

FRAMEWORK FINANCING AGREEMENT (IND: Rural Roads Sector II Investment Program)

This Framework Financing Agreement (FFA), dated 25 November 2005 is made between INDIA and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

Background

INDIA has requested the Asian Development Bank (ADB) to help finance part of its rural roads investment program (the Investment Program) in the selected States (Assam, Orissa and West Bengal at the beginning, and any other States meeting the requirements set forth in this agreement) (the States). ADB's financial support is to be extended through a multitranches financing facility (the Facility), a new instrument approved in *Pilot Financing Instruments and Modalities* (R194-05, 4 August 2005).

Investment Program

Context

The Investment Program is part of a long term investment for the rural sector called PMGSY (*Pradhan Mantri Gram Sadak Yojana*). PMGSY aims to provide all-weather road connectivity to currently unserved habitations in India's rural areas, where 70% of India's population live. PMGSY is one of the key features of the Government's poverty reduction agenda for the rural sector. Investments in rural roads will improve connectivity, cut transport costs, and provide enabling infrastructure to areas currently with poor access to markets and urban towns, and thus contribute to growth and equity in the country's largest sector.

The Investment Program, coinciding with the second five years of PMGSY investment, supports the Government's focused intervention to the States with large numbers of unconnected habitations.

The Investment Program targets the development and construction of about 30,000 km of all-weather rural roads in the States, and will be implemented in phases. In addition to physical infrastructure, the Investment Program will also focus on capacity building, especially in relation to planning, design, operational, safeguard, financial, road safety and maintenance matters.

Investment Plan

The total investments required for the Investment Program will cost approximately \$2.1 billion equivalent over a 5-year period.

Financing Plan

The financing plan for the Investment Program includes outlays from the central Government and ADB.

| Financing Source | Total | Share |
|-------------------------|--------------------------|--------------|
| Asian Development Bank | \$ 750.0 million | 36% |
| Government | \$1,350.0 million | 64% |
| Total | \$2,100.0 million | 100% |

Track Record

ADB has been involved in the rural roads sector in INDIA through a previous ongoing loan.¹

Facility

Amount

The maximum financing amount available under the Facility is seven hundred and fifty million dollars (\$750,000,000). The Facility is intended to finance part of the Investment Program from ADB's ordinary capital resources², through individual Loans for related Projects (hereinafter called "Loan" or "Project" as the context may require).

Utilization Period

As agreed between INDIA and ADB, the maximum utilization period (i.e., closing date for submission of the Periodic Financing Request [PFR(s)] under the Facility will be 31 March 2009. Provided however, such utilization period will lapse twelve months from the date of approval of the Facility by ADB Board, unless by such time the first Loan Agreement under the Facility is signed and made effective.

Terms and Conditions

Each Loan will be used to finance a range of subprojects that meet agreed eligibility criteria described in Schedule 2 to this Agreement, as supplemented in each Loan and Project Agreement(s). The subprojects shall adhere at all times to a set of agreed terms and conditions in the areas of safeguards, technical, commercial, legal, financial, social and economic profiles. The execution of subprojects financed by individual Loans will also follow agreed procurement, disbursement, administrative, governance, fiduciary oversight and financial management arrangements. These terms and conditions are set in Schedules attached to this Agreement. The specific details applicable to individual Loans will be documented in the relevant Loan Agreements.

Execution

The Executing Agency for the Investment Program is the Union Ministry of Rural Development (MORD) at the center, and the governments of the participating States at the State level. Accordingly under the Facility, MORD will implement Projects in the different States

¹ Loan No. 2018-IND: Rural Roads Sector I Project.

² Provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001, would apply to each Loan, subject, to modifications, if any, that may be included under any Loan Agreement (said Ordinary Operations Loan Regulations as so modified, if any, being hereinafter called the Loan Regulations).

with their respective State Rural Roads Development Agencies (SRRDAs) in accordance with the principles set forth in Schedule 1 to this Agreement, as supplemented with more details in each Loan and Project Agreement(s).

Procedures

Periodic Financing Request(s)

INDIA may request, and ADB may agree, to provide Loans for individual Projects under the Facility to finance the Investment Program, upon the submission of a PFR. Each PFR should be submitted by INDIA, as acknowledged by MORD and related State(s). INDIA will make available to MORD, and through MORD to the relevant State(s), the proceeds of the Loans in accordance with the related Loan and Project Agreement(s), as necessary.

