
LOAN NUMBER 2948-SRI(SF)

LOAN AGREEMENT
(Special Operations)

(Greater Colombo Water and Wastewater Management
Improvement Investment Program – Project 1)

between

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

and

ASIAN DEVELOPMENT BANK

DATED 28 JUNE 2013

SRI 45148

LOAN AGREEMENT (Special Operations)

LOAN AGREEMENT dated 28 June 2013 between DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a framework financing agreement dated 12 September 2012 between the Borrower and ADB, ADB has agreed to provide a multitranche financing facility to the Borrower for purposes of financing projects under the Greater Colombo Water and Wastewater Management Improvement Investment Program;

(B) by a periodic financing request dated 12 September 2012, the Borrower has applied for a loan from ADB's Special Funds resources and a loan from ADB's ordinary capital resources, for the purposes of the Project described in Schedule 1 to this Loan Agreement ("Project");

(C) by a loan agreement of even date herewith ("Ordinary Operations Loan Agreement"), ADB has agreed to make a loan ("Ordinary Operations Loan") to the Borrower from ADB's ordinary capital resources in an amount of seventy million Dollars (\$70,000,000) for the purposes of the Project;

(D) the National Water Supply and Drainage Board ("NWSDB") under the Ministry of Water Supply and Drainage ("MWSD") will carry out the Project, and for this purpose the Borrower will make available to NWSDB, through MWSD, the proceeds of the Ordinary Operations Loan provided under the Ordinary Operations Loan Agreement and the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(E) ADB has agreed to make a loan ("Loan") to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and NWSDB;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("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) Section 2.01(25) is deleted and the following is substituted therefor:

“Project Agreement” means the Project Agreement of even date herewith between ADB and NWSDB.

(b) The term “Project Executing Agency” appearing in Sections 6.01(a), 8.01(d), 8.01(f), 8.01(k), 9.01(c) and 9.02(c) of the Loan Regulations shall be substituted by the term “NWSDB”.

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

(b) “Consulting Services” means the services to be financed out of the proceeds of the Loan referred to in paragraph 4 of Schedule 1 to this Loan Agreement, but excluding any services provided in relation to Goods and Works;

(c) “Environmental Assessment and Review Framework” or “EARF” means the environmental assessment and review framework for the Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;

(d) “Environmental Management Plan” or “EMP” means each and any environmental management plan for the Project, including any update thereto, incorporated in the IEE;

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

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

(g) “FAM” means the Facility administration manual dated 12 September 2012 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;

(h) “FFA” means the framework financing agreement dated 12 September 2012 between ADB and the Borrower with respect to the Facility;

(i) “GAP” means the gender action plan prepared for the Investment Program by the Borrower and approved by ADB;

(j) “GIS” means geographical information system;

(k) “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;

(l) “Greater Colombo” means areas falling under the Western Province of the Borrower and encompassing the municipal councils of Colombo, Dehiwela/Mt. Lavinia, Sri-Jayawardenapura-Kotte, Kaduwela and Moratuwa, 5 urban councils, and 5 Pradeshiya Sabhas;

(m) “Initial Environmental Examination” or “IEE” means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the EARF and cleared by ADB;

(n) “Investment Program” means the Greater Colombo Water and Wastewater Management Improvement Investment Program;

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

(p) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2012, as amended from time to time);

(q) “MASC” means the management advisory and supervision consultants;

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

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

(t) “NRW” means non-revenue water;

(u) “NWSDB” means the National Water Supply and Drainage Board of the Borrower, or any successor thereto;

(v) “O&M” means operation and maintenance;

(w) “Part” means a component of the Project, as described in paragraph 3 of Schedule 1 to this Loan Agreement;

(x) “PFR” means the periodic financing request submitted or to be submitted by the Borrower, for the purposes of each loan under the Facility, and for the purpose of this Loan Agreement means the periodic financing request dated 12 September 2012;

(y) “PMU” means the program management unit established by NWSDB for the purposes of the Investment Program, that will serve as the project management unit for the Project;

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

(aa) “Procurement Plan” means the procurement plan for the Project dated 12 September 2012, forming part of the FAM 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;

(bb) “Project Executing Agency” or “EA” for the purposes of, and within the meaning of, the Loan Regulations means MWSD, which is responsible for the carrying out of the Project, or any successor thereto acceptable to ADB;

(cc) “Project facilities” means the NRW office buildings, and water supply and other infrastructure constructed, improved, upgraded and/or rehabilitated under the Project;

