
LOAN NUMBER 2226-IND

LOAN AGREEMENT
(Ordinary Operations)

(Kerala Sustainable Urban Development Project)

between

INDIA

and

ASIAN DEVELOPMENT BANK

DATED 8 December 2006

LAL:IND 32300

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 8 December 2006 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 Kerala (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, (said Ordinary Operations Loan Regulations being hereinafter called the Loan Regulations).

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) "CAPP" means the community awareness and public participation;

(b) "DSC" means the design and supervision consultants;

(c) "EARF" means the Environmental Assessment and Review Framework attached as Supplementary Appendix R to the RRP, that sets out the review and procedures to be followed in the assessment and review of environmental impacts if any, for subprojects developed under Part C of the Project;

- (d) "EC" means the State-level empowered committee to be established by the State;
- (e) "EMP" means the environment management plan as referred in the SIEE;
- (f) "IEE" means the initial environment examination, as referred in the SIEE, as may be further revised/updated following detailed designs of related Subprojects in the Project cities;
- (g) "IPDF" means the Indigenous Peoples Development Framework attached as Supplementary Appendix L to the RRP;
- (h) "KUDFC" means the Kerala Urban Development Finance Corporation;
- (i) "KWA" means the Kerala Water Authority;
- (j) "Kudumbashree" means the Poverty Eradication Mission established by the State to undertake poverty alleviation programs in the State;
- (k) "LSGUD" means the Local Self Government (Urban) Department of the State;
- (l) "MC" means a municipal corporation in any of the Project cities;
- (m) "NGO" means a non-government organization;
- (n) "NRW" means non-revenue water;
- (o) "O&M" means operations and maintenance;
- (p) "PIU" means each of the Project implementation unit to be established at city level under each MC;
- (q) "PMU" means the Project management unit to be established at State level in LSGUD;
- (r) "PPMS" means Project performance monitoring system;
- (s) "Part" each part of the Project as more fully described in Schedule 1 and the RRP;
- (t) "Project city or cities" means and include any of the cities of Kochi, Kollam, Kozhikode, Thiruvananthapuram, and Thrissur, as the context may require;
- (u) "RF" means the resettlement framework attached as Supplementary Appendix J to the RRP;
- (v) "RP" means a resettlement plan prepared for subprojects in accordance with the RF;

(w) "RRP" means the Report and Recommendation of the President to the Board of ADB for the Project;

(x) "Rupee" or "Rs" refer to the local currency of the Borrower;

(y) "SC" means city-level steering committee to be established by the State for each Project city;

(z) "SIEE" means the Summary Initial Environmental Examination, attached as Supplementary Appendix Q to the RRP;

(aa) "State" means the state of Kerala in the territory of the Borrower where the Project is to be implemented;

(bb) "TSU" means the Technical Support Unit to assist the PMU; and

(cc) "ULB" mean an urban local body situated in the State including in any of the Project cities, as the context may require.

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 and twenty one million and two hundred thousand dollars (\$221,200,000), 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 term of 25 years, including a grace period of 5 years, as provided 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.

Section 2.03. (a) The Borrower shall pay a commitment charge at the rate of three-fourths of one percent (0.75%) per annum. Such charge shall accrue on amounts of the Loan (less amounts withdrawn from time to time), during successive periods commencing sixty (60) days after the date of this Loan Agreement, as follows:

during the first twelve-month period, on \$ 33,180,000;
 during the second twelve-month period, on \$ 99,540,000;
 during the third twelve-month period, on \$ 188,020,000; and
 thereafter, on the full amount of the Loan.

(b) If any amount of the Loan is cancelled, the amount of each portion of the Loan stated in paragraph (a) of this Section shall be reduced in the same proportion as the cancellation bears to the full amount of the Loan before such cancellation.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 January and 15 July 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 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. (a) 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.

(b) The Borrower shall cause the State 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 goods and services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such goods and services and other items of expenditure 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 and services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 and Schedule 5 to this Loan Agreement. ADB may refuse to finance a contract where goods 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 and 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 2012 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 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 6 to this Loan Agreement.

Section 4.02. The Borrower shall make available to the State, promptly as needed and on terms and conditions acceptable to ADB, 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 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 pursuant to making the Loan proceeds available 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 shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

ARTICLE V

Effectiveness

Section 5.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 10.01(f) of the Loan Regulations: that the State shall have established the PMU and the PIUs for the five Project cities in accordance with paragraph 3(a) and 4(b) respectively of Schedule 6 to this Loan Agreement.