A PFR may cover more than one State. Each individual Loan shall be for an amount greater than thirty million dollars (\$30,000,000), or its equivalent. ADB will review each PFR and, if found satisfactory, prepare the related Loan and Project Agreement(s).

PFRs for financing subprojects in States other than the States of Assam, Orissa, and West Bengal shall be subject to satisfactory due diligence and preparation of relevant safeguard frameworks, fiduciary requirements, and other relevant documents. ADB and INDIA will agree on an implementation schedule to initiate these activities, within six months of the Effective Date of the first Loan Agreement under the Facility.

Each Loan to be provided under the Facility will be subject to following procedures and undertakings:

- (a) INDIA will have notified ADB of a forthcoming PFR at least 15 days in advance of the submission of the PFR.
- (b) INDIA will have submitted the PFR in the format as agreed with ADB.

PFR information

The PFR will be submitted under an agreed report format and include, the following details:

- (i) Loan amount.
- (ii) Indicative list of subprojects to be financed under the Loan.
- (iii) Cost estimates and financing plan.
- (iv) Implementation arrangements.
- (v) Confirmation of the continuing validity of and adherence to the provisions of this Agreement.
- (vi) Confirmation of compliance with the provisions under previous Loan Agreement(s) and Project Agreement(s), as appropriate.

- (vii) Other information as may be required under the Facility Administration Memorandum ("FAM") to be prepared and agreed between ADB and INDIA to facilitate implementation of the Facility.

Safeguards

All ADB safeguard policies, as amended or updated from time to time, shall apply to all the subprojects financed under the Facility (see Schedule 3 to this Agreement). ADB safeguard policies include (i) Involuntary Resettlement Policy, 1995, (ii) Policy on Indigenous People, 1998, and (iii) Environment Policy, 2002.

Procurement Consulting Services

Guidelines

All goods and services to be financed under the Facility shall be procured in accordance with ADB's Guidelines for Procurement, November 2004, as amended from time to time.

All consulting services to be financed under the Facility shall be procured in accordance with ADB's Guidelines on the Use of Consultants, January 2005, as amended from time to time and other arrangements satisfactory to ADB for the engagement of domestic consultants.

Advance Action and Retroactive Financing

Under each Project under the Facility, advance action for procurement of civil works, and consulting services will be allowed subject to these being eligible in accordance with agreed procedures and Guidelines as above referred.

Except as otherwise agreed with ADB, the expenditures incurred towards civil works and consulting services eligible under advance action will be eligible for retroactive financing, provided that these are incurred for a period 12 months prior to the signing of the related Loan Agreement, and do not exceed an amount equivalent to twenty percent (20%) of the individual Loan.

It is understood that approval of advance action and retroactive financing does not in any way commit ADB to finance the individual Projects or Subprojects therein.

Disbursements

Disbursements under each Loan will be in accordance with ADB's Loan Disbursement Handbook, 2001 and ADB's Interim Guidelines for Disbursement Operations, LIBOR-Based Loan Products, 2002, each as amended from time to time.

Signed in New Delhi as of the day and year first above written.

For INDIA

By 

ARVIND MAYARAM

Joint Secretary

Department of Economic Affairs

(Authorized Representative)

For ASIAN DEVELOPMENT BANK

By 

TADASHI KONDO

Country Director

SCHEDULE 1

IMPLEMENTATION OF INVESTMENT PROGRAM

1. Unless modified or amended in related Loan or Project Agreements under the Facility, each Project shall be implemented as follows:

Implementation Arrangements

2. (a) The Project will be carried out in accordance with the PMGSY Guidelines and related manuals and instructions (hereinafter referred to as the “PMGSY Guidelines”), as supplemented by specific requirements described in this Agreement, including those described more fully in the agreed Community Participation Frameworks (CPF) and the Environment Assessment Frameworks (EAF) for the participating States, as applicable.

(b) A Coordination Committee will be set up at the MORD to assist in implementation of the Project.

(c) Each participating State will likewise set up a Project implementation committee for implementation of the Project at State levels.

3. Each State will assist in obtaining the requisite approvals and clearances for timely implementation of the Project.

4. Each State will provide, as necessary, respective counterpart staff, land facilities, and counterpart funding for the Project in accordance with the financing plan, cost of making land available for the subprojects and assistance, and implementation and monitoring under the CPF and EAF (including unforeseen expenses beyond the estimates), utility relocation, general project management expenses, and road maintenance, in a timely manner through approved annual budget allocations.

