
LOAN NUMBER 3377-PHI

LOAN AGREEMENT
(Ordinary Operations)

(Angat Water Transmission Improvement Project)

between

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM

and

ASIAN DEVELOPMENT BANK

DATED 27 MAY 2016

PHI 46362

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 27 MAY 2016 between METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM ("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) the loan is to be guaranteed by the Republic of the Philippines ("Guarantor") under the terms of the Guarantee Agreement of even date herewith between the Guarantor and ADB; and

(C) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001 ("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 modifications:

(a) Section 3.03 is deleted and the following is substituted therefor:

Commitment Charge; Credit; Maturity Premium.

(a) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(b) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the credit against the interest payable by the Borrower.

(c) The Borrower shall pay a maturity premium at the rate specified in the Loan Agreement, which maturity premium shall remain fixed for the term of the Loan. ADB

shall add the maturity premium to the interest payable by the Borrower.

- (b) Section 3.06 is deleted and the following is substituted therefor:

Rebate. (a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

- (c) Section 3.07 is deleted and the following is substituted therefor:

Surcharge. (a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in

ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

Section 1.02. Wherever used in this Loan Agreement, 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) "CEMP" means the environmental management plan for the Project, including any update thereto, prepared by a contractor in respect of any Works to be undertaken by them under the Project, incorporated in the IEE;

(b) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(c) "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;

(d) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

(e) "IEE" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(f) "Indigenous Peoples Plan" or "IPP" means the indigenous peoples plan for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(g) "Indigenous Peoples Safeguards" means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;

(h) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;

(i) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);

(j) "PAM" means the project administration manual for the Project dated 29 January 2016 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;

(k) "PMO" means the Project management office established for the purposes of the Project and described in the PAM;

(l) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);

(m) "Procurement Plan" means the procurement plan for the Project dated 29 January 2016 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;

(n) "Project facilities" means the facilities to be provided, constructed, operated, upgraded and maintained under the Project;

(o) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of, and compliance with, the CEMP and the IPP (as applicable), including any corrective and preventative actions;

(p) "SPS" means ADB's Safeguard Policy Statement (2009); and

(w) "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. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of one hundred and twenty three million three hundred thousand Dollars (\$123,300,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 18.5 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (b) hereinabove 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 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of:

- (a) LIBOR;
- (b) 0.60% as provided by Section 3.02 of the Loan Regulations less a credit of 0.10% as provided by Section 3.03 of the Loan Regulations; and
- (c) a maturity premium of 0.10% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing 60 days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on March and September in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to subsection (a) hereinabove that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

ARTICLE III

Use of Proceeds of the Loan

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

Section 3.02. The proceeds of the 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, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement. ADB may refuse to finance a contract where any such item has 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 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 30 June 2022 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (a) The Borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. The Borrower shall make available, promptly as needed and on terms and conditions acceptable to ADB, the funds, facilities, services, land and other resources, as required, in addition to the proceeds of the Loan, for the carrying out of the Project and for the operation and maintenance of the Project facilities.

Section 4.03. (a) Whenever applicable, in the carrying out of the Project, the Borrower shall cause competent and qualified consultants and contractors,

acceptable to ADB to be employed to an extent and upon terms and conditions satisfactory to the Borrower and ADB.

(b) The Borrower shall cause the Project to be carried out in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to the Borrower and ADB, as applicable. The Borrower 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 4.04. The Borrower shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.05. (a) The Borrower shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements and use of the Loan proceeds) and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) The Borrower shall enable ADB, upon ADB's request, to discuss the financial statements for the Project, the Borrower and the Borrower's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall use its best efforts to ensure the participation of such auditors in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of the Borrower, unless the Borrower shall otherwise agree.

Section 4.06. The Borrower shall (i) provide its annual financial statements prepared in accordance with national accrual-based financing reporting standards acceptable to ADB; (ii) have its financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards on auditing or the national equivalent acceptable to ADB; and (iii) furnish to ADB, no later than one month of their approval by the relevant authority, copies of such audited financial statements and audit report, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

Section 4.07. The Borrower shall enable ADB's representatives to inspect the Project, the Works, and any relevant records and documents.