Section 5.02. 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. Any of the Secretary, Additional Secretary, Joint Secretary, 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

Cable Address:

ASIANBANK
MANILA

Telex Numbers:

29066 ADB PH (RCA)
42205 ADB PM (ITT)
63587 ADB PN (ETPI)

Facsimile Numbers:

(632) 636-2444
(632) 636-2335/2316.

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, month, and year first above written.

INDIA

By 

ARVIND MAYARAM
Joint Secretary
Department of Economic Affairs
(Authorized Representative)

ASIAN DEVELOPMENT BANK

By 

SHUNSO TSUKADA
Officer-In-Charge
India Resident Mission

SCHEDULE 1

Description of the Project

1. The objectives of the Project are to improve urban environment, economy, and living conditions for people living in the Project cities and ULBs under the Project. To this end, the Project will aim to support the State to (i) improve and expand urban infrastructure and services, (ii) enhance livelihoods, and (iii) improve urban management, planning, and financing capacity of the sector institutions especially the MCs for sustainable provision of urban infrastructure and services.

2. The Project comprises following Parts (as more fully described in the RRP):

Part A - Urban Infrastructure and Services Improvement. This Part will cover the rehabilitation, improvement, and expansion of the following municipal infrastructure services: (i) urban water supply, (ii) sewerage and sanitation, (iii) urban drainage, (iv) solid waste management, and (v) roads and transportation.

Part B - Urban Community Upgrading. This Part will target the interventions for poor communities through integrated interventions for basic infrastructure and services improvements and livelihood enhancement.

Part C – Local Government Infrastructure Development. This Part will provide the ULBs with assistance for subprojects for urban infrastructure in accordance with the subproject selection criteria and procedure as provided under Supplementary Appendix S to the RRP.

Part D – Support for Capacity Building and Project Management. This Part comprises capacity building activities to help facilitate sustainability of investments under the Project. This Part will also provide support for Project implementation activities to the PMU and the PIUs.

3. The Project is expected to be completed by 31 December 2011.

SCHEDULE 2

Amortization Schedule

(Kerala Sustainable Urban Development Project)

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.

Period	Payment Due	Installment Share (Expressed as a %)
1	15-Jan-2011	0.83
2	15-Jul-2011	0.87
3	15-Jan-2012	0.91
4	15-Jul-2012	0.96
5	15-Jan-2013	1.01
6	15-Jul-2013	1.06
7	15-Jan-2014	1.11
8	15-Jul-2014	1.16
9	15-Jan-2015	1.22
10	15-Jul-2015	1.28
11	15-Jan-2016	1.35
12	15-Jul-2016	1.42
13	15-Jan-2017	1.49
14	15-Jul-2017	1.56
15	15-Jan-2018	1.64
16	15-Jul-2018	1.72
17	15-Jan-2019	1.81
18	15-Jul-2019	1.90
19	15-Jan-2020	1.99
20	15-Jul-2020	2.09
21	15-Jan-2021	2.20
22	15-Jul-2021	2.31
23	15-Jan-2022	2.42
24	15-Jul-2022	2.54
25	15-Jan-2023	2.67
26	15-Jul-2023	2.80
27	15-Jan-2024	2.94
28	15-Jul-2024	3.09
29	15-Jan-2025	3.25

Schedule 2

Period	Payment Due	Installment Share (Expressed as a %)
30	15-Jul-2025	3.41
31	15-Jan-2026	3.58
32	15-Jul-2026	3.76
33	15-Jan-2027	3.94
34	15-Jul-2027	4.14
35	15-Jan-2028	4.35
36	15-Jul-2028	4.57
37	15-Jan-2029	4.79
38	15-Jul-2029	5.03
39	15-Jan-2030	5.29
40	15-Jul-2030	5.54
	Total:	<hr/> 100.00 <hr/>

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.

Schedule 2

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, services and other items 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 and reference to "Subcategory" or "Subcategories" in this Schedule is to a Subcategory or Subcategories of a Category.)

Percentages of Bank Financing

2. Except as ADB may otherwise agree, the items of the Categories and Subcategories 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.

Interest and Commitment Charge

3. The amount allocated to Category 6 is for financing interest and commitment charge on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charge.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Imprest Account, Second Generation Imprest Account, and Statement of Expenditures

5. (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 dated January 2001, and the Interim Guidelines for Disbursement Operations for LIBOR-Based Loan Products dated July 2002, both as amended from time to time, and detailed arrangements agreed upon between the Borrower and ADB. The initial amount to be deposited and thereafter to be maintained in the imprest account shall not exceed the equivalent of \$22,120,000 (i.e., 10% of the Loan) or the estimated expenditures for the next six months, whichever is lower.

