

Public Disclosure Authorized

CONFORMED COPY

LOAN NUMBER 4869-UA

Loan Agreement

(Urban Infrastructure Project)

between

UKRAINE

and

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

Dated May 26, 2008

Public Disclosure Authorized



LOAN NUMBER 4869-UA

LOAN AGREEMENT

AGREEMENT, dated May 26, 2008, between UKRAINE (the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank).

WHEREAS (A) the Borrower, having satisfied itself as to the feasibility and priority of the project described in Schedule 2 to this Agreement (the Project), has requested the Bank to assist in the financing of Parts A to D of the Project;

(B) Parts A.1, A.3, B, C and D.2 of the Project will be carried out by the Utilities (as defined hereinafter) with the Borrower's assistance and, as part of such assistance, the Borrower will make part of the proceeds of the loan provided for in Article II of this Agreement (the Loan) available to the Utilities, as set forth in this Agreement; and

WHEREAS the Bank has agreed, on the basis, inter alia, of the foregoing, to extend the Loan to the Borrower upon the terms and conditions set forth in this Agreement and in the agreements to be entered between the Bank and the Utility and the Municipality (the Project Agreements);

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. (a) The “General Conditions Applicable to Loan and Guarantee Agreements for Single Currency Loans” of the Bank, dated May 30, 1995 (as amended through May 1, 2004) with the modifications set forth below (the General Conditions) constitute an integral part of this Agreement:

(b) Notwithstanding the provisions of Section 1.01.(a) of this Agreement, Articles III and IV of the “General Conditions for Loans” of the Bank dated July 1, 2005 (as amended through October 17, 2007) (the 2007 General Conditions), as well as the definitions set forth in the Appendix of the 2007 General Conditions of the terms used in said Articles III and IV, constitute an integral part of this Agreement with respect to Article II and Schedule III of this Agreement.

(c) Section 5.08 of the General Conditions is amended to read as follows:

“Section 5.08. *Treatment of Taxes*

Except as otherwise provided in the Loan Agreement, the proceeds of the Loan may be withdrawn to pay for taxes levied by, or in the territory of, the Borrower or the Guarantor on the goods or services to be financed under the Loan, or on their importation, manufacture, procurement or supply. Financing of such taxes is subject to the Bank’s policy of requiring economy and efficiency in the use of the proceeds of its loans. To that end, if the Bank shall at any time determine that the amount of any taxes levied on or in respect of any item to be financed out of the proceeds of the Loan is excessive or otherwise unreasonable, the Bank may, by notice to the Borrower, adjust the percentage for withdrawal set forth or referred to in respect of such item in the Loan Agreement as required to be consistent with such policy of the Bank.”

(d) Section 6.03 (c) of the General Conditions is amended by replacing the words “corrupt or fraudulent” with the words “corrupt, fraudulent, collusive or coercive”.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “Agency for Development Programs of Odessa” means the municipal enterprise Agency for Development Programs of Odessa, operating under the Charter approved by the Odessa City Council Decision No. 5321-IV of March 6, 2006, Identification No. 34381156, or its successor thereof;

(b) “Chernihivvodokanal Utility” means the municipal enterprise Chernihivvodokanal, operating under the Charter approved by Chernihiv Mayor Decision No. 130-r of April 26, 2001, Identification No. 03358222, or its successor thereof;

(c) “Eligible Categories” means: (i) in respect of Parts A.1, A.3, B, C and D.2 of the Project, Category (1) set forth in the table in Part A.1 of Schedule 1 to this Agreement; (ii) in respect of Part C of the Project, Category (2), set forth in the table in Part A.1 of Schedule 1 to this Agreement; and (iii) in respect of Part A.2 and D.1 of the Project, Category (3) set forth in the table in Part A.1 of Schedule 1 to this Agreement.

(d) “Eligible Expenditures” means the expenditures for goods, works, consultants’ services and incremental operating costs referred to in Section 2.02 of this Agreement;

(e) “Environmental Management Plan” and “EMP” means the Borrower’s environmental management plan dated November 2005, describing the environmental, mitigation, monitoring and institutional measures to be undertaken under Parts B and C of the Project to ensure that all environmental concerns are adequately taken into account in the carrying out of the rehabilitation works and investments thereunder;

(f) “Financial Monitoring Report” or “FMR” means each report prepared in accordance with Section 4.02 of this Agreement;

(g) “Fiscal Year” means the twelve (12) month period corresponding to any of the Borrower’s fiscal years, which period commences on January 1 and ends on December 31 in each calendar year;

(h) “Ivano-Frankivskvodoecotechprom Utility” means the municipal enterprise Ivano-Frankivskvodoecotechprom, operating under the Charter approved by Decision of Ivano-Frankivsk City Council No. 165 of April 15, 2003, Identification No. 32360815, or its successor thereof;

(i) “MHCS” means the Borrower’s Ministry of Housing and Communal Services, acting in accordance with the Regulation adopted by the Resolution of the Cabinet Ministers No. 717 of May 12, 2007, or its successor thereof;