Section 4.08. The Borrower shall ensure that any facilities relevant to the Project are operated, maintained and repaired in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

ARTICLE V

Effectiveness

Section 5.01. The following is specified as an additional matter, for the purposes of Section 10.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: the Guarantee Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Guarantor, and shall have become legally binding upon the Guarantor in accordance with its terms, subject only to the effectiveness of this Loan Agreement.

Section 5.02. 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 10.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Administrator of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

Metropolitan Waterworks and Sewerage System
MWSS Administration Building
Katipunan Road
Balara, Diliman
Quezon City, Philippines

Facsimile Number:

(632) 921-2887.

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2228.

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.

METROPOLITAN WATERWORKS AND
SEWERAGE SYSTEM

By 

GERARDO A.I. ESQUIVEL
Administrator

ASIAN DEVELOPMENT BANK

By 

RICHARD BOLT
Country Director
Philippines Country Office

SCHEDULE 1

Description of the Project

1. The objective of the Project is the sustained operation of a new tunnel from Ipo dam to Bigte settling basins.
2. The Project shall comprise:
 - (a) construction of an intake structure at Ipo reservoir, tunnel works, construction of a new transition basin at Bigte, connection of the new transition basin at Bigte to the existing transition basin no. 3 at Bigte and modifications to the existing transition basin no. 3 at Bigte; and
 - (b) provision of Project management support through contract supervision and administration, technical and legal supervision on the construction site, contractor's documentation control and verification, authenticating of payments for the contractor, and preparing reports for the contracting authority, and capacity building, specifically on gender awareness promotion and training, implementation of the communication strategy, specifically with regards to livelihood opportunities and awareness of health related risks.
3. The Project will finance Consulting Services for contract management and Works supervision.
4. The Project is expected to be completed by 31 December 2021.

SCHEDULE 2

Amortization Schedule

(Angat Water Transmission Improvement Project)

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

<u>Payment Due</u>	<u>Installment Share</u> [(Expressed as a %)]
15 March 2023	2.702703
15 September 2023	2.702703
15 March 2024	2.702703
15 September 2024	2.702703
15 March 2025	2.702703
15 September 2025	2.702703
15 March 2026	2.702703
15 September 2026	2.702703
15 March 2027	2.702703
15 September 2027	2.702703
15 March 2028	2.702703
15 September 2028	2.702703
15 March 2029	2.702703
15 September 2029	2.702703
15 March 2030	2.702703
15 September 2030	2.702703
15 March 2031	2.702703
15 September 2031	2.702703
15 March 2032	2.702703
15 September 2032	2.702703
15 March 2033	2.702703
15 September 2033	2.702703
15 March 2034	2.702703
15 September 2034	2.702703
15 March 2035	2.702703
15 September 2035	2.702703

<u>Payment Due</u>	<u>Installment Share</u> [(Expressed as a %)]
15 March 2036	2.702703
15 September 2036	2.702703
15 March 2037	2.702703
15 September 2037	2.702703
15 March 2038	2.702703
15 September 2038	2.702703
15 March 2039	2.702703
15 September 2039	2.702703
15 March 2040	2.702703
15 September 2040	2.702703
15 March 2041	2.702692
Total	100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating

to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

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 the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table.)

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Interest and Commitment Charges

3. The amount allocated to Category 3 is for financing interest and commitment charges on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charges.

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.

Retroactive Financing

6. 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 in connection with items to be retroactively financed, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Angat Water Transmission Improvement Project)			
Number	Item	Total Amount Allocated for ADB Financing (\$) Category	Basis for Withdrawal from the Loan Account
1	Construction of a new tunnel	88,100,000	100% of total expenditure claimed*
2	Project management support	5,600,000	100% of total expenditure claimed*
3	Interest and Commitment Charges	7,600,000	100% of amounts due
4	Unallocated	22,000,000	
	Total	123,300,000	

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

SCHEDULE 4**Procurement of Works and Consulting Services**General

1. The procurement of 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.

Works

3. Except as ADB may otherwise agree, Works shall only be procured on the basis of the method of procurement set forth below:
 - (a) International Competitive Bidding.
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.

