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LOAN NUMBER 2541-FIJ

LOAN AGREEMENT  
(Ordinary Operations)  
(Emergency Flood Recovery (Sector) Project)

between

REPUBLIC OF THE FIJI ISLANDS

and

ASIAN DEVELOPMENT BANK

DATED 5 NOVEMBER 2009

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LAL:FIJ 43110

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated 5 November 2009 between REPUBLIC OF THE FIJI ISLANDS (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement; and

(B) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

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

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

**Commitment Charge; Credit.** (aa) 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.

(bb) 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 amount of the credit against the interest payable by the Borrower.

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

(aa) 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.

(bb) 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:

(aa) 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.

(bb) 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, unless the context otherwise requires, the several terms defined in the Loan Regulations have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) "Component" means each component of the Project as listed in Schedule 1 to this Loan Agreement;

(b) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2007, as amended from time to time);

(c) "EARP" means the environmental assessment and review procedures prepared for the Project and endorsed by the Borrower;

(d) "EIA" means an environmental impact assessment prepared specifically for a particular Subproject;

(e) "Eligibility Criteria" means the selection criteria for Subprojects specified in paragraphs 5 to 8 of Schedule 5 to this Loan Agreement;

(f) "IEE" means an initial environmental examination prepared specifically for a particular Subproject;

(g) "LWRM" means the Land and Water Resource Management Division of the Ministry of Agriculture and Primary Industries, and any successor thereto;

(h) "MNP" means the Ministry of National Planning, and any successor thereto;

(i) "MWTPU" means the Ministry of Works, Transport and Public Utilities, and any successor thereto;

(j) "PMT" means the project management team housed within MWTPU;

(k) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);

(l) "Procurement Plan" means the procurement plan for the Project dated 30 July 2009 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;

(m) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means MNP or any legal successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(n) "Project facilities" means facilities and services to be rehabilitated and restored or provided under the Project;

(o) "PSC" means the Project Steering Committee established for the purposes of the Project as more fully described in paragraph 3 of Schedule 5 to this Loan Agreement;

(p) "Resettlement Framework" or "RF" means the Resettlement Framework prepared for the Project and endorsed by the Borrower;

(q) "Resettlement Plan" means any of the Resettlement Plans prepared specifically for the Subprojects and endorsed by the Borrower from time to time;

(r) "Subproject" means any of the Subprojects which was, or is to be selected in accordance with the Eligibility Criteria or as otherwise agreed on by the Borrower and ADB, and financed under the Project; and

(s) "Works" means construction or civil works to be financed out of the proceeds of the Loan, and 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 seventeen million five hundred sixty thousand Dollars (\$17,560,000), 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 twenty four (24) years, and a grace period as defined in paragraph (c) of this Section.

(c) The term "grace period" as used in paragraph (b) of this Section 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 LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations, less a credit of 0.40% 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 sixty (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 paragraph (a) of this Section that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

### **ARTICLE III**

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

Section 3.01. 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.

Section 3.02. The Works and consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Works and consulting services and other items of expenditure shall be in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, all Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement. ADB may refuse to finance a contract where Works or consulting services have not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

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

Section 3.05. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 29 February 2012 or such other date as may from time to time be agreed between the Borrower and ADB.

## **ARTICLE IV**

### **Particular Covenants**

Section 4.01. (a) The Borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental and road rehabilitation 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.

Section 4.02. The Borrower shall make available, promptly as needed, the funds, facilities, services, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project and for the operation and maintenance of the Project facilities.

Section 4.03. (a) In the carrying out of the Project, the Borrower shall cause competent and qualified consultants and contractors, acceptable to ADB, to be employed to an extent and upon terms and conditions satisfactory to the Borrower and ADB.

(b) The Borrower shall cause the Project to be carried out in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The Borrower 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 4.04. 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 4.05. (a) The Borrower shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Borrower pursuant to Section 4.05(a) hereabove, 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 the Borrower unless the Borrower shall otherwise agree.

Section 4.06. The Borrower shall enable ADB's representatives to inspect the Project and the Works financed out of the proceeds of the Loan, and any relevant records and documents.

Section 4.07. The Borrower shall ensure that the Project facilities are operated, maintained and repaired in accordance with sound administrative, financial, engineering, environmental, road asset management and maintenance and operational practices.

