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LOAN NUMBER 3413-IND

LOAN AGREEMENT  
(Ordinary Operations)

(Kolkata Environmental Improvement Investment Program – Project 2)

between

INDIA

and

ASIAN DEVELOPMENT BANK

DATED 21 NOVEMBER 2016

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IND 42266

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated 21 November 2016 between INDIA acting by its President ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

**WHEREAS**

(A) by a framework financing agreement dated 08 August 2013 between the Borrower and ADB, ADB has agreed to provide a multitranche financing to the Borrower for the purposes of financing projects under the Kolkata Environmental Improvement Investment Program ("Investment Program");

(B) by a periodic financing request dated 21 April 2016 submitted by the Borrower ("PFR"), 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 State of West Bengal ("State") acting through the Kolkata Municipal Corporation ("KMC"), and for this purpose the Borrower will make available to the State the proceeds of the Loan provided for herein upon terms and conditions mutually satisfactory to ADB and the Borrower; and

(D) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB on the one hand, and the State and KMC on the other hand.

NOW THEREFORE the parties hereto agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001 ("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 3.03 is deleted and the following is substituted therefor:

**Commitment Charge; Credit.**

(a) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(b) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the credit against the interest payable by the Borrower.

(b) Section 3.06 is deleted and the following is substituted therefor:

**Rebate.** (a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(c) Section 3.07 is deleted and the following is substituted therefor:

**Surcharge.** (a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

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 2 of Schedule 1 to this Loan Agreement;

(c) "EA" or "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means the State acting through KMC, or any successor thereto acceptable to ADB, that is responsible for carrying out the Project;

(d) "Environmental Assessment and Review Framework" or "EARF" means the environmental assessment and review framework for the Investment Program, including any update thereto, prepared and submitted by the Borrower through the EA and cleared by ADB, and incorporated by reference in the FFA;

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

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

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

(h) "FFA" means the framework financing agreement dated 08 August 2013 between ADB and the Borrower with respect to the Facility;

(i) "Financing Arrangements" means the arrangements between the Borrower and the State as per current policy of the Borrower, and acceptable to ADB;

- (j) "GAP" means the gender action plan;
- (k) "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;
- (l) "Initial Environmental Examination" or "IEE" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower through the State pursuant to the requirements set forth in the EARF and cleared by ADB;
- (m) "Investment Program" means the Kolkata Environmental Improvement Investment Program;
- (n) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;
- (o) "km" means kilometer;
- (p) "KMC" means Kolkata Municipal Corporation;
- (q) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);
- (r) "NRW" means nonrevenue water;
- (s) "PAM" means the project administration manual for the Project dated June 2016 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;
- (t) "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 21 April 2016;
- (u) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);
- (v) "Procurement Plan" means the procurement plan for the Project as agreed between the Borrower, the State and ADB, and included in the PAM, as also updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;
- (w) "Project facilities" means the facilities to be constructed and the Goods to be provided under the Project;
- (x) "Resettlement Framework" or "RF" means the resettlement framework for the Investment Program, including any update thereto, prepared and submitted by the Borrower through the EA and cleared by ADB, and incorporated by reference in the FFA;

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

(z) "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;

(aa) "State" means the State of West Bengal;

(bb) "Subproject" means each subproject that is in compliance with the 'Selection Criteria and Approval Procedure for Subprojects' attached as Schedule 4 to the FFA, and as further described in the PAM; and

(cc) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

## ARTICLE II

### The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of two hundred million Dollars (\$200,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 15 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (b) 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 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of:

(a) LIBOR; and

(b) 0.60% as provided by Section 3.02 of the Loan Regulations less a credit of 0.10% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing 60 days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 February and 15 August in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to subsection (a) hereinabove that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

### **ARTICLE III**

#### **Use of Proceeds of the Loan**

Section 3.01. The Borrower shall make the proceeds of the Loan available to the EA upon terms and conditions mutually agreeable to ADB and the Borrower, and shall cause the EA 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 by the EA, 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. 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 3.04. Except as ADB may otherwise agree, the Borrower shall cause or cause the EA to ensure all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 30 April 2022 or such other date as may from time to time be agreed between the Borrower and ADB.

## ARTICLE IV

### Particular Covenants

Section 4.01. (a) The Borrower shall cause the Project to be carried out by the EA with due diligence and efficiency and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed by the EA, all obligations set forth in Schedule 5 to this Loan Agreement and the Project Agreement.

