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LOAN NUMBER SRI - 2546(SF)

LOAN AGREEMENT  
(Special Operations)

(Eastern and North Central Provincial Road Project)

between

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

and

ASIAN DEVELOPMENT BANK

DATED 22 OCTOBER 2009

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LAS:SRI 39619

**LOAN AGREEMENT  
(Special Operations)**

LOAN AGREEMENT dated 22 October 2009 between DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA (the "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 Local Government and Provincial Councils, the Eastern Provincial Road Development Department of the Eastern Provincial Council, and the North Central Provincial Roads Development Authority of the North Central Provincial Council;

(C) the Borrower has also applied to ADB for technical assistance for Capacity Development of Provincial Road Agencies, which ADB will finance in conjunction with the Project on a grant basis from its technical assistance funding program; and

(D) 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 of even date herewith between ADB, Eastern Provincial Council, North Central Provincial Council, and North Central Provincial Roads Development Authority;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

(a) Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 (the "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 modification: the term "Project Agreement", wherever it appears in the Loan Regulations, shall mean the project agreement of even date herewith between ADB, Eastern Provincial Council, North Central Provincial Council, and North Central Provincial Roads Development Authority.

Section 1.02. The definitions set forth in the Loan Regulations are applicable to this Loan Agreement unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "CEA" means the Central Environment Authority of the Borrower;

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

(c) "EMP" means the environmental management plan prepared for the Project and set out in the IEE;

(d) "EPC" means the Eastern Provincial Council of the Borrower;

(e) "EPRDD" means the Eastern Provincial Road Development Department of EPC;

(f) "Fiscal Year" means the fiscal year of the Borrower, being the period from 1 January to 31 December of a calendar year;

(g) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, and including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;

(h) "IEE" means the initial environmental examination report prepared for the Project by the Borrower and approved by ADB;

(i) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (January 2007, as amended from time to time);

(j) "MLGPC" means the Borrower's Ministry of Local Government and Provincial Councils;

(k) "NCPC" means the North Central Provincial Council of the Borrower;

(l) "NCPRDA" means the North Central Provincial Roads Development Authority of NCPC;

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

(n) "Procurement Plan" means the procurement plan for the Project dated 8 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;

(o) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan regulations means MLGPC or any legal successor thereto acceptable to ADB;

(p) "Project facilities" means EPRDD's office and the roads and other infrastructure improved, upgraded and/or rehabilitated under the Project;

(q) "Resettlement Framework" means the resettlement framework prepared for the Project by the Borrower and approved by ADB;

(r) "RRP" means ADB's Report and Recommendation of the President to the Board of Directors for the Project; and

(s) "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. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to forty five million three hundred twenty thousand Special Drawing Rights (SDR 45,320,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of one percent (1%) per annum during the grace period, and one and one-half percent (1.5%) per annum 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 paragraph (a) of this Section means the period prior to payment of the first principal amount of the Loan on the 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 February and 15 August 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 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 EPC and to NCPC, upon terms and conditions satisfactory to ADB and shall cause EPC and NCPC to apply such proceeds 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 Goods, 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 Goods, 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. Withdrawals from the Loan Account in respect of the Goods, Works, and consulting services shall be made only on account of expenditures relating to

- (a) Goods which are produced in and supplied from, and services 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, Works, and consulting services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.04. 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 this Loan Agreement.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2014 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, and the Project Agreement.

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

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

Section 4.04. (a) The Borrower shall cause MLGPC to (i) maintain 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 as well as on the use of the procedures for imprest account and statement of expenditures), 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 MLGPC'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 4.04(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 MLGPC unless the Borrower shall otherwise agree.

Section 4.05. The Borrower shall exercise its rights under the financing arrangements pursuant to Section 3.01 of this Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan, and shall not change such financing arrangements without prior notice to ADB.

## **ARTICLE V**

### **Suspension and Cancellation**

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations: EPC, NCPC and/or NCPRDA have failed to perform any obligation under the Project Agreement.

