
LOAN NUMBER 3349-SRI(SF)

LOAN AGREEMENT
(Special Operations)

(Greater Colombo Water and Wastewater Management
Improvement Investment Program – Project 3)

between

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

and

ASIAN DEVELOPMENT BANK

DATED 11 AUGUST 2016

SRI 45148

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 11 August 2016 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 ("Facility") to the Borrower for purposes of financing projects under the Greater Colombo Water and Wastewater Management Improvement Investment Program ("Investment Program");

(B) by a periodic financing request dated 30 October 2015, 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 one hundred twenty three million Dollars (\$123,000,000) for the purposes of the Project;

(D) MCP&WS and NWSDB will carry out the NWSDB Part (as defined below) of the Project and MPCLG and CMC will carry out the CMC Part (as defined below) of the Project, and for these purposes the Borrower will make available to MCP&WS and NWSDB a portion of the proceeds of the Loan provided under the Ordinary Operations Loan Agreement, and to MPCLG and CMC a portion of the proceeds of the Loan provided under the Ordinary Operations Loan Agreement and the proceeds of the Loan provided for herein, both upon terms and conditions satisfactory to ADB and the Borrower; and

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

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modification:

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

“Project Agreements” means the NWSDB Project Agreement and the CMC Project Agreement.

- (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 and CMC”.

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) “CMC” means the Colombo Municipal Council, or any successor thereto;

- (b) “CMC Part” means Parts C, D and E of the Project, as described in paragraph 3 of Schedule 1 to this Loan Agreement, which will be carried out by CMC;

- (c) “CMC Project Agreement” means the Project Agreement of even date herewith between ADB and CMC;

- (d) “CMC Subsidiary Financing Agreement” means the subsidiary loan agreement between the Borrower and CMC referred to in Section 3.01 of this Loan Agreement and in Section 3.01(b) of the Ordinary Operations Loan Agreement;

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

- (f) “Consulting Services” means the services to be financed out of the proceeds of the Loan and/or the Ordinary Operations Loan as described in paragraph 4 of Schedule 1 to this Loan Agreement, but excluding any services provided in relation to Goods and Works;

- (g) “DMA” means district metering area;

- (h) “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;

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

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

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

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

(m) "GAP" means the gender action plan prepared for the Project by the Borrower and approved by ADB;

(n) "GIS" means geographical information system;

(o) "Goods" means equipment and materials to be financed out of the proceeds of the Loan and/or the Ordinary Operations Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(p) "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;

(q) "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;

(r) "Investment Program" means the Greater Colombo Water and Wastewater Management Improvement Investment Program;

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

(t) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);

(u) "MCP&WS" means the Ministry of City Planning and Water Supply, or any successor thereto;

(v) "MOF" means the Ministry of Finance of the Borrower, or any successor thereto;

(w) "MPCLG" means the Ministry of Provincial Councils and Local Government, or any successor thereto;

(x) "NRW" means non-revenue water;

(y) "NWSDB" means the National Water Supply and Drainage Board of the Borrower, or any successor thereto;

(z) "NWSDB Part" means Parts A and B of the Project, as described in paragraph 3 of Schedule 1 to this Loan Agreement, which will be carried out by NWSDB;

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

(bb) "NWSDB Subsidiary Financing Agreement" means the subsidiary loan agreement between the Borrower and NWSDB referred to in Section 3.01(a) of the Ordinary Operations Loan Agreement;

(cc) "O&M" means operation and maintenance;

(dd) "PAM" means the project administration manual dated 30 October 2015 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;

(ee) "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 30 October 2015;

(ff) "PMU" means each of the program management units established by NWSDB and CMC, respectively, for the purposes of the Project;

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

(hh) "Procurement Plan" means the procurement plan for the Project dated 30 October 2015, forming part of the PAM 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;

(ii) "Project 1" means the project described in Schedule 1 of the Project 1 loan agreement in the amount of SDR9,184,000 from ADB's Special Fund resources, dated 28 June 2013 between the Borrower and ADB;

(jj) "Project 1 Loan Agreements" means both the loan agreement in the amount of \$70,000,000 from ADB's ordinary capital resources and the loan agreement in the amount of SDR9,184,000 from ADB's Special Fund resources, dated 28 June 2013 between the Borrower and ADB, to finance Project 1;

(kk) "Project 2" means the project described in Schedule 1 of the Project 2 loan agreement in the amount of SDR11,827,000 from ADB's Special Fund resources, dated 3 June 2014 between the Borrower and ADB;

(ll) "Project 2 Loan Agreements" means both the loan agreement in the amount of \$70,000,000 from ADB's ordinary capital resources and the loan agreement in the amount of SDR11,827,000 from ADB's Special Fund resources, dated 3 June 2014 between the Borrower and ADB, to finance Project 2;