(b) Except as ADB may otherwise agree, the Borrower may cause the State to establish immediately after the Effective Date, a Second Generation Imprest Account (SGIA) in a non-interest bearing commercial bank account. The Borrower shall pass on the Rupee equivalent of ADB's imprest advance as provided in clause (a) of this paragraph. The SGIA shall also be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook dated January 2001, and the Interim Guidelines for Disbursement Operations for LIBOR-Based Loan Products dated July 2002, both as amended from time to time, and detailed arrangements agreed upon between the Borrower and ADB. The initial amount to be deposited and thereafter to be maintained in the SGIA shall not exceed the equivalent of \$22,120,000 (i.e., 10% of the Loan) or the estimated expenditures for the next six months, whichever is lower.

(c) 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" dated January 2001, as amended from time to time and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$100,000.

Retroactive Financing

6. Withdrawals from the Loan Account may be made for reimbursement of reasonable expenditures, incurred under the Project not earlier than a maximum of 12 months prior to the date of this Agreement through to the Effective Date, in connection with items to be retroactively financed, subject to a maximum equivalent up to \$33,200,000 (i.e., 15 percent of the Loan amount).

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Kerala Sustainable Urban Development Project)				
CATEGORY				ADB FINANCING
Number	Item	Amount Allocated		Percentage and Basis for Withdrawal from the Loan Account
		\$		
		Category	Subcategory	
1	Civil Works	128,600,000		82 percent of total expenditure
2	Equipment, Materials, Vehicles, and Furniture	9,600,000		80 percent of total expenditure
	Local Training, Workshops, Surveys, and Studies	1,500,000		73 percent of total expenditure
3	Livelihood Promotion Programs	9,800,000		70 percent of total expenditure
4	Local Government Infrastructure Development	15,000,000		70 percent of total expenditure
5	Consulting Services and incremental administration costs	12,200,000		100 percent of total expenditure*
6	Interest and Commitment Charge	29,300,000		100 percent of amounts due
7	Unallocated	15,200,000		
	Total	221,200,000		

*Exclusive of local taxes.

SCHEDULE 4

Procurement

1. Except as ADB may otherwise agree, the procedures referred to in the following paragraphs of this Schedule shall apply in the procurement of goods and services to be financed out of the proceeds of the Loan. In this Schedule and the Attachment hereto, the term "goods" includes equipment and materials; the term "services" does not include consulting services.

2. Procurement of goods and services shall be subject to the provisions of the "Guidelines for Procurement under Asian Development Bank Loans" dated November 2004 (hereinafter called the Guidelines for Procurement), as amended from time to time, which have been furnished to the Borrower and the State.

3. Procurement of goods and services shall be made without any restriction against, or preference for, any particular supplier or contractor or any particular class of suppliers or contractors, except as otherwise provided in paragraph 6 below.

4. (a) Each civil works contract estimated to cost the equivalent of more than \$10,000,000 and each supply contract for equipment or materials estimated to cost the equivalent of more than \$1,000,000 shall be awarded on the basis of international competitive bidding as described in Chapter II of the Guidelines for Procurement. Bidders for civil works contracts estimated to cost the equivalent of more than \$10,000,000 shall be prequalified before bidding.

(b) For contracts to be awarded on the basis of international competitive bidding, there shall be submitted to ADB, as soon as possible, and in any event not later than 90 days before the issuance of either the first prequalification invitation or the first invitation to bid for the Project, a General Procurement Notice (which ADB will arrange to publish separately) in such form and detail and containing such information as ADB shall reasonably request. ADB shall be provided the necessary information to update such General Procurement Notice annually as long as any goods and works remain to be procured on the basis of international competitive bidding.

(c) For contracts to be awarded on the basis of international competitive bidding, procurement actions shall be subject to review by ADB in accordance with the procedures set forth in Chapter IV of the Guidelines for Procurement. Each draft prequalification invitation and each draft invitation to bid, to be submitted to ADB for approval under such procedures, shall reach ADB at least 21 days before it is issued and shall contain such information as ADB shall reasonably request to enable ADB to arrange for the separate publication of such invitation.

5. (a) Each supply contract for equipment or materials estimated to cost the equivalent of \$1,000,000 or less (other than minor items) shall be awarded on the basis of international shopping as described in Chapter III of the Guidelines for Procurement.

(b) Each draft invitation to bid and related bid document for contracts to be awarded shall be submitted to ADB for approval before they are issued.

Schedule 4

(c) Notwithstanding paragraph 3.03(b) of the Guidelines for Procurement, any award of contract shall be subject to prior ADB approval.