(j) “MOF” means the Borrower’s Ministry of Finance, acting in accordance with the Regulation adopted by the Resolution of the Cabinet Ministers No. 1837 of December 27, 2006, or its successor thereof;

(k) “Monitoring and Evaluation Indicators” means the agreed performance indicators set forth in a letter of even date herewith to be utilized by the Borrower to measure the progress in the implementation of the Project and the degree to which the objectives thereof are being achieved;

(l) “Municipality” or “Municipalities” means: (i) the Municipalities that exercise their authority in accordance with the Borrower’s Law on Local Self-Governing No.280/97 dated May 21, 1997, and the Borrower’s Law on Local State Administration No. 586-14 dated April 9, 1999; or (ii) the Borrower’s local governments which provide the guarantee of local budget to the municipal enterprises participating in the project, or oblast state administrations, depending on their jurisdiction;

(m) “Operations Manual” means the manual to be adopted by the MHCS and setting forth the detailed Project objectives and description and the institutional, implementation, procurement, administrative and monitoring arrangements, as the same may be updated and amended from time to time in accordance with the provisions of paragraph 1 of Section B.1 of Schedule 5 to this Agreement;

(n) “CPMU” means the Central Project Management Unit referred to in Part A.2 of Schedule 5 to this Agreement, with responsibilities at the central level to carry out daily management and implementation activities of the Project;

(o) “Procurement Plan” means the Borrower’s procurement plan, dated July 5, 2007 covering the initial eighteen (18) month period (or longer) of Project implementation, as the same shall be updated from time to time in accordance with the provisions of Section 3.02 (b) to this Agreement, to cover succeeding eighteen (18) month periods (or longer) of Project implementation;

(p) “Project Agreements” means the agreements between the Bank and the Selected Utilities respectively, of even date herewith, as the same may be amended from time to time; and such term includes all schedules and agreements supplemental to the Project Agreements;

(q) “Regional PMUs” means the Project Management Units to be established under the Utilities’ Decrees to carry out at the regional level the daily management and implementation activities of the Project in coordination with the Utilities (as defined hereinafter) and the CPMU;

(r) “Report-based Disbursements” means the Borrower’s option for withdrawal of funds from the Loan Account referred to in Part A.5 of Schedule 1 to this Agreement;

(s) “Selected Utilities” means the Agency for Development Programs of Odessa, Chernihivvodokanal Utility and Ivano-Frankivskvodoecotechprom Utility;

selected for the purposes of carrying out Parts A.1, A.3, B, C and D.2 of the Project and having entered into related Project Agreements and Subsidiary Loan Agreements;

(t) “Special Accounts” means the Special Deposit Accounts A, B, C , and D referred to in Part B of Schedule 1 to this Agreement;

(u) “Subsidiary Loan Agreements” means the agreements to be entered into between MOF, MHCS, and the Utilities pursuant to Section 3.01(c) of this Agreement, as the same may be amended from time to time;

(v) “Utilities” means the selected utilities or the utilities to be selected under paragraph 3 of Part B of Schedule 5 to this Agreement and the Operations Manual; and

(w) “Utilities to be Selected” means the Utilities to be chosen in accordance with the Operations Manual, other than Agency for Development Programs of Odessa, Chernihivvodokanal Utility and Ivano-Frankivskvodoecotechprom Utility, for the purposes of carrying out Part C of the Project under Subsidiary Loan Agreements.

ARTICLE II

The Loan

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Loan Agreement, an amount equal to one hundred and forty million Dollars (\$140,000,000).

Section 2.02. The amount of the Loan may be withdrawn from the Loan Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Bank shall so agree, to be made) in respect of the reasonable cost of works, goods, consultants services, and incremental operating costs required for the Project and to be financed out of the proceeds of the Loan and in respect of the fee referred to in Section 2.04 of this Agreement.

Section 2.03. The Closing Date shall be December 31, 2012 or such later date as the Bank shall establish. The Bank shall promptly notify the Borrower of such later date.

Section 2.04. The Borrower shall pay to the Bank a front-end fee in an amount equal to one quarter of one percent (0.25%) of the amount of the Loan. On or promptly after the Effective Date, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and pay to itself the amount of such fee.

Section 2.05. The interest payable by the Borrower for each interest Period shall be at a rate equal to LIBOR for the Loan currency plus the Variable Spread. Notwithstanding the foregoing, if any amount of the Withdrawn Loan Balance remains unpaid when due and such non-payment continues for a period of thirty days, then the interest payable by the Borrower shall instead be calculated as provided in Section 3.02(d) of the 2007 General Conditions.

Section 2.06. Interest and other charges shall be payable semiannually in arrears on April 15 and October 15 in each year.

Section 2.07. The Borrower shall repay the principal amount of the Loan in accordance with the amortization schedule set forth in Schedule 3 to this Agreement.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project, and, to this end, shall (i) carry out Parts A.2 and D.1 of the Project through the MHCS with due diligence and efficiency and in conformity with appropriate administrative, financial engineering, and environmental practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project and (ii) without any limitation or restriction upon any of its other obligations under the Loan Agreement, shall cause the Utilities to perform the activities related to the carrying out of Parts A.1, A.3, B, C and D.2 of the Project, in accordance with the provisions of the Project Agreements and shall take or cause the Utilities to take all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable the Utilities to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Borrower and the Bank shall otherwise agree, the Borrower, through MHCS, shall carry out the Parts A.2 and D.1 of the Project in accordance with the Implementation Program set forth in Schedule 5 to this Agreement.

