

FINANCING AGREEMENT

Lao Road Sector Project 2

between

Lao People's Democratic Republic

and

NORDIC DEVELOPMENT FUND

Dated 07 FEB 2017

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FINANCING AGREEMENT

Between the LAO PEOPLE'S DEMOCRATIC REPUBLIC (the "Beneficiary") and NORDIC DEVELOPMENT FUND (the "Fund").

WHEREAS

- a) the Fund was established as a Nordic multilateral development financing institution pursuant to an agreement between the Governments of Denmark, Finland, Iceland, Norway and Sweden for the purpose of promoting economic and social development in developing countries through participation in financing on concessional terms of projects of interest to the Nordic Countries;
- b) the Beneficiary, having satisfied itself of the feasibility and priority of the project described in Annex 1 to this Agreement (the "Project"), has requested the Fund to assist in the financing of the Project through a credit and a grant;
- c) the Beneficiary intends to enter into an agreement with the International Development Association (the "Lead Agency") to assist in the financing of the Project;
- d) the Project will be carried out by the Ministry of Public Works and Transport of the Beneficiary (the "Executing Agency"). The Beneficiary will make the proceeds of the Financing (as defined in Article 1) available to the Executing Agency as provided for in this Agreement;
- e) the Beneficiary and the Fund have entered into an agreement on the legal status of the Fund in Lao People's Democratic Republic on 26 October 1998;
- f) the Fund has agreed, on the basis, inter alia, of the foregoing, to extend the Financing to the Beneficiary upon the terms and conditions set forth in this Agreement;

NOW IT IS AGREED:

ARTICLE I

Definitions

1.01 Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the Preamble to this Agreement have the meanings therein set forth, and the following additional terms have the following meanings:

"Agreement" means this particular financing agreement, including all annexes, schedules and agreements supplemental hereto, as such agreement may be amended from time to time;

"Anticorruption Policy" means NDF's Policy on Anticorruption and Integrity, as in effect at any given time;

"Banking Day" means, in relation to any place where transactions under this Agreement have to be carried out, a day on which commercial banks in such place are neither required nor authorised to be closed;

"Closing Date" means the date after which the right of the Beneficiary to make drawdowns under this Agreement may be terminated by the Fund, such date being specified in Section 2.09;

"Contractor" means a consultant, supplier of goods, contractor of works and/or provider of services for the Project, selected and employed or contracted in accordance with this Agreement;

"Credit" means the credit provided for in this Agreement, any part thereof or any outstanding amount thereof as the context requires;

"Disbursement Deadline Date" means the date 3 months after the Closing Date, which is the final date on which the Fund will accept disbursement requests;

"Disbursement Instructions" mean NDF Disbursement Instructions, as in effect at any given time;

"Dollar(s)", "USD" and the sign "\$" mean the lawful currency of the United States of America;

"Eligible Expenditure" means, except as otherwise provided in this Agreement, an expenditure incurred prior to or on the Closing Date in respect of the reasonable cost of goods, works and services required and procured for the Project and to be financed by means of the Financing, all in accordance with the provisions of this Agreement as outlined in Annex 3 or otherwise agreed between the parties to this agreement, provided however that a payment prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations shall not be an Eligible Expenditure;

"EUR" and the sign "€" mean euro, the lawful currency of the member states of the European Union that have adopted and continue to retain a common single currency through monetary union in accordance with European Union treaty law;

"Financing" means the Credit and the Grant funds provided for in this Agreement or any outstanding amount thereof, as the context requires;

"Grant" means the grant provided for in this Agreement or any part thereof, as the context requires;

"Payment Date" means each of April 15 and October 15 in each calendar year. In the event that a Payment Date would otherwise fall on a day that is not a Banking Day, such Payment Date shall instead be the next succeeding Banking Day;

"Project" means the activities to be financed by the proceeds of the Grant, the Credit, and the World Bank funding, as specified in Annex 1 to this Agreement;

"Taxes" includes imposts, levies, fees and duties of any nature, whether in effect at the date of this Agreement or imposed thereafter.

ARTICLE II

The Credit and the Grant

Disbursements

2.01 The Fund agrees to lend to the Beneficiary, on the terms and subject to the conditions set forth or referred to herein, an amount of up to EUR 6,000,000 (six million euros) (the "Credit").

2.02 The Fund agrees to extend to the Beneficiary, on the terms and subject to the conditions set forth or referred to herein, an amount of up to EUR 5,000,000 (five million euros) in the form of a non-recoverable grant (the "Grant").