5. Each State will ensure that the respective IAs will recruit PICs with expertise in social development and environmental management to help implement the provisions of the CPF and the EAF for all subprojects in the related State.

Road Maintenance

6. In accordance with the PMGSY Guidelines, the States will provide adequate and timely funding for proper maintenance of the PMGSY roads. Any increases in the actual amounts to be provided will be met by the respective State through additional budget allocations, or other alternative sources of financing.

7. As also required under the PMGSY Guidelines, except as ADB may otherwise agree, the States will require the respective IAs (through the PIUs) to ensure proper maintenance of the PMGSY roads until these are transferred to the designated zilla panchayats in accordance with the PMGSY Guidelines. The States will also allocate the requisite funds to the relevant functionaries (the related PIU/zilla panchayat) for such maintenance in accordance with the requirements of the PMGSY Guidelines.

8. The States will ensure that related PIU/zilla panchayat, as the case may be in each State, will enter into further maintenance contracts with competitively procured contractors (on the basis of the standard performance-based contracts for road maintenance prepared by PMC

under ADB funded Rural Roads Sector I Project [Loan No. 2018]). The contracts will begin upon completion of the initial 5-year maintenance period under the related construction contracts and will cover routine maintenance and renewal of all PMGSY roads for further periods of not less than 5 years.

Road Safety

9. As part of the mid-term review of the Investment Program as also under each Project, MORD, the States, and ADB will review the outcomes of the road safety program, to consolidate the institutional mechanism, financing modalities, and detailed implementing arrangements to further ensure sustainable road safety programs for the roads to be developed under PMGSY and the Investment Program at the national and State levels.

Performance Monitoring and Reporting

10. The State(s) shall ensure that within 3 months of the Effective Date of the first Loan Agreement under the Facility, the respective IAs shall establish an Investment Program Performance Monitoring System (IPPMS) in a form and substance acceptable to ADB in accordance with the Investment Program performance indicators. The IAs shall undertake periodic subproject performance review under each individual Loan, as also for the Investment Program, in accordance with the IPPMS to evaluate the scope, implementation arrangements, progress and achievements of objectives of the related Project and overall Investment Program.

11. MORD will prepare and provide ADB with quarterly progress reports on subprojects' implementation. Such reports shall include report on progress made during the period of review, changes if any on implementation schedule, problems or difficulties encountered and remedial actions taken, and work to be undertaken in coming quarter. The reports, that shall be submitted to ADB within 45 days from close of each quarter, shall also include a summary financial account for each subproject, expenditures to date, and report on benefit monitoring undertaken pursuant to the preceding paragraph of this Schedule.

12. The Government will submit to ADB a Project completion report within 3 months of physical completion of the subprojects financed under each individual Loan and a Facility completion report within 3 months of physical completion of the subprojects under the Facility. These reports shall cover a detailed evaluation of the Project and the Investment Program respectively, covering the design, costs, contractors' and consultants' performance, social and economic impact, economic rate of return, and other details relating to the Project(s)/Investment Program, for each State as may be requested by ADB.

Review

13. (a) ADB, INDIA, and the States shall meet regularly as required to discuss the progress of the individual Loans and any changes to implementation arrangements or remedial measures required to be undertaken towards achieving the objectives of the Project(s) and Investment Program.

(b) Mid-term review of the Project will be undertaken by ADB, INDIA and the States. The mid-term review will include review of issues and any problems or weaknesses in implementation arrangements, and agree on any changes needed to achieve the objectives of the Project.

(c) A similar mid-term review of the Investment Program by ADB, INDIA, and the States will be undertaken in the third year from date of approval of the Facility by ADB.

Accounts

14. INDIA, MORD and the State(s) shall ensure that proper accounts and records are maintained and audited in a timely manner to adequately identify the use of Loan proceeds in such manner and detail as may be specified under each Loan Agreement and Project Agreement(s).