## **ARTICLE V**

### **Effectiveness**

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

## **ARTICLE VI**

### **Miscellaneous**

Section 6.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

Ministry of Finance  
Ro Lalabalavu House  
P.O. Box 2212  
Government Buildings  
Suva, Fiji

Facsimile Number:

(679) 3300-834

For ADB

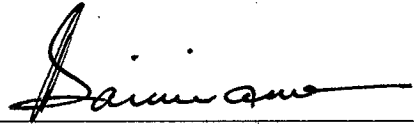
Asian Development Bank  
P.O. Box 789  
0980 Manila, Philippines

Facsimile Numbers:

(632) 636-2444  
(632) 636-2445.

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

REPUBLIC OF THE FIJI ISLANDS

By   
\_\_\_\_\_  
JOSAIA VOREQE BAINIMARAMA  
Prime Minister and Minister for Finance

ASIAN DEVELOPMENT BANK

By   
\_\_\_\_\_  
RICHARD KEITH LEONARD  
Regional Director  
Pacific Subregional Office in Suva, Fiji

## SCHEDULE 1

### Description of the Project

1. The impact of the Project is to reduce economic losses and social disruptions from future extreme weather events. The outcome of the Project is to restore economic and social activities in affected areas to pre-disaster levels. The rehabilitation of damaged roads is expected to restore accessibility to rural roads and allow a resumption of economic activities and social services. The restoration of water facilities will safeguard public health.

2. The Project consists of three Components:

#### Component A: Repairs in the Emergency Response Phase

This Component will provide support during the immediate post-disaster period for restoring basic, safe access. Activities will include clearing of landslides and debris, reinstatement of washed-out approaches to bridges and wet crossings and temporary road pavement repairs.

#### Component B: Civil Works

This Component will provide support for the following civil works:

- (a) Rehabilitation of main sealed highway through the restoration of the bituminous sealed surface and upgrade of the pavement structure as required for a design life of twenty (20) years;
- (b) Repairs to landslips on major roads incorporating appropriate geotechnical investigation and design recommendations;
- (c) Rehabilitation of secondary roads including re-gravelling unsealed roads, reconstruction of culverts, and reconstruction or lengthening of washed-out wet crossings;
- (d) Miscellaneous repairs to water supplies; and
- (e) Repairs to agricultural drainage schemes. Works will be undertaken to (i) clear waterways, (ii) repair damaged seawalls and dykes, (iii) repair and protect scoured drains and culverts, and (iv) repair floodgates.

#### Component C: Consulting Services

This Component will support consulting services for project coordination, design and supervision of implementation of the Subprojects and for strengthening MWTPU's environmental management unit.

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

**SCHEDULE 2****Amortization Schedule****(Emergency Flood Recovery (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.

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 Dec 2017	0.531843
15 Jun 2018	0.558435
15 Dec 2018	0.586357
15 Jun 2019	0.615675
15 Dec 2019	0.646459
15 Jun 2020	0.678781
15 Dec 2020	0.712721
15 Jun 2021	0.748357
15 Dec 2021	0.785774
15 Jun 2022	0.825063
15 Dec 2022	0.866316
15 Jun 2023	0.909632
15 Dec 2023	0.955114
15 Jun 2024	1.002869
15 Dec 2024	1.053013
15 Jun 2025	1.105663
15 Dec 2025	1.160947
15 Jun 2026	1.218994
15 Dec 2026	1.279944
15 Jun 2027	1.343941
15 Dec 2027	1.411138
15 Jun 2028	1.481695
15 Dec 2028	1.555779
15 Jun 2029	1.633568
15 Dec 2029	1.715247
15 Jun 2030	1.801009

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 Dec 2030	1.891060
15 Jun 2031	1.985613
15 Dec 2031	2.084893
15 Jun 2032	2.189138
15 Dec 2032	2.298595
15 Jun 2033	2.413525
15 Dec 2033	2.534201
15 Jun 2034	2.660911
15 Dec 2034	2.793956
15 Jun 2035	2.933654
15 Dec 2035	3.080337
15 Jun 2036	3.234354
15 Dec 2036	3.396071
15 Jun 2037	3.565875
15 Dec 2037	3.744169
15 Jun 2038	3.931377
15 Dec 2038	4.127946
15 Jun 2039	4.334343
15 Dec 2039	4.551061
15 Jun 2040	4.778614
15 Dec 2040	5.017544
15 Jun 2041	5.268429
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 categories of expenditures that may be financed out of the proceeds of the Loan are the categories of Works, consulting services, and interest and commitment charge. (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories specified in this paragraph.)