2.03 The Beneficiary shall be entitled to draw down the Financing in accordance with the provisions of this Agreement and the Disbursement Instructions, for the purpose of paying Eligible Expenditures. The Beneficiary shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Financing in accordance with Section 8.08 and Annexes 1, 2 and 3 of this Agreement.

2.04 The use of any of the proceeds of the Credit to pay for Taxes levied by, or in the territory of, the Beneficiary on or in respect of Eligible Expenditures, or on the importation, manufacture, procurement or supply of goods, works and services for such Eligible Expenditures, if permitted pursuant to this Agreement, is subject to the NDF Policy on Taxes. If the Fund at any time determines that the amount of any such Tax is excessive, or that such Tax is discriminatory or otherwise unreasonable, the Fund may, by notice to the Beneficiary, adjust the percentage of such expenditures to be financed out of the proceeds of the Financing, as required to ensure consistency with the Fund's policy.

2.05 No amount of the Grant shall be drawn or be applied, directly or indirectly, on account of (i) payments made prior to the date of this Agreement, unless the Fund shall agree otherwise, or (ii) any Taxes levied by, or in the territory of, the Beneficiary on goods or services, or on the procurement, manufacture, importation or supply thereof.

2.06 No amount of the Credit shall be drawn or be applied, directly or indirectly, on account of payments made prior to the date of this Agreement, unless the Fund shall agree otherwise.

2.07 Disbursements under the Financing shall be made subject to

(a) the conditions precedent specified in Article III having been, and remaining, fulfilled to the Fund's satisfaction;

(b) in the case of Special Commitment or Special Advance, the Fund having received and accepted all documentation required for these disbursement methods, as set out in the Disbursement Instructions;

(c) receipt by the Fund of (i) a disbursement request, with supporting documentation, acceptable to the Fund submitted by or on behalf of the Beneficiary, or (ii) in the case of Special Commitment, a payment request submitted by the third party to whom the Special Commitment was provided by the Fund.

2.08 Each disbursement shall be made on a date determined by the Fund. Unless the Beneficiary has requested disbursement on a specified later date, disbursement will normally be made not later than 30 calendar days after NDF's receipt of the disbursement request, provided that all conditions precedent to disbursement set out in Article III hereof have been fulfilled and remain fulfilled.

2.09 The Closing Date shall be 31 August, 2022, or such later date as the Fund shall establish.

ARTICLE III

Conditions Precedent to Disbursement

3.01 Unless otherwise agreed, the making of disbursements from the Financing shall be subject to the conditions precedent that

(a) this Agreement is in full force and effect, and no event, which would entitle the Fund to suspend disbursements under this Agreement, shall have occurred and be continuing;

(b) a credit agreement between the Lead Agency and the Beneficiary for the Lao Road Sector Project 2 has been signed and become effective;

(c) the Beneficiary has taken or caused to be taken all actions necessary or advisable to enable the Beneficiary to receive the Financing and to perform its obligations hereunder, including obtaining all required exemptions, consents and permits; and

(d) the Fund has received and accepted

(i) a legal opinion showing that this Agreement has been duly authorised or ratified by, and executed and delivered on behalf of, the Beneficiary and is legally binding upon the Beneficiary in accordance with its terms;

(ii) if requested by the Fund, further evidence satisfactory to it that the execution and delivery of this Agreement on behalf of the Beneficiary has been duly authorised by all necessary authorities;

(iii) evidence satisfactory to the Fund of the authority of the person or persons authorised to sign disbursement requests and the authenticated specimen signature of any such person;

- (iv) evidence satisfactory to the Fund that other financing contemplated for the Project has been obtained, and that conditions precedent to the effectiveness of such financing have been met; and
- (v) any other documentation the Fund reasonably requests relating to the execution of this Agreement or the implementation of the Project.

3.02 All documentation to be delivered to the Fund in accordance with this Article III shall be in English, or if in another language, complemented by an official translation in English.

ARTICLE IV

Charges

4.01 (a) The Beneficiary shall pay to the Fund a commitment charge on the undisbursed amount of the Credit at the rate of 0.5% per annum.

(b) The commitment charge shall accrue from the date 18 months after the date of this Agreement to the respective dates on which amounts are either disbursed or cancelled.

4.02 The Beneficiary shall pay to the Fund a service charge at the rate of 1.25% per annum on the Credit outstanding at any time.

