

LOAN NUMBER 2166 - IND

GRANT NUMBER 0005 - IND

PROJECT AGREEMENT
(Tsunami Emergency Assistance (Sector) Project)

between

ASIAN DEVELOPMENT BANK

and

STATE OF TAMIL NADU

DATED 12 May 2005

PROJECT AGREEMENT

PROJECT AGREEMENT dated 12 May 2005 between ASIAN DEVELOPMENT BANK (hereinafter called ADB), and STATE OF TAMIL NADU (hereinafter called Tamil Nadu) on the other part.

WHEREAS

(A) by a Financing Agreement of even date herewith between India (hereinafter called India) and ADB, ADB has agreed provide to India Loan and Grant financing of two hundred million dollars (\$200,000,000) on the terms and conditions set forth in the Financing Agreement, but only on condition that part of the proceeds of (i) the Loan in an amount equivalent to \$67,550,000, and (ii) the Grant in an amount equivalent to \$76,200,000 be made available to Tamil Nadu and that Tamil Nadu agrees to undertake certain obligations towards ADB as hereinafter in this Project Agreement set forth; and

(B) Tamil Nadu in consideration of ADB entering into the Financing Agreement with India, has agreed to undertake the obligations hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Financing Agreement and in the Loan Regulations (as so defined) and Grant Regulations (as so defined) have the respective meanings therein set forth.

ARTICLE II

Particular Covenants

Section 2.01. (a) Tamil Nadu shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental, social, and coastal management practices.

(b) In the carrying out of the Project and operation of the Project facilities, Tamil Nadu shall perform all obligations set forth in the Financing Agreement to the extent that they are applicable to Tamil Nadu.

Section 2.02. Tamil Nadu shall make available, promptly as needed, the funds, facilities, services, equipment, land and other resources which are required, in addition to the proceeds of the Loan and the Grant, respectively, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, Tamil Nadu shall employ competent and qualified consultants and contractors as required, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, all goods and services to be financed out of the proceeds of the Loan and the Grant, respectively, shall be procured in accordance with the provisions of Schedules 3A and 3B respectively, and Schedule 4 to the Financing 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 India and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. Tamil Nadu shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. Tamil Nadu shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) Tamil Nadu shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of the Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, Tamil Nadu undertakes to insure, or cause to be insured, the goods to be imported for the Project and to be financed out of the proceeds of the Loan and the Grant, respectively, against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such goods.

Section 2.06. Tamil Nadu shall maintain, or cause to be maintained, records and accounts adequate to identify the goods and services and other items of expenditure financed out of the proceeds of the Loan and the Grant, respectively, to disclose the use thereof in the Project and Subprojects, and to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and Tamil Nadu shall cooperate fully to ensure that the purposes of the Loan and the Grant, respectively, will be accomplished.

(b) Tamil Nadu shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement, or the accomplishment of the purposes of the Loan and the Grant, respectively.

(c) ADB and Tamil Nadu shall from time to time, exchange views through their representatives with regard to any matters relating to the Project, Tamil Nadu, the Loan and the Grant, respectively.

(d) Tamil Nadu shall promptly notify ADB of any proposal impacting the Project, and shall afford ADB an adequate opportunity to comment on such proposal prior to taking any action thereon.

Section 2.08. (a) Tamil Nadu shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the Grant, respectively, and the expenditure of the proceeds thereof; (ii) the goods and services and other items of expenditure financed out of such proceeds; (iii) the Project and Subprojects; (iv) the administration, operations and financial condition of Tamil Nadu; and (v) any other matters relating to the purposes of the Loan and the Grant, respectively.

(b) Without limiting the generality of the foregoing, Tamil Nadu shall furnish to ADB quarterly reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, resettlement monitoring, progress made and problems encountered during the quarter under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following quarter.

(c) Promptly after physical completion of the Project, but in any event not later than three (3) months thereafter or such later date as ADB may agree for this purpose, Tamil Nadu shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by Tamil Nadu of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan and the Grant, respectively.

Section 2.09. (a) Tamil Nadu shall (i) maintain separate accounts for the Loan and the Grant related Project and Subprojects; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related statements, as applicable) audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (iii) furnish to ADB, promptly after their preparation but in any event not later than six (6) months after the close of the fiscal year to which they relate, certified copies of such audited Project accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan and the Grant proceeds, respectively, and compliance with the covenants of the Financing Agreement as well as on the use of the procedures for statement of expenditures), all in the English language. The audit of the Loan Imprest Account, Grant Imprest Account, and SOE shall be carried out as part of the regular annual audit. The auditor's opinion of that part of the examination relating to the imprest account, and SOE shall be separately set out in the auditor's report. Tamil Nadu shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) Tamil Nadu shall enable ADB, upon ADB's request, to discuss its financial statements and its financial affairs from time to time in relation to the Project, with

Tamil Nadu auditors, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of Tamil Nadu unless it shall otherwise agree.

Section 2.10. Tamil Nadu shall enable ADB's representatives to inspect the Project, the goods financed out of the proceeds of the Loan and the Grant, respectively, and any relevant records and documents in relation to the Project.

Section 2.11. (a) Tamil Nadu shall, promptly as required, take all action within its powers to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its business.

(b) In relation to the Project, Tamil Nadu shall at all times conduct its business in accordance with sound administrative, financial, engineering, environmental and coastal management practices, and under the supervision of competent and experienced management and personnel.

(c) In relation to the Project, Tamil Nadu shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound administrative, financial, engineering, environmental, coastal management, and maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, Tamil Nadu shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations under the Project or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, Tamil Nadu shall apply the proceeds of the Loan and the Grant, respectively, to the financing of expenditures on the Project in accordance with the provisions of the Financing Agreement and this Project Agreement, and shall ensure that all goods and services financed out of such proceeds are used exclusively in the carrying out of the Project.

ARTICLE III

Effective Date; Termination

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Financing Agreement shall come into force and effect. ADB shall promptly notify Tamil Nadu of such date.

Section 3.02. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Financing Agreement.

ARTICLE IV**Miscellaneous**

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex, or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2337.

For Tamil Nadu

The Chief Secretary to the Government of Tamil Nadu
Secretariat
Chennai
Tamil Nadu, India

Facsimile Number:

(91-44) 25672304.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of Tamil Nadu by its Chief Secretary or by such other person or persons as such officials shall so designate in writing notified to ADB.

(b) Tamil Nadu shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) of this Section, together with the authenticated specimen signature of each such person.

Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

ASIAN DEVELOPMENT BANK

By /s/ ALBAB AKANDA
Officer-in-Charge
India Resident Mission

STATE OF TAMIL NADU

By /s/ N. SUNDARADEVAN
Secretary to the Government
Revenue Department
(Authorized Representative)