
LOAN NUMBER 3210-FIJ

LOAN AGREEMENT
(Ordinary Operations)
(Transport Infrastructure Investment Sector Project)

between

REPUBLIC OF FIJI

and

ASIAN DEVELOPMENT BANK

DATED 12 DECEMBER 2014

FIJ 48141

LOAN AGREEMENT (Ordinary Operations)

LOAN AGREEMENT dated 12 December 2014 between the REPUBLIC OF FIJI (“Borrower”) and ASIAN DEVELOPMENT BANK (“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 Ministry of Finance (“MOF”) through the Fiji Roads Authority (“FRA”), and for this purpose the Borrower will make available to FRA through the MOF 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 FRA;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001 (“Loan Regulations”), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 3.03 is deleted and the following is substituted therefor:

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

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

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

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

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

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

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

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

commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

(a) “Consulting Guidelines” means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(b) “Consulting Services” means the services to be financed out of the proceeds of the Loan as described in paragraph 3 of Schedule 1 to this Loan Agreement;

(c) “EA” or “Project Executing Agency” for the purposes of, and within the meaning of, the Loan Regulations means the MOF, or any successor thereto acceptable to ADB;

(d) “EIA” or “Environmental Impact Assessment” means the environmental impact assessment for a Subproject, as per ESMF, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the ESMF, and cleared by ADB;

(e) “EMP” or “Environmental Management Plan” means an environmental management plan for a Subproject, including any update thereto, incorporated in an EIA;

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

(g) “ESMF” or “Environmental and Social Management Framework” means the environmental and social management framework for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(h) “IA” or “Project Implementing Agency” means FRA, or any successor thereto acceptable to ADB;

(i) “Financing Arrangement” means the arrangement between the Borrower and FRA described in Section 3.01(a) of this Loan Agreement;

(j) “FRA” means the Fiji Roads Authority, established and operating under the Fiji Roads Authority Decree 2012 (as amended) of the Borrower, or any successor thereto;

(k) “GAP” means the gender action plan prepared for the Project, including any update thereto, and agreed to between the Borrower and ADB;

(l) “Goods” means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(m) “Involuntary Resettlement Safeguards” means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;

(n) “LARF” or “Land Acquisition and Resettlement Framework” means the land acquisition and resettlement framework for the Project, including any update thereto, prepared and submitted by the Borrower, and cleared by ADB;

(o) “LARP” or “Land Acquisition and Resettlement Plan” means the land acquisition and resettlement plan for a Subproject, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the LARF, and cleared by ADB;

(p) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2012, as amended from time to time);

(q) “MOF” means the Ministry of Finance of the Borrower, or any successor thereto;

(r) “PAM” means the project administration manual for the Project dated 22 October 2014 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(s) “Procurement Guidelines” means ADB’s Procurement Guidelines (2013, as amended from time to time);

(t) “Procurement Plan” means the procurement plan for the Project dated 22 October 2014 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(u) “Project facilities” means the facilities to be improved, rehabilitated, modernized, constructed, operated and/or maintained, and the equipment to be installed and maintained under the Project;

(v) “Safeguards Monitoring Report” means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of, and compliance with, the EMP and LARP, including any corrective and prevention actions;

(w) “SPS” or “Safeguard Policy Statement” means ADB’s Safeguard Policy Statement (2009);

(x) “Subproject” means a road, bridge and/or rural jetty repair, rehabilitation, reconstruction or upgrading subproject that meets the subproject eligibility criteria set forth in the PAM; and

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

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of one hundred million Dollars (\$100,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

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

(c) The term "grace period" as used in subsection (b) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of:

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

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

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

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

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

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;

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

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

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall make the proceeds of the Loan available to FRA under the Financing Arrangement upon terms and conditions satisfactory to ADB.

(b) The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 31 December 2020 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

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

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

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

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

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

Section 4.05. ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

Section 4.06. The Borrower shall take all actions which shall be necessary on its part to enable FRA to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.07. (a) The Borrower shall exercise its rights under the Financing Arrangement 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 Arrangement shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

ARTICLE V

Effectiveness

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

ARTICLE VI

Delegation of Authority

Section 6.01. The Borrower hereby designates FRA as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02 and 3.03 and of this Loan Agreement and under Sections 6.01, 6.02, 6.03 and 6.04 of the Loan Regulations.