Section 5.02. The following is specified as an additional event for acceleration of maturity of the Loan for the purposes of Section 8.07(d) of the Loan Regulations: the event specified in Section 5.01 of this Loan Agreement has occurred.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations: the execution and delivery of the Project Agreement on behalf of EPC, NCPC and NCPRDA has been duly authorized or ratified by all necessary corporate, administrative and governmental action.

Section 6.02. 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 Project Agreement has been duly authorized or ratified by, and executed and delivered on behalf of EPC, NCPC and NCPRDA, and is legally binding upon EPC, NCPC and NCPRDA in accordance with its terms.

Section 6.03. 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 VII**

### **Miscellaneous**

Section 7.01. Each of the Secretary, Ministry of Finance and Planning; Deputy Secretary to the Treasury; and Director General, External Resources Department, of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

#### For the Borrower

The Secretary  
Ministry of Finance and Planning  
Colombo, Sri Lanka

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

Facsimile Numbers:

94 11 244 9823  
94 11 244 7633

#### For ADB


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

Facsimile Numbers:

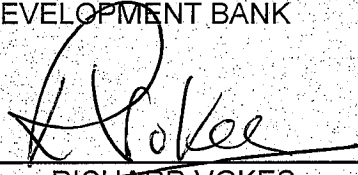
632 636 2444  
632 636 2340.

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 and to be delivered at the principal office of ADB, as of the day and year first above written.

DEMOCRATIC SOCIALIST REPUBLIC  
OF SRI LANKA

By   
PUNCHI BANDARA JAYASUNDERA  
Secretary  
Ministry of Finance and Planning

ASIAN DEVELOPMENT BANK

By   
RICHARD VOKES  
Country Director  
Sri Lanka Resident Mission

**SCHEDULE 1****Description of the Project**

1. The objective of the Project is to improve the transport system in Eastern and North Central Provinces by (i) rehabilitating and improving provincial roads; (ii) enhancing project management capabilities of EPRDD and NCPRDA; and (iii) improving the office of EPRDD.
2. The Project shall consist of the following:
  - A. Rehabilitation and Improvement

Rehabilitation and improvement of about 150km of roads in the Eastern Province and 220km of roads in the North Central Province, including pavements, bridges, drainage, and culverts.
  - B. Enhancement of Project Management Capabilities

Provision of consulting services for on-the-job training with hands-on technical and managerial skills in project and contract management to the staff of EPRDD and NCPRDA; financing incremental expenditures for implementation of the Project.
  - C. Improvement of EPRDD's Office

Upgrading of EPRDD's office and equipment.
3. The Project is expected to be completed by 31 December 2013.

**SCHEDULE 2****Amortization Schedule  
(Eastern and North Central Provincial Road Project)**

<u>Date Payment Due</u>	<u>Payment of Principal (expressed in Special Drawing Rights)*</u>
15-Feb-2018	944,167.00
15-Aug-2018	944,167.00
15-Feb-2019	944,167.00
15-Aug-2019	944,167.00
15-Feb-2020	944,167.00
15-Aug-2020	944,167.00
15-Feb-2021	944,167.00
15-Aug-2021	944,167.00
15-Feb-2022	944,167.00
15-Aug-2022	944,167.00
15-Feb-2023	944,167.00
15-Aug-2023	944,167.00
15-Feb-2024	944,167.00
15-Aug-2024	944,167.00
15-Feb-2025	944,167.00
15-Aug-2025	944,167.00
15-Feb-2026	944,167.00
15-Aug-2026	944,167.00
15-Feb-2027	944,167.00
15-Aug-2027	944,167.00
15-Feb-2028	944,167.00
15-Aug-2028	944,167.00
15-Feb-2029	944,167.00
15-Aug-2029	944,167.00
15-Feb-2030	944,167.00
15-Aug-2030	944,167.00
15-Feb-2031	944,167.00
15-Aug-2031	944,167.00
15-Feb-2032	944,167.00
15-Aug-2032	944,167.00
15-Feb-2033	944,167.00
15-Aug-2033	944,167.00
15-Feb-2034	944,167.00
15-Aug-2034	944,167.00
15-Feb-2035	944,167.00
15-Aug-2035	944,167.00
15-Feb-2036	944,167.00
15-Aug-2036	944,167.00
15-Feb-2037	944,167.00
15-Aug-2037	944,167.00
15-Feb-2038	944,167.00
15-Aug-2038	944,167.00

