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LOAN NUMBER 3222-SRI(SF)

LOAN AGREEMENT  
(Special Operations)

(Integrated Road Investment Program – Tranche 2)

between

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

and

ASIAN DEVELOPMENT BANK

DATED 28 MAY 2015

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SRI 47273

## **LOAN AGREEMENT (Special Operations)**

LOAN AGREEMENT dated 28 May 2015 between DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

### WHEREAS

(A) by a framework financing agreement dated 11 July 2014 between the Borrower and ADB, ADB has agreed to provide a multitranche financing facility to the Borrower for purposes of financing projects under the Integrated Road Investment Program;

(B) by a periodic financing request dated 4 September 2014, the Borrower has applied to ADB for (i) a loan from ADB's Special funds resources; and (ii) a loan from ADB's Ordinary capital resources; each for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(C) the Project will be carried out by the Road Development Authority ("RDA"), and for this purpose the Borrower will make available to RDA the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB;

(D) by a loan agreement of even date herewith ("Ordinary Operations Loan Agreement"), ADB has agreed to lend to the Borrower from its ordinary capital resources an amount of ninety eight million Dollars (\$98,000,000) for the purpose of the Project; and

(E) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement to be signed between ADB and RDA;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Loan Regulations; Definitions**

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("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 2.01(25) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement to be signed between ADB and RDA.

- (b) The term “Project Executing Agency” appearing in Sections 6.01(a), 8.01(d), 8.01(f), 8.01(k), 9.01(c) and 9.02(c) of the Loan Regulations shall be substituted by the term “RDA”.

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) “CEA” means the Central Environmental Authority of the Borrower;
- (b) “Environmental Assessment and Review Framework” or “EARF” means the environmental assessment and review framework for the Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;
- (c) “Environmental Management Plan” or “EMP” means each environmental management plan for the Project, including any update thereto, incorporated in the IEE;
- (d) “Environmental Safeguards” means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (e) “Facility” means the multitranche financing facility provided by ADB to the Borrower for purposes of financing projects under the Investment Program;
- (f) “FAM” means the Facility administration manual dated November 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;
- (g) “FFA” means the framework financing agreement dated 11 July 2014 between ADB and the Borrower with respect to the Facility;
- (h) “GAP” means the gender action plan prepared for the Project, including any update thereto, and agreed to between the Borrower, RDA and ADB;
- (i) “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;
- (j) “Indigenous Peoples Planning Framework” or “IPPF” means the indigenous peoples planning framework for the Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;
- (k) “Indigenous Peoples Safeguards” means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;
- (l) “Initial Environmental Examination” or “IEE” means each initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the EARF and cleared by ADB;

(m) “Investment Program” means the Integrated Road Investment Program;

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

(o) “km” means kilometer;

(p) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2015, as amended from time to time);

(q) “MOHIP” means the Borrower’s Ministry of Highways and Investment Promotion, or any successor thereto;

(r) “PFR” means the periodic financing request submitted or to be submitted by the Borrower, for the purposes of each loan under the Facility, and for the purpose of this Loan Agreement means the periodic financing request dated 4 September 2014;

(s) “Procurement Guidelines” means ADB’s Procurement Guidelines (2015, as amended from time to time);

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

(u) “Project Executing Agency” for the purpose of, and within the meaning of, the Loan Regulations means MOHIP, which is responsible for carrying out the Project;

(v) “Project facilities” means all facilities and structures to be created as part of the Project;

(w) “Resettlement Framework” or “RF” means the resettlement framework for the Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;

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

(y) “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, any resettlement plan and any indigenous peoples’ plan (as applicable), including any corrective and preventative actions; and

(z) “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.

## **ARTICLE II**

### **The Loan**

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to six million one hundred forty three thousand Special Drawing Rights (SDR6,143,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 2% per annum during the grace period and thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in subsection (a) 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 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 January and 15 July in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

## **ARTICLE III**

### **Use of Proceeds of the Loan**

Section 3.01. The Borrower shall make the proceeds of the Loan available to RDA upon terms and conditions satisfactory to ADB and shall cause RDA to apply such proceeds to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement, the Ordinary Operations 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.

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. Withdrawals from the Loan Account in respect of Goods and Works shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Works which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and
- (b) Goods and Works which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 September 2019 or such other date as may from time to time be agreed between the Borrower and ADB.

