
LOAN NUMBER 3348-SRI

LOAN NUMBER 3349-SRI(SF)

PROJECT AGREEMENT

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

between

ASIAN DEVELOPMENT BANK

and

COLOMBO MUNICIPAL COUNCIL

DATED 11 AUGUST 2016

SRI 45148

PROJECT AGREEMENT

PROJECT AGREEMENT dated 11 August 2016 between ASIAN DEVELOPMENT BANK ("ADB") and COLOMBO MUNICIPAL COUNCIL ("CMC").

WHEREAS

(A) by a Loan Agreement of even date herewith between the Borrower and ADB ("Ordinary Operations Loan Agreement"), ADB has agreed to make to the Borrower a loan ("Ordinary Operations Loan") of one hundred twenty three million Dollars (\$123,000,000) on the terms and conditions set forth in the Ordinary Operations Loan Agreement;

(B) by a Loan Agreement of even date herewith between the Borrower and ADB ("Special Operations Loan Agreement", and together with the Ordinary Operations Loan Agreement, "Loan Agreements"), ADB has agreed to make to the Borrower a loan ("Special Operations Loan", and together with the Ordinary Operations Loan, the "Loans") of three million five hundred eighty thousand Special Drawing Rights (SDR3,580,000) on the terms and conditions set forth in the Special Operations Loan Agreement;

(C) ADB has agreed to make the Loans only on the condition that a portion of the proceeds of the Ordinary Operations Loan and the proceeds of the Special Operations Loan be made available to CMC and that CMC agrees to undertake certain obligations towards ADB set forth herein; and

(D) CMC, in consideration of ADB entering into the Loan Agreements with the Borrower, has agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreements and in the Loan Regulations (as defined in each of the Loan Agreements) have the respective meanings therein set forth.

ARTICLE II

Particular Covenants

Section 2.01. (a) CMC shall carry out the CMC Part of the Project 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, CMC shall perform all obligations set forth in the Loan Agreements to the extent that they are applicable to CMC.

Section 2.02. CMC shall make available, promptly as needed, the funds, facilities, services, equipment, land and other resources as required, in addition to the proceeds of the Loans, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, CMC shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, CMC shall procure all items of expenditures to be financed out of the proceeds of the Loans in accordance with the provisions of Schedule 4 to the Special Operations Loan Agreement. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. CMC shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. CMC 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 2.05. (a) CMC shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, CMC undertakes to insure, or cause to be insured, the Goods to be imported for the Project against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. CMC shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loans, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and CMC shall cooperate fully to ensure that the purposes of the Loans will be accomplished.

(b) CMC shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement or the CMC Subsidiary Financing Agreement, or the accomplishment of the purposes of the Loans.

(c) ADB and CMC shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, CMC and the Loans.

Section 2.08. (a) CMC shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loans and the expenditure of the proceeds thereof; (ii) the items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of CMC; and (v) any other matters relating to the purposes of the Loans.

(b) Without limiting the generality of the foregoing, CMC shall furnish to ADB quarterly reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the quarter under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following quarter.

(c) Promptly after physical completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, CMC shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by CMC of its obligations under this Project Agreement and the accomplishment of the purposes of the Loans.

Section 2.09. Without limiting the generality of the provisions under Sections 2.08(b) and (c) herein above,

(a) CMC shall prepare progress reports for the Project and submit these to ADB on a quarterly basis within 30 days from the end of each quarter. Each report will provide a narrative description of progress made during the period in respect of the Project, changes in the implementation schedule, problems or difficulties encountered, and the work to be carried out in the next period. The progress report will also include Project expenditures for the year to date and total expenditure to date. CMC shall undertake periodic project performance review under the Project, as also for the Facility to evaluate the scope, implementation arrangements, progress and achievements of objectives of the Project and the overall Facility. Performance shall be evaluated based on indicators and targets stipulated in the Design and Monitoring Framework for the Facility and the Project; and

(b) CMC shall furnish to ADB a Project completion report within 6 months of physical completion of the Project, and Facility completion report within 6 months of physical completion of the Facility. These reports will cover a detailed evaluation of the Project and the Facility, respectively, covering the design, costs, contractors' and consultants'

performance, social, environmental and economic impact, economic rate of return, and other details for the Project and the Facility as may be requested by ADB.

Section 2.10. (a) CMC 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 for the Project 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 use of the Loan proceeds and compliance with the financial covenants of the Loan Agreements as well as on the use of the procedures for the imprest accounts 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 close of the fiscal year to which they relate, 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) In addition to annual audited financial statements referred to in subsection (a) hereinabove, CMC shall (i) provide its annual financial statements prepared in accordance with national accrual-based financing reporting standards acceptable to ADB; (ii) have its financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; and (iii) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements in the English language and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(d) CMC shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and CMC and its financial affairs where they relate to the Project with the auditors appointed by CMC pursuant to subsections (a)(iii) and (c) 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 CMC, unless CMC shall otherwise agree.

Section 2.11. CMC shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loans, all other plants, sites, properties and equipment of CMC where they relate to the Project, and any relevant records and documents.

Section 2.12. (a) CMC shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its operations.

(b) CMC shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

(c) CMC shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 2.13. Except as ADB may otherwise agree, CMC shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.14. Except as ADB may otherwise agree, CMC shall apply the proceeds of the Loans to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreements and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.15. Except as ADB may otherwise agree, CMC shall duly perform all its obligations under the CMC Subsidiary Loan Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the CMC Subsidiary Loan Agreement.

Section 2.16. CMC shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its constitutional documents, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. CMC shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

ARTICLE III

Effective Date; Termination

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreements come into force and effect. ADB shall promptly notify the CMC of such date.

Section 3.02. (a) This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the Loan Agreements shall terminate in accordance with their terms.

(b) If the Loan Agreement terminates in accordance with its terms before the date specified in subsection (a)(ii) hereinabove, ADB shall promptly notify CMC of this event.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreements.

ARTICLE IV

Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex facsimile or radiogram to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Facsimile Numbers:

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

For CMC

Municipal Commissioner
Colombo Municipal Council
Town Hall, Colombo 7
Sri Lanka

cc.: Project Director
CMC

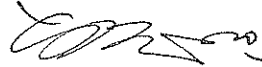
Facsimile Number:

+94 11 269-4640.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of CMC may be taken or executed by its Municipal Commissioner or by such other person or persons as he or she shall so designate in writing notified to ADB.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project 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.

ASIAN DEVELOPMENT BANK



By _____
SRI WIDOWATI
Country Director
Sri Lanka Resident Mission

COLOMBO MUNICIPAL COUNCIL



By _____
L.R.L. WICKRAMARATHNE
Deputy Municipal Commissioner