

LOAN NUMBER _____ - IND

LOAN AGREEMENT
(Ordinary Operations)

(Rajasthan Urban Sector Development Investment Program – Project 2)

between

INDIA

and

ASIAN DEVELOPMENT BANK

DATED _____

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated _____ between India, acting by its President (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called 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) the Project will be carried out by the State of Rajasthan (hereinafter called the State) and for this purpose the Borrower will make available to the State the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(C) 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 and the State;

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, 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 thereof (said Ordinary Operations Loan Regulations as so modified being hereinafter called the Loan Regulations):

(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 amount of the credit against the interest payable by the Borrower.

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

(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:

(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, unless the context otherwise requires, the several terms defined in the Loan Regulations have the respective meanings therein set forth, and the following additional terms have the following meanings:

- (a) "BOT" means build-operate-transfer;
- (b) "CLC" means the city level committee in the State, chaired by the district collectors, with members comprising members of Parliament, members of legislative assembly; mayor; chairman municipal council; vice-chairman, municipal council; chairman/secretary, urban improvement trust; superintending engineer, PHED; superintending engineer, PWD; commissioner, municipal council; principal medical officer, Medical and Health; senior town planner, town planning department; superintending engineer, PIU (as appointed under ADB Loan 1647, and further continued under ADB Loan 2366); and representatives of local non-governmental organizations and community-based organizations;
- (c) "CLIP" means the City Level Infrastructure Plan that identifies the gaps between current and target levels of urban infrastructure, estimates the interventions required to fill the gaps and proposes Subprojects to address these;
- (d) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2007, as amended from time to time);
- (e) "DSCs" means the design and supervision consultants;
- (f) "EARF" means the Environmental Assessment and Review Framework as agreed between the Borrower, the State, and ADB and attached under Schedule 5 to the FFA;
- (g) "EIA" means the Environment Impact Assessment;
- (h) "EMP" means Environment Management Plan as agreed between the Borrower, the State and ADB;
- (i) "Executing Agency" or "EA" for the purposes of the Loan Regulations means the State acting through the LSGD;
- (j) "FAM" means the Facility Administration Memorandum as agreed between ADB and the Borrower to facilitate implementation and processing of the Facility and related PFRs;
- (k) "FFA" means the Framework Financing Agreement dated 28 September 2007 between ADB and India, for the Facility;

(l) “Facility” means the multitranche financing facility provided by ADB to the Borrower in accordance with ADB’s policy under Pilot Financing Instruments and Modalities (R194-05, 4 August 2005);

(m) “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;

(n) “IEE” means Initial Environmental Examination;

(o) “IPDF” means the Indigenous Peoples Development Framework as agreed between the Borrower, State and ADB and attached under Schedule 5 to the FFA;

(p) “IPDP” means the Indigenous Peoples Development Plan as applicable for a Subproject and agreed between the Borrower, the State and ADB;

(q) “IPIU” means the Investment Program Implementation Unit which shall also be the Project implementation unit for the Project;

(r) “IPMC” means the Investment Program management consultants;

(s) “IPMU” means each of the Project Management Unit set up by the EA for purposes of the Project (as also for the Facility) that comprises staff seconded from the State line agencies/departments responsible for urban facilities and services, such as PHED, PWD, Tourism Department, etc, and the ULBs, which shall also be the Project management unit for the Project;

(t) “IPPMS” means the Investment Program Performance Management System;

(u) “Investment Program” means the entire program for the State urban development program as described under the FFA;

(v) “LSGD” means Local Self Government Department under the Urban Governance Department of the State;

(w) “O&M” means operations and maintenance;

(x) “PBMC” means performance-based management contract;

(y) “PFR” means the periodic financing request to be submitted by the Borrower for purposes of each loan under the Facility and for purposes of this Loan Agreement means the PFR dated 10 October 2008;

(z) “PHED” means the State’s Public Health Engineering Department;

(aa) “PPP” means public-private-partnership;

(bb) “PWD” means the State’s Public Works Department;

(cc) “Procurement Guidelines” means ADB’s Procurement Guidelines (2007, as amended from time to time);

(dd) “Procurement Plan” means the procurement plan for the Project as attached to the PFR and agreed between the Borrower, the State, and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(ee) “Project” means as generally defined under the Loan Regulations and referred to as Project 2 under the Investment Program for this Loan Agreement;

