
LOAN NUMBER 3245-MON (SF)

LOAN AGREEMENT
(Special Operations)

(Darkhan Wastewater Management Project)

between

MONGOLIA

and

ASIAN DEVELOPMENT BANK

DATED 5 June 2015.

MON 37697

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 5 June 2015 between MONGOLIA
("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) by an 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 \$9,450,000 ("OCR Loan") upon terms and conditions set forth herein;

(C) the Project will be carried out by the Ministry of Construction and Urban Development ("MCUD"), and for this purpose the Borrower will make available to MCUD and Darkhan-Uul Aimag Government ("DAG") the proceeds of the loan provided for herein upon 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, in the Ordinary Operations Loan Agreement and in the Project Agreement of even date herewith between ADB and DAG;

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 modifications:

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

"Project Agreement" means the Project Agreement of even date herewith between ADB and Darkhan-Uul Aimag Government.

(b) The term "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 "Darkhan-Uul Aimag Government".

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

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

(b) “Consulting Services” means the services to be financed out of the proceeds of the Loan as described in paragraph 3 of Schedule 1 to this Loan Agreement;

(c) “Darkhan Us Suvag” means the Darkhan Us Suvag Joint Stock Corporation, the public utility service organization of DAG or any successor thereto;

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

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

(f) “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;

(g) “Indigenous Peoples Plan” or “IPP” means, if applicable, the indigenous peoples plan for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(h) “Indigenous Peoples Safeguards” means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;

(i) “Initial Environmental Examination” or “IEE” means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

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

(k) “Land Acquisition and Resettlement Plan” or “LARP” means the resettlement plan for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(l) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2015, as amended from time to time);

(m) “PAM” means the project administration manual for the Project dated 10 November 2014 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;

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

(o) "Procurement Plan" means the procurement plan for the Project dated 10 November 2014 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;

(p) "Project Executing Agency" means the MCUD or any successor thereto acceptable to ADB;

(q) "Project Implementing Agency" means DAG or any successor thereto acceptable to ADB;

(r) "PMU" means the Project management unit, established under the Project Executing Agency responsible for overall implementation, management and oversight of the Project;

(s) "PMU Darkhan office" or "PMUD" means the PMU branch office located in Darkhan *Soum* (city);

(t) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);

(u) "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, the LARP and the IPP (as applicable), including any corrective and preventative actions;

(v) "Social Action Plan" or "SAP" means the social action plan for the Project to facilitate continued consultation and participation of the local community, agreed between the Borrower and ADB and set forth in the PAM.

(w) "Subsidiary Agreement" means the agreement or agreements entered into between the Borrower and DAG for the purposes of relending the proceeds of (a) this Loan as referred to in Section 3.01 of this Loan Agreement and (b) the OCR Loan as specified in Section 3.01 of the Ordinary Operations Loan Agreement; and

(x) "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 six million one hundred fifty-nine thousand Special Drawing Rights (SDR6,159,000).

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 semi-annually on 15 February and 15 August 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 DAG under a Subsidiary Agreement upon terms and conditions satisfactory to ADB.

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

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

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

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

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

- (a) Goods which are produced in and supplied from and Works and Consulting Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and
- (b) Goods, Works and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2019 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 and the Project Agreement.

Section 4.02. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.03. (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(s) 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 4.04. The Borrower shall take all actions which shall be necessary on its part to enable DAG 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 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 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: if the event specified in Section 5.01 of this Loan Agreement 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. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

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

Ministry of Finance
Government Building 2
S. Danzan Street 5/1
Ulaanbaatar 15160
Mongolia

Facsimile Number:

(976) 11-320247

For ADB

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

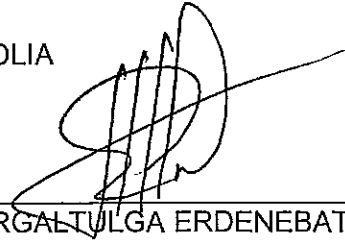
Facsimile Numbers:

