
LOAN NUMBER 3099-MON(SF)

LOAN AGREEMENT
(Special Operations)

(Ulaanbaatar Urban Services and Ger Areas Development Investment Program – Project 1)

between

MONGOLIA

and

ASIAN DEVELOPMENT BANK

DATED 30 JUNE 2014

MON 45007

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 30 June 2014 between MONGOLIA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a framework financing agreement dated 9 December 2013 between the Borrower and ADB, ADB has agreed to provide a multitranches financing facility to the Borrower for the purpose of financing projects under the Ulaanbaatar Urban Services and Ger Areas Development Investment Program;

(B) by a periodic financing request dated 9 December 2013, the Borrower has applied to ADB for loans for the purposes of the Project described in Schedule 1 to the Loan Agreement;

(C) by separate agreement of even date herewith between the Borrower and ADB ("Ordinary Operations Loan Agreement") ADB has agreed to lend to the Borrower from its ordinary capital resources an amount of \$27,500,000 ("OCR Loan") upon terms and conditions set forth therein;

(D) the Borrower has also applied to the Urban Environmental Infrastructure Fund ("UEIF") for financial assistance for the Project, and UEIF has approved the provision of a grant to the Borrower in the amount of \$3,700,000 ("Grant"), to be administered by ADB pursuant to applicable cofinancing arrangements with UEIF, and subject to the terms and conditions of an externally financed grant agreement of even date herewith between the Borrower and ADB ("Grant Agreement");

(E) The Borrower has also applied to the European Investment Bank ("EIB"), who agreed to provide a loan in the amount up to EUR21,300,000 ("EIB Loan") for purposes of parallel cofinancing certain parts of the Project as described in paragraphs 2(i) and 2(ii)(b) of Schedule 1 hereof;

(F) the Project will be carried out by the Municipality of Ulaanbaatar ("MUB"), and for this purpose the Borrower will make available to MUB the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(G) ADB has agreed to make loans to the Borrower from ADB's Special Funds and ordinary capital resources upon the terms and conditions set forth herein, in the Ordinary Operations Loan Agreement, and in the Project Agreement of even date herewith between ADB and MUB;

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.

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) "CDC" means a community development council established for each Subproject;

(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 2(v) of Schedule 1 to this Loan Agreement;

(d) "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;

(e) "Environmental Management Plan" or "EMP" means each environmental management plan for a Subproject, including any update thereto, incorporated in the IEE;

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

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

(h) "FAM" means the Facility administration manual dated 1 November 2013 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;

(i) "FFA" means the framework financing agreement dated 9 December 2013 between ADB and the Borrower with respect to the Facility;

(j) "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;

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

(l) "Investment Program" means the Ulaanbaatar Urban Services and Ger Areas Development Investment Program;

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

(n) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2012, as amended from time to time);

(o) "MUB" means the Municipality of Ulaanbaatar or any successor thereto that is acceptable to ADB;

(p) "PFR" means the periodic financing request submitted or to be submitted by the Borrower, for the purposes of each loan agreement under the Facility, and for the purpose of this Loan Agreement means the periodic financing request dated 9 December 2013;

(q) "PMO" means the project management office established for the Facility that will be responsible for day-to-day implementation of the Project and Subprojects;

(r) "Procurement Guidelines" means ADB's Procurement Guidelines (2013, as amended from time to time);

(s) "Procurement Plan" means the procurement plan for the Project dated 1 November 2013 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;

(t) "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;

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

(v) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);

(w) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of, and compliance with, the EMP, and the RP, including any corrective and preventative actions;

(x) "SDC" means an SME development council established for each Subproject;

(y) "SME" means small and medium enterprises;

(z) "Subproject" means the *Selbe ger* area redevelopment subproject and/or the *Bayankhoshuu ger* area redevelopment subproject, which are parts of the Project as further detailed in Schedule 1 hereof;