Conditions for commencement of physical activities under Contract

5. The Borrower shall ensure that no physical activities commence under any Works contracts until the Borrower has:
 - (a) obtained the environmental compliance certificate from the Environmental Management Bureau of the Guarantor's Department of Environment and Natural Resources; and
 - (b) prepared and submitted to ADB the final IPP and CEMP, and obtained ADB's clearance of such IPP and CEMP.

Consulting Services

6. 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

7.
 - (a) The Borrower shall ensure that all Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other 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 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 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

9. 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; Financial and Other Matters**Implementation Arrangements

1. The Borrower 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 shall ensure that the PMO is equipped with qualified staff, reasonable office space, equipment, and adequate financial resources required for implementation of the Project throughout Project implementation.
3. The Borrower shall ensure that adequate funding and human resources are allocated so that any facilities under the Project are maintained and operated in good condition during and after the Project period, and in strict conformity with all applicable laws, regulations and standards of the Guarantor. In particular, it shall ensure that: (a) user fees cover at least the cost of operations, maintenance and depreciation of the Project facilities; and (b) where third parties are required to carry out operations and maintenance activities in respect of the Project facilities under any common purpose facility or other agreement, the Borrower shall promptly and effectively exercise its rights in relation to such third party in such manner as to ensure the Project facilities are maintained and operated in good condition during and after the Project period.
4. The Borrower shall ensure that all Works under the Project are designed and constructed in accordance with all relevant national, municipal and local design codes and standards and that the construction supervision, quality control, contract management, and completion inspection and acceptance procedures are in accordance with all applicable national laws and municipal and local regulations.
5. The Borrower shall promptly notify ADB of any proposal to construct any additional buildings or other works on the Borrower's 60m Right of Way (ROW) situated in the Project area, which may have an impact on the safety and structural integrity of the tunnels located underneath the ROW. The Borrower shall enforce its ROW to prevent such proposal being approved and to ensure the safety and security of the tunnels located underneath the ROW.

Corporate Matters and Reporting Requirements

6. The Borrower 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.
7. The Borrower shall at all times conduct its business in accordance with sound applicable technical, financial, and business practices, and under the supervision of competent and experienced management and personnel.

8. Except as ADB may otherwise agree, the Borrower shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of the Project or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Loan Agreement.

9. The Borrower shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its constitutional documents, which, if implemented, could materially and adversely affect the carrying out of the Project. The Borrower shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

Safeguards

10. The Borrower shall ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Guarantor relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEE, the CEMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

11. The Borrower shall ensure that the Project does not have any involuntary resettlement impacts, all within the meaning of ADB's Safeguard Policy Statement (2009). In the event that the Project does have any such impact, the Borrower shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with ADB's Safeguard Policy Statement.

12. The Borrower shall ensure that the preparation, design, construction, implementation and operation of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Guarantor relating to indigenous peoples; (b) the Indigenous Peoples Safeguards; and (c) all measures and requirements set forth in the IPP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Human and Financial Resources to Implement Safeguards Requirements

13. The Borrower shall make available necessary budgetary and human resources to fully implement the CEMP and the IPP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

14. The Borrower shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE, the CEMP and the IPP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures; and

- (c) provide the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE, the CEMP and the IPP.

Safeguards Monitoring and Reporting

15. The Borrower shall do the following:
- (a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
 - (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE, the CEMP and the IPP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;
 - (c) report any actual or potential breach of compliance with the measures and requirements set forth in the CEMP or the IPP promptly after becoming aware of the breach.

Prohibited List of Investments

16. The Borrower shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor

17. The Borrower shall ensure that all bidding documents for Works shall include provisions to require the contractors to (a) provide equal pay for equal work, regardless of gender, age, ethnicity or any other factors; (b) provide the timely payment of wages; (c) maximize the employment of local people who meet the job and efficiency requirements for Project construction, operation and maintenance and in that regard, not discriminate against people based on age, provided they are capable of performing the work; (d) advertise labor requirements in a timely manner prior to recruitment, in a venue that can reasonably be expected to be seen by interested men and women, regardless of age or ethnicity; (e) provide workers with a written contract; (f) provide such workers with adequate on-the-job training and safety training; (g) comply with core labor standards and the applicable labor laws and regulations of the Guarantor, including stipulations related to employment; (h) not employ child labor; and (i) maintain records of labor employment (including the name, ethnicity, age, gender, working time and payment of wages) and ensure that such records are included in summary form in the project performance management system.

