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LOAN NUMBER 2931-LAO(SF)

GRANT NUMBER 0313-LAO(SF)

FINANCING AGREEMENT  
(Special Operations)

(Greater Mekong Subregion East-West Economic Corridor Towns Development Project)

between

LAO PEOPLE'S DEMOCRATIC REPUBLIC

and

ASIAN DEVELOPMENT BANK

DATED 4 DECEMBER 2012

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LAO 43319

## **FINANCING AGREEMENT (Special Operations)**

FINANCING AGREEMENT dated 4 December 2012 between LAO PEOPLE'S DEMOCRATIC REPUBLIC ("Beneficiary") and ASIAN DEVELOPMENT BANK ("ADB").

### **WHEREAS**

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

(B) the Beneficiary has also applied to the Urban Environmental Infrastructure Fund under the Urban Financing Partnership Facility for a grant ("UEIF Grant") of six hundred and thirty-eight thousand Dollars (\$638,000) to assist in financing a part of the Project and to be administered by ADB, upon terms and conditions set forth in a grant agreement between the Beneficiary and ADB ("UEIF Grant Agreement"); and

(C) ADB has agreed to provide financing by making a loan and a grant to the Beneficiary from ADB's Special Funds resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Loan Regulations and Grant Regulations; Definitions**

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made applicable to the Loan made pursuant to this Financing Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) The term "Loan Agreement", wherever it appears in the Loan Regulations, shall be substituted by the term "Financing Agreement".

(b) The term "Borrower", wherever it appears in the Loan Regulations, shall be substituted by the term "Beneficiary" as defined in the opening paragraph of this Financing Agreement.

Section 1.02. All provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 ("Grant Regulations"), are hereby made applicable to the Grant made pursuant to this Financing Agreement with the same force and effect as if they were fully set forth herein subject, however, to the following modifications:

(a) The term "Grant Agreement", wherever it appears in the Grant Regulations, shall be substituted by the term "Financing Agreement".

(b) The term “Recipient”, wherever it appears in the Grant Regulations, shall be substituted by the term “Beneficiary” as defined in the opening paragraph of this Financing Agreement.

Section 1.03. Wherever used in this Financing Agreement, the several terms defined in the Loan Regulations and the Grant Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Financing Agreement have the following meanings:

(a) “Consulting Guidelines” means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2010, as amended from time to time);

(b) “Consulting Services” means the services to be financed out of the proceeds of the Loan or the Grant as described in sub-paragraphs 2(h) and (i) of Schedule 1 to this Financing Agreement;

(c) “Environmental Management Plan” or “EMP” means the environmental management plan for the Project, including any update thereto, incorporated in the IEE;

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

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

(f) “Initial Environmental Examination” or “IEE” means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Beneficiary and cleared by ADB;

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

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

(i) “MPWT” means the Ministry of Public Works and Transport of the Beneficiary or any successor thereof;

(j) “PAM” means the project administration manual for the Project dated 27 August 2012 and agreed between the Beneficiary and ADB, as updated from time to time in accordance with the respective administrative procedures of the Beneficiary and ADB;

(k) “Part” means each of Parts 1 to 9 of the Project as described in paragraph 2 of Schedule 1 to this Loan Agreement;

(l) “Procurement Guidelines” means ADB's Procurement Guidelines (2010, as amended from time to time);

(m) "Procurement Plan" means the procurement plan for the Project dated 27 August 2012 and agreed between the Beneficiary and ADB, as updated from time to time in accordance with the Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(n) "Resettlement Plan" or "RP" means the resettlement plan for the Project, including any update thereto, prepared and submitted by the Beneficiary and cleared by ADB;

(o) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);

(p) "Safeguards Monitoring Report" means each report prepared and submitted by the Beneficiary to ADB that describes progress with implementation of and compliance with the EMP, the RP and the Indigenous Peoples plan (as applicable), including any corrective and preventative actions; and

(q) "Works" means construction or civil works to be financed out of the proceeds of the Loan or the Grant, 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 and the Grant**

Section 2.01. ADB agrees to provide to the Beneficiary from ADB's Special Funds resources, on terms and conditions set forth in this Financing Agreement:

- (a) a loan in various currencies equivalent to seventeen million five hundred sixty-two thousand Special Drawing Rights (SDR17,562,000) ("Loan"); and
- (b) a grant in the amount of fourteen million two hundred thirty thousand Dollars (\$14,230,000) ("Grant").