Section 6.02. Any action taken or any agreement entered into by FRA pursuant to the authority conferred under Section 6.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 6.03. The authority conferred on FRA under Section 6.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

ARTICLE VII

Miscellaneous

Section 7.01. The Minister for Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

Ministry of Finance
Rotalabalavu House
Victoria Parade
Suva
Republic of Fiji

Facsimile Number:

(679) 3300-834

For ADB

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

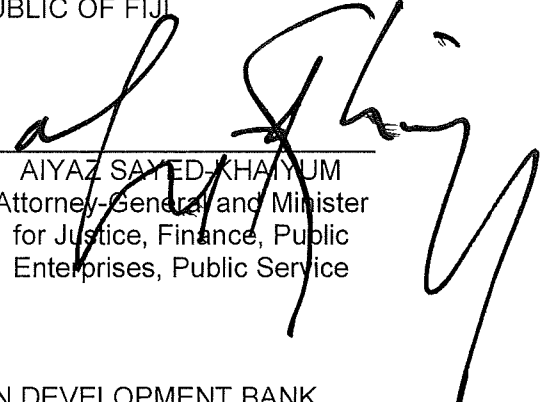
Facsimile Numbers:

(632) 636-2444
(632) 636-2446.

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

REPUBLIC OF FIJI

By


AIYAZ SAYED-KHAYUM
Attorney-General and Minister
for Justice, Finance, Public
Enterprises, Public Service

ASIAN DEVELOPMENT BANK

By


ROBERT A. JAUNCEY
Regional Director
South Pacific Subregional Office

SCHEDULE 1

Description of the Project

1. The objective of the Project is to improve the safety and resilience of land and maritime transport infrastructure.

2. The Project shall comprise:

Part A. Rehabilitated land and maritime transport infrastructure

- (i) repair, rehabilitation, reconstruction, or upgrading of existing roads, bridges, and rural jetties; and
- (ii) installation of safety improvements on selected roads and bridges, including road safety furniture and streetlights, and gender-sensitive designs.

Part B. Efficient project management and institutional strengthening

- (i) establishment of project supervision team in FRA;
- (ii) provision of design and supervision consultants; and
- (iii) updating design and construction standards for roads and bridges to bring uniformity to road assets, to incorporate climate change adaptation considerations for more climate resilient road and maritime transport infrastructure, and to reflect the current international standards on road geometry, pavements, drainage, and associated structures.

3. Consulting Services will be provided to support the above stated activities.

4. The Project is expected to be completed by 30 June 2020.

SCHEDULE 2

Amortization Schedule

(Transport Infrastructure Investment Sector 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.

Date Payment Due	Installment Share (Expressed as a %)
15 June 2020	3.333333
15 December 2020	3.333333
15 June 2021	3.333333
15 December 2021	3.333333
15 June 2022	3.333333
15 December 2022	3.333333
15 June 2023	3.333333
15 December 2023	3.333333
15 June 2024	3.333333
15 December 2024	3.333333
15 June 2025	3.333333
15 December 2025	3.333333
15 June 2026	3.333333
15 December 2026	3.333333
15 June 2027	3.333333
15 December 2027	3.333333
15 June 2028	3.333333
15 December 2028	3.333333
15 June 2029	3.333333
15 December 2029	3.333333
15 June 2030	3.333333
15 December 2030	3.333333
15 June 2031	3.333333
15 December 2031	3.333333
15 June 2032	3.333333
15 December 2032	3.333333
15 June 2033	3.333333
15 December 2033	3.333333
15 June 2034	3.333333
15 December 2034	3.333343
TOTAL	100.000000

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

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

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

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

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

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

SCHEDULE 3

Allocation and Withdrawal of Loan Proceeds

General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category of the Table).

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Interest and Commitment Charges

3. The amount allocated to Category 3 is for financing interest and commitment charges 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 charges.

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 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.

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Retroactive Financing

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

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Transport Infrastructure Investment Sector Project)			
CATEGORY			ADB FINANCING
Number	Item	Total Amount Allocated for ADB Financing (\$) Category	Percentage and Basis for Withdrawal from the Loan Account
1	Civil Works	70,450,000	96.14% of total eligible expenditure claimed
2	Consultants	10,590,000	90.00% of total eligible expenditure claimed
3	Financing Charges During Implementation*	4,700,000	100.00% of total amount due
4	Unallocated	14,260,000	
	Total	100,000,000	

* Include interest and commitment charges. Both interest charges during construction and commitment charges are capitalized.

SCHEDULE 4

Procurement of Goods, Works and Consulting Services

General

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

Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of International Competitive Bidding.
4. The method of procurement is subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the method of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Conditions for Award of Contract

5. The Borrower shall ensure, or cause FRA to ensure, to not award any Works contract for a Subproject which involves environmental impacts until FRA has:
 - (a) obtained the final approval of the EIA from the Department of Environment of the Borrower;
 - (b) updated the EMP based on the detailed design; and
 - (c) incorporated the relevant provisions from the corresponding EMP into the Work contract.
6. The Borrower shall ensure, or cause FRA to ensure, to not award any Works contract for a Subproject which involves involuntary resettlement impacts, until the Borrower, through FRA, has prepared and submitted to ADB the final LARP for such Subproject based on the Subproject's detailed design, and obtained ADB's clearance of such LARP.