(c) The Borrower shall relend the part of proceeds of the Loan to the Utilities under subsidiary loan agreements entered or to be entered into between the Borrower, through MOF and MHCS, and the Utilities, under terms and conditions which shall have been approved by the Bank.

(d) The Borrower, through the MOF and MHCS, shall exercise its rights under the Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Bank and to accomplish the purposes of the Project, and, except as the Bank shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the Subsidiary Loan Agreement or any provision thereof.

Section 3.02. (a) Except as the Bank shall otherwise agree, procurement of the goods, works and services required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 4 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) The Borrower shall update the Procurement Plan and furnish such update to the Bank not later than 12 months after the date of the preceding Procurement Plan, for the Bank's approval.

Section 3.03. For the purposes of Section 9.07 of the General Conditions and without limitation thereto, the Borrower shall, through the MHCS:

(a) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Bank, a plan designed to ensure the continued achievement of the Project's objectives; and

(b) afford the Bank a reasonable opportunity to exchange views with the Borrower on said plan.

Section 3.04. The Bank and the Borrower hereby agree that the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of Part B and C of the Project shall be carried out by the Utilities and Municipalities pursuant to Section 2.03 of the Project Agreement(s).

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower, through the MHCS, shall maintain a financial management system, including records and accounts, and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Bank, adequate to reflect the operations, resources and expenditures related to the Project.

(b) The Borrower, through the MHCS, shall:

- (i) have the financial statements referred to in paragraph (a) of this Section for each Fiscal Year (or other period agreed to by the Bank), audited, in accordance with consistently applied auditing standards acceptable to the Bank, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year (or such other period agreed to by the Bank), (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or other period agreed to by the Bank), as so audited, and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Bank; and
- (iii) furnish to the Bank such other information concerning such records and accounts, and the audit of such financial statements, and concerning said auditors, as the Bank may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Loan Account were made on the basis of reports referred to in Part A.5 of Schedule 1 to this Agreement (Report-based Disbursements) or on the basis of statements of expenditure, the Borrower, through the MHCS, shall:

- (i) retain, until at least one year after the Bank has received the audit report for, or covering, the fiscal year in which the last withdrawal from the Loan Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (ii) enable the Bank's representatives to examine such records; and

- (iii) ensure that such reports and statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Bank), referred to in paragraph (b) of this Section.

Section 4.02. (a) Without limitation upon the Borrower's progress reporting obligations set out in paragraph 2 of Part C of Schedule 5 to this Agreement, the Borrower, through the MHCS, shall prepare, and cause the Utilities to prepare, and furnish to the Bank a consolidated financial monitoring report, in form and substance satisfactory to the Bank, which:

- (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Loan, and explains variances between the actual and planned uses of such funds;
- (ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and
- (iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Bank not later than 45 days after the end of the first calendar quarter in which the first disbursement occur after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Bank not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

ARTICLE V

Remedies of the Bank

Section 5.01. Pursuant to Section 6.02 (p) of the General Conditions, the following additional event is specified, namely that the Utilities and Municipalities shall have jointly or individually failed to perform any of their obligations under the Project Agreements.

Section 5.02. Pursuant to Section 7.01 (k) of the General Conditions, the following additional event is specified, namely that the event specified in Section 5.01 of this Agreement shall occur and shall continue for a period of thirty (30) days after notice thereof shall have been given by the Bank to the Borrower.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following event is specified as an additional condition to the effectiveness of the Loan Agreement within the meaning of Section 12.01(c) of the General Conditions, namely that at least two Project Agreements and respective Subsidiary Loan Agreements have been signed on behalf of the Borrower, through the MOF and MHCS, and two Selected Utilities and the Municipalities, as the case may be.

Section 6.02. The following are specified as additional matters, within the meaning of Section 12.02 (c) of the General Conditions, to be included in the opinion or opinions to be furnished to the Bank:

(a) that the two Project Agreements referred to in Section 6.01 above have been duly authorized by the Utilities, and are legally binding upon the Utilities in accordance with its terms; and

(b) that the Subsidiary Loan Agreements referred to in Section 6.01 above have been duly authorized by the Borrower and the Utilities and are legally binding upon the Borrower and the Utilities in accordance with its terms.

Section 6.03. The date of ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

Section 6.04. Any amendment to this Agreement shall be executed by agreement of the parties hereto in accordance with the provisions of Section 11.03 of the General Conditions. Such amendment shall become effective as set forth in the amending agreement.

ARTICLE VII

Representative of the Borrower; Addresses

Section 7.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance
12/2 Hrushevsky St.
Kyiv, 01008
Ukraine

Telex:

131450

Facsimile:

(380-44) 253 82 43
(380-44) 207 05 08

For the Bank:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INTBAFRAD
Washington, D.C.