(aa) "Subsidiary Loan Agreement" means the agreement or agreements entered into between the Borrower and MUB for the purposes of relending the proceeds of (a) this Loan as specified in Section 3.01 of this Loan Agreement, (b) the OCR Loan as specified in Section 3.01 of the Ordinary Operations Loan Agreement, and (c) the UEIF Grant as specified in Section 3.01 of the Grant Agreement;

(bb) "USUG" means the Water Supply and Sewerage Authority of Ulaanbaatar city or any of successor thereto that is acceptable to ADB; and

(cc) "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 fourteen million five hundred forty-two thousand Special Drawing Rights (SDR14,542,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 2% per annum during the grace period and 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 May and 15 November in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal 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. (a) The Borrower shall relend the proceeds of the Loan to MUB upon terms and conditions satisfactory to ADB.

(b) The Borrower shall cause MUB 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. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2018 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 and in the Project Agreement.

Section 4.02. The Borrower shall make available, or cause to be made 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.

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

Section 4.06. (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, use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for imprest fund and statement of expenditures) 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 and the Borrower's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall authorize and require any representative of such auditors to participate 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 4.07. 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.

Section 4.08. The Borrower shall take all actions which shall be necessary on its part to enable the MUB 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 4.09. (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 is specified as an additional event 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: the Borrower and/or MUB shall have failed to perform any of its/their respective obligations under the EIB Loan agreement.

Section 5.02. The following are is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: the event specified in Section 5.01 above shall have occurred and continued for a period of 60 days after the notice thereof shall have been given by ADB to the Borrower.

ARTICLE VI

Effectiveness

Section 6.01. 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

Delegation of Authority

Section 7.01. The Borrower hereby designates the MUB as its agent for the purposes of taking any action or entering into any agreement required or permitted

under Sections 3.02 and 3.03 of this Loan Agreement and under Sections 5.01, 5.02, and 5.03 of the Loan Regulations.

Section 7.02. Any action taken or any agreement entered into by the MUB pursuant to the authority conferred under Section 7.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 7.03. The authority conferred on the MUB under Section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

ARTICLE VIII

Miscellaneous

Section 8.01. The Minister of Economic Development of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Ministry of Economic Development
Government Building-2
United Nations Street 5/2
Ulaanbaatar – 15160
Mongolia

Facsimile Number:

(976) 11-327914.

For ADB

6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636-2407.

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.

MONGOLIA

By 
BATBAYAR NYAMJAV
Minister of Economic Development

ASIAN DEVELOPMENT BANK

By 
ROBERT M. SCHOELLHAMMER
Country Director
Mongolia Resident Mission

SCHEDULE 1

Description of the Project

1. The objective of the Project is to develop the *Selbe* and *Bayankhoshuu ger* areas into livable, environmentally-friendly, competitive and inclusive urban subcenters which would provide economic opportunities, modern sustainable urban services, and a healthier urban environment.

2. The Project shall comprise the Selbe ger area redevelopment subproject and the Bayankhoshuu ger area redevelopment subproject, each with the following components:
 - (i) Sewerage network extension from the nearest terminals of the existing city sewerage system (financed by EIB only): (a) 3.5 kilometers (km) collector main for Bayankhoshuu and 2.6 km for Selbe, (b) sewerage pumping station along with 2 km of sewer pipe extension and 0.9 km of sewer pressure pipe in Selbe, and (c) connection to the public facilities located along the road corridor and within each subcenter;

 - (ii) Road and urban services: (a) 15 km of combined priority roads; (b) 18.6 km of water supply and 20 km of sewerage network (financed by EIB only); (c) 21 km of district heating network; (d) sidewalks, drainage, flood protection, waste collection facilities, public space, lighting, and urban furniture; and (e) 5 heating facilities using most suitable state-of-the-art environmentally friendly technologies;

 - (iii) Social and economic facilities: Two kindergartens, 8–9 hectares (ha) of green areas and small squares, and two business incubator centers associated with two vocational training centers;

 - (iv) Multi-interventions in the Ulaanbaatar Water Supply and Sewerage Authority (USUG) to improve the central wastewater treatment plant and drinking water supply network, improve local control and central operational control systems (SCADA), improve water pumping system, implement a domestic and industrial water metering program, and install remote controlled flow-meters for nonrevenue water management; and

 - (v) Institutional strengthening and capacity development for (a) detailed design and construction supervision for the water supply and wastewater collection systems, municipal infrastructure, and heating services; (b) community participation, awareness, and empowerment, and small- and medium- enterprises (SME) development; (c) capacity building and institutional strengthening for urban planning and subcenter development; (d) program management office (PMO) to strengthen program implementation capacities; and (e) service provider institutional and regulatory reforms.