(ff) “RF” means the Resettlement Framework as agreed between the Borrower, State and ADB and attached under Schedule 5 to the FFA;

(gg) “RP” means the Resettlement Plan prepared or to be prepared as applicable for a Subproject and as agreed between the Borrower, State and ADB;

(hh) ‘SEC’ means the State level empowered committee that comprises the minister, Urban Development and Local Self Government (chairman); additional chief secretary, infrastructure (member); principal secretary, finance & plan (member); principal secretary, urban governance; principal secretary, art and culture (member); secretary, tourism (member); secretary, PHED (member); secretary, LSGD (member); and project director as appointed under ADB Loan 1647, and further continued under ADB Loan 2366 (member secretary);

(ii) “SEIA” means a summary EIA;

(jj) “SIEE” means a summary IEE;

(kk) “State” means the State of Rajasthan of the Borrower;

(ll) “Subproject’ means such proposal that is prepared by the EA under the Project as detailed in Schedule 1 to this Loan Agreement, in compliance with the selection criteria attached under Schedule 4 to the FFA;

(mm) “ULB” means the Urban Local Body as found eligible and included under the Project in accordance with the selection criteria listed under Schedule 4 to the FFA;

(nn) “WFC” means the work finalization committee comprising the principal secretary, urban governance (chairman); secretary, LSGD; project director (ADB loan 1647, as further continued under ADB Loan 2366); concerned district collectors; additional project director (as appointed under ADB Loan 1647, and further continued under ADB Loan 2366); director, local bodies; additional commissioner, tourism; director, archaeology; director, medical and health; chief engineer, PHED; chief engineer, PWD; chief town planner, town planning department; superintending engineer, PIU (concerned) as appointed under ADB Loan 1647, and further continued under ADB Loan 2366;

(oo) “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 one hundred and fifty million Dollars (\$150,000,000), 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 20 years, and a grace period as defined in paragraph (c) of this Section.

(c) The term "grace period" as used in paragraph (b) of this Section 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 LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations, less a credit of 0.40% 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 sixty (60) days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on _____ and _____ 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 paragraph (a) of this Section 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 State upon terms and conditions satisfactory to ADB and shall cause the State to apply such proceeds 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 Goods, Works and consulting services to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Goods, Works and consulting services shall be 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, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement. ADB may refuse to finance a contract where Goods, Works or consulting or services have 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 all Goods, Works and consulting services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 30 June 2014 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 State to carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental and urban development and public utility practices.

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

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

Section 4.03. The Borrower shall 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 take all action which shall be necessary on its part to enable the State to perform its obligations under the Project Agreement, including the establishment and maintenance of tariffs as stipulated in paragraph 10 of Schedule 5 to this Loan 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 financing arrangements to the State 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 financing arrangements to the State shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

ARTICLE V

Effectiveness

Section 5.01. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the 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) 2309-2477
(91-11) 2309-2511.

For ADB

Asian Development Bank
P.O. Box 789
0980 Manila
Philippines

Facsimile Numbers:
(632) 636-2444
(632) 636- 2305.

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 and to be delivered at the principal office of ADB, as of the day and year first above written.

INDIA

By _____
Authorized Representative

ASIAN DEVELOPMENT BANK

By _____

SCHEDULE 1**Description of the Project**

1. The Project comprises the following parts as described in greater detail in the PFR:

Part A: Urban Infrastructure Improvement

- (a) Water Supply: Improvements of the existing water supply systems and procurement of household meters in the selected Project ULBs.
- (b) Sewerage and sanitation: Construction of sewerage treatment plants, collection network, and outfalls, and procurement of sewer cleaning equipment in the selected Project ULBs.
- (c) Urban Drainage: Rehabilitation and construction of roadside drains in the selected Project ULBs.
- (d) Urban Transport: Rehabilitation and construction of bridges and road over bridges in the selected Project ULBs.

Part B: Capacity Development and Implementation Support

- (a) Capacity Building and Institutional Development: Consultancy support to identify gaps and measures, implementation of institutional restructuring and strengthening, and training of the Project ULBs and State-level service providers.
- (b) Implementation Support: Consultancy support for Project preparation and implementation, design and supervision, Community Action Participation Program, IPPMS, and incremental administration.