Consulting Services

7. Except as ADB may otherwise agree, the Borrower, through FRA, shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

Industrial or Intellectual Property Rights

8. (a) The Borrower, through FRA, shall ensure, that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower, through FRA, shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

9. The Borrower, through FRA, shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the Consulting Services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

ADB's Review of Procurement Decisions

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

SCHEDULE 5

Execution of Project; Financial Matters

Implementation Arrangements

1. The Borrower and the FRA shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.
2. The Borrower shall ensure, or cause the FRA to ensure, that the project supervision team, established as part of the FRA, is provided with such staff and resources as necessary for the efficient implementation of the Project.
3. The Borrower and the FRA shall ensure that to the extent possible under the prevailing laws of the Borrower, the staff members who will receive training under the Project will be retained in their current positions and will not be transferred unnecessarily, so that the Project can benefit from their skills.

Coordination among the Agencies

4. The Borrower is fully committed to the Project and shall ensure that all ministries, agencies and divisions involved in the implementation of the Project, including local government authorities, give their full cooperation to ensure smooth implementation of the Project.

Counterpart Funds

5. The Borrower shall:
 - (a) ensure sufficient counterpart funds from its budget for each fiscal year, in a timely manner, for the efficient implementation of the Project; and
 - (b) ensure adequate funds towards operations and maintenance of Project facilities, through budgetary allocations or other means, during and after the Project's completion.
6. The Borrower shall provide, or cause the FRA to provide, as necessary, respective counterpart staff, land, facilities, and funding required for timely and effective implementation of the Project, including, without limitation, any funds required (a) to fund operation and maintenance of Project facilities, (b) to mitigate unforeseen environmental or social impacts, and (c) to meet any additional costs arising from design changes, price escalation in construction costs and/or unforeseen circumstances. The Borrower shall cause the FRA to make the resources thus required available on an annual basis for each fiscal year.

Resources

7. The Borrower shall ensure that FRA shall be provided with adequate staff, resources, and facilities to implement the Project.

Selection Criteria and Approval Process for Subprojects

8. Feasibility studies prepared for proposed Subprojects shall be endorsed by the EA prior to submission to ADB for approval. The Borrower shall periodically submit for ADB's approval a list of roads, bridges and/or rural jetties it wishes to propose for Subprojects. The list shall be accompanied by an endorsed feasibility study for each proposed Subproject. The Borrower shall ensure that the feasibility studies are prepared with sufficient detail for ADB to assess whether the proposed Subprojects meet the criteria set forth in the PAM, and are otherwise suitable and viable.

9. The Borrower shall ensure that all documents forming the basis for screening, selection and processing of Subprojects are made available to ADB upon request and are kept available for such purposes for a minimum period of five years from the date of the project completion report for the Project.

Project Website

10. Within 12 months after the Effective Date, the Borrower shall ensure, or cause the FRA to ensure, that a Project website is created to disclose information about various matters in regards to the Project, including procurement. With regard to procurement, the website shall disclose the following information in relation to goods and services procured for the Project: (a) the list of participating bidders; (b) the name of the winning bidder; (c) basic details on bidding procedures adopted; (d) the amount of contract awarded; and (e) the list of goods/services procured. The Project website need not be separate from an existing website of the FRA, as long as it is comprehensive and easily accessible by the public.

Grievance Redress Mechanism

11. Within 12 months after the Effective Date, the Borrower shall ensure that FRA prepare a grievance redress mechanism, acceptable to ADB, and establish a special committee to receive and resolve complaints/grievances or act upon reports from stakeholders on misuse of funds and other irregularities, including grievances due to resettlement. The special committee shall (a) make the public aware of the existence of this grievance redress mechanism; (b) receive, review and address complaints/grievances of stakeholders of the Project, in relation to the Project, any of the service providers, or any person responsible for carrying out any aspect of the Project; and (c) proactively and constructively respond to them.