##### Percentages of ADB Financing

2. Except as ADB may otherwise agree, the Categories of Works or consulting services shall be financed out of the proceeds of the Loan on the basis of eighty-seven and a half percent (87.5%) of total expenditures (including local taxes and duties).

##### Interest and Commitment Charge

3. The amount of \$570,000 is allocated for financing interest and commitment charge on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charge.

##### Disbursement Procedures

4. Except as ADB may otherwise agree, the Loan proceeds for financing Works, and consulting services and other items shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time. The disbursement procedures shall include the direct payment and the reimbursement procedures as provided in ADB's Loan Disbursement Handbook.

##### Retroactive Financing

5. Withdrawals from the Loan Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date for Works, subject to a maximum amount equivalent to thirty percent (30%) of the Loan amount; provided that the expenditures have been incurred and paid for after 11 January 2009 but not earlier than twelve (12) months before the date of this Loan Agreement.

6. Reimbursement of reasonable expenditures incurred under the Project shall only be approved for Works which have been procured in accordance the procedures set out in Schedule 4 to this Loan Agreement.

## SCHEDULE 4

### Procurement of Works, and Consulting Services

#### A. General

1. All Works and consulting services to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

#### B. Procurement for Works

3. Except as ADB may otherwise agree, Works shall only be procured on the basis of the methods of procurement set forth below:

International Competitive Bidding
National Competitive Bidding
Shopping

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

4. National Competitive Bidding. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after written approval of such change by the Borrower and ADB.

#### C. Condition for Award of Contracts

5. The Borrower shall not award any Works contracts for a Subproject financed under the Loan until:
  - (a) the Borrower and ADB have cleared the IEE of the relevant Subproject in accordance with the EARP; and
  - (b) if the EARP are revised, ADB has cleared the revised EARP endorsed by the Borrower.

**D. Selection of Consulting Services**

6. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.

7. The Borrower shall apply the following method for selecting and engaging the specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

Consultants' Qualifications Selection for consultants to support detailed Subproject preparation, detailed designs, and contract bidding document as further specified in the Procurement Plan

8. The Borrower shall recruit a project coordinator and an environment and social specialist in accordance with procedures acceptable to ADB for recruiting individual consultants.

**E. Industrial or Intellectual Property Rights**

9. (a) The Borrower shall ensure that all 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 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.

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

**F. ADB's Review of Procurement Decisions**

11. All 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 and Operation of Project Facilities; Safeguard Matters

#### A. PROJECT MANAGEMENT

##### Project Executing Agency

1. MNP shall be the Project Executing Agency which shall be responsible for the overall execution of the Project and coordination with each of MWTPU and LWRM. MNP shall be supported by a project coordinator who shall be recruited as a consultant.

##### Project Implementing Agencies

2. Component A and sub-components (a), (b), (c) and (d) of Component B shall be implemented by MWTPU; and sub-component (e) of Component B shall be implemented by LWRM.

##### Project Steering Committee (PSC)

3. A PSC shall be established comprising representatives from the MNP, the Ministry of Finance, the Permanent Secretary for MWTPU, the Divisional Commissioners, the Director of LWRM, the Director of Roads and Airfields, the Director of Water Supply, and the Divisional Engineers (as required). The PSC shall oversee and monitor all aspects of Project implementation including (a) policy guidance and coordination, (b) subproject selection, (c) Project progress reports and other Project documentation, and (d) audited accounts and financial statements.

##### Project Management Team (PMT)

4. A PMT, which shall be housed within MWTPU, shall be responsible for the day-to-day implementation of the Project, and shall coordinate the Project activities of both MWTPU and LWRM, and report to MNP accordingly. The PMT shall be headed by the Director of Roads and Airfields. The PMT shall (a) conduct subproject assessments, design, and supervision; (b) manage tendering processes; (c) manage contracts; (d) prepare withdrawal applications; (e) prepare Project progress reports and a Project completion report; (f) maintain Project accounts for auditing; (g) monitor the Project's socioeconomic and environmental impacts; and (h) complete related Project management activities, as necessary to implement the Project successfully and comply with ADB policies and guidelines. The PMT shall be supported by consultants that shall be financed from the proceeds of the Loan.