2. The Project is expected to be completed by 31 December 2013.

SCHEDULE 2

Amortization Schedule (Rajasthan Urban Sector Development 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.

<u>Payment Due</u>	<u>Installment Share</u> [(Expressed as a %)]
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

Schedule 2

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: (i) 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 (ii) 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 Goods, Works, and consulting services to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table.

Percentages of ADB Financing

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

Taxes and Duties

3. No withdrawals from the Loan Account shall be made in respect of taxes and duties imposed within the territory of the Borrower.

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, in consultation with and notice to the Borrower and the State, (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 then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, in consultation with and notice to the Borrower and the State, reallocate such excess amount to any other Category.

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds for financing Goods, Works, and consulting services shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Imprest Account: Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, an imprest account at the Reserve Bank of India. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook, and detailed arrangements agreed upon between the Borrower and ADB. The initial amount to be deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure for the first six months of Project implementation, or (ii) the equivalent of ten (10) percent of the Loan amount.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures for the Project and to liquidate advances provided into the imprest account, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower, the State and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$100,000.

Retroactive Financing

7. Withdrawals from the Loan Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with items to be retroactively financed, subject to a maximum amount equivalent to 20 percent of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Rajasthan Urban Sector Development Investment Program – Project 2)				
COMPONENT				ADB FINANCING BASIS
Number	Item	Total Amount Allocated for ADB Financing (\$)		Percentage of ADB Financing from the Loan Account
		Component	Subcomponent	
1	Urban Infrastructure Improvement	101,300,000		
1A	Civil Works		94,100,000	72 percent of total expenditure claimed
1B	Equipment		4,500,000	72 percent of total expenditure claimed
1C	Resettlement		2,700,000	68 percent of total expenditure claimed
2	Capacity Development and Implementation Support	15,500,000		
2A	Incremental Administration		3,100,000	44 percent of total expenditure claimed
2B	Preparation and Implementation Assistance		10,200,000	100 percent of total expenditure claimed*
2C	Capacity and Institutional Development		2,200,000	100 percent of total expenditure claimed*
3	Unallocated	33,200,000		
3A	Physical Contingencies		11,000,000	
3B	Price Contingencies		22,200,000	
	Total	150,000,000		

*Exclusive of taxes and duties imposed within the territory of the Borrower.

SCHEDULE 4

Procurement of Goods and Works, and Consulting Services

A. General

1. All Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

B. Procurement for 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:

International Competitive Bidding
National Competitive Bidding
Limited International Bidding
Shopping

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.

4. Domestic Preference. The Borrower may allow the State to 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 and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

5. National Competitive Bidding. The State's standard bidding documents and procurement procedures, as used for National Competitive Bidding (civil works/goods) under the ongoing ADB Loan No. 1647 and further applicable to ADB Loan No. 2366, as reviewed by the ADB with the State and LSGD, and with certain modifications found consistent with ADB requirements shall apply as reflected in the Procurement Plan. Further modifications if any, together with justifications, shall be furnished to ADB by the State and LSGD through the Borrower, for ADB's prior approval; necessary provisions and detailed procedures for the Investment Program will be incorporated in the FAM.

C. Conditions for Award of Contract

6. The Borrower through the State shall cause the EA not to award any civil works contract or commence works under any civil works contracts (as applicable) financed under the Loan until activities referred under paragraphs 12 to 15 of Schedule 5 to this Loan Agreement are complied with as applicable.

D. Selection of Consulting Services

7. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall through the State cause the EA to apply quality- and cost-based selection for selecting and engaging consulting services.

8. The Borrower shall through the State cause the EA to apply the following methods for selecting and engaging the specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

Least-Cost Selection (LCS)
Consultants' Qualifications Selection (CQS)
Quality Based selection (QBS)
Single Source Selection (SSS)

E. Industrial or Intellectual Property Rights

9. (a) The Borrower shall through the State cause the EA 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 through the State cause the EA 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.

10. The Borrower shall through the State cause the EA 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.

F. ADB's Review of Procurement Decisions

11. All 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, the State, and ADB and set forth in the Procurement Plan.

SCHEDULE 5**Execution of Project and
Operation of Project Facilities**Execution and Committees

1. (a) The Executing Agency (EA) for the Project shall be the State acting through the LSGD.