SCHEDULE 2

SELECTION CRITERIA AND APPROVAL PROCESS FOR SUBPROJECTS

Subproject

Selection Criteria

The following criteria will apply in selecting subprojects intended for financing under the Facility:

- (i) Subprojects will cover rural roads that lack an all-weather road connection;
- (ii) Subprojects will be eligible for construction or upgrading in accordance with the PMGSY Guidelines, and be included in the respective district core network;
- (iii) Subprojects will be ranked using an area approach given in the PMGSY Guidelines, selecting packages of roads that contain: (a) the link road that connects the highest priority habitation in the Comprehensive New Connectivity Priority List; (b) the through road that serves the link road; and (c) other eligible link roads that connect to the through road;
- (iv) Subprojects will be technically feasible, and cost-effective as required under the PMGSY Guidelines;
- (v) Road safety measures will be incorporated in the subproject designs as required under the PMGSY Guidelines;
- (vi) Design of subprojects will be finalized based on input from community consultation conducted in accordance with the PMGSY Guidelines, as supplemented by the CPF;
- (vii) If a subproject requires land to be made available, community consultation process in accordance with the PMGSY Guidelines, as supplemented by the CPF will be conducted, the information on process of land transfer, assistance/support options and grievance procedures will be disseminated to the Project affected communities, and issues are resolved before awarding civil work contract;
- (viii) Subprojects will be environmentally sound, and none will be located within or close to an environmentally sensitive area, such as a wildlife sanctuary, national park, or other areas having significant ecological functions;
- (ix) An environmental checklist will be prepared for the subproject in accordance with the EAF, and relevant provisions of the ECOP will have been identified;
- (x) Sufficient counterpart funding will be allocated by the Government or related State governments, as required, to implement the subproject as scheduled and maintain the subproject road under the post-construction 5-year maintenance contract; and
- (xii) All necessary central and State government approvals will have been obtained for the subproject.

Approval Procedures for Subprojects

Approval procedures for road connectivity subprojects intended for financing under the Facility will follow the process given in the PMGSY

Guidelines as supplemented by the requirements of the CPF and the EAF (including ECOP).

For the subprojects already prepared under ADB project preparatory technical assistance,³ the approval process stands completed, subject to their meeting the selection criteria (vi) and (vii) above.

For subprojects other than those referred in previous paragraph above, intended for financing under the Facility, the approval procedures will be as follows:

- (i) The State IA will prepare subproject proposals in formats given in the PMGSY Guidelines, the CPF and the EAF indicating compliance of each proposed subproject with the selection criteria, and will submit the proposals to the National Rural Roads Development Agency (NRRDA);
- (ii) NRRDA will review the subproject proposals, check compliance with the selection criteria, and for those found compliant with the selection criteria, recommend approval to the MORD;
- (iii) MORD through NRRDA will further submit the subproject proposals it intends to finance under ADB loan to ADB for review and approval before formally sending the subproject proposals to the Empowered Committee for clearance;
- (iv) ADB will approve the subproject proposals, subject to any further modifications required to be made to the proposals;
- (v) Subject to addressing any modification as required under subclause (iv) above, MORD will give final approval for the subproject proposals to the State IA; and
- (vi) The State IA will proceed with tendering as guided by the PMGSY Guidelines.

Notwithstanding sub-clauses (iii), (iv) and (v) above, unless otherwise required by ADB, for financing to be provided to each State under the Facility, prior approval of ADB will be required for subproject proposals only for the first 100 km of rural roads in such State.

Monitoring during Implementation

Adherence to requirements of the PMGSY Guidelines, the CPF, the EAF (including ECOP) and other applicable guidelines for subproject implementation will be monitored through the completion of each subproject and only those subprojects meeting the requirements will be eligible for ADB financing. The existing monitoring mechanism under the PMGSY, namely OMMAS and State Quality Monitor/National Quality Monitor, will be supplemented by the input from the Technical Support Consultants for safeguard compliance and road safety.

³ TA4220-IND: Rural Roads Sector II Project

SCHEDULE 3

SAFEGUARDS

Environment

1. ADB will only finance subprojects that meet the eligibility requirements set out in Schedule 2 to this Agreement, and which adhere to relevant requirements of the PMGSY Guidelines, the CPF, the EAF and other applicable guidelines for subproject implementation. The States will monitor the implementation of subprojects through to their completion of each subproject.

2. The States will ensure that: (i) subprojects will be implemented in accordance with the EAF; and (ii) relevant provisions of the ECOP identified in the subproject preparation stage are incorporated into the subproject designs and followed during subproject design, construction, operation and maintenance.

