
LOAN NUMBER 2571-AZE

LOAN AGREEMENT
(Ordinary Operations)

(Water Supply and Sanitation Investment Program – Project 1)

between

REPUBLIC OF AZERBAIJAN

and

ASIAN DEVELOPMENT BANK

DATED 17 December 2009

LAL:AZE 42408

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 17 December 2009 between the REPUBLIC OF AZERBAIJAN ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a framework financing agreement dated 15 August 2009 between the Borrower and ADB ("FFA"), ADB has agreed to provide a multitranche financing facility to the Borrower for the purpose of financing projects under the Water Supply and Sanitation Investment Program ("Investment Program");

(B) by a periodic financing request dated 15 August 2009 submitted by the Borrower, the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(C) the Project will be carried out by the AzerSu Joint Stock Company ("AZERSU") and the State Amelioration and Water Management Agency of the Nakhchivan Autonomous Republic ("SAWMA"), and for this purpose the Borrower will make available to AZERSU and SAWMA 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 ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and AZERSU and the Project Agreement of even date herewith between ADB and SAWMA (together "Project Agreements");

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, 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 thereof (said Ordinary Operations Loan Regulations as so modified being hereinafter called the Loan Regulations):

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

Commitment Charge; Credit. (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.

(bb) 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 amount of the credit against the interest payable by the Borrower.

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

(aa) 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.

(bb) 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:

(aa) 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.

(bb) 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, unless the context otherwise requires, the several terms defined in the Loan Regulations have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) "AZERSU" means the AzerSu Joint Stock Company incorporated under Decree No. 252 dated 11 June 2004 of the President of the Borrower;

(b) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2007, as amended from time to time);

(c) "EARF" means the environmental assessment and review framework prepared for the Investment Program and incorporated by reference in the FFA;

(d) "EMPs" means the environmental management plans prepared for the Project;

(e) "Facility" means the multitranche financing facility provided by ADB to the Borrower for the purposes of financing projects under the Investment Program;

(f) "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;

(g) "Goychay" means the Goychay town of the Borrower;

(h) "IEEs" means the initial environmental examinations prepared for the Project;

(i) "JSCs" means the joint stock companies in Goychay and Nakhchivan;

(j) "LARF" means the land acquisition and resettlement framework prepared for the Investment Program and incorporated by reference in the FFA;

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

(l) "Manat" means the currency of the Borrower;

(m) "Nakhchivan" means the Nakhchivan town of the Nakhchivan Autonomous Republic, an administrative subdivision of the Borrower;

(n) "PFR" means the periodic financing request submitted or to be submitted by the Borrower for the purpose of each loan under the Facility, and for the purpose of this Loan Agreement means the periodic financing request dated 15 August 2009;

(o) "PIRCs" means the project implementation review committees established for the Project;

(p) "PMF Consultants" means the international and domestic consultants engaged under Component C of the Investment Program;

(q) "PMOs" means the program management offices established for the Project;

(r) "PPMS" means the project performance management system established for the Project;

(s) "PSC" means program steering committee established for the Investment Program;

(t) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);

(u) "Procurement Plan" means the procurement plan for the Project dated 15 August 2009 and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines and other arrangements agreed with ADB;

(v) "SAWMA" means the State Amelioration and Water Management Agency of the Nakhchivan Autonomous Republic established under Decree No. 160-II FR dated 27 October 2004 of the Chairman of the National Assembly of the Nakhchivan Autonomous Republic;

(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; and

(x) "WSS" means water supply and sanitation.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of seventy-five million dollars (\$75,000,000), 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 20 years, and a grace period as defined in paragraph (c) of this Section.

(c) The term "grace period" as used in paragraph (b) 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 2.02. 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 LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations, less a credit of 0.40% 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 15 June and 15 December 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 paragraph (a) of this Section 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. (a) The Borrower shall relend a portion of the proceeds of the Loan each to AZERSU and SAWMA (in an amount equivalent to \$47,000,000 to AZERSU and in an amount equivalent to \$28,000,000 to SAWMA) upon terms and conditions satisfactory to ADB. The relent proceeds of the Loan shall be denominated in Manat.