(b) Towards compliance with the requirements of this Loan Agreement, the Borrower shall cause that (i) the State, and (ii) through the State the LSGD, and all departments, committees and agencies set up herein, undertake activities and respective responsibilities as set out in this Loan Agreement and related documents in a timely manner to achieve the objectives of the Project and the Facility.

2. (a) The EC as established by the State shall provide policy guidance and overall coordination across all the State agencies and ULBs, and take decisions on matters related to the Facility and the Project.

(b) The WFC as established by the State, shall be responsible for reviewing the Subproject appraisal reports for their final approval in accordance with the procedures set forth under schedule 4 to the FFA.

Implementation

3. (a) An IPMU as established and fully staffed by the EA that shall be the implementing agency (IA), shall be responsible for overall implementation and management of the Project. The IPMU shall be headed by a Project Director (PD). The PD shall be responsible for overall management of the Facility and the Project and coordination with and reporting to the EC, the State and ADB on the same.

(b) The IPMU, with the assistance of IMPC and DSCs, shall be responsible for detailed appraisal of Subprojects and ensure that these meet the selection criteria described in Schedule 4 of the FFA.

4. (a) Under the IPMU, IPIUs shall be established by the EA at the zonal and sub-division levels of the LSGD (in relation to selected Project ULBs) by no later than January 2009, and a full-time representative of the IPIU shall be appointed in each ULB. These IPIUs shall carry out daily implementation activities of the Project.

(b) The IPMU and IPIUs shall be assisted by the IPMC in managing the Project and assuring the technical quality of design and construction, and the DSCs in preparing the design documents, managing tendering of contractors and supervising the construction works.

Schedule 5

5. The CLCs as set up by the State, shall review Project activities, identify issues for improvement, and provide guidance to the IPIUs on actions to improve Project performance. In ULBs where water source augmentation Subprojects are proposed, representatives from State Department of Irrigation shall also be made members of the CLC; and wherever heritage and tourism Subprojects are proposed representatives from Archaeological Survey of India or State Department of Archaeology Museum (depending on appropriate jurisdiction), and State Department of Tourism shall be members of the CLC. The CLCs shall meet at least quarterly or more frequently, as required.

Funds

6. The State shall on-lend the Loan proceeds to the ULBs under appropriate arrangements acceptable to ADB, as also ensure that sufficient counterpart funds are made available from its budget for each fiscal year, in a timely manner, for the efficient implementation of the Project towards its contribution and those of the ULBs.

Subproject Selection and Implementation

7. (a) The EA shall ensure that all ULBs and Subprojects are selected and processed for approval, and implemented in accordance with the criteria and procedures included under Schedule 4 to the FFA, as agreeable to ADB, the Borrower and the State .

(b) The EA shall post the procurement documents, the criteria for Subproject selection and details of sanctioned contracts/Subprojects on the State's Investment Program office bulletin board and its website.

(c) The EA shall ensure that civil works for all Subprojects are synchronized with civil works for sewerage, water supply pipe laying, and drainage, as appropriate.

Additional conditions for commencement of civil works under Subprojects for water supply, urban transport and roads, urban drainage

8. Without limiting the generality of paragraph 6 of Schedule 4 to this Loan Agreement, following compliances shall apply to Subprojects as referred, prior to commencement of civil works under the Subprojects:

(a) In the case of water supply Subprojects - the related PHED/ULB shall have set up a separate accounting system for water supply and sewerage for the ULB.

(b) In the case of urban transport Subprojects - the concerned ULB shall have prepared a comprehensive citywide traffic and transportation plan.

(c) In the case of urban drainage Subprojects - the concerned ULB shall have prepared a city wide drainage master plan.

Institutional Reforms and Sustainability

9. The State shall ensure adequate funds towards O&M of the Project facilities through budgetary allocations or other means, to be provided to the IPMU, the appropriate ULB or line agency(ies) during and after Subproject(s) completion.

10. The EA shall ensure that for each ULB, the Institutional and Financial Improvement Action Plan, which includes water, sewerage, solid waste tariffs and infrastructure development tax (Table 2, Schedule 1 to the FFA) is endorsed and implemented on schedule.

11. (a) The EA shall ensure that the contractual documents under any PPP modality, in particular the extended O&M, BOT, or PBMC, as applicable, are provided to ADB for prior review and approval, for use under individual Subprojects.