(mm) "Project Executing Agencies" or "EAs" for the purposes of, and within the meaning of, the Loan Regulations means MCP&WS and MPCLG, or any successor thereto;

(nn) "Project facilities" means water supply and wastewater investments under the Project;

(oo) "Project Implementing Agencies" or "IAs" for the purposes of, and within the meaning of, the Loan Regulations means NWSDB, which is responsible for the carrying out of the NWSDB Part, or any successor thereto acceptable to ADB; and CMC, which is responsible for the carrying out of the CMC Part, or any successor thereto acceptable to ADB;

(pp) "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;

(qq) "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;

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

(ss) "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;

(tt) "Subproject" means a subproject under the Project that meets the selection criteria set out in Schedule 4 to the FFA; and

(uu) "Works" means construction or civil works to be financed out of the proceeds of the Loan and/or the Ordinary Operations 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 three million five hundred eighty thousand Special Drawing Rights (SDR3,580,000).

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. The Borrower shall make the proceeds of the Loan and a portion of the proceeds of the Ordinary Operations Loan available to CMC, under the CMC Subsidiary Financing Agreement upon terms and conditions satisfactory to ADB and the Borrower, and shall cause CMC to apply such proceeds to the financing of expenditures on the CMC Part of the Project in accordance with the provisions of this Loan Agreement, the Ordinary Operations Loan Agreement and the CMC 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 31 December 2020 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 relevant records and documents.

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 CMC to perform its obligations under the CMC 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 CMC Subsidiary Financing 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 CMC Subsidiary Financing 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 shall have failed to perform any of its obligations under the Ordinary Operations 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: 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.

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: 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

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 MOF, the Deputy Secretary to the Treasury and the Director General of the Department of External Resources 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
Colombo 1
Sri Lanka

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

Facsimile Number:

+94 11 248-4563

+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 

R. H. S. SAMARATHUNGA
Secretary
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 

SRI WIDOWATI
Country Director
Sri Lanka Resident Mission

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 system efficiency and financial sustainability of water supply and wastewater services in Colombo.
3. The Project comprises the following components as described in greater detail in the PFR:

Part A. Rehabilitation and expansion of water supply system and NRW reduction in the northeast part of Colombo city

- (i) additional financing for Project 1 due to cost increase from improved design including the formation of seven additional DMAs; and
- (ii) expanding the area engineering office from 800 square meters to 1,400 square meters.

Part B. Rehabilitation and expansion of water supply system and NRW reduction in the southwest part of Colombo city

- (i) additional financing for Project 2 due to cost increase from improved design including the formation of seven additional DMAs;
- (ii) enhancement of a training facility;
- (iii) construction of a new pump station at Ellie house site; and
- (iv) support for enhancing NWSDB's project design and readiness capacity.

Part C. Rehabilitation and expansion of wastewater network in south catchment area of Colombo, including

laying of about 30 kilometers of sewer network and construction of three pump stations to cover currently unserved Kirulapona area.

Part D. Construction of a secondary wastewater treatment plant in south catchment area of Colombo, including

construction of a secondary treatment plant with 50,000 cubic meters-per-day capacity at Wellawatta.

Part E. Strengthening institutional structure and capacity of service provider, including

- (i) establishment of a separate wastewater unit within the CMC;
- (ii) establishment of GIS-based asset management system for wastewater system;
- (iii) strengthening the institutional capacity of CMC staff for increased operational efficiency in wastewater management;
- (iv) promoting awareness of shared responsibility in wastewater management by the new sewerage system users in the south catchment area of Colombo;
- (v) training and capacity building to improve the operating performance of CMC; and
- (vi) approving and initiating the collection of wastewater tariff in Colombo city.

4. Consulting Services will be provided to support the above stated activities.

5. The Project is expected to be completed by 30 June 2020.

SCHEDULE 2

Amortization Schedule

(Greater Colombo Water and Wastewater Management Improvement Investment Program – Project 3)

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)
15 May 2021	89,500
15 November 2021	89,500
15 May 2022	89,500
15 November 2022	89,500
15 May 2023	89,500
15 November 2023	89,500
15 May 2024	89,500
15 November 2024	89,500
15 May 2025	89,500
15 November 2025	89,500
15 May 2026	89,500
15 November 2026	89,500
15 May 2027	89,500
15 November 2027	89,500
15 May 2028	89,500
15 November 2028	89,500
15 May 2029	89,500
15 November 2029	89,500
15 May 2030	89,500
15 November 2030	89,500
15 May 2031	89,500
15 November 2031	89,500
15 May 2032	89,500
15 November 2032	89,500
15 May 2033	89,500
15 November 2033	89,500
15 May 2034	89,500
15 November 2034	89,500
15 May 2035	89,500
15 November 2035	89,500
15 May 2036	89,500
15 November 2036	89,500
15 May 2037	89,500
15 November 2037	89,500
15 May 2038	89,500
15 November 2038	89,500
15 May 2039	89,500
15 November 2039	89,500
15 May 2040	89,500
15 November 2040	<u>89,500</u>
TOTAL	3,580,000

