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LOAN NUMBER 2546 - SRI(SF)

PROJECT AGREEMENT  
(Eastern and North Central Provincial Road Project)

between

ASIAN DEVELOPMENT BANK

and

EASTERN PROVINCIAL COUNCIL

NORTH CENTRAL PROVINCIAL COUNCIL

NORTH CENTRAL PROVINCIAL ROADS DEVELOPMENT AUTHORITY

DATED 22 OCTOBER 2009

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PAG:SRI 39619

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 22 October 2009 between ASIAN DEVELOPMENT BANK ("ADB") of one part, and EASTERN PROVINCIAL COUNCIL ("EPC"), NORTH CENTRAL PROVINCIAL COUNCIL ("NCPC") and NORTH CENTRAL PROVINCIAL ROADS DEVELOPMENT AUTHORITY ("NCPRDA") of the other part.

### **WHEREAS**

(A) by a Loan Agreement of even date herewith between the Democratic Socialist Republic of Sri Lanka (the "Borrower") and ADB, ADB has agreed to make to the Borrower a loan in various currencies equivalent to forty five million three hundred twenty thousand Special Drawing Rights (SDR 45,320,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that a portion of the proceeds of the Loan be made available to EPC, NCPC, and NCPRDA and that EPC, NCPC, and NCPRDA agree to undertake certain obligations towards ADB as set forth in this Project Agreement;

(B) EPC, NCPC, and NCPRDA in consideration of ADB entering into the Loan Agreement with the Borrower, have agreed to undertake the obligations set forth in this Project Agreement; and

(C) EPC shall perform, or cause to be performed, its obligations set forth herein through EPRDD;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Definitions**

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

## **ARTICLE II**

### **Particular Covenants**

Section 2.01. (a) EPC, NCPC, and NCPRDA shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental, and road management practices.

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

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

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

(b) Except as ADB may otherwise agree, all Goods, 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 the Loan Agreement. ADB may refuse to finance a contract where Goods, 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 2.04. EPC, NCPC, and NCPRDA shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. EPC, NCPC, and NCPRDA shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

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

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

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

Section 2.07. (a) ADB, EPC, NCPC, and NCPRDA shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) EPC, NCPC, and NCPRDA shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the

performance of its obligations under this Project Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB, EPC, NCPC, and NCPRDA shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, EPC, NCPC, and NCPRDA and the Loan.

Section 2.08. (a) EPC, NCPC, and NCPRDA shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the Goods, Works and consulting services and other items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of EPC, NCPC, and NCPRDA; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, EPC, NCPC, and NCPRDA shall furnish to ADB monthly and quarterly reports on the execution of the Project and on the operation and management of the Project facilities as set out in paragraph 17 of Schedule 5 to the Loan Agreement. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request.

(c) Promptly after physical completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, and as set out in paragraph 18 of Schedule 5 to the Loan Agreement, EPC, NCPC, and NCPRDA shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by EPC, NCPC, and NCPRDA of their obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) EPC, NCPC, and NCPRDA shall (i) maintain separate accounts for the Project; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related 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; and (iii) furnish to ADB, promptly after their preparation but in any event not later than 6 months after the close of the fiscal year to which they relate, 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 the Loan Agreement as well as on the use of the procedures for imprest account and statement of expenditures), all in the English language. EPC, NCPC, and NCPRDA shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) EPC, NCPC, and NCPRDA shall enable ADB, upon ADB's request, to discuss the financial statements and financial affairs, from time to time, of EPC, NCPC, and NCPRDA with the auditors, appointed by EPC, NCPC, and NCPRDA pursuant to Section 2.09(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 EPC, NCPC, and NCPRDA unless EPC, NCPC, and NCPRDA shall otherwise agree.

Section 2.10. EPC, NCPC, and NCPRDA shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, all other plants, sites, properties and equipment of EPC, NCPC, and NCPRDA, and any relevant records and documents.

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

(b) EPC, NCPC, and NCPRDA shall at all times conduct its business in accordance with sound administrative, financial, environmental and road management practices, and under the supervision of competent and experienced management and personnel.

(c) EPC, NCPC, and NCPRDA shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound administrative, financial, engineering, environmental, and maintenance and operational practices.

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

Section 2.13. Except as ADB may otherwise agree, EPC, NCPC, and NCPRDA shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all Goods, Works and consulting services financed out of such proceeds are used exclusively in the carrying out of the Project.

### **ARTICLE III**

#### **Effective Date; Termination**

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement shall come into force and effect. ADB shall promptly notify EPC, NCPC, and NCPRDA of such date.

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

**ARTICLE IV****Miscellaneous**

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

For ADB

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

Facsimile Numbers:

632 636 2444  
632 636 2340

For EPC

Chief Secretary  
Eastern Provincial Council  
Inner Harbour Road  
Trincomalee, Sri Lanka

Facsimile Number:

+94 26 2222008

For NCPC

Chief Secretary  
North Central Provincial Council  
Anuradhapura, Sri Lanka

Facsimile Number:

+94 25 2224914

For NCPRDA

General Manager  
North Central Provincial Road Development Authority  
H.B. Semasinha Mawatha  
Anuradhapura, Sri Lanka

Facsimile Number:

+94 25 2235613

+94 25 2222505

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of EPC, NCPD, and NCPDA may be taken or executed by their Chief Secretary or General Manager (as applicable) or by such other person or persons as he/she shall so designate in writing notified to ADB.

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

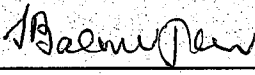
Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action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

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

## ASIAN DEVELOPMENT BANK

By   
RICHARD VOKES  
Country Director  
Sri Lanka Resident Mission

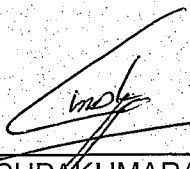
## EASTERN PROVINCIAL COUNCIL

By   
V. P. BALASINGHEM  
Chief Secretary

## NORTH CENTRAL PROVINCIAL COUNCIL

By   
A. THALAKOTANAGE  
Chief Secretary

NORTH CENTRAL PROVINCIAL ROADS  
DEVELOPMENT AUTHORITY

By   
P. M. S. PUSHPAKUMARA  
Acting General Manager