#### B. PROJECT IMPLEMENTATION

##### Subproject Eligibility Criteria

5. The Borrower shall ensure that all Subprojects shall rehabilitate infrastructure with high importance based on their contributions to the objectives of the development policy

objectives as set out in the Borrower's Sustainable Economic and Empowerment Development Strategy 2008-2010 and shall focus on rehabilitation of efficient and cost effective infrastructure which shall facilitate economic and social development and private sector investment. The Subprojects shall meet one or more of the following general eligibility criteria:

- (a) improved accessibility to social services among poor and rural households, including schools, health facilities, and the Borrower's extension services;
- (b) restored opportunities for employment and income generation among poor and rural households; and
- (c) contribution to economic growth and poverty reduction among poor and rural households.

6. The Borrower shall assess Subprojects for their contribution to:

- (a) potential for restoration of agricultural production;
- (b) potential for restoration of exports of agricultural products;
- (c) potential for restoration of tourism;
- (d) employment of local communities and contractors for maintenance and small scale works;
- (e) restoration of incomes, particularly among poor and rural households; and
- (f) contribution to economic growth.

7. The Borrower shall conduct environmental screening for all Subprojects. In selecting Subproject sites, including extraction sites for materials to be imported to construction sites, the following environmental criteria shall be used for the first level of screening. If any of these criteria are found applicable to the site, then the Subproject shall require the production and approval of an EIA, following the procedures and requirements of an environmental category A project according to ADB's *Environment Policy* (2002):

- (a) sites in or adjacent to areas classified as ecologically sensitive;
- (b) requirement for major re-alignment of an existing road or complete relocation of an existing wet crossing or drainage structure that may cause significant environmental impacts;
- (c) significant adverse impacts on natural/primary forest or near-shore marine environments such as reefs, mangroves, or other sensitive coastal areas;

- (d) permanent negative effect on a known rare or endangered species; and
- (e) permanent damage to irreplaceable cultural relics and archaeological sites.

8. The Borrower shall conduct screening for land acquisition and resettlement impacts for all Subprojects. Any Subproject that would entail involuntary resettlement, according to ADB's *Involuntary Resettlement Policy* (1995) shall require production of a Resettlement Plan in accordance with the Resettlement Framework.

#### Subproject Approval Process

9. MNP shall identify and prioritize a list of potential Subprojects based on assessments of (a) existing facilities and levels of usage including the number of potential beneficiaries; and (b) positive and negative economic, social, and environmental impacts. Subprojects shall be restricted to facilities damaged in the January 2009 disaster. Community consultations shall be held in the preparation of the list. These consultations shall involve broad representation from the community and must include women.

10. MNP, assisted by the PMT, shall prepare an assessment report for each Subproject proposed for detailed design and preparation of bidding documents. Each Subproject assessment shall include (a) a technical feasibility assessment, including detailed cost estimates; (b) a narrative assessment of economic impact; and (c) an IEE and a full EIA if warranted, in accordance with the EARP. Each component of the assessment shall confirm acceptable ratings against the criteria, or recommend further work to complete the assessment.

11. The PSC shall review and endorse the Subprojects that meet all the Eligibility Criteria. Prior to the detailed design of any Subproject, the Borrower shall obtain ADB's concurrence on the inclusion of the Subproject for financing under the Project, based on the appraisal and selection criteria agreed between the Borrower and ADB.

12. The contracts for repairs to agricultural drainage schemes, and described in the Procurement Plan are deemed to be approved by ADB and eligible for financing from the Loan proceeds provided that such contracts include provisions for environmental management during implementation. This shall include enforceable environmental management and monitoring plans acceptable to ADB.

#### Counterpart Funds

13. Without limiting the generality of Section 4.02 above, the Borrower shall allocate, on a timely basis, adequate counterpart funds from its budget for each fiscal year during Project implementation including the requisite funds required for implementation of resettlement, environment measures, and other specific actions.