3. The States will require the related SRRDA to implement each individual Project under the Facility in accordance with all applicable laws and regulations regarding wildlife and protected areas/forest areas for subprojects that involve roads passing through forest areas and address these under the relevant IEE for such subprojects. No construction work will be undertaken on sections of subprojects that pass through a forest reserve unless clearance is granted by INDIA's Ministry of Environment and Forest under applicable laws and regulations of INDIA/respective State, and no subproject will be located within or close to an environmentally sensitive area such as a wildlife sanctuary, national park, or other areas with significant ecological functions that are declared as national parks, sanctuaries, or national/international cultural heritage.

Land Availability

4. The States will ensure that the respective IAs implement the relevant provisions of the CPF for all subprojects as agreed upon with ADB and in conformity with all applicable laws and regulations of INDIA /respective State.

5. The States will ensure that the IAs will, subject to compliance with the relevant provisions of the CPF and EAF/ECOP and in accordance with all applicable laws and regulations of INDIA /respective State, acquire or make available the land and rights to land free from any encumbrances, and cleared the utilities, trees and any other obstruction from such land, required for commencement of construction activities in accordance with the schedule agreed under the related civil works contract.

6. (a) The States will ensure that the respective IAs will (i) carry out the community consultation process for all subprojects in accordance with the PMGSY Guidelines as supplemented by the CPF, (ii) disseminate the information on process of land transfer/availability as the case may be, support/assistance provisions and grievance procedures to the project affected communities in a timely manner so that all related issues are resolved before awarding civil work contracts, and (iii) ensure that in case of voluntary land donations/transfer, these are undertaken in a transparent manner under proper documentation, and avoid any kind of coercion or forced donations/transfer; and in this regard shall not exercise any eminent domain or related mechanisms that may be deemed to be compulsory acquisition of land.

(b) The States will ensure that the details of land made available in accordance with the procedures prescribed in the PMGSY Guidelines, are reflected in the local land records in a timely manner and not later than commencement of the related civil works contract under a subproject.

Execution of Civil Works Contracts

7. Subject to compliance with the requirements of CPF and EAF/ECOP, the States will: (i) acquire or make available on a timely basis the land and rights in land, free from any encumbrances; and (ii) clear the utilities, trees and any other obstruction from such land, on a timely basis, i.e., strictly in accordance with the schedule as agreed under the related civil works contract, as required for construction activities relating to each section of the related civil works contract under the subproject.

8. The States will ensure that, subsequent to award of civil works contract under any subproject, no section or part thereof under the civil works contract will be handed over to the contractor unless the applicable provisions of the CPF and the EAF/ECOP have been complied with.

9. Any changes to the land alignment or environment impacts on account of detailed designs of related subproject roads will be subject to prior approval by ADB or related agency (MORD) as the case may be in accordance with the subproject selection criteria and procedures included in Schedule 2 to this Agreement.

Social Impacts and Other Issues

10. (a) The States shall ensure through specific provisions in the bid documents and the civil works contracts under each individual Project under the Facility that the contractors shall: (i) disseminate information at work sites on the risks of sexually transmitted diseases and HIV/AIDS as part of the health and safety measures for those employed during construction; (ii) follow legally mandated provisions on health, welfare, sanitation, and appropriate working conditions, including accommodation, where appropriate, for construction workers at camp sites; (iii) comply with all applicable labor laws, not employ child labor for construction and maintenance activities, and provide appropriate facilities for children of labor in construction camp sites; (iv) provide equal opportunity for women for road construction activities, and not differentiate wages for men and women for work of equal value.

(b) The States will ensure that compliance with provisions in clause (a) of this paragraph is monitored by the respective IAs. The civil works contracts will also provide for their termination by the employer for breach of any provision.

11. In case of any significant or related impacts on Scheduled Tribes (ST) under any subproject, these will follow the requirements as set out in the CPF as agreed by ADB (the CPF lays down special provisions for all ST households to ensure that their living standards are not adversely affected as a result of land donation or in the event of any loss of non-land asset and impacts on their livelihoods). As also laid down in the CPF, for any impact on land involving traditional and tenurial rights of the STs, the legal provisions laid down by INDIA and States pertaining to transfer of land will be duly followed.

12. The States will ensure acceptance of the Project through effective community participation in selecting and implementing subprojects in accordance with the PMGSY Guidelines as supplemented by the CPF.

13. Applicability of the CPF and EAF/ECOP to the second and subsequent Projects under the Facility may be reviewed and necessary modifications, acceptable to ADB and INDIA, will be made prior to finalizing the corresponding Loan Agreements.