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

Section 3.02. The Goods, Works, consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Goods, Works, consulting services and other items of expenditure shall be 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, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement. ADB may refuse to finance a contract where Goods, Works or consulting or 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 3.04. Except as ADB may otherwise agree, the Borrower shall cause all Goods, Works and consulting services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 30 June 2013 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 AZERSU and SAWMA to carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental and social safeguards 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 to AZERSU and SAWMA, promptly as needed the funds, facilities, services, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 4.03. 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 4.04. (a) In the carrying out of the Project, the Borrower shall cause competent and qualified consultants and contractors, acceptable to the Borrower and the ADB, to be employed to an extent and upon terms and conditions satisfactory to the Borrower and the 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 the ADB. The Borrower shall furnish, or cause to be furnished, to the ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as the ADB shall reasonably request.

Section 4.05. (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 covenants of this Loan Agreement as well as on the use of the procedures for imprest accounts/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 Borrower's auditors, 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 4.06. The Borrower shall enable ADB's representatives to inspect the Project, the goods financed out of the proceeds of the Loan and any relevant records and documents.

Section 4.07. The Borrower shall ensure that the Project facilities are operated, maintained and repaired in accordance with sound administrative, financial, engineering, environmental, health care and maintenance and operational practices.

ARTICLE V

Effectiveness

Section 5.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 10.01(f) of the Loan Regulations: AZERSU and SAWMA shall have appointed in their respective PMOs a program director, a financial management/disbursement specialist and a WSS/monitoring and evaluation specialist.

Section 5.02. A date 30 days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Minister of Finance 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

Ministry of Finance
S. Vurgun Street, 83
AZ1022
Baku
Republic of Azerbaijan

Facsimile Number:

(994-12) 404 4720
(994-12) 404 4721.

For ADB

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

Facsimile Numbers:


(632) 636-2444
(632) 636-2484.

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 and to be delivered at the principal office of ADB, as of the day and year first above written.

REPUBLIC OF AZERBAIJAN

By 
SAMIR SHARIFOV
Minister
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 
MATTHEW WESTFALL
Director
Urban Services Division
Central and West Asia Department

SCHEDULE 1

Description of the Project

1. The objective of the Investment Program is to finance projects with one or more of the following components:

- (a) development of WSS infrastructure (“Component A”);
- (b) improvement of institutional effectiveness (“Component B”); and
- (c) establishment of program management facilities (“Component C”).

2. As a part of the Investment Program, the Project shall support:

Component A

- (a) construction of new water distribution system (approximately 110 km) and sewerage system (approximately 100 km) in Goychay;
- (b) construction of water intake and treatment facilities, water transmission main from the water reservoir to the city (approximately 8 km) and water feeder mains (approximately 25 km) and trunk sewers (approximately 35 km) in selected zones, in Nakhchivan;
- (c) installation of bulk and individual water meters in Goychay and Nakhchivan (approximately 20 bulk water meters and 10,000 individual water meters in Goychay and approximately 20 bulk water meters and 3,000 individual water meters in Nakhchivan);
- (d) development and implementation of water quality monitoring systems in Goychay and Nakhchivan;

Component B

- (e) provision of capacity development to AZERSU, SAWMA and the relevant JSCs for strengthening management of WSS systems in Goychay and Nakhchivan;
- (f) development of a comprehensive public outreach program in Goychay and Nakhchivan, including the establishment of town water users associations and women neighbourhood groups; and

Component C

- (g) provision of technical and management support to the PMOs of AZERSU and SAWMA for the implementation of the Project in Goychay and Nakhchivan, and for the preparation of subsequent projects under the Investment Program.

3. The Project is described more fully in the PFR.

4. The Project is expected to be completed by 31 December 2012.

SCHEDULE 2**Amortization Schedule****(Water Supply and Sanitation Investment Program – Project 1)**

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 Dec 2013	0.827816
15 Jun 2014	0.869207
15 Dec 2014	0.912667
15 Jun 2015	0.958301
15 Dec 2015	1.006216
15 Jun 2016	1.056526
15 Dec 2016	1.109353
15 Jun 2017	1.164820
15 Dec 2017	1.223061
15 Jun 2018	1.284214
15 Dec 2018	1.348425
15 Jun 2019	1.415846
15 Dec 2019	1.486639
15 Jun 2020	1.560971
15 Dec 2020	1.639019
15 Jun 2021	1.720970
15 Dec 2021	1.807019
15 Jun 2022	1.897369
15 Dec 2022	1.992238
15 Jun 2023	2.091850
15 Dec 2023	2.196442
15 Jun 2024	2.306264
15 Dec 2024	2.421578
15 Jun 2025	2.542657
15 Dec 2025	2.669789
15 Jun 2026	2.803279
15 Dec 2026	2.943443
15 Jun 2027	3.090615
15 Dec 2027	3.245146