Date and Payment DuePayment of Principal  
(expressed in Special  
Drawing Rights)\*

15-Feb-2039	944,167.00
15-Aug-2039	944,167.00
15-Feb-2040	944,167.00
15-Aug-2040	944,167.00
15-Feb-2041	944,167.00
15-Aug-2041	944,151.00
Total	45,320,000.00

\* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity are subject to the relevant provisions of the Special Operations Loan Regulations.

### SCHEDULE 3

#### Allocation and Withdrawal of Loan Proceeds

##### General

1. The table attached to this Schedule sets forth the Categories of Goods, 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 to each such Category (the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table).

##### Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

##### Interest Charge

3. The amount allocated to Category 5 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 then 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 for financing Goods, Works, and consulting services and other items shall be disbursed in accordance with the Loan Disbursement Handbook.

Imprest Accounts; Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish, or cause to be established, immediately after the Effective Date, (i) a first generation imprest account for MLGPC at the Central Bank of Sri Lanka, and (ii) a second generation imprest account for each of MLGPC, EPC and NCPC at state banks acceptable to ADB. The imprest accounts shall be established, managed, replenished and liquidated in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. The currency of the first generation imprest account shall be the Dollar. The aggregate initial amount to be deposited into the imprest accounts shall not exceed the lower of (i) the estimated expenditure to be financed from the imprest accounts for the first 6 months of Project implementation, or (ii) the equivalent of 10% of the Loan amount.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest accounts, in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$100,000.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Eastern and North Central Provincial Road Project)</b>			
<b>CATEGORY</b>			<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Amount Allocated SDR</b>	<b>Percentage and Basis for Withdrawal from the Loan Account</b>
1	Works	34,379,000	88 percent of total expenditure claimed
2	Equipment	129,000	100 percent of total expenditure claimed*
3	Consultants	3,367,000	100 percent of total expenditure claimed*
4	Project Management (Incremental Expenditures)	647,000	100 percent of total expenditure claimed*
5	Interest during Implementation	1,813,000	
6	Unallocated	4,985,000	
	Total	45,320,000	

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

## SCHEDULE 4

### Procurement of Goods and Works, and Consulting Services

#### General

1. The procurement of all Goods, 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.

#### Procurement for Goods and Works

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

National Competitive Bidding
Shopping

4. 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.
5. 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.

#### Selection of Consulting Services

6. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.

#### Industrial or Intellectual Property Rights

7. (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.

8. 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.