6. In comparing bids under international competitive bidding, a margin of preference may be provided, at the option of the Borrower and in accordance with the provisions of the Attachment to this Schedule, for

(a) goods manufactured in the territory of the Borrower, provided that the bidder offering such goods shall have established to the satisfaction of the Borrower and ADB that the domestic value added equals at least 20 percent of the ex-factory bid price of such goods; and

(b) civil works to be carried out by eligible domestic contractors, as defined by ADB.

Local procurement

7. (a) Civil works contracts estimated to cost the equivalent of \$10,000,000 or less may be awarded on the basis of local competitive bidding among contractors in accordance with the standard procurement procedures of the Borrower/State, including single stage two envelope procedure, as acceptable to ADB. First draft invitation to bid and related bid document for the contracts to be awarded on the basis of local competitive bidding shall be submitted to ADB for approval before they are issued.

(b) For the first contract to be awarded on the basis of local competitive bidding, selection and engagement of contractors shall be subject to the approval of ADB. As soon as the bids received have been evaluated, the proposal for award of contract shall be submitted to ADB for approval. For this purpose, ADB shall be furnished with three copies of (i) an account of the public opening of bids; (ii) a summary and evaluation of the bids; (iii) the proposal for award; and (iv) a draft contract or a draft letter of acceptance. Promptly after each contract is awarded, ADB shall be furnished with three copies of the contract as executed.

Direct procurement

8. Certain items estimated to cost, in the aggregate, the equivalent of \$100,000 or less, may be procured directly from the suppliers in accordance with procedures acceptable to ADB. After award, three copies of each contract for such items shall be furnished to ADB.

Industrial or Intellectual Property Rights

9. (a) The Borrower shall ensure that all ADB-financed goods and services 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.

Schedule 4

(b) The Borrower shall ensure that all ADB-financed contracts for the procurement of goods and services 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.

Preference for Domestically Manufactured Goods

1. In the procurement of goods through international competitive bidding, goods manufactured in the territory of the Borrower may be granted a margin of preference in accordance with the following provisions, provided that the bidder shall have established to the satisfaction of the Borrower and ADB that the domestic value added equals at least 20 percent of the ex-factory bid price of such goods. The 20 percent domestic value added applies to the total ex-factory bid price of the goods and not only to one item in a list.

- (a) For application of domestic preference, all responsive bids shall first be classified into the following three categories:

Category I -- bids offering goods manufactured in the territory of the Borrower which meet the minimum domestic value added requirement;

Category II -- bids offering other goods manufactured in the territory of the Borrower; and

Category III -- bids offering imported goods.

- (b) The lowest evaluated bid of each category shall then be determined by comparing all evaluated bids in each category among themselves, without taking into account customs duties and other import taxes levied in connection with the importation, and sales and similar taxes levied in connection with the sale or delivery, pursuant to the bids, of the goods.
- (c) Such lowest evaluated bids shall next be compared with each other and if, as a result of this comparison, a bid from Category I or Category II is found to be the lowest, it shall be selected for the award of contract.
- (d) If, however, as a result of the comparison under subparagraph (c) above, the lowest bid is found to be from Category III, it shall be further compared with the lowest evaluated bid from Category I. For the purpose of this further comparison only, an upward adjustment shall be made to the lowest evaluated bid price of Category III by adding either
- (i) the amount of customs duties and other import taxes which a nonexempt importer would have to pay for the importation of the goods offered in such Category III bid; or
 - (ii) 15 percent of the CIF bid price of such goods if the customs duties and import taxes referred to above exceed 15 percent of the CIF bid price.

If, after such further comparison, the Category I bid is determined to be the lowest, it shall be selected for the award of contract; if not, the lowest evaluated bid from Category III shall be selected for the award.

2. (a) Bidders applying for the preference shall provide evidence necessary to establish the eligibility of a bid for the preference, including the minimum domestic value added.

(b) The bidding documents shall clearly indicate the preference to be granted, the information required to establish the eligibility of a bid for the preference claimed, and the procedures to be followed in the comparison of bids, all as set forth above.

Domestic Preference for Turnkey Contracts and
Supply-and-Installation Contracts

3. In single-responsibility turnkey (including design-build) contracts and supply-and-installation contracts for large and complex packages, procured through international competitive bidding and in which discrete items of goods are grouped into one contract package and where the CIF or ex-factory cost of goods to be used for or in the permanent works under such contracts is estimated, prior to bidding, to equal or exceed 60 percent of the total cost of such works, a margin of preference shall be applied to the domestically manufactured goods in accordance with the following provisions.