Safeguards and SocialEnvironment

12. The Borrower shall ensure that the preparation, design, construction, implementation, operation and decommissioning of each Subproject, and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment,

health, and safety; (b) the Environmental Safeguards; (c) the ESMF; and (d) all measures and requirements set forth in the EIA and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

13. The Borrower shall ensure that FRA make all land and all rights-of-way required for each Subproject available to the Works contractor in accordance with the schedule agreed under the related Works contract, and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; (c) the LARF; and (d) all measures and requirements set forth in the relevant LARP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

14. Without limiting the application of the Involuntary Resettlement Safeguards, the LARF or the relevant LARP, the Borrower shall ensure, or cause the FRA to ensure, that no physical or economic displacement takes place in connection with the Subprojects until:

- (a) compensation and other entitlements have been provided to affected people in accordance with the relevant LARP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the relevant LARP.

Indigenous Peoples

15. The Borrower shall ensure that the Project does not have any impact on indigenous peoples within the meaning of the SPS. In the event that the Project does have any such impact, the Borrower shall ensure, or cause the FRA to ensure, that the preparation, design, construction, implementation and operation of the relevant Subprojects comply with (a) all applicable laws and regulations of the Borrower relating to indigenous peoples; (b) the Indigenous Peoples Safeguards; and (c) any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Human and Financial Resources to Implement Safeguards Requirements

16. The Borrower shall make available, or cause the FRA to make available, all necessary budgetary and human resources to fully implement the EMP and the LARP as required.

Safeguards-Related Provisions in Bidding Documents and Works Contracts

17. The Borrower shall ensure, or cause the FRA to ensure, that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures and requirements relevant to the contractor set forth in the relevant EIA, EMP, LARP, any conditions attached to the approval issued by the Department of Environment of the

Borrower, and any corrective or preventative actions set forth in a Safeguards Monitoring Report;

- (b) make available a budget for all such environmental and social measures;
- (c) provide the EA with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the relevant EIA, EMP, or LARP;
- (d) adequately record the condition of roads, agricultural land the other infrastructure prior to starting to transport materials and construction; and
- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

18. The Borrower shall do, or cause the FRA to do, the following:
- (a) submit semi-annual Safeguards Monitoring Reports to ADB, and disclose relevant information from such reports to affected persons promptly upon submission;
 - (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the relevant EIA, EMP, or LARP, as applicable, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
 - (c) report any breach of compliance with the measures and requirements set forth in the relevant EIA, EMP, or LARP promptly after becoming aware of the breach.

Prohibited List of Investments

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

Gender

20. The Borrower shall ensure that (a) the GAP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for implementation of the GAP; and (d) progress on implementation of the GAP,

including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

Other Social Measures

21. The FRA shall ensure that all civil works contracts under the Project follow all applicable labor laws of the Borrower, and that these further include provisions to the effect that contractors: (a) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction; and (b) follow and implement all statutory provisions on labor (including not employing or using children as labor, and equal pay for equal work), health, safety, welfare, sanitation, and working conditions. Such contracts shall also include clauses for termination in case of any breach of the stated provisions by the contractors.

Procurement

22. The EA and the FRA shall ensure that the anticorruption provisions acceptable to ADB and the Borrower are included in all bidding documents and contracts financed by ADB in connection with the Project, including provisions specifying the right of ADB to review and examine the records and accounts of the EA, the FRA, and all contractors, suppliers, consultants, and other service providers as they relate to the projects. The Borrower and the FRA shall allow and assist ADB's representatives to carry out random spot checks on the work in progress and utilization of funds for the Project.

Reform Measure

23. By June 2015, the Borrower shall have endorsed the updated National Transport Investment Plan and the updated Land Transport Policy and Maritime Transport Policy.

Governance and Anticorruption

24. The Borrower and the FRA shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation, and as included in detail in the PAM.

25. The Borrower and the FRA shall (a) ensure that the anticorruption provisions acceptable to ADB and the Borrower are included in all bidding documents and contracts financed by ADB in connection with the Project, including provisions specifying the right of ADB to review and examine the records and accounts of the FRA, and all contractors, suppliers, consultants, and other service providers as they relate to the Project and as included in detail in the PAM, and (b) allow and assist ADB's representatives to carry out random spot checks on the work in progress and utilization of funds for the Project.

Operation and Maintenance

26. The Borrower shall allocate and make available, on a timely basis, sufficient funds for the operation and maintenance of the Project facilities, and shall ensure that the Project facilities are adequately maintained in accordance with the applicable standards and best international practices.

Review

27. (a) ADB, the Borrower, and the FRA shall meet regularly as required to discuss the progress of the Project and any changes in the implementation arrangements or remedial measure required to be taken to achieve the objectives of the Project.

(b) ADB, the Borrower, and the FRA shall undertake a mid-term review of the Project, around 2 years from the Effective Date, which shall include review of issues and any problems and/or weaknesses in implementation arrangements and shall agree on any changes needed to achieve the objectives of the Project.