan") for the purposes of the Project;

(C) MWSD and NWSDB will carry out parts A.I (ii) to (viii), A.II.,B and C of the Project, and MLGPC and NPC, through its PID, will carry out part A.I (i) of the Project, and for this purpose the Borrower will make available to MWSD and NWSDB the proceeds of the Loan provided under the Ordinary Operations Loan Agreement and to NWSDB and NPC a portion of the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreements;

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 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modification:

(a) Sections 2.01 (25) is deleted and the following is substituted therefor:

"Project Agreements" means the NPC Project Agreement and NWSDB Project Agreement."

Section 1.02. Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the 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) "AFD" means Agence Francaise de Development;
- (b) "AFD Project Component" means (i) the construction of new water intake at Iranamadu Tank, raw water supply system, water treatment plant, and treated water pumping station, and (ii) laying part of the treated water transmission mains to the Jaffna Municipality;
- (c) "AFD Loan" means the loan provided by AFD to the Borrower in the amount equivalent to forty million Dollars (\$40,000,000) to finance the AFD Project Component;
- (d) "AFD Loan Agreement" means the loan agreement to be signed by and between the Borrower and AFD with regard to the AFD Loan;
- (e) "CBSL" means Central Bank of Sri Lanka established pursuant to the Borrower's Monetary Law Act No. 58 of 1949;
- (f) "CCD" means the Coast Conservation Department of the Borrower, and any successor thereto;
- (g) "CEA" means the Central Environment Authority of the Borrower, and any successor thereto;
- (h) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2010, as amended from time to time);
- (i) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in paragraph 3 of Schedule 1 to this Loan Agreement, but excluding any services provided in relation to Goods and Works;
- (j) "EMP" means the environmental management plan prepared for the Project and set out in the IEE;
- (k) "Fiscal Year" means the fiscal year of the Borrower, being the period from 1 January to 31 December of a calendar year;
- (l) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;
- (m) "IEE" means the initial environmental examination report prepared for the Project by the Borrower and approved by ADB;
- (n) "JRO" means the Jaffna regional office of the NWSDB, and any successor thereto;
- (o) "JWRMC" means the Jaffna Water Resources Management Committee, and any successor thereto;

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

(q) "MLGPC" means the Ministry of Local Government and Provincial Councils of the Borrower, and any successor thereto;

(r) "MOFP" means the Ministry of Finance and Planning of the Borrower, and any successor thereto;

(s) "MWSD" means the Ministry of Water Supply and Drainage of the Borrower, and any successor thereto;

(t) "NPC" means the Northern Provincial Council, and any successor thereto;

(u) "NWSDB" means the National Water Supply and Drainage Board, and any successor thereto;

(v) "NPC Project Agreement" means the Project Agreement of even date herewith between ADB and NPC;

(w) "NWSDB Project Agreement" means the Project Agreement of even date herewith between ADB and NWSDB;

(x) "PAM" means the project administration manual for the Project dated 20 October 2010 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(y) "PID" means the Provincial Irrigation Department of NPC, and any successor thereto;

(z) "PIU" means project implementation units;

(aa) "PMCIU" means the project management, coordination and implementation unit established by MWSD in accordance with the PAM;

(bb) "Pradeshiya Sabhas" means local authorities established under Pradeshiya Sabha Act Nr. 15 of 1987;

(cc) "Procurement Guidelines" means ADB's Procurement Guidelines (2010, as amended from time to time);

(dd) "Procurement Plan" means the procurement plan for the Project dated 20 October 2010 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;

(ee) "Project Area" means the Jaffna Peninsula and Poneryn in Kilinochchi District;

(ff) "Project Executing Agencies" or "EAs" means, for the purposes and within the meaning of the Loan Regulations, MWSD, which is responsible for the carrying out parts A, B and C of the Project and MLGPC, which is responsible for the carrying out certain part of part A of the Project, or any successor thereto acceptable to ADB;

(gg) "Project facilities" means NWSDB regional office in Jaffna and other infrastructure improved, upgraded and/or rehabilitated under the Project;

(hh) "Project Implementing Agencies" or "IAs" means NWSDB, which is responsible for implementing parts A.I (ii) to (viii), A.II., B and C of the Project and the PID of NPC, which is responsible for implementing part A.I (i) of the Project, and any successor thereto acceptable to ADB;

(ii) "RP" means the resettlement plan prepared for the Project and agreed between ADB and the Borrower; and

(jj) "Works" means construction or civil works to be financed out of the proceeds of the 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 forty four million and two hundred eighty six thousand Special Drawing Rights (SDR 44,286,000).