- (a) The margin of preference shall not be applied to the whole package but only to the domestically manufactured goods within the package.
- (b) Goods offered from outside the territory of the Borrower shall be quoted CIF and goods offered domestically shall be offered ex-factory or ex-works (free of sales and similar taxes).
- (c) All other cost components, such as design as well as works installation, commissioning and supervision, shall be quoted separately, and shall not be subject to preference.
- (d) In the comparison of bids (which should not be classified into Categories I, II or III as with the domestic preference for goods), only the CIF price in each bid of the goods offered from outside the territory of the Borrower shall be increased by the applicable duty and other taxes payable by a nonexempt importer or by 15 percent, whichever is less.
- (e) If duties vary from item to item within a package, the appropriate tariff for each item shall apply.
- (f) No margin of preference shall be applied to any associated services or works included in the package.
- (g) Bidders shall not be permitted or required to modify the mix of domestic and foreign goods after bid opening.

4. (a) Bidders applying for the preference shall provide evidence necessary to establish the eligibility of a bid for the preference.

(b) The bidding documents shall clearly indicate the preference to be granted, the information required to establish the eligibility of a bid for the preference claimed, and the procedures to be followed in the comparison of bids, all as set forth above.

Preference for Domestic Contractors

5. In the selection of civil-works contractors, single-responsibility turnkey (including design-build) contractors or supply-and-installation contractors where the CIF cost of goods to be used for or in the permanent works under such contracts is less than 60 percent of the total cost of such works, eligible domestic contractors, as defined below, through international competitive bidding may be granted a margin of preference in accordance with the following provisions.

- (a) For application of domestic preference, all responsive bids shall first be classified into the following two categories:

Category I -- bids offered by domestic contractors and joint ventures eligible for the preference in accordance with the applicable criteria as set forth in paragraph 6 below; and

Category II -- bids offered by other contractors.

- (b) The lowest evaluated bid of each category shall then be determined by comparing all evaluated bids in each category among themselves.
- (c) Such lowest evaluated bids shall next be compared with each other and if, as a result of this comparison, a bid from Category I is found to be the lowest, it shall be selected for the award of contract.
- (d) If, however, as a result of the comparison under subparagraph (c) above, the lowest bid is found to be from Category II, it shall be further compared with the lowest evaluated bid from Category I. For the purpose of this further comparison only, an upward adjustment shall be made to the lowest evaluated bid price of Category II by adding an amount equal to seven-and-one-half percent of the bid price. If, after such comparison, the Category I bid is determined to be the lowest, it shall be selected for the award of contract; if not, the lowest evaluated bid from Category II shall be selected.

6. (a) To be eligible for the preference set forth in paragraph 5 above, domestic contractors must meet the following criteria:

- (i) firms are registered in the territory of the Borrower;
- (ii) firms have majority ownership by nationals of the Borrower; and
- (iii) firms will not subcontract more than 50 percent of the total value of their work to foreign contractors.

(b) A joint venture between a domestic contractor and its foreign partner shall be eligible for the preference only if it meets the following criteria:

- (i) the domestic partner(s) is individually eligible for the preference according to the criteria stated above;
- (ii) the domestic partner(s) would not qualify for the contract works on technical or financial grounds without the foreign participation; and
- (iii) the domestic partner(s) will, under the arrangements proposed, carry out at least 50 percent of the contract works measured in terms of value.

(c) Contractors applying for the preference shall be required to provide, as part of the data for qualification, necessary information, including details of ownership, for determining whether, according to the applicable criteria, a particular firm or group of firms qualifies for the preference.

7. The bidding documents shall clearly indicate the preference to be granted, the information required to establish the eligibility of firms for the preference claimed, and the procedures to be followed in the comparison of bids, all as set forth above. Bidders applying for the preference shall provide such additional information in support of such eligibility as may be requested by the Borrower and ADB.

SCHEDULE 5

Consultants

1. The services of international and domestic consulting firms shall be utilized in the carrying out of the Project, particularly with regard to:

- (a) assist the PMU and the PIUs in Project formulation, management, monitoring and evaluation, financial and environmental management, and in ULB's subprojects selection; and
- (b) assist the PIUs located in MCs in conducting detailed engineering design, procurement of goods and services, construction supervision, and quality control, under the Project.

The terms of reference of the consultants shall be as determined by agreement between ADB, the Borrower and the State.

2. The selection, engagement and services of the consultants shall be subject to the provisions of this Schedule and the provisions of the "Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers" dated January 2005 (hereinafter called the Guidelines on the Use of Consultants), as amended from time to time, which have been furnished to the Borrower and the State.