4.03 Commitment charges and service charges shall be paid semi-annually in arrears on the applicable Payment Dates, and shall be computed on the basis of a 360-day year of twelve 30-day months.

ARTICLE V

Repayment

5.01 The Beneficiary shall repay the disbursed principal amount of the Credit in semi-annual instalments commencing on the first Payment Date in 2022 and ending on the last Payment Date in 2042. Each instalment to and including the instalment payable on the last Payment Date in 2032 shall be 3.3% of such principal amount, and each instalment thereafter shall be 6.7% of such principal amount.

5.02 Notwithstanding the above the Beneficiary shall have the right to repay one or more instalments in advance of maturity, provided that after such prepayment no portion of the principal amount of the Credit maturing after the prepaid portion shall remain outstanding.

ARTICLE VI

Currency Provisions

Payments by the Beneficiary

Taxes and Restrictions

6.01 The proceeds of the Financing shall be disbursed in a freely convertible currency with reference to EUR in accordance with section 6.03 hereof.

6.02 The Beneficiary shall pay the principal of, and service and commitment charges on, the Credit in EUR.

6.03 Whenever it shall be necessary for the purpose of this Agreement to determine the value of one currency or unit of account with reference to another currency or unit of account as of a given date, such value shall be as reasonably determined by the Fund.

6.04 Payments by the Beneficiary shall be made on the due date in immediately available funds to such account as may be notified to the Beneficiary by the Fund.

6.05 All payments made by the Beneficiary under this Agreement shall be made free of restrictions and without deduction of any kind, including deductions for any Taxes imposed by or in the territory of the Beneficiary. However, if the Beneficiary shall be compelled by any law or regulation to comply with such restrictions or to make or suffer deductions, and as a result thereof the Fund would not receive payment in full as contemplated in this Agreement, the Beneficiary shall pay such higher amounts as may be necessary to ensure that the net amounts received by the Fund will equal the amounts payable under this Agreement.

6.06 The Beneficiary shall pay or cause to be paid any Taxes levied under the laws of the Beneficiary and any fees on or in connection with the execution, issue, delivery or registration of, or payments under, this Agreement.

6.07 The liability of the Beneficiary to effect payment of the principal amount of and charges on the Credit and of any other amount to be paid under this Agreement on the due dates, shall not be conditional upon performance by a Contractor or any co-operating party and shall not be affected in any way by any claim which the Beneficiary may have or might consider that it has against a Contractor or any co-operating party as aforesaid, or by any other reason whatsoever.

ARTICLE VII

Co-operation and Information

Beneficiary's Undertakings and Representations

7.01 The Beneficiary represents that this Agreement has been duly authorised, and has been duly executed, signed and delivered on behalf of the Beneficiary and is legally binding upon the Beneficiary in accordance with its terms and conditions.

7.02 The Beneficiary and the Fund shall co-operate fully to ensure that the purpose of the Financing will be accomplished. To that end, each of them shall furnish to the other party all such

information as it shall reasonably request with regard to the general status of the Financing and the Project.

7.03 The Beneficiary shall promptly inform the Fund of (i) any condition which interferes or threatens to interfere with the accomplishment of the purpose of the Financing (including substantial increase in the cost of the Project), and (ii) any event which with the lapse of time or otherwise would entitle the Fund to suspend disbursements under this Agreement.

7.04 The Beneficiary shall include all amounts due and payable, or to fall due and payable, to the Fund during each fiscal year in its annual budget for such year.

7.05 The Beneficiary represents that its obligations of payment under this Agreement constitute general and unconditional obligations that rank and will rank at least *pari passu* with all other present and future unsecured, unsubordinated obligations of the Beneficiary, with the exception only of certain obligations which are mandatorily preferred by laws of general application.

7.06 The Beneficiary recognises that the Fund follows policies similar to other multilateral financial institutions as regards project execution and debt service obligations of its Beneficiaries and Borrowers, including the policy of non-participation in debt rescheduling.

7.07 (a) The Beneficiary undertakes to comply with and ensure that the Project is implemented in accordance with the Anticorruption Policy.

(b) The Beneficiary undertakes to take all necessary action to prevent and detect Prohibited Practices, as defined in the Anticorruption Policy, within its territory and to pursue, by all appropriate means, any such practices whenever identified.

(c) The Beneficiary undertakes to promptly inform the Fund of any allegation or finding of Prohibited Practices, in connection with the Project or with the use of the proceeds of the Financing.