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.

(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 2 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 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal 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 Loan Regulations shall be the Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall make a portion of the proceeds of the Loan available to MWSD and NWSDB, under a subsidiary loan agreement, upon terms and conditions satisfactory to ADB, and shall cause MWSD and NWSDB to apply such proceeds to the financing of expenditures on parts A, B and C of the Project in accordance with the provisions of this Loan Agreement and the NWSDB Project Agreement.

(b) The Borrower shall make a portion of the proceeds of the Loan available to NPC as a grant and shall cause NPC to apply such proceeds to the financing of expenditures on part A of the Project in accordance with the provisions of this Loan Agreement and the NPC Project Agreement.

Section 3.02. The proceeds of Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure or cause to be procured items of expenditure in accordance with the applicable provisions of Schedule 4 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 Loan Regulations shall be 14 August 2017 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause NWSDB and NPC to perform, all obligations set forth in Schedule 5 to this Loan Agreement.

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. (a) The Borrower shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for imprest account and 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 Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Borrower pursuant to Section 4.02(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 Borrower unless the Borrower shall otherwise agree.

Section 4.04. The Borrower shall take all actions which shall be necessary on its part to enable NWSDB and the NPC to perform its obligations under the Project Agreements, and shall not take or permit any action which would interfere with the performance of such obligations.

ARTICLE V

Effectiveness

Section 5.01. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Secretary of MOFP is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

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

For the Borrower

Secretary
Ministry of Finance and Planning
Colombo 1
Sri Lanka

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

Facsimile Numbers:

(94-11) 2433-349
(94-11) 2447-633

For ADB


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

Facsimile Numbers:

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

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 
PUNCTI BANDARA JAYASUNDERA
Secretary to the Ministry of
Finance and Planning

ASIAN DEVELOPMENT BANK

By 
RICHARD W. VOKES
Country Director
Sri Lanka Resident Mission

SCHEDULE 1

Description of the Project

1. The objective of the Project is to improve water supply and sanitation infrastructure for residents living in the Project Area, and to protect and manage Jaffna Peninsula Water resources.
2. The Project shall comprise:

Part A: Improving Water Supply and Sanitation Infrastructure

I. Water Supply:

- (i) rehabilitation and improvement of headworks at the Iranamadu Tank;
- (ii) laying part of the treated water transmission mains to Jaffna Municipality;
- (iii) provision of connections to urban council and Pradeshiya Sabhas en-route involving about 12 off-takes;
- (iv) provision of new distribution systems for Jaffna Municipality and Chavakachcheri urban council, including access to household connections and metered community facilities in poor areas;
- (v) provision of new distribution systems for selected Pradeshiya Sabhas of the Jaffna and Kilinochchi districts, including extensions to property boundaries;
- (vi) installation of bulk/system water meters;
- (vii) provision of leak detection program for rehabilitation and strengthening of the existing distribution network; and
- (viii) provision of spare parts and maintenance equipment.

II. Sewerage and Sanitation:

Provision of:

- (i) sewage collection system;
- (ii) sewage treatment plant;
- (iii) treated effluent sea outfall;
- (iv) maintenance equipment;
- (v) low cost sanitation programs for poor communities; and
- (vi) septic tank cleaning machines.

Part B: Strengthening Jaffna Water Resource Management

- (i) assist JWRMC in designing a policy and institutional framework for integrated water resources management by financing a study to develop a water resources management plan;
- (ii) support NWSDB in developing groundwater quality and quantity monitoring system in the Project Area;

- (iii) support municipalities, urban councils, and Pradesihya Sabhas in the preparation of their by-laws and implementing rules and regulation; and
- (iv) conduct public water conservation, environmental, and hygiene awareness campaigns and community monitoring programs.

Part C: Building JRO and Implementation Capacity

- (i) construct and establish an NWSDB regional office in Jaffna; and
 - (ii) provide project implementation capacity and administration support.
3. Consulting Services will be provided to support the above stated activities.
 4. The Project is expected to be completed by 14 February 2017.