3. Selection and engagement of the consultants shall be made without any restriction against, or preference for, any particular consultants or any particular class of consultants.

4. The consultants shall be selected and engaged as a firm by the Borrower/State using the quality-and-cost-based selection (QCBS) method in accordance with the following procedures.

(a) Invitation for technical and financial proposals. The invitation to submit technical and financial proposals (hereinafter called the Request for Proposals or RFP) and all related documents shall be approved by ADB before they are issued. For this purpose, three copies of the draft RFP, the names of consultants to be short-listed, the proposed criteria for evaluation of both proposals, a draft consultancy contract, and other related documents shall be submitted to ADB. A period of at least 45 days in case of international consultants under paragraph 1 (a) and domestic consultants under paragraph 1(b) of this Schedule, respectively shall be allowed for submission of both proposals. A copy of the final RFP as issued, together with all related documents, shall be furnished to ADB for information promptly after issuance. The validity period for the technical and financial proposals as provided in the RFP shall usually not exceed three months from the date specified for submission of the technical and financial proposals. The approval of ADB shall be obtained for any request to extend such validity period. Except as ADB may otherwise agree, the validity period, including any extensions, shall not exceed a maximum total period of six months. If the contract is not signed within the validity period in accordance with the Guidelines on the Use of Consultants, the selection shall be invalid and the selection and engagement process as provided in this paragraph shall be followed again.

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(b) Evaluation and scoring of technical proposals. Immediately after the technical proposals have been evaluated and scored, approval of ADB shall be obtained to the evaluation and scoring of the technical proposals. For this purpose, ADB shall be furnished with three copies of the technical proposals.

(c) Public opening of financial proposals. The financial proposals of the firms whose technical proposals meet the minimum qualifying technical score shall be opened publicly after adequate notice is given to such firms or their representatives to attend the opening of the financial proposals.

(d) Evaluation and scoring of financial proposals and ranking of technical and financial proposals. After the financial proposals have been evaluated and scored, the ranking of the technical and financial proposals shall be made. Before negotiations are started with the first-ranked consultants, approval of ADB shall be obtained to the evaluation and scoring of the financial proposals and the ranking of the technical and financial proposals. For this purpose, ADB shall be provided with three copies of (i) the evaluation and scoring of the financial proposals and (ii) the ranking of the technical and financial proposals.

(e) Execution of contract. After the conclusion of negotiations but before the signing of the contract, ADB shall be furnished with the contract as negotiated for approval. Promptly after the contract is signed, ADB shall be furnished with three copies of the signed contract. If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

5. In addition to the consulting firms to be selected under paragraph 1 of this Schedule, individual domestic consultants shall be engaged to assist the PMU to undertake PPMS, to be selected and engaged by the State in accordance with the following procedures.

(a) A list of the candidates together with their qualifications and their ranking and a draft contract shall be furnished to ADB for approval before the selection of consultants.

(b) Promptly after the contract is signed, ADB shall be furnished with the evaluation of the candidates and a brief justification for the selection, together with three copies of the signed contract.

(c) If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

Intellectual Property

6. The Borrower 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.

SCHEDULE 6

Execution of Project and Operation of Project Facilities

Project Execution and Implementation

1. (a) The State through the LSGUD shall be responsible for execution of the Project.

(b) The State shall continue to delegate LSGUD with sufficient administrative and financial authority for expeditious implementation of the Project.

2. (a) Without limiting the generality of Section 4.02 of this Loan Agreement, the Borrower shall ensure that the State provides sufficient and timely budgetary allocations, counterpart funds (including additional funds as may be required on account of detailed designs) staff, and administrative clearances, to LSGUD for effective and timely implementation of the Project.

(b) The State also ensure that the MCs allocate, counterpart funds from their annual budget in order to meet the counterpart funding requirements of the Project. The State shall also ensure that each MC will make available all necessary land, staffing and facilities as required for timely completion of subprojects.

PMU

3. (a) The State shall establish a state-level PMU, led by a full time Project director, that will be responsible for overall Project implementation, monitoring and supervision, and will report directly to the Secretary, LSGUD. The Project director shall be assisted by three deputy Project directors for technical, social and institutional development and finance matters. The PMU shall be staffed with experts in urban planning, water, and wastewater engineering, urban roads and municipal engineering, procurement, environment, finance and accounting, social and community development, institutional development and law.