(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

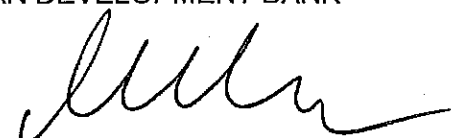
By



JARGALTULGA ERDENEBAT
Minister
Ministry of Finance

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 improve the system of wastewater collection and treatment for domestic and industrial users in Darkhan *Soum* (city).
2. The Project shall comprise the following outputs in Darkhan *Soum* (city):
 - (a) Output 1: Improved wastewater treatment plant. Modern wastewater treatment plant through structural renovation of components of the existing facility that are structurally sound, on site new construction of the other components and installation of new equipment throughout the facility and a new, effective and energy-efficient treatment process will be adopted, suitable for the cold climate and meeting national and international effluent standards;
 - (b) Output 2: Rehabilitated pumping stations and sewer pipes. Improved wastewater collection system through replacement of dilapidated sewer pipes complementing earlier investment programs of sewer network rehabilitation by the Borrower and two existing pumping stations will be structurally renovated and fully and newly equipped ensuring delivery of the wastewater to treatment plant at higher energy efficiency; and
 - (c) Output 3: Project management support and capacity development. Provision of expert support for project management, institutional enhancement and capacity development in utility management, operation, service provision, emergency preparedness and response and detailed technical design and construction supervision; strengthening of PMU capacity and policy dialogue on water and wastewater tariff reform, sanitation improvements and solid waste management.
3. The Project includes the provision of Consulting Services for Output 3 described above.
4. The Project is expected to be completed by 31 December 2018.

SCHEDULE 2
Amortization Schedule
(Darkhan Wastewater Management Project)

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights) *
15 February 2020	153,975
15 August 2020	153,975
15 February 2021	153,975
15 August 2021	153,975
15 February 2022	153,975
15 August 2022	153,975
15 February 2023	153,975
15 August 2023	153,975
15 February 2024	153,975
15 August 2024	153,975
15 February 2025	153,975
15 August 2025	153,975
15 February 2026	153,975
15 August 2026	153,975
15 February 2027	153,975
15 August 2027	153,975
15 February 2028	153,975
15 August 2028	153,975
15 February 2029	153,975
15 August 2029	153,975
15 February 2030	153,975
15 August 2030	153,975
15 February 2031	153,975
15 August 2031	153,975
15 February 2032	153,975
15 August 2032	153,975
15 February 2033	153,975
15 August 2033	153,975
15 February 2034	153,975
15 August 2034	153,975
15 February 2035	153,975
15 August 2035	153,975
15 February 2036	153,975
15 August 2036	153,975

* 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 February 2037	153,975
15 August 2037	153,975
15 February 2038	153,975
15 August 2038	153,975
15 February 2039	153,975
15 August 2039	153,975
Total	6,159,000

* 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.

Reallocation

3. 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

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

Condition for Withdrawals from Loan Account

5. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account until the Subsidiary 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 DAG, and is legally binding upon the parties thereto in accordance with its terms.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Darkhan Wastewater Management Project)			
Number	Item	Total Amount Allocated for ADB Financing (SDR)	Percentage and Basis for Withdrawal from the Loan Account
		Category	
1	Wastewater Treatment Plant**	5,961,000	100% of total expenditure claimed*
2	Interest	198,000	100% of total amount due
	Total	6,159,000	

* Exclusive of taxes and duties imposed within the territory of the Borrower, and exclusive of costs for land acquisition and resettlement. All taxes and duties are financed in form of cash contribution by the Borrower.

** Includes Wastewater Treatment Plant contract package in plant: design, supply and install modality. This category will be financed by both the OCR and ADF loans. ADF loan will be front-loaded, which means that the ADF loan proceeds will finance 100% of this category for all first payments until loan proceeds are fully utilized. OCR will finance 100% of this category once ADF proceeds have been fully utilized.

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.

Conditions for Award of Contract

7. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that no Works contracts shall be awarded until:
 - (a) the Borrower's Ministry of Environment and Green Development has granted the final approval of the Detailed Environmental Impact Assessment (as applicable); and

- (b) the relevant provisions from the EMP are incorporated into the Works contract.

8. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that no Works contract shall be awarded which involves involuntary resettlement impacts until the Borrower has prepared and submitted to ADB the final LARP based on the Project's detailed design, and obtained ADB's clearance of such LARP.

Consulting Services

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

10. The Borrower shall recruit the individual consultants for PMU support in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

11. (a) The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to 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 and shall cause the Project Executing Agency and the Project Implementing Agency to 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.

12. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to 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

13. Contracts procured under (i) international competitive bidding procedures for Works, Goods and plant, (ii) national competitive bidding procedures for Works and Goods and (iii) 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; Safeguards; and Other Matters

Implementation Arrangements

1. The Borrower and the Project Executing Agency 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.

Project Management Unit (PMU)

2. The Borrower shall ensure that the Project Executing Agency establishes a PMU to manage the Project which shall report to both the MCUD and DAG.

3. The PMU shall be comprised of sufficient number of full-time professional experts and support staff with adequate capacity to manage and carry out the day-to-day implementation of the Project. Within six (6) months of the Effective Date, the Borrower shall ensure that the PMU shall be adequately trained on governance, financial management and procurement to effectively carry out the Project.

Counterpart Support

3. The Borrower shall ensure that counterpart funds necessary for the Project are provided on a timely basis, and in particular for the financing of all taxes and duties. The Borrower shall further ensure that additional counterpart funding is available to cover any shortfalls that may occur during Project implementation.

4. The Borrower shall ensure that the Project Implementing Agency provide on a timely basis, the counterpart funds necessary (a) for land acquisition and resettlement costs and (b) to sustain the operation and maintenance costs of wastewater management services and related Project facilities in sound and functional order during and after Project completion in the event that there is insufficient collection of water supply and wastewater tariff.

Cost Recovery and Tariff Reform

5. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that (a) water supply and wastewater tariff for all users are restructured to recover all investment and operation and management costs associated with wastewater management services, subject to the relevant approvals of the independent agencies responsible for restructuring of the water and sanitation tariffs; (b) the Darkhan Us Suvag undertakes bi-annual reviews of tariff and fees; (c) no entity receiving water supply services is exempted from payment of the tariff, or excused for delays in payments without penalty; and (d) relevant reviews and consultations are conducted on the impact of increase(s) of water and sanitation tariff on the poor taking into account the ability of consumers, particularly vulnerable people, to pay for such increases and provide a cross-subsidy and/or another form of assistance in the event the increase(s) in water and sanitation tariff is unaffordable to the poor and vulnerable people.

Emergency Preparedness and Response

6. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure (a) through regular compliance monitoring that industries discharging industrial wastewater to the public sewer network meet the relevant national discharge standards, and that the monitoring results are reported to ADB in the annual environment monitoring reports; and (b) an emergency preparedness and response plan is developed for the wastewater treatment plant, including (but not limited to) the connection of critical units to a standby generator in case of power shutdown.

Wastewater Treatment Sludge

7. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that the sludge drying beds at the wastewater treatment plant under the Project will be properly designed for air-drying with leachate collection, and that sampling tests are carried out for the sludge from the wastewater treatment plant on a quarterly basis until approval of the Project completion report to determine its suitability, through compliance with the Borrower's applicable standards for either disposal to a sanitary landfill or for beneficial use (urban landscaping).

Avoidance of Damage to Wastewater Treatment Process Due to Potential Toxic Industrial Effluents

8. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that any damage to the wastewater treatment process from discharge of potentially toxic wastewater by new and existing industries in Darkhan-Uul Aimag shall be avoided through (a) enforcement of relevant local laws requiring only allowable limits of industrial wastewater composition before letting effluents into the central wastewater system; (b) support of policy mechanisms to enable industries with the development of their wastewater pre-treatment facilities; and (c) support of Darkhan Uu Suvag in developing mechanisms to effectively monitor industrial wastewater composition before it enters the public sewer system, establishing emergency measure to enable toxic flows to be diverted, stored and properly treated and disposed avoiding environmental impacts so they do not enter the sewer system and advising existing and new industries on optimal technology solutions for their respective processes in case of potential toxic effluents.

Environment

10. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency 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; and (c) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions (i) set forth in a Safeguards Monitoring Report, or (ii) which are subsequently agreed between ADB and the Borrower.

Land Acquisition and Involuntary Resettlement

11. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that all land and all rights-of-way required for the Project are made available to the Works contractor in a manner and within timeframes compliant with the LARP and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; and (c) all measures and requirements set forth in the LARP, and any corrective or preventative actions (i) set forth in the Safeguards Monitoring Report, or (ii) subsequently agreed between ADB and the Borrower.

12. Without limiting the application of the Involuntary Resettlement Safeguards or the LARP, the Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that no physical or economic displacement takes place in connection with the Project until compensation and other entitlements have been provided to the displaced persons under the Involuntary Resettlement Safeguards as described in and in accordance with the LARP.