(b) As realized under ADB Loan 2366, the Project shall continue to adopt extended operation and maintenance contracts for sewage treatment plants where operation and maintenance of swage treatment plant shall be undertaken by a private contractor for 5 years after construction completion as part of contract for construction. PPP for other urban sub-sectors and of other modalities shall be further explored and developed in collaboration with PPP cell established in the State under ADB TA 4890.

Other Subproject specific requirements

12. The EA shall ensure that

(a) if a Subproject contains augmentation of supply from surface sources that are under the mandate of the State Irrigation Department (ID), the ID shall be included in the relevant CLC and in all decisions regarding the Subproject proposal;

(b) in ULBs with proposed heritage and tourism subprojects, representatives from the Archaeological Survey of India and State Department of Tourism shall be made members of the CLC;

(c) prior to commencement of water supply Subprojects, the source shall be made secure for the ULBs; where possible, all proposed water supply/source augmentation shall be carried out from surface water sources; for all groundwater supply augmentation proposals, a comprehensive catchment-based water resource plan has been completed, supported by data, in consultation with all users/stakeholders, including the groundwater department of the Borrower and the State;

(d) prior to commencement of distribution network improvement works in water supply Subprojects for the towns, a detailed unaccounted for water (UFW) reduction program, including network maps/plans, showing where rehabilitation is required, has been prepared by the PHED, to be reviewed and approved by the relevant IPIU and CLC;

(e) 90% of water supply service coverage is achieved in selected Project ULBs within four years of the Effective Date;

Schedule 5

(f) 90% customer metering is achieved in the respective ULB within three years of the completion of water supply Subprojects in stated ULB;

(g) the PHED/ULB shall set up a separate accounting system for water supply and sewerage for the ULB prior to commencement of water supply Subproject in the ULB;

(h) the domestic waste is segregated from the industrial, medical and hazardous waste in the ULBs where solid waste management Subprojects are being implemented, which is to be treated separately as per the prescribed system in the Municipal Solid Wastes (Management and Handling) Rules, 2000, of the Borrower;

(i) for water supply, where, through the PHED or other State-level entities, the State is implementing the upstream and/or associated infrastructure works in parallel to a Subproject funded under this Project, the EA shall ensure that the associated works are implemented on schedule and within the scope indicated in the Subproject summary appraisal report submitted to ADB. An implementation progress report on the associated works shall be submitted semi-annually to ADB for information until their completion.

Safeguards and Social IssuesEnvironment

13. The EA shall ensure that:

(a) the Project is carried out and all Subproject facilities designed, constructed, operated, maintained, and monitored in compliance with the environmental laws and regulations of the Borrower, the State, ADB's Environment Policy (2002), and the EARF;

(b) Subprojects encroaching any National Park or its buffer zone shall not be included in the Project; however, Subprojects in or close to the wild life sanctuaries or any other environmentally sensitive areas may be allowed subject to the EA obtaining all statutory clearances;

(c) an IEE or EIA as required, including an EMP with budget identifying the cost of its implementation as incorporated in the related bid document if any, with adequate public consultation for each Subproject, in accordance with the EARF shall be submitted to ADB for review and approval before award of related contract. In case of any SEIA or SIEE for Subproject classified as A or B sensitive, this shall be subject to the 120 day public disclosure requirement under ADB's Environment Policy (2002);

(d) all mitigation measures identified in the IEE, SIEE, EIA or SEIA and the related EMP, as applicable, for each Subproject, shall be incorporated in Subproject design, and carried out during construction, and O&M, and disclosed to stakeholders;

Schedule 5

(e) if there are any changes in specific locations or alignments of any Subproject facilities after completion of the process of IEE (or EIA) or due to detailed design or implementation that has an impact on the environmental assessment carried out thus far, then additional environmental assessment shall be carried out in accordance with ADB's Environment Policy (2002) and the EARF, and prior approval of ADB obtained before further physical implementation of the Subproject;

(f) all environmental clearances required by applicable laws, and regulations at Borrower, State, or local levels shall be obtained in a timely manner, prior to commencement of civil works for the relevant Subproject,

(g) semi-annual progress reports on the implementation of the EMPs, measures under the IEE/EIA, and the environmental monitoring shall be carried out as a part of Project implementation for review and disclosure in accordance with ADB's Public Communications Policy (2005), and

(h) all sewerage and sanitation Subprojects involving a sewage treatment plant under the Project shall include adequate effluent channels and a laboratory facility within the Subproject scope.