(dd) “Project Implementing Agency” or “IA” for the purposes of, and within the meaning of, the Loan Regulations means NWSDB, which is responsible for the carrying out of the Project, or any successor thereto acceptable to ADB;

(ee) “Resettlement Framework” or “RF” means the resettlement framework for the Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;

(ff) “Resettlement Plan” or “RP” means each and any resettlement plan for the Project, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the RF and cleared by ADB;

(gg) “Safeguard Policy Statement” or “SPS” means ADB’s Safeguard Policy Statement (2009);

(hh) “Safeguards Monitoring Report” means each report prepared and submitted by the Borrower to ADB, that describe progress with implementation of, and compliance with, the EMPs, and the RPs, including any corrective and preventative actions;

(ii) “Subproject” means a subproject under the Project that meets the selection criteria set out in Schedule 4 to the FFA;

(jj) “Subsidiary Loan Agreement” means the agreement between the Borrower and NWSDB referred to in Section 3.01 of this Loan Agreement;

(kk) “Western Central Regional Support Center” or “RSC-WC” means the Western Central Regional Support Center of NWSDB; and

(ll) “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 nine million one hundred eighty four thousand Special Drawing Rights (SDR9,184,000).

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

(b) The term "grace period" as used in subsection (a) 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 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 April and 15 October 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 amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall make the proceeds of the Loan available to NWSDB, under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB and the Borrower, and shall cause NWSDB to apply such proceeds to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 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.

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. 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 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 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 to be performed, 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, financed out of the proceeds of the Loan, and any records and documents relevant to the Project.

Section 4.03. 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.

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

Section 4.05. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

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

ARTICLE V

Suspension; Acceleration of Maturity

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

(a) the Borrower shall have failed to perform any of its obligations under the Ordinary Operations Loan Agreement;

(b) NWSDB shall have failed to perform any of its obligations under the Project Agreement; and

(c) the Borrower or NWSDB shall have failed to perform any of its obligations under the Subsidiary Loan Agreement.

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

ARTICLE VI

Effectiveness

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

(a) the Ordinary Operations Loan Agreement shall have been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower, and all conditions precedent to its effectiveness, other than a condition requiring the effectiveness of this Loan Agreement, shall have been fulfilled; and

(b) the Subsidiary Loan Agreement, in form and substance satisfactory to ADB and the Borrower, shall have been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and NWSDB, and shall have become legally binding upon the parties thereto in accordance with its terms.

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

(a) that the Ordinary Operations Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and is legally binding upon the Borrower in accordance with its terms; and

(b) that the Subsidiary Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and NWSDB and is legally binding upon the Borrower and NWSDB in accordance with its terms.

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

ARTICLE VII

Miscellaneous

Section 7.01. Each of the Secretary of MOFP, the Deputy Secretary to the Treasury and the Director General of the Department of External Resources, MOFP, of the Borrower, is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 7.02. 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, Department of External Resources

Facsimile Numbers:

+94 11 243-3349
+94 11 244-7633.

For ADB

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

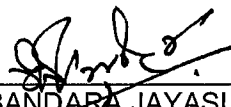
Facsimile Numbers:

+63 2 636-2444
+63 2 636-2293.

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

DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

By


PUNCHI BANDARA JAYASUNDERA
Secretary
Ministry of Finance and Planning

ASIAN DEVELOPMENT BANK

By


TAKEHIKO NAKAO
President

SCHEDULE 1

Description of the Project

1. The objective of the Investment Program is to improve water supply and wastewater service and management in Greater Colombo.
2. The objective of the Project is to improve water supply service and management in Colombo.
3. The Project comprises the following components as described in greater detail in the PFR:

Part A. Rehabilitating water supply network and reducing NRW in Colombo

- (i) rehabilitation and replacement of about 320 km of degraded distribution network pipes;
- (ii) installation of new electro-magnetic flow meters, valves, and special fittings for formation of district metered areas and for NRW monitoring and remote control system; replacement and transfer of about 51,000 service connections with polyethylene pipes and fittings; replacement of about 17,000 defective water meters; and introduction of about 5,000 water meters with automatic meter reader facility;
- (iii) metering of about 3,200 additional free water outlets, and formation and operationalization of their consumer association;
- (iv) validation and updating of GIS network for rehabilitated system;
- (v) establishment of fully equipped, city-wide, active leakage control units/teams, and reinforcement of the operation and maintenance units/teams to undertake NRW reduction activities and major repairs; and
- (vi) establishment of dedicated NRW office for Colombo with construction of buildings and provision of materials, equipment and vehicles.