Land Acquisition and Resettlement

14. The Borrower shall ensure that:
- (a) all the Subprojects are screened for resettlement impacts and those Subprojects with impacts have Resettlement Plans prepared and approved in accordance with the Resettlement Framework;
  - (b) all Resettlement Plans are implemented in accordance with their terms;
  - (c) all land and rights-of-way required by the Project are made available in a timely manner;
  - (d) the provisions of the Resettlement Plan, including compensation and entitlements for affected persons, shall be implemented in accordance with all applicable laws and regulations of the Borrower, the Resettlement Framework and ADB's *Involuntary Resettlement Policy* (1995);
  - (e) timely provision of counterpart funds for land acquisition and resettlement activities;
  - (f) any obligations in excess of the Resettlement Plan budget estimate are met; and
  - (g) the affected persons shall be at least as well off as they would have been in the absence of the Project. In the case where a Resettlement Plan is required, the Borrower, through MNP, shall ensure that no construction activities begin until ADB has reviewed and approved such Resettlement Plan.

Environment

15. The Borrower shall ensure that:
- (a) the Project is carried out in accordance with applicable laws and regulations of the Borrower and ADB's *Environment Policy* (2002);
  - (b) no Subproject Works contracts shall be awarded until the Borrower and ADB have cleared the IEE of the relevant Subproject in accordance with the EARP;
  - (c) If the EARP are revised, no Works contract shall be awarded until ADB has cleared the revised EARP endorsed by the Borrower;
  - (d) the mitigation and monitoring measures provided in the IEE for each Subproject are reflected as part of bidding documents and Works contracts; and

- (e) the IEE for each Subproject is prepared in accordance with the EARP, reviewed and updated at the engineering design stage, and submitted to ADB for approval.

#### Gender and Employment

16. The Borrower shall:
- (a) encourage project contractors to employ women in rehabilitation and labor-intensive maintenance;
  - (b) provide equal pay to men and women for work of equal type, in accordance with national laws and international treaty obligations;
  - (c) provide safe working conditions for male and female workers; and
  - (d) ensure that project contractors comply with applicable labor laws and abstain from child labor. Specific provisions to this effect shall be included in the bidding documents.

#### Health Risks

17. The Borrower, through MNP, shall ensure that all Works contractors engaged under the Project participate in an HIV/AIDS prevention program to be funded under the Project in construction campsites. In addition, MNP shall ensure that information on the risk of transmission of HIV/AIDS and other sexually transmitted diseases is disseminated to local communities in coordination with national agencies working on the issue. MNP shall also include specific provisions to this effect in Works contracts and strictly monitor compliance.

#### Project Performance Monitoring and Evaluation

18. Within three (3) months of the Effective Date, the Borrower, through MNP, shall finalize and adopt a Project performance and monitoring system acceptable to ADB, based on indicators in the design and monitoring framework and following procedures agreed between the Borrower and ADB. MNP shall monitor the indicators according to the agreed framework on a quarterly basis to determine the efficiency and effectiveness of the Project, and shall provide to ADB monitoring reports from the commencement of Project implementation until completion.

#### Anticorruption

19. The Borrower shall:
- (a) undertake necessary measures to create and sustain a corruption-free environment;
  - (b) ensure that its anticorruption laws and regulations and ADB's *Anticorruption Policy* (1998, as amended to date) are strictly enforced and are being complied with during project implementation, and that

relevant provisions of ADB's *Anticorruption Policy* (1998, as amended to date) are included in all bidding documents for the Project;

- (c) facilitate ADB's exercise of its right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project;
- (d) ensure that MNP conducts periodic inspections on the contractors' activities related to fund withdrawals and settlements; and
- (e) ensure that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of MNP, MWTPU, LWRM and all contractors, suppliers, consultants and other service providers as they relate to the Project.

#### Special Audit

20. The Borrower shall carry out a special audit focusing on governance and financial accountability on completion of the Project.

#### Project Review

21. ADB and the Borrower shall undertake semi-annual reviews of the Project to consider (a) compliance with the covenants of this Loan Agreement; (b) the scope of the Project; (c) the implementation arrangements; (d) Loan disbursements and financial progress; and (e) Project implementation issues requiring resolution or action.