ADB's Review of Procurement Decisions

9. All contracts procured under national 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; Financial Matters

#### Implementation Arrangements

1. The Borrower shall designate MLGPC as the Project Executing Agency with overall responsibility for Project coordination at the central level, including provision of policy and technical guidance and interagency coordination. MLGPC shall undertake these activities through the existing project coordinating unit established under ADB loans 1986-SRI: Road Sector Development Project and 2080-SRI: Road Project Preparatory Facility. The project coordinating unit shall continue to be led by a Project coordinator, assisted by a chief accountant, an office engineer, and support staff.
2. EPC, through EPRDD, and NCPC, through NCPRDA, shall act as the implementing agencies with primary responsibility for project management, including - without limitation - (i) procurement; (ii) day-to-day project implementation; (iii) withdrawal applications certification; (iv) progress reports preparation; and (v) maintenance of project accounts and completion of loan financial records for auditing for the respective provinces.
3. EPRDD shall be led by the provincial director, assisted by a chief engineer–Trincomalee, chief engineer–Batticaloa, chief accountant, an office engineer, and support staff. NCPRDA shall be led by a general manager, assisted by the chief engineer–operation 1, chief engineer–operation 2, the chief accountant, an office engineer, and support staff.
4. The Borrower shall establish a national steering committee, which shall be responsible for overseeing and monitoring implementation of the Project and monitoring the adequacy of overall funding for the Project and for non-Project roads. The national steering committee shall be chaired by the Secretary of MLGPC, and shall consist of representatives from: Ministry of Finance and Planning (External Resource Department and National Planning Department); Finance Commission; Ministry of Highways and Road Development; Chief Secretaries of EPC and NCPC, EPRDD, NCPRDA, and the project coordinating unit, and by invitation, as and when necessary, representatives from the CEA, Geological Survey and Mines Bureau, and utilities agencies (electricity, telecommunications, water, and drainage). The national steering committee shall meet as required but at least every quarter.
5. EPC and NCPC shall each establish in their respective provinces, a provincial coordination committee, which shall be responsible for monitoring project implementation at the provincial level. Each provincial coordination committee shall be chaired by the chief secretary of the respective province, and consist of a representative from EPRDD or NCPRDA (as applicable), the project implementation consultant (ex officio nonvoting) of the respective province, and by invitation, as and when necessary, the CEA, Geological Survey and Mines Bureau, utilities agencies (electricity, telecommunications, water, and drainage). The provincial coordination committee shall meet every month.

#### Road Maintenance and Rehabilitation

6. The Borrower shall ensure that:

- (i) EPC (through EPRDD) and NCPC (through NCPRDA) maintain the Project roads to a proper standard, and that the benefits of the rehabilitated roads are realized over their expected lifetimes;
- (ii) EPC and NCPC commit the entire revenue from vehicle license fees towards routine maintenance of the provincial roads in their respective provinces;
- (iii) a provincial road investment plan (2012-2014), including road maintenance plan, will be prepared by 30 September 2011;
- (iv) commencing Fiscal Year 2012, at least 70% of the periodic maintenance financing required for provincial roads under the road investment plan is made available to EPC and NCPC, and is increased by 10% annually until it reaches 100% of the required financing; and
- (v) the funds required for road maintenance and rehabilitation are allocated annually and released on a timely basis.

#### Institutional Strengthening

7. EPC and NCPC shall implement the institutional development program resulting from the recommendations of ADB's technical assistance for 'Capacity Development of Provincial Road Agencies' in accordance with the time frame set out in the program.

#### Environment

8. The Borrower shall ensure, and cause EPC through EPRDD, and NCPC through NCPRDA, to ensure that:

- (i) that the Project is undertaken and all Project facilities are designed, constructed, implemented, operated, and maintained in accordance with the Borrower's applicable laws and regulations and ADB's *Environment Policy* (2002);
- (ii) the EMP is implemented in accordance with its terms so that all adverse environmental impacts during construction and operation of the Project are mitigated; and in the event of any unanticipated adverse environmental impacts, such impacts are reported to the CEA and ADB, and remedial actions taken to mitigate the impacts in consultation with the affected persons, the CEA and ADB;
- (iii) an additional environmental study is undertaken and corresponding approval from the CEA is obtained should there be changes in the Project design that have significant environmental impacts;
- (iv) the IEE and EMP are updated, as necessary, during the course of Project implementation, and submitted to ADB for approval;

- (v) reports on the implementation of the EMP are submitted to ADB on a semi-annual basis; and
- (vi) (a) all contractors are provided with the summary IEE and the EMP, implement the required mitigation measures as described in the EMP in a satisfactory manner, and report the implementation of the EMP on a regular basis, along with any deviation from the IEE; (b) the bidding documents for Works under the Project include the requirement to comply with the EMP; and (c) the Project implementation consultants closely monitor compliance with the EMP by the contractors.