Indigenous Peoples

13. The Borrower shall ensure that the Project shall not have any adverse impact on indigenous peoples, within the meaning of the SPS. If any impact is anticipated, the Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that an IPP is prepared in accordance with the Indigenous Peoples Safeguards and take all steps required to ensure that the Project complies with and is carried out in accordance with all applicable laws and regulations of the Borrower, the Indigenous Peoples Safeguards and such IPP.

Human and Financial Resources to Implement Safeguards Requirements

14. The Borrower shall make available and shall cause the Project Executing Agency and the Project Implementing Agency to make available necessary budgetary and human resources to fully implement the EMP, the LARP and the IPP, if applicable.

Safeguards-Related Provisions in Bidding Documents and Works Contracts

15. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE, the EMP, the LARP and IPP, if applicable (to the extent they concern impacts on the respective affected people under the Environmental Safeguards, the Involuntary Resettlement Safeguards and the Indigenous Peoples Safeguards, if applicable, during construction), and any corrective or preventative actions set forth in (i) a Safeguards Monitoring Report, or (ii) subsequently agreed between ADB and the Borrower;

- (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, the LARP and the IPP, if any;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

16. The Borrower shall do the following and shall cause the Project Executing Agency and the Project Implementing Agency to do the following:

- (a) submit Safeguards Monitoring Reports to ADB
 - (i) in respect of implementation of and compliance with Environmental Safeguards and the EMP, quarterly during construction and the implementation of the Project and the EMP, and thereafter annually during operation, until the issuance of ADB's Project completion report unless a longer period is agreed in the EMP; and
 - (ii) in respect of implementation of and compliance with Involuntary Resettlement Safeguards and Indigenous Peoples Safeguards, if applicable, and of the LARP and IPP, if applicable, semi-annually during the implementation of the Project, the LARP and the IPP until the issuance of ADB's Project completion report unless a longer period is agreed in the LARP and/or IPP, if applicable

and disclose relevant information from such reports to the respective affected people under the Environmental Safeguards, the Involuntary Resettlement Safeguards and the Indigenous Peoples Safeguards (if applicable) 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, the LARP and the IPP, if

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, the LARP or the IPP, if applicable, promptly after becoming aware of the breach.

Prohibited List of Investments

17. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to 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 and Health

18. The Borrower shall ensure that the Project Executing Agency, the Project Implementing Agency, PMU, PMUD and contractors and service providers comply with all applicable labor laws of the Government, including prioritization of local people for employment, prohibition of child and forced labor, give equal pay for equal work regardless of gender, ethnicity or social group, provide written contracts, and disseminate information on sexually transmitted diseases (including HIV/AIDS) and human trafficking to sub-contractors/employees and local communities surrounding the Project construction sites and collaborate with ADB in the implementation of awareness activities under the Project. Furthermore, the Borrower shall ensure that a monitoring system acceptable to ADB is established for compliance with all applicable labor laws of the Government within six (6) months of the Effectiveness Date.

Gender and Development

19. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that the principles of gender equity aimed at increasing Project benefits and impacts on women in the Project area consistent with ADB's Policy on Gender and Development (1998) are followed during implementation of the Project, including (a) equal pay to men and women for work of equal value; (b) enabling working conditions for women workers; and (c) taking necessary actions to encourage women living in the Project area to participate in the design and implementation of Project activities.

Social Action Plan

20. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that the Social Action Plan is complied with during Project implementation, including (i) public awareness program on wastewater sanitation and public health issues; (ii) public hearing on wastewater tariff increase; and (iii) targets for employment of local labor, women and the poor during construction and operation, all as set forth in the PAM. The PMUD shall ensure that the Social Action Plan is implemented and that achievement of targets and objectives are monitored and updated annually and submitted to ADB.

Governance and Anti-Corruption

21. The Borrower, the Project Executing Agency, the Project Implementing Agency, PMU and PMUD 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.

22. The Borrower, the Project Executing Agency, the Project Implementing Agency, PMU and PMUD 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.

Grievance Redress Mechanism

23. The Borrower shall ensure and shall cause the Project Executing Agency and the Project Implementing Agency to ensure that a joint safeguards grievance redress mechanism acceptable to ADB is established in accordance with the provisions of the EMP and LARP at the PMUD, within the timeframes specified in the relevant EMP and LARP, to consider safeguards complaints.