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 Jun 2028	3.407403
15 Dec 2028	3.577773
15 Jun 2029	3.756662
15 Dec 2029	3.944495
15 Jun 2030	4.141720
15 Dec 2030	4.348806
15 Jun 2031	4.566246
15 Dec 2031	4.794558
15 Jun 2032	5.034286
15 Dec 2032	5.286000
15 Jun 2033	<u>5.550311</u>
	<u>100.000000</u>

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 Goods, Works, consulting services and other items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table.)

Percentages of ADB Financing

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

Interest and Commitment Charge

3. The amount allocated to Category 5 is for financing interest and commitment charge 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 charge.

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, 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 then 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 for financing Goods, Works, consulting services and other items 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 immediately after the Effective Date, an imprest account each for AZERSU and SAWMA at a commercial bank acceptable to ADB. The imprest accounts shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. The currency of the imprest accounts shall be Dollar. The initial amount to be deposited into each imprest account shall not exceed the lower of: (i) the estimated expenditure to be financed from the imprest account for AZERSU or SAWMA for the initial 6 months of Project implementation; or (ii) the equivalent of 10 percent of the respective Loan amounts related to AZERSU or SAWMA.

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

Retroactive Financing

7. Withdrawals from the Loan Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement, in connection with items to be retroactively financed subject to a maximum amount equivalent to 20 percent of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Water Supply and Sanitation Investment Program – Project 1)			
CATEGORY			ADB FINANCING BASIS
Number	Item	Total Amount Allocated for ADB Financing \$ Category	Percentage of ADB Financing from the Loan Account
1	Works	58,080,000	100 percent of total expenditure claimed*
2	Equipment	2,050,000	100 percent of total expenditure claimed*
3	Training and Capacity Building	1,700,000	100 percent of total expenditure claimed*
4	Consulting Services	2,400,000	35.1 percent of total expenditure claimed*
5	Interest and Commitment Charge	6,070,000	100 percent of amounts due
6	Unallocated	4,700,000	
	Total	75,000,000	

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

SCHEDULE 4

Procurement of Goods and Works, and Consulting Services

A. General

1. All Goods, Works and consulting services to be financed out of the proceeds of the Loan 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.

B. Procurement for Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:

International Competitive Bidding
National Competitive Bidding
Shopping

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.
5. National Competitive Bidding. The Borrower and ADB shall ensure that national competitive bidding for the procurement of Goods and Works shall conform to the provisions of the Public Procurement Law of 27 December 2001 with the clarifications and modifications described in the Procurement Plan. Any subsequent change to the agreed clarifications and modifications shall become effective only after written approval of such change by the Borrower and ADB.

C. Selection of Consulting Services

6. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.
7. The Borrower shall recruit the individual consultants in accordance with the Consulting Guidelines.

D. 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.

E. ADB's Review of Procurement Decisions

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

SCHEDULE 5

Execution of Project and Operation of Project Facilities; Financial Matters

A. Project Management

1. The Borrower shall appoint AZERSU and SAWMA as the Project Executing Agencies for the Project. AZERSU shall be the Project Executing Agency for the activities under the Project in all areas except in Nakhchivan. SAWMA shall be the Project Executing Agency for activities in Nakhchivan.

2. The Borrower shall cause the PMOs to be established at AZERSU and SAWMA respectively for implementing the Project. The PMOs shall comprise of the PMF Consultants and the counterpart staff. AZERSU and SAWMA shall ensure that:

(a) recruitment of PMF Consultants is completed within 1 month of Loan effectiveness; and

(b) their PMOs shall each have counterpart staff comprising: (i) a program director; (ii) a financial management/disbursement specialist; (iii) a WSS/monitoring and evaluation specialist; and (iv) a safeguards expert. Selection of each program director shall be satisfactory to ADB. Following project completion, these counterpart staff may be integrated and become part of the staff of the JSCs in Goychay and Nakhchivan.

3. The Borrower shall cause AZERSU and SAWMA to ensure that the respective PMOs shall: (a) submit the PFRs; (b) undertake due diligence and prepare detailed designs for subsequent projects, and supervise procurement work and construction; (c) oversee safeguards and gender compliance; (d) coordinate among rayon agencies; (e) monitor and evaluate progress and prepare progress reports; and (f) provide expertise in project management, planning, results measurement and training.

