
LOAN NUMBER 2807-GEO (SF)

LOAN AGREEMENT
(Special Operations)

(Urban Services Improvement Investment Program – Project 2)

between

GEORGIA

and

ASIAN DEVELOPMENT BANK

DATED 1 December, 2011

GEO 43405

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 1 December, 2011 between GEORGIA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a framework financing agreement dated 1 March 2011 between the Borrower and ADB ("FFA"), ADB has agreed to provide a multitranche financing facility ("Facility") to the Borrower for purposes of financing projects under the Urban Services Improvement Investment Program ("Investment Program");

(B) by a periodic financing request dated 25 May 2011 submitted by the Borrower, the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(C) the Project will be carried out by the United Water Supply Company of Georgia Limited Liability Company ("UWSCG"), and for this purpose the Borrower will make available to UWSCG the proceeds of the loan provided herein in accordance with the terms and conditions satisfactory to ADB; and

(D) 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 Agreement between ADB and UWSCG.

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 to the following modifications:

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

"Project Agreement" means the Project Agreement between ADB and UWSCG.

(b) The term "the Project Executing Agency" appearing in Section 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 "UWSCG".

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) "EARF" means the Environmental Assessment and Review Framework for the Investment Program, as agreed between the Borrower and ADB, as amended from time to time;

(b) "EMP" means the Environmental Management Plan for the Project prepared in accordance with the EARF, incorporated in the IEE;

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

(d) "IEE" means the Initial Environmental Examination for the Project prepared in accordance with the EARF;

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

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

(g) "MRDI" the Ministry of Regional Development and Infrastructure of the Borrower;

(h) "PAM" means the project administration manual for the Project dated 3 November 2011 and agreed between the Borrower and ADB, as amended from time to time;

(i) "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 25 May 2011;

(j) "Procurement Guidelines" means ADB's Procurement Guidelines (2010, as amended from time to time);

(k) "Procurement Plan" means the procurement plan for the Project dated 3 November 2011 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines and other arrangements agreed with ADB;

(l) "Project Executing Agency" means MRDI, which is responsible for carrying out the Project;

(m) "RF" means the Resettlement Framework for the Investment Program, as agreed between the Borrower and ADB, as amended from time to time;

(n) "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, including any corrective and preventative actions;

- (o) "SPS" means ADB's Safeguard Policy Statement (2009);
- (p) "Subsidiary Loan Agreement" means the agreement between the Borrower, MRDI and UWSCG referred to in Section 3.01(a) of this Loan Agreement;
- (q) "UWSCG" means the United Water Supply Company of Georgia Limited Liability Company established under the laws and regulations of the Borrower with its current registered address at #5, Anna Politkovskaia Street, Tbilisi 0186, Georgia;
- (r) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services; and
- (s) "WSS" means water supply and sanitation.

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 twenty five million forty seven thousand Special Drawing Rights (SDR 25,047,000).

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

(b) The term "grace period" as used in subsection (a) of 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 March and 15 September 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 UWSCG under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB. Except as ADB shall otherwise agree, the terms for relending the proceeds of the Loan shall include interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum thereafter, and a repayment period of 32 years, including a grace period of 8 years. Foreign exchange risk shall be borne by UWSCG.

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

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. Withdrawals from the Loan Account in respect of Works shall be made only on account of expenditures relating to:

- (a) Works 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) Works which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2017 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out 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 and Works, and any relevant records and documents.

Section 4.03. (a) The Borrower shall: (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 9 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Borrower pursuant to subsection (a) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Borrower unless the Borrower shall otherwise agree.

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

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

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

ARTICLE V

Effectiveness

Section 5.01. A date 30 days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Ministry of Finance
16 Gorgosali Street, 0114
Tbilisi, Georgia

Facsimile Number:

(99532) 2261 461.

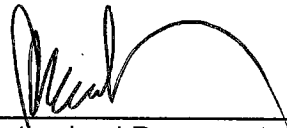
For ADB

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

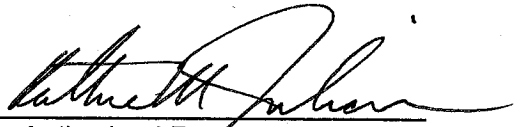
(632) 636-2444
(632) 636-2301.

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.