Part B. Institutional strengthening, reforming and capacity building of NWSDB

- (i) establishment of an operations performance audit cell in NWSDB;
- (ii) decentralization of Colombo water supply operations to RSC-WC, and setting up RSC-WC as an autonomous business

center under NWSDB, with appropriate financial and commercial systems, separate books of accounts, and transfer of all records;

- (iii) delegation of asset management to RSC-WC and establishment of GIS-based asset management system;
- (iv) provision of MASC to manage all NRW reduction activities in Colombo;
- (v) implementation of public awareness campaigns, with active participation of women and non-government organizations; and
- (vi) trainings and capacity building of NWSDB staff to improve operational performance.

Part C. Project management and implementation support, including

provision of MASC support to manage and implement the Project and the Investment Program.

- 4. Consulting Services shall be provided to support the above stated activities.
- 5. The Project is expected to be completed by 31 December 2016.

SCHEDULE 2**Amortization Schedule****(Greater Colombo Water and Wastewater Management
Improvement Investment Program – Project 1)**

<u>Date Payment Due</u>	<u>Payment of Principal*</u> (expressed in Special Drawing Rights)
15 April 2021	191,333
15 October 2021	191,333
15 April 2022	191,333
15 October 2022	191,333
15 April 2023	191,333
15 October 2023	191,333
15 April 2024	191,333
15 October 2024	191,333
15 April 2025	191,333
15 October 2025	191,333
15 April 2026	191,333
15 October 2026	191,333
15 April 2027	191,333
15 October 2027	191,333
15 April 2028	191,333
15 October 2028	191,333
15 April 2029	191,333
15 October 2029	191,333
15 April 2030	191,333
15 October 2030	191,333
15 April 2031	191,333
15 October 2031	191,333
15 April 2032	191,333
15 October 2032	191,333
15 April 2033	191,333
15 October 2033	191,333
15 April 2034	191,333
15 October 2034	191,333
15 April 2035	191,333
15 October 2035	191,333
15 April 2036	191,333
15 October 2036	191,333
15 April 2037	191,333
15 October 2037	191,333
15 April 2038	191,333
15 October 2038	191,333
15 April 2039	191,333
15 October 2039	191,333

<u>Date Payment Due</u>	<u>Payment of Principal*</u> (expressed in Special Drawing Rights)
15 April 2040	191,333
15 October 2040	191,333
15 April 2041	191,333
15 October 2041	191,333
15 April 2042	191,333
15 October 2042	191,333
15 April 2043	191,333
15 October 2043	191,333
15 April 2044	191,333
15 October 2044	191,349
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Total	9,184,000

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

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 Charge

3. The amount allocated to Category 5 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

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

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

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

Disbursement Procedures

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

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 (Greater Colombo Water and Wastewater Management Improvement Investment Program – Project 1)			
Number	Item	Total Amount Allocated for ADB Financing (SDR) Category	Basis for Withdrawal from the Loan Account
1	Material and Equipment	1,863,000	54% of total expenditure claimed
2	Consulting Services	4,132,000	100% of total expenditure claimed*
3	Training and Workshops	649,000	100% of total expenditure claimed*
4	Incremental Recurrent Costs	1,609,000	72% of total expenditure claimed
5	Interest Charge	343,000	100% of amounts due
6	Unallocated	588,000	
	Total	9,184,000	

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

Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:
 - (a) international competitive bidding;
 - (b) national competitive bidding; and
 - (c) 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.

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

2. Towards smooth implementation of the Project, the Borrower shall cause the IA to ensure that grievance(s), if any, from stakeholders, relating to Project implementation or use of funds are addressed effectively and efficiently.

Counterpart Support

3. The Borrower shall make available, and shall ensure that the IA make available, adequate budgetary allocations of the required counterpart funds in respect of the Project on a timely and regular basis.

4. The IA, through the EA, shall make timely submission of annual budgetary appropriation request to MOFP and MOFP shall ensure prompt disbursement of appropriate funds during each year of project implementation.

Subproject Implementation

5. The EA and the IA shall ensure that all subprojects are evaluated and selected in accordance with the criteria set out in Schedule 4 to the FFA and implemented in accordance with the procedures set out under the FFA and the FAM as the case may be. All documents forming the basis for screening, selection and processing of subprojects shall be made available to ADB upon request and will be kept available for such purposes for a minimum period of 5 years from the date of the Project completion report.