Section 2.02. (a) The Beneficiary shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 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 the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Financing Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 January and 15 July in each year.

Section 2.04. The Beneficiary 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 Financing Agreement.

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

### **ARTICLE III**

#### **Use of Proceeds of the Loan and the Grant**

Section 3.01. The Beneficiary shall cause the proceeds of the Loan and the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Financing Agreement.

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

Section 3.03. Except as ADB may otherwise agree, the Beneficiary shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan and the Grant in accordance with the provisions of Schedule 4 to this Financing Agreement.

Section 3.04. Withdrawals from the Loan Account and the Grant Account in respect of 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 Works and Consulting 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 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations, and the Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations, shall be 30 June 2019 or, in each case, such other date as may from time to time be agreed between the Beneficiary and ADB.

## **ARTICLE IV**

### **Particular Covenants**

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

Section 4.02. (a) The Beneficiary shall (i) maintain separate accounts and records for the Project, including separate accounts and records for the Loan and Grant; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the use of the Loan and Grant proceeds and compliance with the financial covenants of this Financing Agreement as well as on the use of the procedures for the imprest account(s) and statement of expenditures) and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

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

(c) The Beneficiary shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Beneficiary's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of the Beneficiary, unless the Beneficiary shall otherwise agree.

Section 4.03. The Beneficiary shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

## **ARTICLE V**

### **Suspension; Acceleration of Maturity**

Section 5.01. The following is specified as an additional event for suspension of the right of the Beneficiary to make withdrawals from (a) the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations, and (b) the Grant Account for the

purposes of Section 8.01(k) of the Grant Regulations, respectively: the UEIF Grant shall have become liable for suspension or cancellation.

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 Financing Agreement shall have occurred.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following is specified as an additional condition to the effectiveness of this Financing Agreement for the purposes of Section 9.01(f) of the Loan Regulations and Section 9.01(e) of the Grant Regulations, respectively: the UEIF Grant Agreement has been duly authorized, executed and delivered on behalf of the Beneficiary and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Agreement) shall have been fulfilled.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(d) of the Loan Regulations and Section 9.02(c) of the Grant Regulations, respectively, to be included in the opinion or opinions to be furnished to ADB: the UEIF Grant Agreement has been duly authorized, executed and delivered on behalf of the Beneficiary, and is legally binding upon the Beneficiary in accordance with its terms.

Section 6.03. A date 90 days after the date of this Financing Agreement is specified for the effectiveness of the Financing Agreement for the purposes of Section 9.04 of the Loan Regulations and Section 9.04 of the Grant Regulations.

## **ARTICLE VII**

### **Miscellaneous**

Section 7.01. The Minister of Finance of the Beneficiary is designated as representative of the Beneficiary for the purposes of Section 11.02 of the Loan Regulations and Section 11.02 of the Grant Regulations.

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

For the Beneficiary

Ministry of Finance  
23 Singha Road  
P.O. Box 46  
Vientiane Capital  
Lao People's Democratic Republic

## Facsimile Numbers:

(856-21) 412 142  
(856-21) 911 611.

For ADB

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

## Facsimile Numbers:

(632) 636-2444  
(632) 636-2018.