3. The Project is expected to be completed by 31 December 2017.

SCHEDULE 2**Amortization Schedule****(Ulaanbaatar Urban Services and Ger Areas Development Investment Program – Project 1)**

DATE	Payment of Principal (expressed in Special Drawing Rights)*
15 May 2019	363,550
15 November 2019	363,550
15 May 2020	363,550
15 November 2020	363,550
15 May 2021	363,550
15 November 2021	363,550
15 May 2022	363,550
15 November 2022	363,550
15 May 2023	363,550
15 November 2023	363,550
15 May 2024	363,550
15 November 2024	363,550
15 May 2025	363,550
15 November 2025	363,550
15 May 2026	363,550
15 November 2026	363,550
15 May 2027	363,550
15 November 2027	363,550
15 May 2028	363,550
15 November 2028	363,550
15 May 2029	363,550
15 November 2029	363,550
15 May 2030	363,550
15 November 2030	363,550
15 May 2031	363,550
15 November 2031	363,550
15 May 2032	363,550

DATE	Payment of Principal (expressed in Special Drawing Rights)*
15 November 2032	363,550
15 May 2033	363,550
15 November 2033	363,550
15 May 2034	363,550
15 November 2034	363,550
15 May 2035	363,550
15 November 2035	363,550
15 May 2036	363,550
15 November 2036	363,550
15 May 2037	363,550
15 November 2037	363,550
15 May 2038	363,550
15 November 2038	363,550
TOTAL	14,542,000

* 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 the Consulting

Services and Project management support, subject to a maximum amount equivalent to 20% of the Loan amount.

Imprest Account

7. Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, an imprest account at a commercial bank acceptable to ADB. The imprest account shall be established, managed, replenished and liquidated in accordance with the Loan Disbursement Handbook, and detailed arrangements agreed upon between the Borrower and ADB. The imprest account shall only be used for the purposes of the Project. The currency of the imprest account shall be the Dollar. The maximum ceiling for the imprest account shall not exceed the equivalent of ten (10) percent of the Loan amount, unless otherwise agreed between the Borrower and ADB.

Condition for Withdrawals from Loan Account

8. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account until the Subsidiary Loan Agreement, in form and substance satisfactory to ADB, has been duly authorized by, and executed and delivered on behalf of, the Borrower (or its authorized government entity) and the MUB, and is legally binding upon the parties thereto in accordance with its terms.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS			
(Ulaanbaatar Urban Services and Ger Areas Development Investment Program –Project 1)			
Number	Item	Total Amount Allocated for ADB Financing (SDR)	Basis for Withdrawal from the Loan Account
		Category	
1	Works	7,414,000	100% of total expenditure claimed*
2	Detailed design and construction supervision	2,810,000	100% of total expenditure claimed*
3	Project Management Support and Administration	1,293,000	100% of total expenditure claimed*
4	Consulting Services	1,293,000	100% of total expenditure claimed*
5	Interest Charge	446,000	100% of amounts due
6	Unallocated	1,286,000	
	Total	14,542,000	

* 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 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.

National Competitive Bidding

5. 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.

Conditions for Award of Contract

6. The Borrower shall not award any Works contract for a Subproject, or any component financed under the Project, which involves environmental impacts until MUB has:
 - (a) obtained the final approval of the Detailed Environmental Impact Assessment (as applicable) from the Mongolia's Ministry of Environment and Green Development (MEGD); and
 - (b) incorporated the relevant provisions from the EMP into the Works contract.
7. The Borrower shall not award any Works contract for a Subproject, which involves involuntary resettlement impacts, until the Borrower has prepared and submitted to ADB the final RP for such Subproject based on the detailed design, and obtained ADB's clearance of such RP.

