

---

LOAN NUMBER 2832-VAN(SF)

**LOAN AGREEMENT  
(Special Operations)  
(Port Vila Urban Development Project)**

between

**REPUBLIC OF VANUATU**

and

**ASIAN DEVELOPMENT BANK**

**DATED 12 DECEMBER 2012**

---

VAN 42391

*18*  
*se*

**LOAN AGREEMENT  
(Special Operations)**

LOAN AGREEMENT dated 12 December 2012 between the REPUBLIC OF VANUATU ("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 Borrower has also applied to the Government of Australia, represented by the Australian Agency for International Development ("AusAID") for a grant not exceeding \$26,500,000 ("AusAID Grant") to be administered by ADB for purposes of the Project;
- (C) by a Cofinancing Agreement dated 6 December 2012 between ADB and AusAID ("Cofinancing Agreement"), AusAID has agreed to provide the AusAID Grant for the purpose of cofinancing jointly with ADB various parts of the Project, and ADB has agreed to administer the Grant upon the terms and conditions set forth in the Cofinancing Agreement;
- (D) by a grant agreement of even date herewith between the Borrower and ADB ("AusAID Grant Agreement"), ADB has agreed to make the proceeds of the AusAID Grant available to the Borrower upon the terms and conditions set forth therein;
- (E) the Borrower has also applied to the Government of Australia for a grant not exceeding \$4,500,000 through the Memorandum of Understanding on Channel Financing between the Government of the Commonwealth of Australia and ADB ("CFA Grant") to be administered by ADB for the purposes of the Project;
- (F) by a grant agreement of even date herewith between the Borrower and ADB ("CFA Grant Agreement"), ADB has agreed to make the proceeds of the CFA Grant available to the Borrower upon the terms and conditions set forth therein; and
- (G) ADB has agreed to make a loan to the Borrower 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; Definitions**

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made

*sc M*

applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein.

**Section 1.02:** Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan 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 AusAID Grant and CFA Grant as described in paragraph 2, Parts 4 and 5, of Schedule 1 to this Loan 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) "Gender Action Plan" or "GAP" means the gender action plan for the Project prepared in consultation with the Borrower and approved by ADB;
- (f) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, the AusAID Grant and the CFA Grant, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;
- (g) "Initial Environmental Examination" or "IEE" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (h) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;
- (i) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2007, as amended from time to time);
- (j) "MFEM" means the Borrower's Ministry of Finance and Economic Management, or any successor thereto acceptable to ADB;
- (k) "MIPU" means the Borrower's Ministry of Infrastructure and Public Utilities, or any successor thereto acceptable to ADB;
- (l) "PAM" means the project administration manual for the Project dated 8 November 2011 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

*se*

(m) "Part" or "part" means a sub-component of the Project, as described in paragraph 2 of Schedule 1 to this Loan Agreement;

(n) "Procurement Guidelines" means ADB's Procurement Guidelines (2010, as amended from time to time);

(o) "Procurement Plan" means the procurement plan for the Project dated 8 November 2011 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;

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

(q) "Resettlement Framework" or "RF" means the resettlement framework for Parts 1 and 3 of the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(r) "Resettlement Plan" or "RP" means (i) the resettlement plan for the Part 2 of the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB; and (ii) each other resettlement plan for Parts 1 and 3 of the Project that may be prepared and submitted by the Borrower pursuant to the requirements set forth in the RF and cleared by ADB;

(s) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of and compliance with the EMP and the RP, including any corrective and preventative actions;

(t) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009); and

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

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to three million one hundred seventy-four thousand Special Drawing Rights (SDR3,174,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum thereafter,

SE 102

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 subsection (a) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 April and 15 October 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 amount 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 cause the proceeds of the Loan to be applied to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

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

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

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

Section 3.05. Withdrawals from the Loan Account in respect of Goods and Works shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from, and Works 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

se 102

- (b) Goods and Works which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 December 2017 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.

Section 4.02. (a) The Borrower shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for imprest account), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Borrower pursuant to subsection (a) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Borrower unless the Borrower shall otherwise agree.