Telex:

248423 (MCI) or
64145 (MCI)

Facsimile:

(202) 477-6391

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Kyiv, Ukraine, as of the day and year first above written.

UKRAINE

By /s/ Oleksiy Kucherenko

Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Paul Bermingham

Authorized Representative

SCHEDULE 1

Withdrawal of the Proceeds of the Loan

A. General

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Loan, the allocation of the amounts of the Loan to each Category and the percentage of expenditures for items so to be financed in each Category:

<u>Category</u>	<u>Amount of the Loan Allocated (Expressed in Dollars)</u>	<u>% of Expenditures to be financed</u>
(1) For Parts A.1 A.3, B, C and D.2 of the Project		100%
(a) Agency for Development Programs of Odessa		
Goods, Works, Consultant Services, and incremental operating costs	35,530,000	
(b) Chernihivvodokanal Utility		
Goods, Works, Consultant Services, and incremental operating costs	14,830,000	
(c) Ivano-Frankivskvodoecotechprom Utility		
Goods, Works, Consultant Services, and incremental operating costs	7,170,000	
(2) Part C of the Project		100%
Goods, Works, Consultant Services and incremental operating costs	80,120,000	

<u>Category</u>	<u>Loan Allocated (Expressed in Dollars)</u>	<u>Amount of the % of Expenditures to be financed</u>
(3) Part A.2 and D.1 of the Project Consultant Services and incremental operating costs for the MHCS	2,000,000	100%
(4) Front-end fee	350,000	Amount due under Section 2.04 of this Agreement
TOTAL	<u>140,000,000</u>	

2. For the purposes of this Schedule, the term “incremental operating costs” means expenditures incurred by the Borrower, through MHCS, to finance reasonable and necessary operating expenses of the CPMU and Regional PMUs in respect of their operations and administration of activities under the Project, and which are payable on account of cost of rent and utilities, office equipment and supplies, maintenance, communication, transportation, public consultations, training, travel and per diem, Project audit, and salaries, except salaries of civil servants, and all other expenses as may be agreed with the Bank.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:

(a) payments made for expenditures prior to the date of this Agreement prior to the date of this Agreement,;

(b) payments made for expenditures under Category (1) (a) unless the Borrower has provided evidence that the Project Agreement with the Agency for Development Programs of Odessa and the respective Subsidiary Agreement have been executed under terms satisfactory to the Bank and a legal opinion, satisfactory to the Bank, has been issued stating that the Subsidiary Loan Agreement and the Project Agreement have been concluded on behalf of the Borrower, through MOF and MHCS, and the Agency for Development Program of Odessa and that such Agreements have been duly authorized by the Borrower, through MOF and MHCS, and the Agency for

Development Programs of Odessa and are legally binding upon the Borrower and the Agency for Development Programs of Odessa;

(c) payments made for expenditures under Category (1) (b) unless the Borrower has provided evidence that the Project Agreement with the Chernihivvodokanal Utility and Municipality and the respective Subsidiary Agreement have been executed under terms satisfactory to the Bank and a legal opinion, satisfactory to the Bank, has been issued stating that the Subsidiary Loan Agreement and the Project Agreement have been concluded on behalf of the Borrower, through MOF and MHCS, and the Chernihivvodokanal Utility and Municipality and that such Agreements have been duly authorized by the Borrower, through MOF and MHCS, and the Chernihivvodokanal Utility and Municipality and are legally binding upon the Borrower and the Chernihivvodokanal Utility and Municipality;

(d) payments made for expenditures under Category (1) (c) unless the Borrower has provided evidence that the Project Agreement with the Ivano-Frankivskvodoecotechprom Utility and Municipality and the respective Subsidiary Agreement have been executed under terms satisfactory to the Bank and a legal opinion, satisfactory to the Bank, has been issued stating that the Subsidiary Loan Agreement and the Project Agreement have been concluded on behalf of the Borrower, through MOF and MHCS, and the Ivano-Frankivskvodoecotechprom Utility and Municipality and that such Agreements have been duly authorized by the Borrower, through MOF and MHCS, and the Ivano-Frankivskvodoecotechprom Utility and Municipality and are legally binding upon the Borrower and the Ivano-Frankivskvodoecotechprom Utility and Municipality;

(e) payments made for expenditures under Category (2) unless the Borrower has provided evidence that the Subsidiary Loan Agreements with the Utilities to be Selected or Municipalities as the case may be – other than Agency for Development Programs of Odessa, Chernihivvodokanal Utility and Ivano-Frankivskvodoecotechprom Utility - have been executed under terms satisfactory to the Bank and a legal opinion, satisfactory to the Bank, has been issued stating that the Subsidiary Loan Agreements have been concluded on behalf of the Borrower, through MOF and MHCS, and the Utilities to be Selected (or Municipalities as the case may be) and that such Agreements have been duly authorized by the Borrower, through MOF and MHCS, and the Utilities to be Selected or Municipalities as the case may be, and are legally binding upon the Borrower and the Utilities to be Selected or Municipalities as the case may be.