4. The Borrower shall cause AZERSU and SAWMA to ensure that:

(a) the JSCs in Goychay and Nakhchivan shall each designate an implementation team to work with the relevant PMO during project implementation. Such implementation team shall include at least: (i) a water supply engineer; (ii) a sewerage specialist; (iii) 3 field inspectors; and (iv) 2 electro-mechanical technicians;

(b) the PMOs provide "hands-on" training to these JSCs during each stage of project implementation; and

(c) additional training shall be provided to these JSCs through a twinning arrangement with an external WSS utility. Such twinning arrangement shall be finalized within 12 months of Loan effectiveness.

5. The Borrower shall cause AZERSU and SAWMA to ensure that these JSCs are adequately staffed, including through providing adequate staff resources to these JSCs.

6. The Borrower shall cause AZERSU and SAWMA to ensure that the time-bound action plans to be agreed with AZERSU, SAWMA and these JSCs during implementation of the Project are strictly complied with and monitored through the PSC and PIRC meetings to avoid implementation delay.

B. Program Coordination

7. The Borrower shall ensure that the following 2 levels of committees shall be established within 3 months of Loan effectiveness.

8. At the national level, the Borrower shall ensure that a PSC shall be established by the Cabinet of Ministers. The PSC shall be headed by a high-level official from the Cabinet of Ministers and comprised officials from the Ministry of Finance, the Ministry of Economic Development, the Ministry of Health, AZERSU, SAWMA and the heads of the rayon administration for the rayons under the Project. The PSC shall provide general policy and strategic oversight, resolve interagency problems and oversee overall implementation. It shall also decide on future PFRs and evaluate implementation of the Investment Program based on the design and monitoring framework. The PSC shall meet at least once every 3 months and share with ADB minutes of its meetings.

9. At the operational level, the Borrower shall cause AZERSU and SAWMA to ensure that a PIRC shall be established by the rayon administration for each rayon under the Project. Such PIRC shall be headed by the head of the rayon administration and comprised officials from the relevant JSCs, the town water users associations and PMF consultants. The PIRCs shall: (a) meet on a monthly basis to review the implementation of Project activities under their purview; and (b) ensure timely resolution of site-specific operational issues. Any unresolved issue may be referred to the relevant EA or the PSC for action.

C. Tariff Levels and Payment Recovery

10. The Borrower shall ensure that tariffs are reviewed annually for customers receiving improved WSS services to ensure that they are set at appropriate levels, taking into account the real costs of delivering the improved services. The Borrower shall cause AZERSU and SAWMA to ensure that such revised tariffs are implemented.

11. The Borrower shall cause AZERSU and SAWMA to ensure that the JSCs have an adequate enforcement mechanism for effective collection of service fees and penalising defaulters, deterring non-payment and ensuring sustainability of JSCs operations.

D. Environmental and Social Safeguards

12. No land acquisition and resettlement is expected for the Project. However, if land acquisition or resettlement activity arises, the Borrower shall cause AZERSU and SAWMA to ensure that it shall be carried out promptly and efficiently in accordance with applicable laws and regulations in Azerbaijan, ADB's *Involuntary Resettlement Policy* (1995) and the LARF.

13. The Borrower shall cause AZERSU and SAWMA to ensure that:

(a) the Project is carried out in accordance with the project design, and construction and operations will comply with applicable laws and regulations in Azerbaijan and ADB's *Environment Policy* (2002);

(b) the EARF is applied to ensure compliance with ADB's *Environment Policy*;

(c) the EMPs in the IEEs are updated, and made contract- and site-specific during final design;

(d) the environmental mitigation and monitoring measures specified in the EMPs are incorporated in the bidding documents and such documents be released after the relevant environmental assessment reports have been approved by ADB;

(e) the contracts for civil works require the contractors to implement the EMPs and such contractors are closely supervised to ensure compliance; and

(f) the design supervision consultant will undertake environmental monitoring and reflect the results in the project progress reports and bi-annual environmental monitoring reports submitted to ADB.

E. Public Consultation and Participation

14. The Borrower shall ensure that AzerSu and SAWMA implement a public consultation and participation plan comprising: (i) a community awareness and participation program; (ii) a hygiene and sanitation program; and (iii) a training program for town water users associations.