Health

18. The Borrower shall ensure that the preparation, construction, operation and maintenance of the Project facilities comply with all applicable laws and regulations of the Guarantor relating to health and safety.

Gender and Development

19. The Borrower shall ensure that the principles of gender equity aimed at increasing Project benefits and impacts on women in the Project area consistent with ADB's Policy on Gender and Development (1998) are followed during implementation of the Project, including (a) equal pay to men and women for work of equal value; (b) enabling working conditions for women workers; and (c) taking necessary actions to encourage women living in the Project area to participate in the design and implementation of Project activities.

Counterpart Support

20. The Borrower shall ensure that counterpart funding and/or support is provided in a timely manner. To this end, the Borrower shall ensure timely preparation and submission of annual budgets and requests for disbursement of counterpart funds and/or provision of counterpart support necessary for Project implementation and take all measures necessary or appropriate for the prompt disbursement of such funds and/or provision of such support.

Governance and Anticorruption

21. The Borrower shall comply with ADB's Anticorruption Policy (1998, as amended to date). The Borrower: (a) acknowledges ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; and (b) agrees 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 Borrower shall ensure that (a) periodic inspections of the Project contractors' activities related to fund withdrawals and settlements are carried out; (b) relevant provisions of ADB's Anticorruption Policy are included in all bidding documents for the Project; and (c) contracts financed under the Project include provisions specifying the right of ADB to audit and examine the records and accounts of the contractors, suppliers, consultants, and other service providers as they relate to the Project. Individuals/entities on ADB's anticorruption debarment lists are ineligible to participate in ADB-financed activity and may not be awarded any contracts under the Project.

22. If the Borrower or ADB is or becomes aware or has a reasonable suspicion that any member of the Borrower has engaged in corrupt or fraudulent practices (as defined in ADB's Anticorruption Policy) under or in connection with the Project or the loan, the Borrower shall take such timely and appropriate action satisfactory to ADB to investigate and/or remedy the situation.

23. In addition to these requirements, to deter corruption and increase transparency, the Borrower shall create a link for the Project on its corporate website within 2 months of the Effective Date, accessible by the general public, to disclose various information concerning the Project including general information about the Project, public procurements related to the Project, Project progress and contact details in English and Filipino. The website shall also provide a link to ADB's Integrity Unit (<http://www.adb.org/Integrity/complaint.asp>) for reporting to ADB any grievances or allegations of corrupt practices arising out of the Project and Project activities. For each contract, the website shall include information on, among others, the list of participating bidders, name of the winning bidder, basic details on bidding procedures adopted, amount of contract awarded, and the list of Consulting Services, procured. The Borrower shall permit

any bidder to request an explanation as to why a bid was unsuccessful and the Borrower shall respond within 20 working days. The website shall be updated within 2 weeks after: (a) each award of contract, and (b) each submission of the semi-annual Safeguards Monitoring Report to ADB.

Combating Money Laundering

24. The Borrower shall:

- (a) comply with applicable laws and regulations of the Guarantor on combating money laundering and ensure that Loan proceeds are not used, directly or indirectly, in money laundering;
- (b) formulate and implement internal control procedures, including customer due diligence procedures, to prevent violation of subparagraph (a) hereinabove; and
- (c) promptly inform the Guarantor and ADB if there is any violation or potential violation of subparagraph (a) hereinabove. In the event that ADB informs the Borrower of its concern that there has been such an alleged violation, the Borrower shall: (i) cooperate in good faith with ADB and its representatives so that ADB can determine whether such a violation has occurred; (ii) respond promptly and in reasonable detail to any query from ADB; and (iii) furnish documentary support for such response upon ADB's request.