Consulting Services

8. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall cause MUB to apply quality- and cost-based selection for selecting and engaging Consulting Services.

9. The Borrower may recruit the individual consultants for improving operation and maintenance of utility service providers and incremental administrative tasks in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

10. (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.

11. 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

12. 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 Matters

Implementation Arrangements

1. The Borrower and MUB 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.

Environment

2. The Borrower shall ensure, or cause MUB to ensure, that the preparation, design, construction, implementation, operation of the Project, comply with (a) all applicable laws and regulations of the Borrower relating to environment, health, and safety; (b) the Environmental Safeguards; (c) SPS; (d) the EARF; and (e) all measures and requirements set forth in the respective IEE and EMP, and any corrective or preventative actions (i) set forth in a Safeguards Monitoring Report or (ii) subsequently agreed with ADB.

Land Acquisition and Resettlement

3. The Borrower shall ensure, or cause MUB to ensure, that all land and all rights-of-way required for the Project, are made available to the Works contractor in accordance with the schedule agreed under the related final RP 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 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 (i) set forth in a Safeguards Monitoring Report or (ii) subsequently agreed with ADB.

4. Without limiting the application of the Involuntary Resettlement Safeguards, the RF or the RP, the Borrower shall ensure, or cause MUB 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 respective RP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the respective RP.

Indigenous Peoples

5. The Borrower shall cause MUB to ensure that the preparation, design, construction, implementation and operation of the Project and Project facilities does not have any adverse impacts on the indigenous peoples, within the meaning of SPS. In the event that the Project does have 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 SPS.

Bidding documents and work contracts

6. The MUB shall ensure that all bidding documents and contracts for civil works contain provisions that require contractors to: (a) comply with the measures relevant to the contractor set forth in the IEE, the EMP, relevant RPs and any corrective or preventative actions set forth in the Annual Environmental Monitoring Report or subsequently agreed with ADB; (b) make available a budget for all such environmental and social measures; and (c) provide MUB with a written notice of any unanticipated environmental and social risks or impacts that arise during construction, implementation or operation of the project that were not considered in the IEE, the EMP or the relevant RPs.

Human and Financial Resources to Implement Safeguards Requirements

7. The Borrower shall cause MUB to make available necessary budgetary and human resources to fully implement the EMP and the relevant RPs.

8. The Borrower shall ensure, or cause MUB 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 relevant RPs (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set out in a Safeguards Monitoring Report or subsequently agreed with ADB;
- (b) make available a budget for all such environmental and social measures;
- (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 EMP, or the relevant RPs; and
- (d) fully reinstate pathways, other local infrastructure, and public facilities to at least their pre-project condition as early as possible and no later than completion of construction.

9. The Borrower shall cause MUB to ensure that (a) the Project implementation consultants are engaged in a timely manner, including safeguards specialists; (b) a licensed environmental monitoring institute is contracted to conduct periodic environmental impact monitoring in accordance with the approved monitoring plan; and (c) the capacity-building program described in the EMP and the RPs is implemented as planned from the date of engagement of the consultants until Project completion.

Safeguards Monitoring and Reporting

10. The Borrower shall cause MUB to 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) review any changes to the Project design that may potentially cause negative environmental or social impacts, and in consultation with ADB, revise environmental or social monitoring and mitigation measures as necessary to assure full safeguard compliance. MUB will provide to ADB within 60 days, justification for any proposed changes to the mitigation measures required during design, construction, and operations, if any changes to the IEE or RPs must be implemented for safety or emergency reasons; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP, or the relevant RPs promptly after becoming aware of the breach.