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

LAO PEOPLE'S DEMOCRATIC  
REPUBLIC

By   
\_\_\_\_\_  
H.E. SANTIPHAB PHOMVIHANE  
Vice Minister  
Ministry of Finance

ASIAN DEVELOPMENT BANK

By   
\_\_\_\_\_  
CHI NAI CHONG  
Country Director  
Lao Resident Mission

## SCHEDULE 1

### Description of the Project

1. The objective of the Project is to improve urban infrastructure and services in the towns of Kaysone Phomvihane, Phine and Dansavanh.
2. The Project shall comprise of:
  - (a) rehabilitation of the waste water and sewerage system, and installation of 3 new waste water treatment plants in Kaysone Phomvihane ("Part 1");
  - (b) rehabilitation and widening of 11 kilometers of roads, and construction of related drainage structures and lighting facilities in Kaysone Phomvihane ("Part 2");
  - (c) establishment of a new sanitary landfill on existing dumpsites in Kaysone Phomvihane, and procurement of related equipment and vehicles ("Part 3");
  - (d) construction of a new 980 meter river embankment protection and related structures in Kaysone Phomvihane ("Part 4");
  - (e) establishment of a materials recovery facility for solid-waste recycling in Kaysone Phomvihane ("Part 5");
  - (f) rehabilitation and widening of 9.42 kilometers of roads and construction of related drainage structures and street lighting in Phine ("Part 6");
  - (g) rehabilitation and widening of 4.23 kilometers of roads and construction of related drainage structures and street lighting, and construction of a 50 meter bridge, in Dansavanh ("Part 7");
  - (h) project implementation support, including technical support for detailed engineering design, construction supervision, procurement, environmental and social safeguards and financial management ("Part 8"); and
  - (i) capacity development support and training ("Part 9").
3. The Project is expected to be completed by 31 December 2018.

**SCHEDULE 2****Amortization Schedule****(Greater Mekong Subregion East-West Economic Corridor Towns Development Project)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)
15 January 2021	365,875
15 July 2021	365,875
15 January 2022	365,875
15 July 2022	365,875
15 January 2023	365,875
15 July 2023	365,875
15 January 2024	365,875
15 July 2024	365,875
15 January 2025	365,875
15 July 2025	365,875
15 January 2026	365,875
15 July 2026	365,875
15 January 2027	365,875
15 July 2027	365,875
15 January 2028	365,875
15 July 2028	365,875
15 January 2029	365,875
15 July 2029	365,875
15 January 2030	365,875
15 July 2030	365,875
15 January 2031	365,875
15 July 2031	365,875
15 January 2032	365,875
15 July 2032	365,875
15 January 2033	365,875
15 July 2033	365,875
15 January 2034	365,875
15 July 2034	365,875
15 January 2035	365,875
15 July 2035	365,875
15 January 2036	365,875
15 July 2036	365,875
15 January 2037	365,875
15 July 2037	365,875
15 January 2038	365,875
15 July 2038	365,875
15 January 2039	365,875
15 July 2039	365,875
15 January 2040	365,875

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 July 2040	365,875
15 January 2041	365,875
15 July 2041	365,875
15 January 2042	365,875
15 July 2042	365,875
15 January 2043	365,875
15 July 2043	365,875
15 January 2044	365,875
15 July 2044	365,875
<b>TOTAL</b>	<b>17, 562,000</b>

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

### **SCHEDULE 3**

#### **Allocation and Withdrawal of Loan and Grant Proceeds**

##### General

1. The tables attached to this Schedule set forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the Grant. Table 1 sets forth the allocation of the Loan proceeds to each such Category. Table 2 sets out the allocation of the Grant proceeds to each such Category (Reference to "Category" in this Schedule is to a Category or Subcategory of Table 1 and Table 2, respectively.)

##### Basis for Withdrawal from the Loan and Grant Account

2. Except as ADB may otherwise agree, the proceeds of the Loan and the Grant shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in Table 1 and Table 2, respectively.

##### Interest Charge

3. The amount allocated to Category 3 of Table 1 is for financing the interest charge on the Loan during the implementation period of the Project.

##### Reallocation

4. Notwithstanding the allocation of the Loan proceeds and the Grant proceeds and the withdrawal percentages set forth in Table 1 and Table 2, respectively,

(a) if the amount of the Loan or the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Beneficiary, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan or the Grant 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 or the Grant then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Beneficiary, reallocate such excess amount to any other Category.