Section 4.02. The Borrower shall make available, or cause to be made available by the State, promptly as needed, the funds, facilities, services, and other resources, as required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 4.03. The Borrower shall ensure, or cause the State to ensure, that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.04. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.05. ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

Section 4.06. In so far as it relates to the Project, the Borrower shall cause the State to take all actions which shall be necessary on its part to enable the EA 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 4.07. (a) In so far as it relates to the Project, the Borrower shall exercise its rights under the Financing Arrangements in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) In so far as it relates to the Project, no rights or obligations under the Financing Arrangements shall be assigned, amended, abrogated or waived without prior notice to ADB.

## **ARTICLE V**

### **Effectiveness**

Section 5.01. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

## **ARTICLE VI**

### **Miscellaneous**

Section 6.01. The Secretary, Additional Secretary, Joint Secretary, Director, or Deputy Secretary, in the Department of Economic Affairs of the Ministry of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

#### **For the Borrower**

The Secretary to the Government of India  
Department of Economic Affairs  
Ministry of Finance  
North Block  
New Delhi – 110001  
India

Facsimile Number:

(91-11) 2309-2511.

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.

INDIA



By \_\_\_\_\_  
Raj Kumar  
Joint Secretary (MI)  
Department of Economic Affairs

ASIAN DEVELOPMENT BANK



By \_\_\_\_\_  
M. Teresa Kho  
Country Director

## SCHEDULE 1

### Description of the Project

1. The objective of the Project is to have improved and climate resilient water supply, sewerage and drainage service and operational sustainability in selected service areas of KMC.
2. The Project shall comprise the following components that will also be assisted through provision of Consulting Services as applicable:

Component 1: Rehabilitate inefficient water supply assets. This includes:

- (a) Reducing nonrevenue water ("NRW") in KMC's service area to 25%;
- (b) Training 100 staff from KMC water supply department on NRW reduction;
- (c) Upgrading and operationalizing existing supervisory control and data acquisition ("SCADA") with data from bulk meters and pressure loggers from the district metering areas and production centres;
- (d) Establishing 16 additional customer service centres and one additional meter calibration and testing centre;
- (e) Constructing and/or rehabilitating 9 elevated and 2 ground level service reservoirs, 28 km of transmission mains and 300 km of distribution pipe network; and
- (f) Installing, monitoring, and maintaining at least 90,000 water (domestic) meters.

Component 2: Continue sewerage and drainage extension to peripheral areas. This includes:

- (a) Connecting at least 83,400 additional households to sewerage network;
- (b) Constructing at least 128 km of additional sewer-drain pipes, including 3 km of large (over 1000millimeter diameter) sewer-drain pipes through micro-tunnelling; and
- (c) Constructing 5 pumping stations and laying out approximately 6 km of pumping mains.

Component 3: Further develop financial and project management capacity. This includes:

- (a) Improving KMC's property tax collection efficiency ratio to 75%;
- (b) Implementing KMC's water loss policy roadmap;
- (c) Designing, installing and implementing early warning system for flood risk management and training at least 20 staff on its usage;
- (d) Completing KMC's capacity development on climate resilient infrastructure, land use planning, and disaster management;
- (e) Updating KMC's land use map to incorporate climate change principles; and

(f) Conducting additional 50 trainings to PMU staff on project implementation, sector best practices, ADB's policies and procedures.

3. The Project is expected to be completed by 31 October 2021.

**SCHEDULE 2****Amortization Schedule****(Kolkata Environmental Improvement Investment Program – Project 2)**

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

Date Payment Due	Installment Share (Expressed as a %)
15 February 2022	3.333333
15 August 2022	3.333333
15 February 2023	3.333333
15 August 2023	3.333333
15 February 2024	3.333333
15 August 2024	3.333333
15 February 2025	3.333333
15 August 2025	3.333333
15 February 2026	3.333333
15 August 2026	3.333333
15 February 2027	3.333333
15 August 2027	3.333333
15 February 2028	3.333333
15 August 2028	3.333333
15 February 2029	3.333333
15 August 2029	3.333333
15 February 2030	3.333333
15 August 2030	3.333333
15 February 2031	3.333333
15 August 2031	3.333333
15 February 2032	3.333333
15 August 2032	3.333333
15 February 2033	3.333333
15 August 2033	3.333333
15 February 2034	3.333333
15 August 2034	3.333333
15 February 2035	3.333333
15 August 2035	3.333333

Date Payment Due	Installment Share (Expressed as a %)
15 February 2036	3.333333
15 August 2036	3.333343
<b>Total</b>	<b>100.000000</b>

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (a) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (b) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

**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, in consultation with and by notice to the Borrower and the EA, (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, in consultation with and by notice to the Borrower and the EA, 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, and detailed arrangements agreed upon between ADB and the Borrower.