F. Accounting and Auditing

15. The Borrower shall ensure that AZERSU and SAWMA maintain separate records and accounts adequate to identify; (a) the Goods and consulting services financed from the Loan proceeds; (b) financing resources received; (c) expenditures incurred on the components for the Project; and (d) the use of Government contribution. These accounts and related financial statements shall be audited annually in accordance with sound auditing standards by an independent auditor acceptable to ADB. The audit of the imprest account and statement of expenditure shall be carried out as part of the regular annual audit. The auditor's opinion of the examination of the imprest account and statement of expenditure shall be separately set out in the auditor's report. AZERSU and SAWMA shall submit annual audited reports and related financial statements to ADB within 6 months after the end of each fiscal year during implementation of the Project.

G. Governance and Anticorruption

16. The Borrower, AZERSU and SAWMA acknowledge that ADB, consistent with its commitment to good governance, accountability, and transparency, reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive, or coercive practices relating to the activities carried out under the Project, and shall: (a) comply

with ADB's Anti-Corruption Policy (1998, as amended to date); and (b) cooperate with any investigation and extend all necessary assistance, including access to all relevant books and records and for the engagement of independent experts who may be needed for satisfactory completion of such investigation.

17. The Borrower shall cause AZERSU and SAWMA to ensure that anti-corruption 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 AZERSU, SAWMA, relevant JSCs and all contractors, suppliers, consultants, and other service providers as they relate to the Project. All costs related to such investigations shall be borne under the Investment Program.

18. The Borrower shall cause AZERSU and SAWMA to ensure that: (a) all decisions relating to procurement shall be made by the Tendering Committee which comprises representatives of the Ministry of Economic Development, the Ministry of Finance, the State Procurement Agency (as observer) and other relevant agencies in accordance with the Procurement Guidelines; (b) the supervision consultant shall verify the contractors' invoices in accordance with working drawings and contract specifications; and (c) disclosure of information on selection of consultants and contractors be made through local newspapers.

H. Project Monitoring and Evaluation

19. The Borrower shall cause AZERSU and SAWMA to establish (through their PMOs) a PPMS acceptable to ADB within 3 months of the effectiveness of the Loan. The PPMSs shall help monitor and evaluate the performance of the Project. They shall incorporate a set of performance monitoring indicators relating to outputs and outcomes in the design and monitoring framework, including service delivery performance, physical implementation, management improvement and capacity development milestones. The PMOs shall develop baseline data for each of the selected indicators and conduct annual surveys, and update ADB on the progress against each indicator. For activities procured under the turnkey and design-build-operate modalities under the Project, key performance indicators satisfactory to ADB shall be developed during the preparation of requests for proposals and draft contract documents for such activities.

20. The Borrower shall cause AZERSU and SAWMA to prepare (through their PMOs) annual reports on the progress against the above performance monitoring indicators, to be submitted to ADB within 30 days after the review period. These reports shall incorporate the information provided by relevant JSCs. These reports shall also discuss progress made during the period of review, changes on the implementation schedule (if any), problems or difficulties encountered and remedial actions taken, and work to be undertaken in the following quarter.

I. Project Review

21. The Borrower, AZERSU, SAWMA and ADB shall jointly review implementation progress of the Project on a semiannual basis. Such reviews shall examine: (a) performance of the components under the Project; and (b) any changes to the implementation arrangements or remedial measures to be undertaken for achieving the objectives of the Project.

22. The Borrower, AZERSU, SAWMA and ADB shall jointly conduct a comprehensive review at midterm of the Project. Such review shall: (a) evaluate the Project's scope, design, and implementation arrangements; (b) evaluate the progress of the WSS infrastructure development and capacity development aspects; (c) evaluate the performance of the PMOs; (d) identify changes needed in any or all of the above areas; (e) assess implementation performance against agreed targets in the design and monitoring framework; (f) identify critical issues and constraints, if any; and (g) recommend adjustments to the project design and/or implementation arrangements.

23. The Borrower shall cause AZERSU and SAWMA to submit to ADB project completion reports within 3 months following physical completion of the Project. The reports shall provide detailed evaluation of the Project (to the extent applicable to AZERSU and SAWMA respectively), including the design, costs, performance of the contractors and consultants, social, environmental and economic impacts, economic rate of return and other details pertaining to the Project as may be requested by ADB.