4. The Bank may require withdrawals from the Loan Account to be made on the basis of statements of expenditure for expenditures under contracts for: (a) goods costing less than \$100,000 equivalent per contract; (b) works costing less than \$100,000 equivalent per contract; (c) services of individual consultants costing less than \$100,000 equivalent per contract; (d) services of consulting firms under contracts costing less than \$100,000 equivalent per contract; and (e) incremental operating costs all under such terms and conditions as the Bank shall specify by notice to the Borrower.

5. The Borrower may request withdrawals from the Loan Account to be made on the basis of reports to be submitted to the Bank in form and substance satisfactory to the Bank, such reports to include the FMR and any other information as the Bank shall specify by notice to the Borrower (Report-based Disbursements). In the case of the first such request submitted to the Bank before any withdrawal has been made from the Loan Account, the Borrower shall submit to the Bank only a statement with the projected sources and applications of funds for the Project for the six-month period following the date of such request.

B. Special Accounts

1. The Borrower may open and maintain in Dollars: (a) Special Deposit Account A in respect of the Agency for Development Programs of Odessa; (b) Special Deposit Account B in respect of Chernihivvodokanal Utility; (c) Special Deposit Account C in respect of Ivano-Frankivskvodoecotechprom Utility; and (d) Special Deposit Account D under Part C of the Project, implemented by the MHCS in respect of the Utilities to be Selected, and Municipalities; all in commercial banks acceptable to the Bank, on terms and conditions satisfactory to the Bank, including appropriate protection against set-off, seizure and attachment.

2. After the Bank has received evidence satisfactory to it that the Special Accounts have been opened, withdrawals from the Loan Account of amounts to be deposited into the Special Accounts shall be made as follows:

(a) if the Borrower is not making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex A to this Schedule 1; and

(b) if the Borrower is making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex B to this Schedule 1.

3. Payments out of the Special Accounts shall be made exclusively for Eligible Expenditures. For each payment made by the Borrower out of the Special Account, the Borrower shall, at such time as the Bank shall reasonably request, furnish to the Bank such documents and other evidence showing that such payment was made exclusively for Eligible Expenditures.

4. Notwithstanding the provisions of Part B.2 of this Schedule, the Bank shall not be required to make further deposits into the Special Accounts:

(a) if the Bank, at any time, is not satisfied that the reports referred to in Part A.4 of this Schedule 1 adequately provide the information required for Report-based Disbursements;

(b) if the Bank determines at any time that all further withdrawals for payment of Eligible Expenditures should be made by the Borrower directly from the Loan Account; or

(c) if the Borrower shall have failed to furnish to the Bank, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Bank pursuant to said Section in respect of the audit of: (A) the records and accounts for the Special Accounts; or (B) the records and accounts reflecting expenditures with respect to which withdrawals were Report-based Disbursements or were made on the basis of statements of expenditure, as the case may be.

5. The Bank shall not be required to make further deposits into the Special Accounts in accordance with the provisions of Part B.2 of this Schedule if, at any time, the Bank shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Loan Account pursuant to Section 6.02 of the General Conditions. Upon such notification, the Bank shall determine, in its sole discretion, whether further deposits into the Special Accounts may be made and what procedures should be followed for making such deposits, and shall notify the Borrower of its determination.

6. (a) If the Bank determines at any time that any payment out of the Special Accounts were made for expenditures which are not Eligible Expenditure, or were not justified by the evidence furnished to the Bank, the Borrower shall, promptly upon notice from the Bank, provide such additional evidence as the Bank may request, or deposit into the Special Accounts (or, if the Bank shall so request, refund to the Bank) an amount equal to the amount of such payment. Unless the Bank shall otherwise agree, no further deposit by the Bank into the Special Accounts shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Bank determines at any time that any amount outstanding in the Special Accounts will not be required to cover payments for Eligible Expenditures during the six-month period following such determination, the Borrower shall, promptly upon notice from the Bank, refund to the Bank such outstanding amount.

(c) The Borrower may, upon notice to the Bank, refund to the Bank all or any portion of the funds on deposit in the Special Accounts.

(d) Refunds to the Bank made pursuant to subparagraph (a), (b) or (c) of this paragraph 6 shall be credited to the Loan Account for subsequent withdrawal or for cancellation in accordance with the provisions of the Loan Agreement.

**Annex A
to
SCHEDULE 1**

**Operation of Special Account
When Withdrawals Are Not
Report-based Disbursements**

1. For the purposes of this Annex, the term “Authorized Allocation” means the amount of \$3,500,000 in respect of Special Account A, the amount of \$1,400,000 in respect of Special Account B, the amount of \$1,000,000 in respect of Special Account C and the amount of \$7,600,000 in respect of Special Account D, to be withdrawn from the Loan Account and deposited into the Special Accounts pursuant to paragraph 2 of this Annex.

2. Withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Accounts shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Bank a request or requests for deposit into the Special Accounts of an amount or amounts which in the aggregate do not exceed the Authorized Allocation. On the basis of each such request, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Accounts such amount as the Borrower shall have requested.

(b) For replenishment of the Special Accounts, the Borrower shall furnish to the Bank requests for deposit into the Special Accounts at such intervals as the Bank shall specify. Prior to or at the time of each such request, the Borrower shall furnish to the Bank the documents and other evidence required pursuant to Part B.3 of Schedule 1 to this Agreement for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for Eligible Expenditures. Each such deposit into the Special Account shall be withdrawn by the Bank from the Loan Account under one or more of the Eligible Categories.