Retroactive Financing

5. Withdrawals from the Loan Account may be made to finance eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Kolkata Environmental Improvement Investment Program – Project 2)</b>			
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (\$) Category</b>	<b>Basis for Withdrawal from the Loan Account</b>
1	Civil Works, Goods and Others	167,210,000	74% of total expenditure claimed
2	Equipment and Furniture	13,450,000	97% of total expenditure claimed
3	Consulting Services and Capacity Building	6,120,000	87% of total expenditure claimed
4	Trainings and Workshops	100,000	100% of total expenditure claimed
5	Project Management- Recurrent Costs	1,000,000	18% of total expenditure claimed
6	Unallocated	12,120,000	
	<b>Total</b>	<b>200,000,000</b>	



**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. Except as ADB may otherwise agree, Goods and Works shall be procured and Consulting Services shall be selected and engaged only on the basis of the procurement methods and the selection methods set forth below. These methods are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower and EA may only modify the procurement methods and the selection methods or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.
3. 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

4. Goods and Works shall be procured on the basis of the methods of procurement set forth below:
  - (a) International Competitive Bidding; and
  - (b) National Competitive Bidding.

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 State's standard bidding documents and procurement procedures, used for national competitive bidding (civil works / goods) as in use by the State were reviewed by ADB. These were found consistent with ADB's requirements, and shall apply to the Project. The State shall submit any modifications to such standard bidding documents and procurement procedures to ADB, together with justification, for ADB's prior approval and incorporation in the Procurement Plan and use under the national competitive bidding.

Conditions for Award of Contract

7. The Borrower shall ensure, or cause the EA to ensure, that no Works contract is awarded for a Subproject which involves environmental impacts until the EA has incorporated the relevant provisions from the EMP into the Works contract.

8. The Borrower shall ensure, or cause the EA to ensure, that no commencement of Works is allowed under any Works contract under any Subproject which involves environmental impacts and requires environmental clearances, until the EA has obtained the final approval of (a) the IEE from ADB; and (b) environmental clearance, including approval of the environmental assessment report, from the relevant environment authority of the Borrower and the State.

9. The Borrower shall ensure, or cause the EA to ensure, that no Works contract is awarded for a Subproject which involves involuntary resettlement impacts until the Borrower through the EA has prepared and submitted to ADB the final RP for such Subproject based on the Subproject's detailed design, and obtained ADB's clearance of such RP.

#### Consulting Services

10. The EA shall apply Quality- and Cost-Based Selection for Consulting Services.

#### Industrial or Intellectual Property Rights

11. (a) The EA 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 EA 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.

12. The EA 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

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

**SCHEDULE 5****Execution of Project; Financial Matters**Implementation Arrangements

1. The Borrower, State and the EA 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, the State, EA and ADB. In the event of any discrepancy between the PAM and this Loan Agreement and the Project Agreement, the provisions of this Loan Agreement and the Project Agreement shall prevail.

2. (a) The EA shall ensure that towards smooth implementation of the Project, grievances if any from stakeholders relating to any Project implementation or use of funds are addressed effectively and efficiently.

(b) The Borrower shall ensure that State and the EA comply with all the requirements and obligations on their part as included in this Loan Agreement and the Project Agreement to meet the objectives of the Project in a timely and efficient manner.

3. The State shall ensure that the Steering Committee established for the Project meets at least twice a year, and the Special Committee for Water Loss Management, established under Project 1 (consistent with paragraph 4 of Schedule 5 under Loan Agreement for Loan No. 3053), shall continue for the Project with the same mandate.

Counterpart Funds

4. The State shall make available the Loan proceeds to KMC under appropriate arrangements acceptable to ADB, and ensure:

- (a) sufficient counterpart funds are allocated from its budget for each fiscal year, in a timely manner, for the efficient implementation of the Project;
- (b) adequate funds towards operations and maintenance of the Project facilities, through budgetary allocations or other means, to be provided to KMC's Water Supply Department and Sewerage and Drainage Department, during and after the Subprojects' completion; and
- (c) In addition to the foregoing, the State shall ensure that KMC has sufficient funds to satisfy its liabilities arising from any Works, Goods and/or Consulting Services contract.

Subprojects Implementation

5. The EA shall ensure that the Subprojects are evaluated and selected in accordance with the criteria set out in the 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 five years from the date of the Project completion report for the Project.