SCHEDULE 2

**Amortization Schedule
(Jaffna and Kilinochchi Water Supply and Sanitation Project)**

| <u>Date Payment Due</u> | <u>Payment of Principal</u> <u>(Expressed in Special Drawing Rights)</u> |
|-------------------------|---|
| 15 May 2019 | 922,625.00 |
| 15 November 2019 | 922,625.00 |
| 15 May 2020 | 922,625.00 |
| 15 November 2020 | 922,625.00 |
| 15 May 2021 | 922,625.00 |
| 15 November 2021 | 922,625.00 |
| 15 May 2022 | 922,625.00 |
| 15 November 2022 | 922,625.00 |
| 15 May 2023 | 922,625.00 |
| 15 November 2023 | 922,625.00 |
| 15 May 2024 | 922,625.00 |
| 15 November 2024 | 922,625.00 |
| 15 May 2025 | 922,625.00 |
| 15 November 2025 | 922,625.00 |
| 15 May 2026 | 922,625.00 |
| 15 November 2026 | 922,625.00 |
| 15 May 2027 | 922,625.00 |
| 15 November 2027 | 922,625.00 |
| 15 May 2028 | 922,625.00 |
| 15 November 2028 | 922,625.00 |
| 15 May 2029 | 922,625.00 |
| 15 November 2029 | 922,625.00 |
| 15 May 2030 | 922,625.00 |
| 15 November 2030 | 922,625.00 |
| 15 May 2031 | 922,625.00 |
| 15 November 2031 | 922,625.00 |
| 15 May 2032 | 922,625.00 |
| 15 November 2032 | 922,625.00 |
| 15 May 2033 | 922,625.00 |
| 15 November 2033 | 922,625.00 |
| 15 May 2034 | 922,625.00 |
| 15 November 2034 | 922,625.00 |
| 15 May 2035 | 922,625.00 |
| 15 November 2035 | 922,625.00 |

| <u>Date Payment Due</u> | <u>Payment of Principal</u> <u>(Expressed in Special Drawing Rights)</u> |
|-------------------------|---|
| 15 May 2036 | 922,625.00 |
| 15 November 2036 | 922,625.00 |
| 15 May 2037 | 922,625.00 |
| 15 November 2037 | 922,625.00 |
| 15 May 2038 | 922,625.00 |
| 15 November 2038 | 922,625.00 |
| 15 May 2039 | 922,625.00 |
| 15 November 2039 | 922,625.00 |
| 15 May 2040 | 922,625.00 |
| 15 November 2040 | 922,625.00 |
| 15 May 2041 | 922,625.00 |
| 15 November 2041 | 922,625.00 |
| 15 May 2042 | 922,625.00 |
| 15 November 2042 | 922,625.00 |
| Total | 44,286,000.00 |

SCHEDULE 3**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 amounts of the Loan to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Categories 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 6 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. Notwithstanding the allocation of the 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, in consultation with 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, in consultation with 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) two first generation imprest

(FGIA) account at CBSL, one for MWSD and one for MLGPC; and (ii) two second generation imprest accounts (SGIA), one for NWSDB and one for NPC, at a state owned bank (collectively, imprest accounts). The FGIAs and SGIAs 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 currency of the FGIAs shall be the Dollar and the currency of the SGIAs shall be the Sri Lanka rupee. The aggregate amount to be deposited into the FGIAs 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.

Condition for Withdrawals from Loan Account

7. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account until the Borrower shall have entered into a valid and legally binding subsidiary loan agreement with MWSD and NWSDB with respect to the Loan proceeds, upon terms and conditions satisfactory to ADB.