3. The Bank shall not be required to make further deposits into the Special Accounts, once the total unwithdrawn amount of the Loan minus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions shall equal the equivalent of twice the amount of the Authorized Allocation. Thereafter, withdrawal from the Loan Account of the remaining unwithdrawn amount of the Loan shall follow such procedures as the Bank shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Bank shall have been satisfied that all such amounts remaining on deposit in the

Special Accounts as of the date of such notice will be utilized in making payments for Eligible Expenditures.

**Annex B
to
SCHEDULE 1**

**Operation of Special Account
When Withdrawals Are
Report-based Disbursements**

1. Withdrawals from the Loan Account shall be deposited by the Bank into the Special Accounts in accordance with the provisions of Schedule 1 to this Agreement. Each such deposit into the Special Accounts shall be withdrawn by the Bank from the Loan Account under one or more of the Eligible Categories.

2. Upon receipt of each application for withdrawal of an amount of the Loan, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Accounts an amount equal to the lesser of: (a) the amount so requested; and (b) the amount which the Bank has determined, based on the reports referred to in Part A.5 of this Schedule 1 applicable to such withdrawal application, is required to be deposited in order to finance Eligible Expenditures during the six-month period following the date of such reports.

SCHEDULE 2

Description of the Project

The Project objective is to assist utilities in moving towards higher quality and reliability of services and towards reducing the costs of service through a series of institutional improvements and rehabilitation of water supply, wastewater and solid waste systems.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Bank may agree upon from time to time to achieve such objectives:

Part A Institutional Strengthening

1. Preparing and implementing annual business plans for water, wastewater and solid waste utilities, including performance targets and production of updated financial statements.
2. Further strengthening the MHCS's capacity to monitor and ensure accountability, supervision capacity and improved efficiency of the water, wastewater and solid waste sector, through the carrying out of procurement and financial management training.
3. Further strengthening the Utilities' capacity to monitor and ensure accountability, supervision capacity and improved efficiency of the water, wastewater and solid waste sector, through the carrying out of procurement and financial management training.

Part B Rehabilitation Investments

Carrying out selected rehabilitation of infrastructure works and replacement and upgrading of equipment needed for selected water, wastewater and solid waste utilities to mitigate serious health and environmental risks, all in accordance with the Project's Utilities Business Plan.

Part C Energy Efficiency Investments

Replacing energy intensive equipment and related infrastructure with more energy efficient facilities of selected municipal utilities, rehabilitation of infrastructure works and upgrading of equipment of selected municipal entities. These eligible municipal utilities shall have: (a) completed their business plans under Part A.1 of the Project in a manner satisfactory to the MHCS and the Bank, (b) provided economic and technical analysis confirming sufficient potential energy savings, and (c) obtained prior no-objection of the Bank.

Part D Project Management

1. Supporting MHCS's overall implementation and coordination of the Project at the central level, including financial management, procurement, monitoring and evaluation, public information and training and related operating expenses.
2. Supporting the Utilities implementation and coordination of the Project at the regional level, including financial management, procurement, monitoring and evaluation, public information and training and related operating expenses.

* * *

The Project is expected to be completed by June 30, 2012.

SCHEDULE 3

Amortization Schedule

<u>Date Payment Due</u>	<u>Payment of Principal (Expressed in Dollars)*</u>
April 15, 2013	3,000,000
October 15, 2013	3,085,000
April 15, 2014	3,175,000
October 15, 2014	3,265,000
April 15, 2015	3,360,000
October 15, 2015	3,460,000
April 15, 2016	3,560,000
October 15, 2016	3,660,000
April 15, 2017	3,765,000
October 15, 2017	3,875,000
April 15, 2018	3,985,000
October 15, 2018	4,100,000
April 15, 2019	4,220,000
October 15, 2019	4,340,000
April 15, 2020	4,465,000
October 15, 2020	4,595,000
April 15, 2021	4,725,000
October 15, 2021	4,860,000
April 15, 2022	5,000,000
October 15, 2022	5,145,000
April 15, 2023	5,295,000
October 15, 2023	5,445,000
April 15, 2024	5,605,000
October 15, 2024	5,765,000
April 15, 2025	5,930,000
October 15, 2025	6,100,000
April 15, 2026	6,275,000
October 15, 2026	6,460,000
April 15, 2027	6,645,000
October 15, 2027	6,840,000
TOTAL	140,000,000

* The figures in this column represent the amount in Dollars to be repaid, except as provided in Section 4.04 (d) of the General Conditions.

SCHEDULE 4

Procurement

Section I. General

A. All goods, works and services (other than consultants' services) shall be procured in accordance with the provisions of Section I of the "Guidelines: Procurement under IBRD Loans and IDA Credits" dated May 2004, (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants' services shall be procured in accordance with Sections I and IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" dated May 2004, (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Bank of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

Section II. Particular Methods of Procurement of Goods, Works and Services (other than Consultants' Services)

A. International Competitive Bidding. Except as otherwise provided in Part B of this Section, contracts shall be awarded on the basis of International Competitive Bidding. The provisions of paragraphs 2.55 and 2.56 of the Procurement Guidelines, providing for domestic preference in the evaluation of bids, shall apply to goods manufactured in the territory of the Borrower and works to be carried out by domestic contractors.