##### Disbursement Procedures

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

TABLE 1

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS</b> <b>(Greater Mekong Subregion East-West Economic Corridor Towns Development Project)</b>				
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (SDR)</b>		<b>Basis for Withdrawal from the Loan Account</b>
		<b>Category</b>	<b>Subcategory</b>	
1	Works	13,228,000		
1A	Works (Part 1)		2,086,000	65% of total expenditure claimed*
1B	Works (Part 2)		4,018,000	65% of total expenditure claimed*
1C	Works (Part 3)		742,000	65% of total expenditure claimed*
1D	Works (Part 4)		2,441,000	65% of total expenditure claimed*
1E	Works (Part 6)		2,393,000	65% of total expenditure claimed*
1F	Works (Part 7)		1,548,000	65% of total expenditure claimed*
2	Consulting Services	2,344,000		
2A	Consulting Services (Part 1)		113,000	58% of total expenditure claimed*
2B	Consulting Services (Part 2)		285,000	58% of total expenditure claimed*
2C	Consulting Services (Part 3)		54,000	58% of total expenditure claimed*
2D	Consulting Services (Part 4)		170,000	58% of total expenditure claimed*
2E	Consulting Services (Part 6)		172,000	58% of total expenditure claimed*
2F	Consulting Services (Part 7)		110,000	58% of total expenditure claimed*
2G	Project Implementation Support		769,000	64% of total expenditure claimed*
2H	Capacity Development and Training		671,000	63% of total expenditure claimed*
3	Interest Charge	432,000		100% of amounts due
4	Unallocated	1,558,000		
	Total	17,562,000		

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

TABLE 2

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Greater Mekong Subregion East-West Economic Corridor Towns Development Project)</b>				
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (\$)</b>		<b>Basis for Withdrawal from the Grant Account</b>
		<b>Category</b>	<b>Subcategory</b>	
1	Works	10,699,000		
1A	Works (Part 1)		1,710,000	35% of total expenditure claimed*
1B	Works (Part 2)		3,235,000	35% of total expenditure claimed*
1C	Works (Part 3)		614,000	35% of total expenditure claimed*
1D	Works (Part 4)		1,968,000	35% of total expenditure claimed*
1E	Works (Part 6)		1,926,000	35% of total expenditure claimed*
1F	Works (Part 7)		1,246,000	35% of total expenditure claimed*
2	Consulting Services	2,237,000		
2A	Consulting Services (Part 1)		124,000	42% of total expenditure claimed*
2B	Consulting Services (Part 2)		313,000	42% of total expenditure claimed*
2C	Consulting Services (Part 3)		59,000	42% of total expenditure claimed*
2D	Consulting Services (Part 4)		186,000	42% of total expenditure claimed*
2E	Consulting Services (Part 6)		188,000	42% of total expenditure claimed*
2F	Consulting Services (Part 7)		121,000	42% of total expenditure claimed*
2G	Project Implementation Support		652,000	36% of total expenditure claimed*
2H	Capacity Development and Training		594,000	37% of total expenditure claimed*
3	Unallocated	1,294,000		
	Total	14,230,000		

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

## **SCHEDULE 4**

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

#### General

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

#### Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:
  - (a) International Competitive Bidding; and
  - (b) National Competitive Bidding.
4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Beneficiary 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.

#### National Competitive Bidding

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

#### Conditions for Award of Contract

6. The Beneficiary shall not award any Works contract which involves environmental impacts until MPWT has:
  - (a) obtained the final approval of the IEE from the appropriate authority of the Beneficiary; and
  - (b) incorporated the relevant provisions from the EMP into the Works contract.



7. The Beneficiary shall not award any Works contract which involves involuntary resettlement impacts, until MPWT has prepared and submitted to ADB the final RP based on the detailed design, and obtained ADB's clearance of such RP.