* 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 4 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 3)				
Number	Item	Total Amount Allocated for ADB Financing (SDR)		Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Equipment – CMC	430,000		75.6% of total expenditure claimed
2	Project Management	1,217,000		
2a	Project Management - CMC		859,000	100% of total expenditure claimed*
2b	Training and Workshops Management - CMC		358,000	100% of total expenditure claimed
3	Incremental Administrative Costs – CMC	1,661,000		100% of total expenditure claimed
4	Interest Charge	129,000		100% of amounts due
5	Unallocated	143,000		
	Total	3,580,000		

* 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 and the IAs 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 the Loan Agreements, the provisions of this Loan Agreement shall prevail.

Counterpart Support

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

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

4. NSWDB and CMC, through MCP&WS and MPCLG, respectively, shall make timely submission of annual budgetary appropriation request to MOF, and MOF shall ensure prompt disbursement of appropriate funds during each year of project implementation.

Coordination among Borrower's Agencies

5. The Borrower, NSWDB and CMC are fully committed to the Investment Program and the projects under tranches 1 and 2 of the Facility, and shall ensure that all of their ministries, agencies and divisions, as applicable, involved in the implementation of the projects, give their full cooperation to ensure smooth implementation of the projects. Specifically, the Borrower shall give full, timely and efficient cooperation in issuing any licenses, permits or approvals required in connection with infrastructure work.

Grievance Redress Mechanism

6. The Borrower shall cause NSWDB and CMC to have a grievance redress mechanism for the projects under the Investment Program, acceptable to ADB, to receive and resolve complains/grievances or act upon reports from stakeholders on misuse of funds and other irregularities, including grievances due to resettlement. The Borrower, NSWDB and CMC shall (a) make public of the existence of this grievance redress mechanism; (b) review and address grievances of stakeholders of the projects under the Investment Program, in relation to either the projects, any of the service providers, or any person responsible for carrying out any aspects of the Subprojects; and (c) proactively and constructively respond to them.

Subproject Implementation

7. The Borrower ensure, or cause the IAs to 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 PAM 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

8. The Borrower shall ensure, or cause the IAs to ensure, that the PMUs shall be provided with adequate staff, resources, and facilities to implement the Project.

O&M

9. The Borrower shall cause NWSDB and CMC to ensure that they shall maintain the Subproject facilities and that proper technical supervision and adequate routine funds for this purpose are provided. The funds required for the O&M shall be allocated annually and released on a timely basis. NWSDB and CMC shall prepare O&M management system prepared throughout the Investment Program period. Furthermore, NWSDB and CMC shall ensure that all equipment and spare parts financed under the Subprojects shall be used exclusively for the maintenance and operation of the Subprojects.

Safeguards and SocialEnvironment

10. The Borrower shall ensure, or cause the IAs to ensure, that the preparation, design, construction, implementation, operation and decommissioning of each Subproject, and all Subproject 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

11. The Borrower shall ensure, or cause the IAs to ensure, that all land and all rights-of-way required for a Subproject are made available to the Works contractor in accordance with the schedule agreed under the related Works contract, and that 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.

12. Without limiting the application of the Involuntary Resettlement Safeguards, the RF, or the RP, the Borrower shall ensure, or cause the IAs to ensure, that no physical or economic displacement takes place in connection with a Subproject 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

13. The Borrower shall make available, or cause the IAs 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

14. The Borrower shall ensure, or cause the IAs 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

15. The Borrower shall do, or cause the IAs 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

16. 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

17. The Borrower shall ensure, or cause the IAs to ensure, that all civil works contracts under a Subproject 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

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

Reform Measures

19. The Borrower shall ensure that the IAs implement 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, (b) 100% collection and treatment of wastewater in the south catchment area of Colombo city, and (c) institutional and financial sustainability.

20. 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.

21. The Borrower shall ensure, or cause NWSDDB to ensure, that the annual accounts receivable ratio is maintained at 86% by 2020.

Governance and Anticorruption

22. The Borrower, the EAs and the IAs 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.

23. The Borrower, through the EAs and the IAs, 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.

24. 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

25. 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.

26. 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 and CMC. 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.