TABLE

| ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS | | | |
|---|--|--|--|
| (Jaffna and Kilinochchi Water Supply and Sanitation Project) | | | |
| CATEGORY | | | ADB FINANCING |
| Number | Item | Amount Allocated SDR Category | Percentage and Basis for Withdrawal From the Loan Account |
| 1 | Works | 32,258,000 | 78% of total expenditure claimed |
| 2 | Equipment | 132,000 | 100% of total expenditure claimed* |
| 3 | Road Reinstatement | 5,063,000 | 100% of total expenditure claimed* |
| 4 | Consultants | 2,062,000 | 100% of total expenditure claimed* |
| 5 | Project Administration and Implementation | 481,000 | 100% of total expenditure claimed* |
| 6 | Interest Charge | 823,000 | 100% of amount due |
| 7 | Unallocated | 3,467,000 | |
| | Total | 44,286,000 | |

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

SCHEDULE 4

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 and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Procurement of 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:
 - (a) International Competitive Bidding;
 - (b) National Competitive Bidding;
 - (c) Shopping;
 - (d) Direct Contracting; and
 - (e) Force Account

4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Domestic Preference

5. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods.

National Competitive Bidding

6. 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

7. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.

Industrial or Intellectual Property Rights

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

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

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

ADB's Review of Procurement Decisions

10. Contracts procured under international competitive bidding procedures and contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

SCHEDULE 5

Execution of Project and Operation of Project Facilities; Financial Matters

Implementation Arrangements

1. The Borrower, the Project Executing Agencies, and the Project Implementing Agencies 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.

Counterpart Funds

2. The Borrower shall provide counterpart funds for project implementation on time. The PMCIU and the PIU through the EAs, shall make timely submission of annual budgetary appropriation request to MOFP and MOFP shall ensure prompt disbursement of appropriated funds during each year of project implementation.

Resources

3. The Borrower, the EAs and the IAs shall ensure that the PMCIU and the PIU shall be provided with adequate staff, resources, and facilities to implement the Project.

Operation and Maintenance

4. At the latest by 28 February of each year, MWSD and NWSDB shall have submitted to ADB: (a) the end of the year income statement for the previous year (inclusive of O&M, debt service, and depreciation); and (b) annual projections (inclusive of O&M, debt service and, depreciation) for the coming year. In the event that (b) shows a negative value, NWSDB shall implement, at the latest by 31 August of the same year, the water and sewerage tariff revisions required to secure a positive net income in each of these sectors.

5. The Borrower shall ensure that NWSDB and NPC, through PID, maintain the project facilities and that proper technical supervision and adequate routine funds for this purpose are provided. The Borrower shall ensure that NWSDB shall provide funds required for the O&M of the Project facilities, as identified in the annual projections. The funds for the O&M shall be allocated annually and released on a timely basis. Furthermore, the Borrower shall ensure that all equipment and spare parts financed under the Project shall exclusively be used for the maintenance and operation of the Project.

Governance and Anticorruption

6. Within 6 months after the Effective Date, the EAs through the PMCIU shall create a project website to disclose information about various matters of the Project, including procurement. With regard to procurement, the website shall include information on the list of participating bidders, name of the winning bidder, basic details on bidding procedures adopted amount of contract awarded, and the list of goods/services procured.

7. Within 9 months after the Effective Date, the PMCIU shall prepare a grievance redress mechanism, acceptable to ADB, and establish a task force at the PMCIU to receive and resolve complaints/grievances or act upon reports from stakeholders on misuse of funds and other irregularities, including grievances due to resettlement and environmental issues. The task force shall (i) make public the existence of this Grievance Redress Mechanism, through a public awareness campaign, (ii) review and address grievances of stakeholders of the Project, in relation to either the Project, any of the service providers, or any person responsible for carrying out any aspect of the Project; and (iii) proactively and constructively respond to them, in a timely manner.

8. The Borrower, the EAs and the IAs shall comply with ADB's Anticorruption Policy (1998, as amended to date), and cooperate fully with any investigation by ADB and extend all necessary assistance, including providing access to all relevant books and records for the satisfactory completion of such investigation.

9. NWSDB and NPC, through the PMCIU and the PIU, shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

Labor

10. The Borrower, the EAs and the IAs, shall ensure that Works contractors engaged under the Project (i) provide for equal pay to men and women for equal work and make prompt payment of wages; (ii) provide safe working conditions and water and sanitation facilities for male and female workers; (iii) do not violate any prohibitions against child labor under the Borrower's laws and international treaty obligations; and (iv) require the contractor to include information on the risk of transmission of sexually-transmitted diseases, including HIV/AIDS, in health and safety programs for all construction workers employed under the Project. Specific provisions to this effect shall be included in bidding documents and civil works contracts, and compliance shall be monitored by NWSDB and NPC, respectively.