#### Consulting Services

8. Except as ADB may otherwise agree, the Beneficiary shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

9. The Beneficiary shall recruit the individual consultants for such services as agreed with ADB in accordance with procedures acceptable to ADB for recruiting individual consultants.

#### Industrial or Intellectual Property Rights

10. (a) The Beneficiary 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 Beneficiary 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.

11. The Beneficiary 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

12. 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 Beneficiary and ADB and set forth in the Procurement Plan.

## **SCHEDULE 5**

### **Execution of Project; Financial Matters**

#### Implementation Arrangements

1. The Beneficiary shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Beneficiary and ADB. In the event of any discrepancy between the PAM and this Financing Agreement or the UEIF Grant Agreement, the provisions of this Financing Agreement or the UEIF Grant Agreement shall prevail.

#### Environment

2. The Beneficiary shall ensure, and cause MPWT to ensure, that the preparation, design, construction, implementation, operation and decommissioning of the Project comply with: (a) all applicable laws and regulations of the Beneficiary relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEEs, the EMPs and any corrective or preventative actions set forth in a Safeguards Monitoring Report. The Beneficiary shall ensure, and cause MPWT to ensure, that the foregoing is applied and implemented for all Parts of the Project, regardless of the financing source. If there is any discrepancy between the SPS and the Beneficiary's laws and regulations, the SPS shall prevail.

#### Land Acquisition and Involuntary Resettlement

3. The Beneficiary shall ensure, and cause the Project province to ensure, that all land and all rights-of-way required for the Project are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with: (a) all applicable laws and regulations of the Beneficiary relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; and (c) all measures and requirements set forth in the RPs, and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

4. Without limiting the application of the Involuntary Resettlement Safeguards or the RPs, the Beneficiary shall cause MPWT to ensure that no physical or economic displacement takes place in connection with the Project until:

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

#### Indigenous Peoples

5. No impact on indigenous people is expected for the Project. In the event that there is any such impact, the Beneficiary shall cause MPWT to ensure that it adheres to

applicable laws and regulations of the Beneficiary and the SPS. If there is any discrepancy between the SPS and the Beneficiary's laws and regulations, the SPS shall prevail.

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

6. The Beneficiary shall make available, and cause MPWT to make available, necessary budgetary and human resources to fully implement the EMPs and the RPs.

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

7. The Beneficiary shall ensure, and cause MPWT to ensure, that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEEs, the EMPs and the RPs (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures; and
- (c) provide the Beneficiary with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEEs, the EMPs and the RPs.

#### Safeguards Monitoring and Reporting

8. The Beneficiary shall do the following:

- (a) submit semiannual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEEs, the EMPs and the RPs, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMPs and the RPs promptly after becoming aware of the breach.

#### Prohibited List of Investments

9. The Beneficiary shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor Standards and Health

10. The Beneficiary shall ensure, and cause MPWT to ensure that, all Works contractors: (a) comply with all applicable labor laws of the Beneficiary; (b) use their best efforts to employ women and local people, including disadvantaged people, living in the vicinity of the Project; (c) disseminate information at worksites on health safety for those employed during construction; (d) provide equal pay to men and women for work of equal type; (e) provide safe working conditions and separate culturally appropriate facilities for male and female workers; and (f) abstain from child labor.

Gender and Development

11. The Beneficiary shall ensure, and cause MPWT to ensure, that: (a) the gender action plan developed for the Project is implemented in accordance with its terms; (b) the bidding documents include relevant provisions for contractors to comply with the measures set forth in this plan; (c) adequate resources are allocated for the implementation of this plan; and (d) key gender outcome and output targets (notably: (i) gender awareness and sensitisation training to be carried out for 30 staff from MPWT and the implementing agencies; (ii) 5 percent of the construction workers hired by the Works contractors should be female; (iii) 30 percent of the total staff positions in the project management unit and the project implementation units of the Project are for female; and (iv) 30 percent of the total management positions in the project management unit and the project implementation units of the Project are for female) are monitored regularly and achieved.

Governance and Anticorruption

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

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