B. Other Procurement Procedures

1. National Competitive Bidding. Goods estimated to cost less than \$500,000 equivalent per contract and works estimated to cost less than \$5,000,000 equivalent per contract, may be procured under contracts awarded on the basis of National Competitive Bidding and the following additional provisions:

(a) Eligibility

Bidding shall not be restricted to domestic firms. Foreign firms shall not be excluded from the national competitive bidding process irrespective of the contract value.

(b) Procedures

- (i) “Open tender procedures” shall be followed in all cases.
- (ii) Invitations to bid shall be advertised in at least one (1) widely circulated national daily newspaper allowing a minimum of thirty (30) days for the preparation and submission of bids.
- (iii) Bids shall not be invited on the basis of percentage premium or discount over the estimated cost.

(c) Pre-qualification

- (i) Prequalification, where used, shall be based on a “pass/fail” system.
- (ii) Minimum experience, technical, and financial requirements shall be explicitly stated in the pre-qualification documents.

(d) Participation by Government-owned Enterprises

- (i) Government-owned enterprises in the Borrower’s territory shall be eligible to participate in bidding only if they can establish that they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the Government.
- (ii) Government-owned enterprises will be subject to the same bid and performance security requirements as other bidders.

(e) Bidding Documents

- (i) Procuring entities shall use the appropriate Bank’s sample bidding documents, including pre-qualification documents, for the procurement of goods, works, or technical services (other than consultants' services), all acceptable to the Bank.
- (ii) Bidding documents shall be made available to all those companies that have paid the required fee.

(f) Bid Opening and Bid Evaluation

- (i) Bids shall be opened in public, immediately after the deadline for submission of bids.

- (ii) Evaluation of bids shall be made in strict adherence to the monetarily quantifiable criteria declared in the bidding documents.
- (iii) No domestic preference shall be allowed in evaluating bids.
- (iv) Contracts shall be awarded to qualified bidders having submitted the lowest evaluated substantially responsive bid and no negotiations shall be carried out prior to contract award.

(g) Rejection of Bids

- (i) No bid shall be rejected purely on the basis that the bid price is higher than the estimated budget for that procurement.
- (ii) All bids shall not be rejected and new bids solicited without the Bank's prior concurrence.

(h) Securities

Bid security shall not exceed two percent (2%) of the estimated cost of the contract. Performance security shall not exceed ten percent (10%) of the contract price. No advance payments shall be made to contractors without a suitable advance payment security. The format of all such securities shall be included into the bidding documents and shall be acceptable to the Bank.

2. Shopping. Goods estimated to cost less than \$100,000 equivalent per contract and works estimated to cost less than \$100,000 equivalent per contract, may be procured under contracts awarded on the basis of Shopping.

3. Direct Contracting. Goods and works which the Bank agrees meet the requirements for Direct Contracting may be procured in accordance with the provisions of said procurement method.

Section III. Particular Methods of Procurement of Consultants' Services

A. Quality- and Cost-based Selection. Except as otherwise provided in Part B of this Section, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection. For purposes of paragraph 2.7 of the Consultant Guidelines, the short list of consultants for services estimated to cost less than \$100,000 equivalent per contract may comprise entirely national consultants.

B. Other Procedures

1. Selection Based on Consultants' Qualifications. Services estimated to cost less than \$200,000 equivalent per contract] may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1, 3.7 and 3.8 of the Consultant Guidelines.

2. Single Source Selection. Services for tasks in circumstances which meet the requirements of paragraph 3.10 of the Consultant Guidelines for Single Source Selection, may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraphs 3.9 through 3.13 of the Consultant Guidelines.

3. Individual Consultants. Services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines. Under the circumstances described in paragraph 5.4 of the Consultant Guidelines, such contracts may be awarded to individual consultants on a sole-source basis.

Section IV. Review by the Bank of Procurement Decisions

The Procurement Plan shall set forth those contracts which shall be subject to the Bank's Prior Review. All other contracts shall be subject to Post Review by the Bank.

SCHEDULE 5

Implementation Program

Part A: Institutional Arrangements

1. The Borrower shall maintain until completion of the Project, with composition and under terms of reference satisfactory to the Bank, the MHCS which shall be responsible for the overall review and overseeing of the Project activities, advising on any major policy issues related to the implementation of the Project and ensuring coordination between governmental and local authorities and related agencies involved in the implementation of the Project.

2. The Borrower, through MHCS, shall ensure that all necessary measures are taken to establish by, not later than June 30, 2008, and thereafter maintain the CPMU during the execution of the Project with such staff and resources as shall be required for the CPMU to perform its duties in respect of the day-to-day management and implementation of the Project at the central level and in coordination with the Regional PMUs, all in accordance with the Operations Manual.