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

se 17

**ARTICLE V****Suspension; Acceleration of Maturity**

Section 5.01. The following are specified as additional events 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:

- (a) the Borrower shall have failed to perform any of its obligations under the AusAID Grant Agreement or the CFA Grant Agreement;
- (b) the AusAid Grant or the CFA Grant shall have become liable for suspension or cancellation for any reason whatsoever; or
- (c) the Cofinancing Agreement shall have been suspended or cancelled.

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

**ARTICLE VI****Effectiveness**

Section 6.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

- (a) the AusAid Grant Agreement and the CFA Grant Agreement shall have been duly authorized or ratified by, executed and delivered on behalf of, the Borrower, and all conditions precedent to their effectiveness, other than a condition requiring effectiveness of this Loan Agreement, shall have been fulfilled;
- (b) the Borrower shall have established the Vanuatu project management unit at MFEM as described in the PAM; and
- (c) the Borrower shall have appointed at least 5 permanent staff to key positions as described in the PAM within MIPU.

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: the AusAid Grant Agreement and the CFA Grant Agreement have been duly authorized or ratified by, executed and delivered on behalf of, the Borrower, and are legally binding upon the Borrower in accordance with their terms.

sc ml

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

## **ARTICLE VII**

### **Miscellaneous**

**Section 7.01.** The Director General, MFEM 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

Director General  
Ministry of Finance and Economic Management  
Private Mail Bag 9052  
Port Vila  
Vanuatu

Facsimile Number:

+678 27937.

#### For ADB

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

Facsimile Numbers:

(632) 636-2444

(632) 636-2446.

SCM



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

REPUBLIC OF VANUATU

By \_\_\_\_\_  
CHARLOT SALWAI  
Minister of Finance and  
Economic Planning

ASIAN DEVELOPMENT BANK

By \_\_\_\_\_  
ANDREA IFFLAND  
Regional Director  
Pacific Liaison and Coordination Office

S TA

## SCHEDULE 1

### Description of the Project

1. The objective of the Project is to improve hygiene situation and reduce water-based hazards in Port Vila by providing affordable, effective and sustainable drainage, road and sanitation systems.

2. The scope of the Project is:

Part 1: Improving road network and drainage systems (in greater Port Vila)

- (a) Repairing and improving roads with kerbs, footpaths and other essential road features; and
- (b) Constructing new storm water drainage systems and improving existing drains together with new channels.

Part 2: Improving the sanitation system (in greater Port Vila)

- (a) Improving the management of privately operated sludge collection and disposal system;
- (b) Designing and constructing a sludge treatment plant and disposal facility;
- (c) Transferring sludge disposal site from the current location in Bouffa to a new site for disposal and treatment of sludge; and
- (d) Constructing a biogas plant as a clean development mechanism project.

Part 3: Improving the hygiene facilities (in central area and settlement communities)

- (a) Setting up multi-purpose, multi-user sanitation facilities such as toilet, washing and bathing facilities in villages and peri-urban settlements;
- (b) Upgrading, rebuilding or refurbishing public toilets, principally in the city centre and located at major publicly-owned sporting facilities; and
- (c) Involving women in site selection and design of sanitation facilities and maintenance activities under Parts 3 (a) and (b) hereinabove.

Part 4: Strengthening capacity of government agencies and community and user organizations to manage drainage, road and sanitation systems

- (a) Formulating an operation and maintenance plan for the Project assets in consultation with other development partners, key government agencies and the private sector; and
- (b) Undertaking generic and targeted training programs on a range of topics such as planning and policy improvement in hygiene, sanitation, drainage and road development; operations and maintenance, monitoring and quality control of urban road

sc *DR*

networks, and sanitation and drainage facilities; property tax administration and contract management; hygiene and health education awareness; household sanitation improvement with participation of women and youth; gender awareness in hygiene and sanitation; and management and maintenance of communal sanitation facilities for women and youth groups.

Part 5: Enhancing efficiency of Project management services

Providing Project related technical support and advisory services, including services relating to (a) Project administration; (b) preparation and implementation of a Project performance monitoring system; (c) design, procurement and contract supervision; (d) gender mainstreaming in Project management; (e) Project benefit and monitoring and evaluation; and (f) climate proofing of infrastructure.