Land Acquisition, Resettlement

14. The EA shall:

(a) undertake the Project in accordance with the Borrower's and State laws and regulations, ADB's Policy on Involuntary Resettlement (1995) and the RF;

(b) ensure that to the extent possible, Subprojects will not require land acquisition or involuntary resettlement; however, if land acquisition and/or involuntary resettlement are required for any subproject; the EA shall ensure following:

- (i) a RP for the Subproject, acceptable to ADB is prepared, in accordance with applicable laws and regulations and the RF, and submitted to ADB for review and approval before award of related civil works contract proper consultation during preparation of the RP with the affected persons, as also disclosure of the RP to the affected persons including information on land acquisition and compensation process undertaken;
- (ii) all land, rights of way and other land-related rights required for the Subproject are acquired or made available;
- (iii) all affected persons are compensated in accordance with the agreed RP before commencement of civil works of the related subproject including any section-wise handover thereof, strictly in accordance with the stipulation in the related civil works contract. If during detailed design and implementation, any modification and/additional land acquisition or involuntary resettlement impacts are identified, the RP will be prepared (or modified if existing) in accordance with applicable laws and regulations and the RF and prior approval of ADB obtained before further implementation of RP;

Schedule 5

- (iv) ensure that efficient grievance redress mechanisms are in place in accordance with the related RP to assist affected persons resolve queries and complaints if any, in a timely manner;
- (v) ensure that all compensation at replacement value for acquired assets made to affected persons well in advance for them to make alternative arrangements, before commencement of civil works.

Indigenous Peoples

15. The EA shall ensure that if any impact is identified during planning, design, or implementation of any Subproject on indigenous peoples, that an IPDP or integration of specific actions for the indigenous people in the RP is prepared in accordance with ADB's Policy on Indigenous People (1998) and the IPDF and that the same is further (i) approved by ADB before award of related civil works contract, and (ii) implemented before commencement of related civil works contract. Any updation to the IPDP due to detailed designs or during implementation shall follow requirements similar to the RPs.

Other Social Issues

16. (a) The EA shall ensure that civil 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; (i) 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 (ii) follow and implement all statutory provisions on labor (including not employing or using children as labor, equal pay for equal work), health, safety, welfare, sanitation, and working conditions. Such contracts shall also include clauses for termination by the State/EA in case of any breach of the stated provisions by the contractors.

(b) If any Project related facilities are located within the premises of a public school, the EA shall construct and/or rehabilitate the existing toilet facilities with separate and adequate provision for female and male students.

Performance Monitoring and Evaluation; Reports

17. (a) In addition to the IPPMS in the process of being established for the Facility, the EA through IPMU shall ensure that within three months of the Effective Date, a project performance monitoring system will be established for the Project, satisfactory to ADB, including key impact and outcome indicators and associated assumptions with corresponding target dates. The IPPMS shall monitor and evaluate the performance of the Investment Program, Facility. The project performance report in respect of the Project will contribute to preparing the IPPMS. For Subprojects under PPP modalities, such as PBMC, or extended O&M contracts, if applicable, key performance indicators satisfactory to ADB will be developed during the preparation of requests for proposals and draft contract documents for each Subproject.

(b) Without limiting the generality of Section 2.08 of the Project Agreement the EA shall, after physical completion of the Facility, but in any event not later than three months thereafter or such later date as ADB may agree for this purpose, prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request on the Facility.

Review

18. Based on a review of quarterly progress reports provided under section 2.08 of the Project Agreement, ADB, Borrower and State representatives shall meet as required to discuss the progress of the Project, Facility and the Investment Program, any changes to implementation arrangements, or remedial measures required to be undertaken to achieve the overall objectives of specific Subprojects and components and of the overall Facility and Investment Program. In addition to regular reviews, including a midterm review for the Project, a detailed midterm review of the Facility will be undertaken by no later than February 2012. The midterm review shall include a detailed evaluation of the scope of the Facility, implementation arrangements, any outstanding issues, environment, resettlement and other safeguard issues, achievement of scheduled targets, contract management progress, and other issues, as appropriate.