Prohibited List of Investments

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

Health and Labor Standards

12. The Borrower shall cause MUB to ensure that works contractors engaged under the Project (i) comply with all applicable labor laws and core labor standards; (ii) use their best efforts to employ women and local people, including disadvantaged people; (iii) provide equal pay to men and women for work of equal type; (iv) provide and adequately equip first-aid, health and sanitation, and personal hygiene facilities for male and female workers at the Project site; (v) maximize female training and employment; (vi) conduct an information and education campaign on sexually transmitted diseases and HIV/AIDS for construction workers as part of the health and safety program during Project implementation; and (vii) abstain from child labor. Relevant contracts financed under the Project must include specific clauses on these undertakings.

Gender and Development

13. The Borrower shall cause MUB to ensure that the social action plan (SAP) and gender action plan (GAP) in form and substance agreed with ADB are implemented in a timely manner over the Project period and, to the extent necessary, incorporated into the bidding documents, and that adequate resources are allocated for these purposes. Specific social- and gender-related measures and activities undertaken during Project implementation shall be reported in the Project Performance Monitoring Report.

14. The Borrower shall cause MUB to ensure that the agreed SAP includes measures to (i) facilitate and support each Subprojects' community development council (CDC) and SME development council (SDC); (ii) identify and prioritize CDC and SDC needs and sustain awareness and support to the project by the different stakeholders; (iii) mobilize and organize community members as well as the business owners affected by a Subproject into relevant CDC and/or SDC to support the development of the land use plan, local development plan, and investment plan of the Project; (iv) facilitate public awareness

concerning overall strategy of urban functions development; (v) facilitate the skills mapping of the community members and matching with the demand of the SMEs as well as linking the community groups with training institutions providing vocational/technical skills training; and (vi) facilitate proper monitoring and evaluation of the different aspects of these components.

15. The Borrower shall cause MUB to ensure that the agreed GAP: (i) integrates gender inclusive design measures into road infrastructure to ensure safety, security, mobility and access; (ii) serves at least 1,000 beneficiaries of which at least 50% are women for the vocational training; (iii) assesses affordability and potential for creating subsidies on the tariff reform; (iv) ensures that the CDCs and SDCs are fully functional with at least 40% female participation; and (v) requires sex disaggregated data be reported in the Project Performance Monitoring Report.

Counterpart Support

16. The Borrower shall cause MUB to ensure that the counterpart funding required for successful Project implementation is timely allocated and provided. The Borrower shall cause MUB to adequately staff and equip a Project implementation unit in a manner acceptable to ADB

Good Governance

17. The Borrower and MUB shall (i) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project and Facility; and (ii) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

18. The Borrower and MUB 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.

19. The Borrower shall cause MUB assisted by Project consultants to develop a transparent mechanism, acceptable to ADB, for voluntary community-led Ger areas' subcenters redevelopment. Such mechanism, among other matters, shall proscribe terms and conditions on private sector participation, adequate community consultation on redevelopment proposals, fair and equitable land pooling and compensation procedures for volunteering landowners, and shall be established and made operational by December 2014.

20. The Borrower shall ensure that necessary implementing legislation and/or regulation governing the procedure of voluntary land pooling for purposes of redevelopment is developed and adequate public consultation, with participation of ADB, on such draft legislation/regulation is conducted by December 2014; and that such legislation/regulation is adopted by June 2015. Prior to adoption of such legislation/regulation, the Borrower shall cause MUB assisted by Project consultants to conduct public awareness campaign in the Project area, with CDC and SDC participation, to educate interested landowners on land pooling mechanism in order to facilitate fair dealing and to avert coercion and other unfair practices.

Operational covenants

21. The Borrower shall cause MUB to ensure that the Works contractors (a) select quarries, borrow pits and spoil disposal sites appropriate to the scale of the required borrow soil and the spoil generated before construction commences; (b) endorse such sites as being consistent with the selection criteria set out in the EMP; and (c) manage the sites in accordance with the EMP prescriptions.

22. The Borrower shall cause MUB to ensure that the heating facilities comply with relevant national standard (e.g., MNS 6298:2011) and regular ambient air quality and stack emission monitoring is conducted and reported to ADB.