GEORGIA

By  _____
Authorized Representative

ASIAN DEVELOPMENT BANK

By  _____
Authorized Representative

SCHEDULE 1**Description of the Project**

1. The objective of the Investment Program is to finance projects with one or more of the following components:
 - (a) rehabilitation, improvement and expansion of WSS infrastructure;
 - (b) capacity development for WSS-related institutions, including support to improve management and technical capabilities of UWSCG; and
 - (c) project implementation support.
2. The Project shall comprise the construction of water supply and sanitation facilities in the towns of Anaklia and Mestia.
3. The Project is described more fully in the PFR.
4. The Project is expected to be completed by 31 December 2016.

SCHEDULE 2**Amortization Schedule****(Urban Services Improvement Investment Program - Project 2)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 March 2020	521,813
15 September 2020	521,813
15 March 2021	521,813
15 September 2021	521,813
15 March 2022	521,813
15 September 2022	521,813
15 March 2023	521,813
15 September 2023	521,813
15 March 2024	521,813
15 September 2024	521,813
15 March 2025	521,813
15 September 2025	521,813
15 March 2026	521,813
15 September 2026	521,813
15 March 2027	521,813
15 September 2027	521,813
15 March 2028	521,813
15 September 2028	521,813
15 March 2029	521,813
15 September 2029	521,813
15 March 2030	521,813
15 September 2030	521,813
15 March 2031	521,813
15 September 2031	521,813
15 March 2032	521,813
15 September 2032	521,813
15 March 2033	521,813
15 September 2033	521,813
15 March 2034	521,813
15 September 2034	521,813
15 March 2035	521,813
15 September 2035	521,813
15 March 2036	521,813
15 September 2036	521,813
15 March 2037	521,813

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

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 September 2037	521,813
15 March 2038	521,813
15 September 2038	521,813
15 March 2039	521,813
15 September 2039	521,813
15 March 2040	521,813
15 September 2040	521,813
15 March 2041	521,813
15 September 2041	521,813
15 March 2042	521,813
15 September 2042	521,813
15 March 2043	521,813
15 September 2043	521,789
TOTAL	25,047,000

* 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 Categories of the Table.)

Percentages of ADB Financing

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

Interest Charge

3. The amount allocated to Category 2 is for financing 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 Works, subject to a maximum amount equivalent to 20% of the Loan amount.

Condition for Withdrawals from Loan Account

7. Notwithstanding any other provision of this Loan Agreement, no withdrawal shall be made from the Loan Account until the Subsidiary Loan Agreement, in form and substance satisfactory to ADB, has been duly authorized and executed and delivered on behalf of, the Borrower, MRDI and UWSCG, and is legally binding upon the parties thereto in accordance with its terms.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS			
(Urban Services Improvement Investment Program – Project 2)			
CATEGORY			ADB FINANCING
Number	Item	Total Amount Allocated for ADB Financing (SDR) Category	Percentage and Basis for Withdrawal from the Loan Account
1	Civil Works and System Operation & Maintenance	18,573,000	84.75% of total expenditure claimed
2	Interest Charge	626,000	100% of amounts due
3	Unallocated	5,848,000	
	Total	25,047,000	

SCHEDULE 4**Procurement of Works**General

1. The procurement of Works shall be subject to and governed by the Procurement Guidelines.
2. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines.

Works

3. Except as ADB may otherwise agree, Works shall only be procured on the basis of 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.

Conditions for Award of Contract

5. The Borrower shall not award any Works contract which involves environmental impacts until:
 - (a) the IEE, as incorporated in the relevant environmental compliance safeguards documents, has been approved by the appropriate authority of the Borrower; and
 - (b) the Borrower has incorporated relevant provisions from the EMP into the Works contract.

Industrial or Intellectual Property Rights

6.
 - (a) The Borrower shall ensure that all 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 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.

ADB's Review of Procurement Decisions

7. Contracts procured under international competitive bidding procedures shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

8. The Borrower shall seek ADB's approval before it:

(a) grants any extension of the stipulated time for completion of a contract for Works;

(b) agrees to any modification or waiver of the conditions of a contract for Works, including any change order that falls under (c) or (d) below;

(c) issues any change order under a contract for Works that will in aggregate increase the original contract price (for the avoidance of doubt, such aggregate shall take into account any previous or simultaneous change order or orders under such contract); or

(d) issues any change order under a contract for Works that will affect more than 15% of the original contract price (either through increases or decreases), even if the net effect of such change order will not in aggregate increase the original contract price. For the avoidance of doubt, such aggregate shall take into account any previous or simultaneous change order or orders under such contract.