## **ARTICLE IV**

### **Particular Covenants**

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.03. 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 4.04. The Borrower shall take all actions which shall be necessary on its part to enable RDA to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. The Borrower shall make available, or cause to be made available, promptly as needed, the funds (including any residual financing for completion of contracts under the Project), facilities, services, land and other resources, as required, in addition to the proceeds of the Loan, for the carrying out of the Project.

## ARTICLE V

### Effectiveness

Section 5.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purpose of Section 9.01(f) of the Loan Regulations: the Ordinary Operations Loan Agreement shall have been duly executed and delivered on behalf of the Borrower, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled.

Section 5.02. The following is specified as an additional matter for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: that the Ordinary Operations Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and is legally binding upon the Borrower in accordance with its terms, subject only to the effectiveness of this Loan Agreement,

Section 5.03. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

## ARTICLE VI

### Miscellaneous

Section 6.01. Each of the Secretary of the Ministry of Finance, Deputy Secretary to the Treasury and Director General of the Department of External Resources of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

#### For the Borrower

Secretary  
Ministry of Finance  
Colombo 1  
Sri Lanka

cc.: Deputy Secretary to the Treasury  
Director General, Department of External Resources

Facsimile Numbers:

+94 11 243-3349  
+94 11 244-7633.

For ADB

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

## Facsimile Numbers:

+63 2 636-2444  
+63 2 636-2340.

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.

DEMOCRATIC SOCIALIST REPUBLIC  
OF SRI LANKA

By   
\_\_\_\_\_  
R. H. S. SAMARATHUNGA  
Secretary  
Ministry of Finance

ASIAN DEVELOPMENT BANK

By   
\_\_\_\_\_  
SRI WIDOWATI  
Country Director  
Sri Lanka Resident Mission

## SCHEDULE 1

### Description of the Project

1. The objective of the Investment Program is to enhance road accessibility between rural communities and socioeconomic centers.
2. As part of the Investment Program, the Project aims to enhance road accessibility between rural communities and socioeconomic centers.
3. The Project shall comprise:  
  
**Road improvement in Sabaragamuwa Province, Kalutara District of Western Province, Central Province, Northern Central Province and North Western Province:** Financing of the first slice of contract packages under the Project, as described in the PFR, including improvement and/or maintenance of 2,548 km of rural access roads to all weather standards and 118 km of national roads. This will include improvement and maintenance of (i) the rural access roads for 3 years under management contracts, (ii) selected national road corridors for 7 years, and (iii) short, isolated sections of national road corridors for 3 years.
4. The Project is expected to be completed by 30 March 2024.

**SCHEDULE 2****Amortization Schedule****(Integrated Road Investment Program – Tranche 2)**

<u>Date Payment Due</u>	<u>Payment Principal</u> (expressed in Special Drawing Rights)*
15 January 2020	153,575
15 July 2020	153,575
15 January 2021	153,575
15 July 2021	153,575
15 January 2022	153,575
15 July 2022	153,575
15 January 2023	153,575
15 July 2023	153,575
15 January 2024	153,575
15 July 2024	153,575
15 January 2025	153,575
15 July 2025	153,575
15 January 2026	153,575
15 July 2026	153,575
15 January 2027	153,575
15 July 2027	153,575
15 January 2028	153,575
15 July 2028	153,575
15 January 2029	153,575
15 July 2029	153,575
15 January 2030	153,575
15 July 2030	153,575
15 January 2031	153,575
15 July 2031	153,575
15 January 2032	153,575
15 July 2032	153,575
15 January 2033	153,575
15 July 2033	153,575
15 January 2034	153,575
15 July 2034	153,575
15 January 2035	153,575
15 July 2035	153,575
15 January 2036	153,575
15 July 2036	153,575
15 January 2037	153,575
15 July 2037	153,575
15 January 2038	153,575
15 July 2038	153,575
15 January 2039	153,575
15 July 2039	153,575
<b>TOTAL</b>	<b>6,143,000</b>

\* The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

**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 or Subcategory 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 Charge

3. The amount allocated to Category 2 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

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

- (a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, in consultation with 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, in consultation with 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, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Integrated Road Investment Program – Tranche 2)</b>			
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (SDR) Category</b>	<b>Basis for Withdrawal from the Loan Account</b>
1	Works	5,747,000	100% of total expenditure claimed*
2	Interest Charge	396,000	100% of amount due
	<b>Total</b>	<b>6,143,000</b>	

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

## SCHEDULE 4

### Procurement of Goods and Works

#### General

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

#### Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the following method of procurement: 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 not award any Works contract which involves environmental impacts until RDA has:
  - (a) obtained the final approval of the IEE from the CEA; and
  - (b) incorporated the relevant provisions from the EMP into the Works contract.