(b) The PMU shall be responsible for (i) appointing the TSU, two DSCs, one for Thiruvananthapuram and Kollam, and another for Kozhikode, Kochi and Thrissur, PPMS consultants, and NGOs; (ii) approving the design of the investment components prepared by the PIUs; (iii) selection of subprojects of ULBs, obtaining ADB's approvals for the subproject finance, assisting and monitoring the implementation of subprojects; (iv) pre-qualifying contractors; (v) preparing standard bid documents to comply with ADB guidelines; (vi) monitoring the tendering process and reviewing the bid evaluation and preparing bid evaluation reports for approval by ADB; (vii) procuring equipment and services at the State-level; (viii) reviewing CAPPs; (ix) ensuring Project compliance with loan covenants; (x) coordinating with ADB on matters related to disbursements; (xi) undertaking the institutional development assistance and capacity building programs; and (xii) maintaining Project documents and submitting timely reports to ADB and the State, including audit reports.

PIUs and ULBs

4. (a) The Project shall be implemented by the relevant MCs in each of the Project cities. With regard to Part C the LSGUD shall be responsible to provide assistance directly to the ULBs who shall be responsible to implement Part C.

(b) Each PIU shall be guided by the relevant SC and shall be headed by a Project manager, supported by specialists in water supply, sewerage, civil engineering, solid waste management, urban planning, procurement, environment, finance and accounting, and social and community development. A staff deputed into the PIU from the Revenue Department of the State shall handle all land acquisition and resettlement and rehabilitation issues, including coordination with different line agencies in shifting of utility lines, if necessary. Each PIU shall comprise staff with required specialist fields for the subproject (approximately seven professional staff) and required support staff. The PIU will be assisted by the two DSCs.

(c) Each PIU shall be responsible for (i) carrying out detailed surveys, investigations and engineering designs of investment components; (ii) tendering, evaluating bids and awarding works, contract administration, supervision and quality control; (iii) measuring works carried out by the contractors and certifying payments; (iv) conducting public awareness campaigns and participation programs; (v) carrying out the PPMS surveys; (vi) carrying out environmental assessments; (vii) ensuring respective MCs' compliance with ADB's loan covenants; and (viii) preparing monthly reports. For the water supply component of the Project, each PIU will be responsible to prepare detailed designs of the subproject with assistance from DSC, and will obtain clearance/no objection from the KWA before tendering the works as in the case of Capital City Development Project funded by the State.

(d) Each PIUs shall also be responsible for detailed engineering, procurement, construction supervision and quality control for the community infrastructure and livelihood promotion activities under Part B. A committee will be formed in each MC comprising of representatives from the MC, NGOs, and Kudumbashree to facilitate establishment of consensus on the proposed community upgrading subcomponents and submission to the PIU for further approval of related SC for implementation.

EC and SCs

5. (a) The State shall establish the EC and the SCs, with a first meeting held in these, no later than three months following Effective Date.

(b) The EC shall comprise the State Chief Secretary, the secretaries of LSGUD, Finance, Planning, Water Resources, Minor Irrigation, and Public Works, the Executive Director of Kudumbashree, mayors of the MCs, and the Project director of the PMU as member secretary.

(c) The SC shall comprise the Mayor, Corporation Secretary, District Collector, representatives of State-level departments in the MC (such as Public Works Department, Electricity Board, KWA, and State Pollution Control Board), Standing Committee chairpersons of Health, Welfare, Works, and Finance, and representatives of community based organizations.

Revenue

6. By mid-term review of the Project, the State shall develop a road map on the role of KWA and relevant statutory authorities/ULBs for water supply in the area covered by the Project, to ensure empowering these with related services and cost recovery in accordance with the Kerala Municipalities Act, 1994 and Decentralization of Powers Act, 2000.

7. The State shall ensure that the plinth area based tax and increase in tax base as recommended by the Second Finance Commission of the Borrower, is implemented starting from fiscal year 2006/07.

8. By not later than March 2007, the State shall formulate a policy on conversion of stand-posts to individual metered house service connections, and/or metering the stand-posts, for the purpose of efficient demand side management and reduction of NRW.

9. The State shall ensure that all the MCs pass a resolution by March 2008 to introduce service tax and/or other revenue mobilization measures in each MC to meet shortfall of revenues needed to fund O&M of the expanded water supply.

10. The State shall ensure that all the MCs will prepare and implement a Financial Improvement Action Plan to (a) introduce a sewerage charge, (b) introduce a solid waste management charge, and (c) improve collection efficiency, by no later than one year after related subproject completion.

11. The State shall ensure that MCs adopt ADB's approved standard bidding documents, evaluation criteria and procedures for awarding contracts for all procurement contracts being undertaken under the Project.

12. The State shall ensure that Part C of the Project shall be implemented by the ULBs under close guidance of the LSGUD and is undertaken in accordance with the detailed criteria and approval procedure for local government infrastructure development attached as Supplementary Appendix S to the RRP.