3. The Project is expected to be completed by 30 June 2017.

9/2  
SC

**SCHEDULE 2****Amortization Schedule****(Port Vila Urban Development Project)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 April 2020	66,125
15 October 2020	66,125
15 April 2021	66,125
15 October 2021	66,125
15 April 2022	66,125
15 October 2022	66,125
15 April 2023	66,125
15 October 2023	66,125
15 April 2024	66,125
15 October 2024	66,125
15 April 2025	66,125
15 October 2025	66,125
15 April 2026	66,125
15 October 2026	66,125
15 April 2027	66,125
15 October 2027	66,125
15 April 2028	66,125
15 October 2028	66,125
15 April 2029	66,125
15 October 2029	66,125
15 April 2030	66,125
15 October 2030	66,125
15 April 2031	66,125
15 October 2031	66,125
15 April 2032	66,125
15 October 2032	66,125
15 April 2033	66,125
15 October 2033	66,125
15 April 2034	66,125
15 October 2034	66,125
15 April 2035	66,125
15 October 2035	66,125
15 April 2036	66,125
15 October 2036	66,125
15 April 2037	66,125
15 October 2037	66,125
15 April 2038	66,125
15 October 2038	66,125
15 April 2039	66,125
15 October 2039	66,125

MR  
SC

Schedule 2

<u>Date Payment Due</u>	<u>Payment of Principal (expressed in Special Drawing Rights)*</u>
15 April 2040	66,125
15 October 2040	66,125
15 April 2041	66,125
15 October 2041	66,125
15 April 2042	66,125
15 October 2042	66,125
15 April 2043	66,125
15 October 2043	66,125
<b>Total</b>	<b>3,174,000</b>

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

102  
sc

**SCHEDULE 3****Allocation and Withdrawal of Loan Proceeds****General**

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

**Percentages of ADB Financing**

2. Except as ADB may otherwise agree, each item of expenditure 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 2 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 allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, in consultation with the Borrower, reallocate such excess amount to any other Category.

**Disbursement Procedures**

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

**Imprest Account**

6. Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, an imprest account at the Reserve Bank. The imprest account shall be established, managed, replenished and liquidated in accordance with the

107  
sc

Schedule 3

Loan Disbursement Handbook, and detailed arrangements agreed upon between the Borrower and ADB. The imprest account shall only be used for the purposes of the Project. The currency of the imprest account shall be the Dollar. Except as ADB may otherwise agree, the ceiling for the imprest account shall not exceed the lower of (a) the estimated expenditure to be financed from the imprest account for the following 6 months of Project implementation, or (b) \$100,000.

Condition for Withdrawals from Loan Account

7. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account in respect of Part 2 of the Project until the Borrower has acquired the land for the sludge treatment plant in accordance with the RP and made it available for Works under the Project.

102  
Se

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Port Vila Urban Development Project)				
CATEGORY			ADB FINANCING	
Number	Item	Total Amount Allocated for ADB Financing (SDR)		Percentage and Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Civil Works	2,594,000		
1A	Drainage and Road Improvement		2,019,000	16.3% of total expenditure claimed*
1B	Sanitation**		487,000	16.3% of total expenditure claimed*
1C	Hygiene		88,000	16.3% of total expenditure claimed*
2	Interest During Implementation	76,000		100% of total amounts due
3	Unallocated	504,000		
	Total	3,174,000		

\* Exclusive of local taxes and duties.

\*\* Withdrawals from the Loan Account in respect of Category 1B are subject to the condition set out in paragraph 7 of Schedule 3 to this Loan Agreement.

se 102



**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 Loan 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;
- (b) National Competitive Bidding; and
- (c) 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.

**Domestic Preference**

5. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods.

**National Competitive Bidding**

6. 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 approval of such change by the Borrower and ADB.

**Conditions for Award of Contract**

7. The Borrower shall not award any Work contracts which involves environmental impacts until:
  - (a) the relevant environment authority of the Borrower has granted the final approval of the IEE; and

102  
SC

- (b) the Borrower has incorporated the relevant provisions from the EMP into the Works contract.