9. ADB shall respond to each request for approval under paragraph 8 above within 10 business days (in Manila) of ADB's receipt of such request. Such response will indicate that the request is: (a) approved; (b) declined; (c) pending receipt of additional information or documentation; or (d) pending consideration by ADB's Procurement Committee, in each case as determined by ADB. If ADB fails to respond within 10 business days (in Manila) of ADB's receipt of such request, the request (except if it relates to consideration by ADB's Procurement Committee) shall be deemed to have been approved by ADB. In the case of (c), the Borrower shall promptly provide the requested information or documentation to ADB and ADB shall respond to the relevant request within 10 business days (in Manila) upon receipt of such requested information or documentation satisfactory to ADB. In the case of (d), ADB shall notify the Borrower of the decision by the Procurement Committee within 10 business days (in Manila) of such decision by the Procurement Committee.

10. The Borrower shall, or shall ensure that UWSCG will:

(a) provide to ADB within 10 days a copy of all time extensions, modifications or waivers to the contracts (including change orders) following ADB's approval in accordance with paragraph 8 above and amendment of the contracts; and

(b) maintain a record of all change orders under all contracts for Works which do not require ADB's prior approval under paragraph 8 above and submit such record for ADB's review every 6 months.

SCHEDULE 5

Execution of Project; Financial Matters

Implementation Arrangements

1. The Borrower and UWSCG 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 and/or the Project Agreement, the provisions of this Loan Agreement and/or the Project Agreement shall prevail.

Counterpart Funding and Resources

2. The Borrower shall ensure that: (a) financial, technical and human resources necessary for the implementation of the Project are provided on a timely basis throughout the implementation period; and (b) adequate funds are allocated for the maintenance of the infrastructure built and items procured under Project.

Construction Quality

3. The Borrower shall ensure that the Project is carried out in accordance with applicable standards and international best practice for design, technical specifications, construction supervision, quality control and project management.

Environment

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

Land Acquisition and Involuntary Resettlement

5. The Borrower shall cause UWSCG to ensure that (a) all land and all rights-of-way required for the Project and all Project facilities are made available to the Works contractor in accordance with the schedule agreed under the related Works contract; and (b) the Project does not require any land acquisition or resettlement activities within the meaning of the SPS. If there is such an impact, the Borrower shall cause UWSCG to ensure that such land acquisition and resettlement activities are implemented in accordance with (i) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (ii) the Involuntary Resettlement Safeguards; and (iii) the RF.

Safeguards Monitoring and Reporting

6. The Borrower shall cause UWSCG 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) if any unanticipated environmental impacts arise during construction, implementation or operation of the Project that were not considered in the IEE or the EMP, 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 promptly after becoming aware of the breach.

Indigenous Peoples

7. The Borrower shall cause UWSCG to ensure that the Project does not cause any impact on indigenous peoples within the meaning of the SPS. If there is such an impact, the Borrower shall cause UWSCG to prepare, disclose and implement an indigenous peoples plan in accordance with all applicable laws and regulations of the Borrower relating to indigenous peoples and the SPS.

Human and Financial Resources to Implement Safeguards Requirements

8. The Borrower shall cause UWSCG to make available necessary budgetary and human resources to fully implement the EMP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

9. The Borrower shall cause UWSCG 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 and the EMP, and any corrective or preventative actions set out in a Safeguards Monitoring Report;
 - (b) make available a budget for all such environmental measures;
 - (c) provide UWSCG with a written notice of any unanticipated environmental risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE or the EMP;
 - (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.

Prohibited List of Investments

10. The Borrower 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 SPS.

Labor Standards and Health

11. The Borrower shall cause UWSCG to ensure monitoring of the social impacts throughout the implementation of the Project in consultation with local governments, local communities and nongovernment organizations. UWSCG shall ensure that all civil works contractors: (a) comply with all applicable labor laws of the Borrower; (b) use their best efforts to employ women and local people, including disadvantaged people, living in the vicinity of the Project; (c) disseminate information at worksites on health safety (including HIV prevention programs) for those employed during construction; (d) maintain equal pay to men and women for work of equal type; (e) provide safe working conditions and appropriate facilities for male and female workers; and (f) abstain from child labor.

Gender and Development

12. The Borrower shall cause UWSCG to: (a) ensure that the gender action plan prepared for the Investment Program is implemented in a timely manner over the Investment Program period; and (b) submit semiannual reports to ADB.

Governance and Anticorruption

13. The Borrower and UWSCG shall: (a) 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 (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation. This includes ensuring that 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 Project Executing Agency and implementing agencies and all contractors, suppliers, consultants and other service providers as they relate to the Project.