23. The Borrower shall cause MUB to ensure that the Works contractors take necessary actions to avoid interruptions to water supply, heating and other utility services during the construction under the Project.

24. The Borrower shall cause the Ulaanbaatar Water Supply and Sewerage Authority (USUG) to consolidate and improve its operational sustainability by ensuring that commencing no later than 2016 fiscal year, USUG will achieve and maintain for each subsequent fiscal year, a full cost recovery operating ratio of at least 1.0 or below, where:

- (a) “full cost recovery operating ratio” means that ratio of full expenditure over revenues net of subsidies;
- (b) “full expenditure” means the sum of all expenses related to operations including administration, maintenance, current taxes and payments in lieu of taxes, and a return on equity computed at 12% of the average of the opening and closing balance of equity;
- (c) “debt” means any indebtedness of USUG maturing by its terms more than 1 year after the date on which it was originally incurred;
- (d) “equity” means the sum of total unimpaired paid-up capital, retained earnings and reserves of USUG not allocated to cover specific liabilities; and
- (e) “debt servicing” means the aggregate amount of all repayments (including sinking fund payments, lease payments under financial leases if any), whether or not actually paid, and interest and other charges on debt. Interest charges which are incurred in financing capital expenditure during development are excluded if they are capitalized.

25. The Borrower and MUB shall ensure that: (a) USUG tariffs are reviewed at least once a year and set and periodically adjusted as appropriate by at least 5% every 5 years, starting no later than 2017 fiscal year, to ensure the financial viability of the project investments; (b) commencing no later than 2016 fiscal year, USUG achieves an aggregate tariff collection rate from all customers of 80%; (c) commencing no later than 2018 fiscal year, USUG achieves an aggregate tariff collection rate from all customers of 85%; and (d) commencing no later than 2022 fiscal year, USUG achieves an aggregate tariff collection rate from all customers of 90%. Furthermore, the Borrower and MUB shall ensure that appropriate public awareness programs are conducted to educate the public on the need for

a rational water supply and sewerage tariffs scheme and the importance of water conservation.

26. In order to facilitate and improve its operational and financial sustainability, MUB shall ensure that USUG prepares, in accordance with prudent business practice, annual business plans for the MUB's approval commencing no later than 2015 fiscal year.

27. The Borrower and MUB shall also ensure that (a) heating tariffs are reviewed at least once a year and set and periodically adjusted as appropriate by at least 10% every 5 years, starting from no later than 2017 fiscal year, to ensure the financial viability of the project investments; (b) commencing no later than 2016 fiscal year, heating service providers involved in the project achieve an aggregate tariff collection rate from all customers at 85%; (c) commencing no later than 2018 fiscal year, an aggregate tariff collection rate for heating from all customers of 90% is achieved; and (d) commencing no later than 2022, an aggregate tariff collection rate for heating from all customers of 95% is achieved. The Borrower and MUB shall also ensure that appropriate public awareness programs are conducted to educate the public on the need for a rational tariffs scheme on heating services and heating conservation.

Grievance Redress Mechanism

28. The Borrower shall cause MUB to ensure that separate safeguards grievance redress mechanisms acceptable to ADB are established in accordance with the provisions of the EMP and RPs at the PMO, within the timeframes specified in the relevant EMP and RPs, to consider safeguards complaints.

29. The Borrower shall cause MUB to ensure that within 12 months following the Effective Date, a grievance redress mechanism, acceptable to ADB, is established and a task force is functioning effectively to (a) review and document eligible complaints of Project stakeholders; (b) proactively address grievances; (c) provide the complainants with notice of the chosen mechanism/action; and (d) prepare periodic reports to summarize (i) the number of complaints received and resolved; (ii) chosen actions; and (iii) final outcomes of the grievances and make these reports available to ADB upon request. Eligible complaints include those related to the Project, any of the service providers, any person responsible for carrying out the Project, complaints on misuse of funds, unfair land pooling practices and other irregularities, as well as gender issues.