#### Industrial or Intellectual Property Rights

6. (a) The Borrower 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 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.

#### ADB's Review of Procurement Decisions

7. Contracts procured under international competitive bidding procedures 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 RDA shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the FAM. Any subsequent change to the FAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the FAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

#### Safeguards

2. The Borrower shall ensure, or cause RDA to ensure, that the preparation, design, construction, implementation, operation and decommissioning of the Project 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 as set out in ADB's Safeguard Policy Statement; (c) the EARF and IEEs; and (d) all measures and requirements set forth in the respective IEEs and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

3. The Borrower shall ensure, or cause RDA to ensure, that the Project does not have any Indigenous Peoples Safeguards and Involuntary Resettlement Safeguards impacts, both within the meaning of SPS. In the event that the Project does have any such impact, the Borrower shall take all steps required to ensure that the Project complies with the RF and IPPF, applicable laws and regulations of the Borrower and with SPS.

4. The Borrower shall ensure, or cause RDA to ensure, that any voluntary donation of land by beneficiaries for any provincial or rural road is implemented in accordance with the procedures laid out in Appendix 3 of the RF after free, prior and informed consultation and consent of the affected persons, provided that there shall be no voluntary land donation for national roads.

#### Human and Financial Resources to Implement Safeguards Requirements

5. The Borrower shall make available, or cause RDA to make available, necessary budgetary and human resources to fully implement the SPS, IEEs, EMPs and any safeguard documents which may be prepared for the Project.

#### Safeguards – Related Provisions in Bidding Documents and Works Contracts

6. The Borrower shall ensure, or cause RDA to ensure, that all bidding documents contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in any safeguards document (including relevant IEEs, EMPs and road-specific EMPs), and any corrective or preventative actions set forth in the Safeguards Monitoring Report;

- (b) make available a budget for all such safeguard measures; and
- (c) provide the Borrower with a written notice of any unanticipated environmental, resettlement or small ethnic community peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEEs, EMPs and any other safeguard plans.

#### Safeguards Monitoring and Reporting

7. The Borrower shall do the following or cause RDA to do the following:
- (a) submit 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 IEEs, EMPs, and any safeguard documents, 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 actual or potential breach of compliance with the measures and requirements set forth in the IEEs, EMPs and any safeguard documents promptly after becoming aware of the breach.

#### Prohibited List of Investments

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

#### Labor Standards

9. The Borrower shall ensure that (a) all contractors under the Project comply with all applicable labor laws and regulations, do not allow employment of child labor for Project activities, encourage the employment of the poor, particularly women, and provide appropriate facilities for women and children in work sites; (b) people directly affected by the Project are given priority to be employed by the Project; (c) contractors do not differentiate wages between men and women for work of equal value; and (d) specific clauses ensuring these shall be included in the contracts.

10. 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.

Governance and Anticorruption

11. The Borrower and RDA shall comply with ADB's Anticorruption Policy (1998, as amended to date) and cooperate with any investigation by ADB and extend all necessary assistance for satisfactory completion of such investigation.

12. The Borrower and RDA shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

13. The Borrower and RDA shall ensure that detailed information on project implementation is made readily available to the public through the RDA website. This shall include all relevant information and documents relating to procurement, including the list of participating bidders, name of the winning bidder, basic details on the bidding process adopted, amount of contract awarded and the list of goods and services procured.

Operation and Maintenance

14. The Borrower shall ensure that it allocates sufficient funds for operation and maintenance of the roads to be constructed or upgraded under the Project, and ensure that the funds are made available to RDA on a timely basis for the same purpose.

15. In the event that a contractor fails to perform the maintenance of the Project roads required under the road management contract, the Borrower, through RDA, shall (a) terminate the contract, and (b) assume the maintenance responsibility by providing sufficient funds and making appropriate implementation arrangements.

16. The Borrower shall ensure that a contractor failing to perform the maintenance of the Project roads will be recorded as a non-performing contractor, and ADB and the Borrower reserve the right to disqualify such a contractor from participating in any future procurement.