#### Land Acquisition and Resettlement

9. The Borrower shall ensure, and cause EPC through EPRDD, and NCPC through NCPDA, to ensure, that:

- (i) the Project makes every effort to avoid land acquisition; and
- (ii) in the event any land acquisition or resettlement becomes necessary, or any potential impact on indigenous peoples is identified, a resettlement plan is drawn up in accordance with the Resettlement Framework in consultation with the affected people, and in compliance with the applicable national laws, regulations and policies, ADB's *Involuntary Resettlement Policy* (1995) and *Policy on Indigenous Peoples* (1998), and submitted to ADB for its approval; and
- (iii) any such resettlement plan approved by ADB is implemented in accordance with its terms, including:
  - (a) public disclosure of the resettlement plan and any updates thereof;
  - (b) adequate budgetary support to cover the costs of land acquisition and resettlement;
  - (c) full compensation at replacement cost and relocation of affected persons before the commencement of Works;
  - (d) submission of external monitoring reports to ADB; and
  - (e) compliance with any other conditions and terms stipulated in the resettlement plan.

#### Grievance Redress Mechanism

10. Within 90 days of the Effective Date, the Borrower shall ensure that EPC and NCPC establish a grievance redress mechanism to redress any Project-related concerns raised by Project road users and communities along the Project roads.

#### Construction Labor

11. The Borrower shall ensure, and cause EPC through EPRDD, and NCPC through NCPDA, to ensure that the contractors:

- (i) provide appropriate information to, and create awareness among the construction workers on the risks of sexually transmitted diseases and HIV/AIDS;
- (ii) provide safe and healthy working conditions, including appropriate sanitation facilities for women workers; and
- (iii) comply with all applicable labor laws; provide equal pay for equal work; do not employ child labor; provide appropriate facilities for the children of the construction workers in construction campsites; and provide equal opportunities for women and men in the construction activities.

### Governance

12. The Borrower shall ensure, and cause EPC and NCPC to ensure, that all contracts financed by ADB in connection with the Project shall include provisions specifying the right of ADB to audit and examine the records and accounts of implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

13. The Borrower shall ensure, and cause EPC and NCPC to ensure, that:

- (i) a Project management and monitoring system is established; and the Project targets, progress, and achievements are disclosed to the public at the EPRDD and NCPRDA head offices, construction sites, and their websites;
- (ii) all road rehabilitation and maintenance Works are outsourced to the private sector;
- (iii) procurement is not restricted by contractor registration rules; and
- (iv) bidding documents are standardized and FIDIC-based contract management is implemented.

### Counterpart Support

14. The Borrower shall provide EPRDD and NCPRDA with adequate staff, resources, and facilities to implement the Project. The Borrower shall also make available all counterpart funds required for timely and effective implementation of the Project, including any funds required to make land available for the Project, to mitigate unforeseen environmental and social impacts and to meet additional costs arising from design changes, price escalation in construction costs and/or unforeseen circumstances.

### Reporting

15. EPC through EPRDD, and NCPC through NCPRDA shall separately prepare and submit to ADB

- (i) within 15 days of the end of each month, monthly progress reports, with a copy to MLGPC, in a brief electronic form containing basic data,

implementation progress, major issues/problems and proposed remedial measures, and work to be undertaken in the following period; and

- (ii) within 15 days of the end of each quarter, quarterly progress reports to MLGPC, which will consolidate and submit to ADB a report containing, in addition to the basic information provided in the monthly reports, any changes to implementation schedule, utilization of funds, achievement of outputs and outcome, and compliance with loan covenants.

16. Within 3 months of physical completion of the Project, MLGPC, in collaboration with EPRDD and NCPRDA, shall submit to ADB a Project completion report with a detailed evaluation of the Project design, costs, contractors and consultants' performance, social and economic impact, economic rate of return, and other details as may be requested by ADB.

#### Project Performance Monitoring and Evaluation

17. EPRDD and NCPRDA, assisted by Project implementation and technical assistance consultants under the Project, shall establish a Project performance management system, with indicators, criteria, and reporting agreed by ADB. These indicators shall be monitored at inception and completion of the Project, both on the Project roads and select control roads.

#### Project Review

18. MLGPC, EPC through EPRDD, and NCPC through NCPRDA shall monitor Project implementation in accordance with the schedule and time-bound milestones, and keep ADB informed of any significant deviations that may result in the milestones not being met. ADB and the Borrower shall undertake at least annual reviews, and special reviews as necessary, throughout the Project implementation period.