### Safeguards

#### Environment

6. The Borrower shall ensure, or cause the EA to ensure, that the preparation, design, construction, implementation, operation and decommissioning of the Project, and all Subprojects' facilities comply with (a) all applicable laws and regulations of the Borrower and the State 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

7. The Borrower shall ensure, or cause the EA to ensure, that all land and all rights-of-way required for the Project, and all Project/Subproject facilities are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower and the State 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.

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

9. The Borrower shall ensure, or cause the EA to ensure, that all necessary budgetary and human resources to fully implement the EMP and RP, as required, are made available.

#### Indigenous Peoples

10. The Borrower shall ensure, or cause the EA to ensure, that the Project does not involve any indigenous peoples risks or impacts within the meaning of the SPS. In the event that the Project does have any such impact, the Borrower shall take, or cause the EA to take, all steps required to ensure that the Project complies with all applicable laws and regulations of the Borrower and the State and with the SPS.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

11. The Borrower shall ensure, or cause the EA 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 out in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide EA with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP, or the 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

12. The Borrower shall do, or cause the EA to ensure, 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 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 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

13. The Borrower shall cause EA to ensure that no proceeds of the Loan under the Project are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor Standards

14. The EA shall ensure that Works contracts under the Project follow all applicable labor laws of the Borrower and the State 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 shall also include clauses for termination in case of any breach of the stated provisions by the contractors.

Gender

15. The EA shall ensure that (a) the GAP, referred in the PAM is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for implementation of the GAP; and (d) progress on implementation of the GAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

Communications and Participation

16. The EA shall ensure that the Project is undertaken in conformity with the communication strategy as agreed between ADB, the Borrower, State and the EA and referred in the PAM.

Procurement

17. The EA shall announce the Project and business opportunities associated with the Project on its website. The website shall disclose the following information in relation to goods and services procured for the Project and Subprojects: (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. In accordance with the Procurement Guidelines, the published information for International Competitive Bidding contracts shall also include the bid prices as read out at bid opening, the reasons for rejection of unsuccessful bidders, and the duration of the awarded contract.

Governance and Anticorruption

18. The Borrower, the State, and EA shall comply with ADB's Anticorruption Policy (1998, as amended to date) and (a) shall ensure that the anticorruption provisions acceptable to ADB, the Borrower, the State and EA are included in all bidding documents and contracts financed by ADB in connection with the Project, including provisions specifying

the right of ADB to review and examine the records and accounts of the State and EA and all contractors, suppliers, consultants, and other service providers as they relate to the Subprojects and the Project, and as included in the PAM; (b) shall allow and assist ADB's representatives to carry out random spot checks on the work in progress and utilization of funds for the Project; (c) 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 (d) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation, and as included in the PAM.

#### Reform Measures

19. The EA shall implement the reform activities set forth in table 10 of Schedule 1 to the FFA ("Challenges, Approaches and Reforms") in a timely manner as indicated in greater detail in the said table towards (a) 24-hour continuous water supply at 100% coverage; (b) increasing service coverage of the sewerage; and (c) finance investment from surplus in dedicated account.

20. The EA shall undertake on a timely basis the reform measures stipulated in paragraph 5 of Schedule 6 to the FFA with respect to (a) Project implementation (water); (b) Project implementation (sewerage); (c) cost recovery; (d) institutional reforms; (e) sustainability enhancement; and (f) geographic information system.

#### Undertakings

21. The Borrower, the State and EA shall carry out the relevant undertakings included in Schedule 6 to the FFA on a timely basis.

#### Financial Improvement

22. KMC shall (a) implement the area-based property tax by the end of fiscal year 2017; (b) complete and update its property mapping on geographical information system platform by July 2018; and (c) improve its property tax bill collection efficiency ratio to 75% by the end of fiscal year 2019. For purposes of this subparagraph (b), the bill collection efficiency ratio is calculated as: current collection divided by total current demand raised (less litigated demand).

#### Water Loss Policy

23. KMC shall, by the end of fiscal year 2017 approve and implement the water loss policy, in the form and substance acceptable to ADB, incorporating agreed reforms and undertakings set forth in the FFA.

#### Treatment Capacity

24. KMC shall ensure that all the newly constructed sewerage and drainage networks established under Component 2 of the Project, as described in Schedule 1, will have adequate treatment capacity with improved sewage treatment plants and sufficient drainage canals. KMC shall ensure that adequate funds towards operations and maintenance of the same are provided in a timely manner during and after the Project's completion.

Operations and Maintenance

25. KMC shall recover at least 70% of its water supply operations and maintenance cost from its water tariff and property tax collections by the end of fiscal year 2019.