Environment

11. The Borrower, the EAs and the IAs, shall ensure that the Project shall be carried out in accordance with the IEE and the EMP prepared under the Project, and shall comply with the Borrower's environmental laws and regulations and ADB's Safeguard Policy Statement (2009). If there is any discrepancy between the Borrower's laws and regulations, and ADB's Safeguard Policy Statement (2009), the ADB's Safeguard Policy Statement (2009) shall prevail. NWSDB and NPC, through PID, shall implement the environmental mitigation and management measures, and other recommendations specified in the EMP to minimize any adverse environmental impacts arising from the implementation of the Project. The requirements of the EMP and of the conditional clearance or approval provided by the CEA and/or CCD shall be incorporated in bidding documents and included as part of works contract documents. NWSDB and NPC through PID are responsible for ensuring compliance by the contractors with requirements of the EMP.

Resettlement

12. The Borrower, the EAs and the IAs shall ensure that land acquisition and involuntary resettlement for construction of Project facilities shall be carried out and managed in accordance with the RP, the Borrower's laws and regulations on land acquisition and resettlement and ADB's Safeguard Policy Statement (2009). The Borrower shall ensure that NWSDB and NPC through PID update the RP during the detailed design stage, and implement the final RP, after approval from the Borrower and clearance from ADB. Approval from the Borrower and ADB shall be obtained prior to any commencement of construction in the concerned area.

Project Performance and Monitoring System

13. Within 9 months from the Effective Date, NWSDB, through the PMCIU shall develop a set of indicators for monitoring performance (PPMS) and for preparing benchmark information, which shall be submitted to ADB, for review and concurrence. The PPMS shall establish cause-and-effect relationships between the Project and its impact, shall be updated and reported quarterly to the Borrower and ADB, and may include Critical Path Method diagrams. The PMCIU shall gather gender disaggregated baseline physical and socioeconomic data, submit a detail implementation plan for monitoring performance, and prepare benchmark information for ADB's review and concurrence.

Gender

14. The Borrower shall ensure that the Project is carried out in accordance with ADB's Policy on Gender and Development (1998) and the gender strategy contained in the gender action plan (GAP) for the Project that has been prepared and agreed between the Borrower and ADB. The Borrower shall further ensure, and shall cause the EAs and the IAs to ensure, that the GAP and the specific actions and targets contained therein, are included in the project and provincial annual work plans. In particular, the EAs and IAs shall ensure gender mainstreaming in project planning, implementation, monitoring and review. Further, the EAs and the IAs shall ensure gender sensitive and responsive policy formulation.

AFD Cofinancing

15. (a) The Borrower shall use its best endeavor to enter into the AFD Loan Agreement and to meet all the conditions required under the AFD Loan Agreement, in order for the AFD Loan Agreement to be effective, within 6 months after the Effective Date;

(b) The Borrower shall apply the proceeds of the AFD Loan provided under the AFD Loan Agreement to the financing of expenditures on the AFD Project Component in accordance with the provisions of the AFD Loan Agreement;

(c) The Borrower shall carry out the AFD Project Component in accordance with the provisions of the AFD Loan Agreement;

(d) The Borrower, the EAs and the IAs shall ensure that land acquisition and involuntary resettlement for the construction of the AFD Project Component facilities shall be carried out and managed in accordance with the RP, the Borrower's laws and

regulations on land acquisition and resettlement, AFD's policy on involuntary resettlement and ADB's Safeguard Policy Statement (2009). Approval from the Borrower, AFD and ADB shall be obtained prior to any commencement of construction in the concerned area;

(e) The Borrower, the EAs and the IAs, shall ensure that the AFD Project Component shall be carried out in accordance with the IEE and the EMP prepared under the Project, and shall comply with the Borrower's environmental laws and regulations, AFD's policy on environment and ADB's Safeguard Policy Statement (2009); and

(f) In the event the AFD Loan cannot be obtained, the ADB loan proceeds shall not be used to finance any activities under the AFD Project Component. The Borrower shall make alternative arrangements satisfactory to ADB, necessary to cover the funding shortfall resulting from the lack of the AFD Loan. If the Borrower cannot cover the funding shortfall, the Borrower and ADB will agree to adjust the scope of the Project.