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

9. The Borrower shall not award any Works contract under Parts 1, 2 and 3 of the Project until it has obtained approval of ADB to the subprojects thereunder based on Project's detailed design.

#### Consulting Services

10. Except as ADB may otherwise agree, and except as set forth in the paragraph below, and in the Procurement Plan, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

11. The Borrower shall recruit the individual consultants for a part of the services under Part 5 of the Project in accordance with procedures acceptable to ADB for recruiting individual consultants.

#### Industrial or Intellectual Property Rights

12. (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.

13. 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

14. Contracts procured under international competitive bidding procedures and contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

Sc MZ

**SCHEDULE 5****Execution of Project; Financial Matters****Implementation Arrangements**

1. The Borrower 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 Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

**Operational Arrangements**

2. The Borrower shall ensure sustainable operation and maintenance of infrastructure and facilities financed under the Project by (a) providing increased recurrent budgetary resources for such operation and maintenance; (b) improving the revenue collection system; (c) providing training to the agencies involved in revenue collection; and (d) maximizing private sector participation in operation and maintenance.

3. Within 6 months of the Effective Date, the Borrower shall establish the Project performance and monitoring system acceptable to ADB.

4. Upon completion of detailed design, the Borrower shall obtain prior approvals of ADB in respect of final subprojects under Parts 1, 2 and 3 of the Project.

**Environment**

5. The Borrower shall ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

**Land Acquisition and Involuntary Resettlement**

6. The Borrower shall 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 Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; (c) the RF; and (d) all measures and requirements set forth in the RP, and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

7. Without limiting the application of the Involuntary Resettlement Safeguards, the RF or the RP, the Borrower shall ensure that no physical or economic displacement takes place in connection with the Project until:

sc 172

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

Human and Financial Resources to Implement Safeguards Requirements

8. The Borrower shall make available necessary budgetary and human resources to fully implement the EMP and the RP.

Safeguards-Related Provisions in Bidding Documents and Works Contracts

9. The Borrower shall 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 IEE, the EMP and the RP (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;
- (c) provide the Borrower 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 IEE, the EMP and the RP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

10. The Borrower shall do the following:

- (a) submit semi-annual 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 IEE, the EMP and the RP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;

MD  
SC

- (c) in the event unexpected significant safeguard impacts are identified, promptly engage qualified and experienced external expert or agency under a selection process and terms of reference acceptable to ADB, to verify information produced through the Project monitoring process, and facilitate the carrying out of any verification activities by such external experts; and
- (d) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP or the RP promptly after becoming aware of the breach.

#### Prohibited List of Investments

11. The Borrower 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

12. The Borrower shall ensure that all Works contracts include provisions requiring contractors: (a) to comply with all workplace occupational safety norms, applicable local labor laws and core labor standards; (b) not to employ child labor in any aspect of their activities; (c) to provide appropriate facilities for children in construction campsites if such sites are established; and (d) not to differentiate wages between men and women for work of equal value.

#### Gender and Development

13. The Borrower shall ensure that (a) the GAP is implemented in accordance with its terms; (b) the bidding documents include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for the implementation of the GAP; and (d) key gender outcome and output targets are monitored regularly and achieved.

#### Governance and Anticorruption

14. The Borrower 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.

15. The Borrower 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.

16. The Borrower shall facilitate financial audit of the Project by its Auditor General's office, and also allow random and independent spot checks of implementation and fund flow by ADB. The Borrower shall maintain a Project website and update it regularly to

02  
Sc

Schedule 5

include (a) bidding procedures, bidders, and contract awards; (b) use of the funds disbursed under the Project; and (c) the physical progress of the Project.

17. Within 6 months of the Effective Date, the Borrower shall prepare an anticorruption strategy and action plan to cover agencies involved in tender evaluation and contractor selection processes and establish a complaints mechanism. The Borrower shall support anticorruption efforts through consultations on major Project decisions, subproject selection and implementation.

18. Within 18 months of the Effective Date, the Borrower shall (a) draft and submit the following legislations to its parliament: the Public Road Act, Traffic Management Act, and Building Standards Control Act; and (b) cause its office of the auditor-general to undertake performance audit of its public works department.

MM  
SC