Resources

6. The Borrower, the EA and the IA shall ensure that the PMU shall be provided with adequate staff, resources, and facilities to implement the Project.

Operation and Maintenance

7. At the latest by 28 February of each year, 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 take necessary actions, at the latest by 31 August of the same year, to increase revenue required to secure a positive net income.

8. The Borrower shall ensure that NWSDB, through PMU, 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 and NWSDB shall ensure that all equipment and spare parts financed under the Project shall be used exclusively for the maintenance and operation of the Project.

Safeguards and Social

Environment

9. The Borrower and the IA 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 Borrower relating to environment, health and safety; (b) the Environmental Safeguards; (c) the EARF; and (d) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

10. The Borrower and the IA shall ensure that all land and all rights-of-way required for the Project, and all Project facilities are made available to the Works contractor in accordance with the schedule, agreed under the related Works contract, and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; (c) the RF; and (d) all measures and requirements set forth in the respective RP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

11. Without limiting the application of the Involuntary Resettlement Safeguards, the RF, or the RP, the Borrower shall ensure, or cause the IA to ensure, that no physical or economic displacement takes place in connection with the Project until:

- (a) compensation and other entitlements have been provided to affected people in accordance with the RP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the RP.

Human and Financial Resources to Implement Safeguards Requirements

12. The Borrower shall make available, or cause the IA to make available, all necessary budgetary and human resources to fully implement the EMP and the RP and as required.

Safeguards-Related Provisions in Bidding Documents and Works Contracts

13. The Borrower shall ensure, or cause NWSDB to ensure, that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures and requirements relevant to the contractor set forth in the IEE, the EMP and the RP (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;
- (c) provide the Borrower with a written notice of any unanticipated environmental or resettlement risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP or the RP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

14. The Borrower shall do, or cause the IA to do, the following:
- (a) submit semiannual Safeguards Monitoring Reports to ADB for disclosure on ADB's website, 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 EMP, or the RP, as applicable, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
 - (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP or the RP promptly after becoming aware of the breach.

Prohibited List of Investments

15. The Borrower and the IA 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 Safeguard Policy Statement.

Labor Standards

16. The Borrower and the IA shall ensure that all civil works contracts under the Project follow all applicable labor laws of the Borrower, and that these further include

provisions to the effect that contractors: (a) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction; and (b) follow and implement all statutory provisions on labor (including not employing or using children as labor, and equal pay for equal work), health, safety, welfare, sanitation, and working conditions. Such contracts will also include clauses for termination in case of any breach of the stated provisions by the contractors.

Gender

17. The Borrower shall cause the IA to ensure that it implements the GAP in a timely manner over the entire Project period, and that adequate resources are allocated for this purpose. In particular, the Borrower and the IA shall ensure that the targets stated in the GAP are achieved. The Borrower shall ensure that implementation of the GAP is closely monitored, and progress is reported to ADB.

Reform Measures

18. The Borrower shall ensure that NWSDB implements the reforms activities indicated under Table 2 of Schedule 1 to the FFA ("Policy and Institutional Reform Plan") in a timely manner as indicated in greater detail in the said table towards (a) 24-hour continuous water supply at 100% coverage, and (b) institutional and financial sustainability.

19. The Borrower shall undertake on a timely basis the measures stipulated in Schedule 6 to the FFA, as applicable, with respect to, among others, (a) Project implementation, (b) cost recovery, (c) institutional reform, and (d) sustainability enhancement.

Governance and Corruption

20. The Borrower, the EA and the IA shall comply with ADB's Anticorruption Policy (1998, as amended to date) and cooperate 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.

21. The Borrower, through the EA and the IA, 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.

22. The Borrower shall announce the Project and business opportunities associated with the Project on its respective website. The website will disclose the following information in relation to goods and services procured for the Project: (a) the list of participating bidders, (b) the name of the winning bidder, (c) the amount of the contracts awarded, and (d) the goods and services procured.

Performance Monitoring, Review and Progress Reports

23. The Borrower, the EA and the IA shall establish for the Facility as well as for the Project, a project performance monitoring system as required by ADB. The performance reports for the Project will be compiled for preparing Facility level performance reporting.

24. In addition to semiannual reviews, a mid-term review shall be carried out 2 years after the loan effectiveness for the Project and the Facility, focusing on all aspects including, but not limited to, the engineering, resettlement, environmental and social aspects, and reviewing the financial status of NWSDB. The review will allow for any necessary midcourse corrections to ensure successful Project implementation and achievement of objectives of the overall Facility and the Investment Program.