3. The Borrower, through MHCS, shall ensure that all necessary measures are taken to establish by not later than June 30, 2008 and thereafter maintain the Regional PMUs during the execution of the Project with such staff and resources as shall be required for the PMU to perform its duties in respect of the day-to-day management and implementation of the Project at the local level and in coordination with the PMU and the Utilities, all in accordance with the Operations Manual.

Part B: Implementation Modalities

1. Operations Manual

(a) The Borrower, through MOF and MHCS: shall (i) adopt the Operations Manual not later than 6 months after the date of this Agreement; and (ii) take all action required to ensure that the Operations Manual is applied and followed at all times in the implementation, monitoring and evaluation of the Project.

(b) Except as the Bank shall otherwise agree or as the Bank may otherwise judge it necessary to update the Operations Manual to reflect and support a sustainable evolution of the Project, the Borrower shall not amend, abrogate or waive the Operations Manual or any provision thereof.

2. Subsidiary Loan Agreements

(a) The Borrower, through MOF and MHCS, shall enter into agreements with the Selected Utilities for the purpose of carrying out Parts A.1, A.3, B, C and D.2 of

the Project, and with the Utilities to be Selected for the purposes of carrying out Part C of the Project, all under terms and conditions which shall have been agreed upon with the Bank (the Subsidiary Loan Agreements) and which shall include, *inter alia*:

- (i) Except as the Bank and the Borrower shall otherwise agree, the provisions set forth or referred to in this provision shall apply for the purposes of Section 3.01 (c) of this Agreement.
- (ii) The principal amount of the Subsidiary Loan repayable to the Borrower under the Subsidiary Loan Agreement shall: (i) be denominated in Dollars; and (ii) be the equivalent in Dollars (determined as of the date or respective dates of repayment of the principal amount of the Loan specified in Schedule 3 to this Agreement) of the value of the currency or currencies withdrawn from the Loan Account or paid out of the Special Accounts for Parts A.1, A.3, B, C and D.2 of the Project on account of the cost of works, goods and services for Parts A.1,A.3, B, C and D.2 of the Project, to be financed under a Subsidiary Loan out of the proceeds of the Loan allocated from time to time to Categories (1) to (2).
- (iii) The Utilities shall pay to the Borrower: (i) interest on the principal amount of the Subsidiary Loan withdrawn and outstanding from time to time at the rate applicable from time to time to the Loan pursuant to the provisions of Section 2.05 of this Agreement; and (ii) a front-end fee equal to the rate applicable to the Loan pursuant to the provisions of Section 2.04 of this Agreement on the amount of the Subsidiary Loan.
- (iv) The Utilities shall repay to the Borrower the principal amount of the Subsidiary Loan in accordance with an amortization schedule, as set forth in the Subsidiary Loan Agreement, not exceeding the maturity of the Loan, inclusive of a grace period not exceeding five (5) years.
- (v) The Utilities shall at all times function and organize itself pursuant to the organizational principles set forth in paragraph A.1 of the Schedule to the Project Agreement and Subsidiary Loan Agreement, as the case may be.

(b) The Borrower, through the MOF shall exercise its rights under Subsidiary Loan Agreements in such a manner as to protect the interests of the Borrower and the Bank and to accomplish the purposes of the Project, and, except as the Bank shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive, said agreements or any provisions thereof.

3. Part B and C of the Project: Criteria for Utilities Selection

For the purposes of carrying out Parts A.1, A.3, B, C and D.2 of the Project, water, wastewater and solid waste utilities have been selected under terms satisfactory to the Bank or will be selected according to agreed criteria set forth in the Operations Manual.

4. Parts B and C of the Project: Environmental Management Plan

The Borrower shall take all measures necessary to ensure that the MHCS carry out and shall cause the Utilities to carry out the measures identified under the Environmental Management Plan at all times in a timely manner, ensuring that adequate information on the implementation of said measures is suitably included in the Project progress reports to be prepared pursuant to the provisions of paragraph 1 of Part C of this Schedule.

The Borrower, through MHCS, shall ensure that all measures necessary for the carrying out of the Environmental Management Plan shall be taken in a timely manner and that all legal and administrative urban planning and permits from the Borrower's environmental executive authorities and authorizations necessary to carry out Parts B and C of the Project are secured in a timely manner and with due diligence.

Part C: Progress and Evaluation and Monitoring Reporting

1. Progress Reports

Without limitation upon the provisions of Section 9.07 of the General Conditions, the Borrower, through the MHCS, shall, commencing on June 30, 2008 and thereafter, not later than March 1 and September 1 in each calendar year and until Project completion, prepare and furnish to the Bank a semi-annual progress report, of such scope and in such detail as the Bank shall reasonably request, describing, in accordance with the Monitoring and Evaluation Indicators, the progress achieved in the implementation of the Project during the preceding six (6) months of the calendar year.

2. Mid-Term Review

The Borrower, through MHCS, shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators acceptable to the Bank, the carrying out of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Bank, and furnish to the Bank, on or about December 31, 2009, a mid-term report integrating the results of the

monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Bank, by February 28, 2010, or such later date as the Bank shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Bank's views on the matter.