Safeguards

13. (a) The State shall ensure that if, during design of Project components (including during detailed designs), involuntary resettlement arises from land acquisition or temporary disruption of income generation, a RP will be prepared and implemented in accordance with Borrower/State laws and procedures, ADB's policy on Involuntary Resettlement, 1995 and the Project's agreed-upon RF. ADB's approval of any RP or the short resettlement plan for Kollam Project city (including any revision to such RP or plan if any on account of detailed/finalized design of a Subproject component) shall be a condition for the award of related civil works contracts.

(b) Without limiting the generality of clause (a) of this paragraph and its applicability to all Project cities including Kollam, the following shall be complied in particular for Kollam Project city. The State shall ensure that

- (i) the short resettlement plan for Kollam, attached as Supplementary Appendix K to the RRP shall be utilized for Part A in relation to the roads and transportation subcomponent in Kollam; and
- (ii) in relation to the proposed sewerage treatment plant site under Part A in Kollam, the MC of Kollam shall (1) ensure that its PIU monitors the affected people as part of Project monitoring, and provides them with opportunities to participate in any livelihood initiatives, with particular attention paid to the vulnerable households if any; and (2) shall complete in full, the payment of compensation due to all people affected by land acquisition and/or resettlement. Full payment of such compensation as specified herein shall be a condition for withdrawal of Loan proceeds for the Kollam sewerage treatment plant.

14. The State shall ensure (a) compliance with the existing environmental laws and regulations of the Borrower/State, the ADB's Policy on Environment, 2002, and the agreed upon EARF, particularly regarding the environmental due diligence and compliance for subprojects proposed under the Project, (b) updating and revision of IEEs and EMPs for the MCs during detailed Project design and compliance with all monitoring and mitigation measures indicated in the IEE and provided for under the EMPs for the Project, and (c) consultation with local communities on environmental issues.

15. The State shall ensure that the MCs assume a proactive role in environmental planning, management and monitoring, and that State Pollution Control Board clearance will be obtained for all applicable Project components before starting work on those components.

16. The State shall ensure (i) compliance with applicable Borrower/State laws and ADB's policy on Indigenous Peoples, 1998, and (ii) preparation of IPDP or specific actions to address any impacts in accordance with measures and/or specific actions as set forth in the IPDF.

Social matters

17. The State shall ensure that civil works contracts under the Project incorporate provisions to the effect that contractors (i) shall carry out HIV/AIDS awareness and prevention programs for labor, (ii) shall not employ or use children as labor; (iii) 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 (iv) follow and implement all statutory provisions on labor (including equal pay for equal work), health, safety, welfare, sanitation, and working conditions. The civil works contracts shall also provide for termination of the contract by the State in case of breach of any of the stated provisions by the contractors.

18. The State shall ensure that the Gender Action Plan as set out in Supplementary Appendix O to the RRP is implemented in a timely manner.

PPMS

19. Within six months of the Effective Date, the State shall through the PMU, establish the PPMS to track Project implementation activities, with corresponding target dates, expected outcomes, and assigned responsibilities under a monitoring mechanism formulated, discussed and agreed between ADB, the State and the MCs.

Project Review

20. (a) Notwithstanding the generality of Section 2.08 of the Project Agreement, the Project shall be under regular review as follows: (i) the PMU shall conduct monthly reviews based on performance reports prepared by the DSC for each Project city. The monthly Project performance, major policy issues, and necessary actions required or taken by the respective authorities will be reviewed and results circulated to ADB, LSGUD, and the relevant SC; (ii) the EC shall review the Project progress on a quarterly basis based on the monthly review by the PMU with results similarly circulated to ADB, LSGUD, and the relevant SC; and (iii) the third level review shall be conducted by ADB once every six months throughout the Project implementation period.

(b) A comprehensive mid-term review of the Project shall be carried out 24 months after the Effective Date to identify problems or weaknesses in implementation arrangements, and to agree on any corrective measures.

Others

21. The State shall ensure that the PMU will closely monitor the utilization of funds for community upgrading and livelihood promotion on an annual basis and identifies corrective actions to ensure proper utilization of the funds earmarked for these activities.

22. The State shall onlend the Loan proceeds to the related MCs or ULBs under the Project Parts through appropriate written financing arrangements between the State and each ULB.

23. In the event that the State changes the KUDFC into a financial intermediary, subject to further review and assessment of such new entity, the State through the Borrower may request the implementation of Part C through such financial intermediary. ADB's assistance and acceptance of such arrangement shall however be subject to its due diligence and acceptability by ADB.