(d) The Beneficiary undertakes to comply with applicable World Bank Group safeguard policies and guidelines, including but not limited to the Environmental and Social Management Framework, the Resettlement Policy Framework and the Ethnic Group Policy Framework.

(d) The Beneficiary acknowledges that the Fund reserves the right to investigate, directly or through any agent appointed by the Fund, any Prohibited Practices relating to the Project or the use of the proceeds of the Financing and undertakes to cooperate in any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

ARTICLE VIII

Execution of the Project

8.01 The Beneficiary shall take or cause to be taken all actions which shall be necessary to execute the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, technical, social, environmental and climate change mitigation and adaptation standards and practices, in accordance with this Agreement. These practices also include transparency in Project operations and wide and easy access to public information on the Project. In particular, the Beneficiary shall make available to the public: (i) Project-related safeguards assessments and plans related to environment, resettlement, and indigenous peoples; (ii) audited annual financial statements for the Project; (iii) procurement plans; and (iv) results of procurement procedures.

8.02 For the purposes of ensuring the efficient and effective carrying out the Project, the Beneficiary shall maintain, at all times during the implementation of the Project, Project implementation structures within the Executing Agency with functions and resources satisfactory to the Fund, and with staff in adequate numbers and with qualifications, experience and terms of reference satisfactory to the Fund.

8.03 (a) The Beneficiary shall ensure that the proceeds of the Financing shall be used only for the financing of Eligible Expenditures for the Project or, as applicable, Project component(s) for which the Financing is extended. Procurement of the goods, works and services required for the Project and to be financed out of the proceeds of the Financing shall be governed by the provisions of Annexes 1, 2 and 3 to this Agreement.

(b) The Beneficiary shall ensure that in respect of procurement of goods, works and services for the Project, invitations to tender as well as contracts shall, respectively, include clauses that give the Beneficiary, the buyer, and the Fund the right to (i) demand investigations of the tenderer's/Contractor's books by independent auditors for the purpose of ascertaining whether or not corrupt practices have taken place, (ii) reject any tender and cancel any procurement contract in case any corrupt practices have taken place in connection with the procurement procedure related to the contract or the execution thereof, (iii) claim compensation for the damage or loss arising from any such rejection of tender or cancellation of contract, and (iv) exclude the tenderer/Contractor, either indefinitely or for a certain period of time, from competing for and participating in the execution of contracts in the territory of the Beneficiary.

8.04 The Beneficiary shall ensure that the Project is carried out in accordance with the arrangements and procedures set out in its Project Operation Manual ("POM") prepared in cooperation with the Lead Agency (provided, however, that in the event of any conflict between the arrangements and procedures set out in the POM and the provisions of this Agreement, or any other arrangements and procedures communicated in writing by the Fund to the Beneficiary, the provisions of this Agreement, or any other such arrangements and procedures as communicated in writing by the Fund, shall prevail).

8.05 In addition to the proceeds of the Financing the Beneficiary shall make available or cause to be made available promptly when needed, all other funds that are required for the execution of the Project (including any funds that may be required to meet any increase in cost).

8.06 The Beneficiary shall insure or cause to be insured, or make adequate provision for the insurance of, the imported goods to be financed out of the proceeds of the Financing against hazards incidental to the acquisition, transportation and delivery thereof to the place of use or installation. Any indemnity for such insurance shall be payable in a freely usable currency to replace or repair such goods.

8.07 The Beneficiary shall:

(i) maintain or cause to be maintained records and procedures adequate to record and monitor the progress of the Project (including its cost and the benefits to be derived from it), to identify the goods, works and services financed out of the proceeds of the Financing and to disclose their use in the Project;

(ii) ensure that such records mentioned in (i) above are retained until at least one year following receipt by the Fund of the final audited financial statements of the Project or two years after the Closing Date; and

(iii) enable representatives appointed by the Fund to visit any facilities and construction sites included in the Project and to examine the goods, works and services financed out of proceeds of the Financing and any plants, installations, sites, works, buildings, property, equipment, records and documents relevant to the performance of the obligations of the Beneficiary under this Agreement.

8.08 The Beneficiary shall furnish or cause to be furnished to the Fund as follows:

(i) the Beneficiary shall ensure that the Fund is furnished, not later than June 1 of each fiscal year of the Beneficiary (or such later date as the Fund may agree) during the implementation of the Project for the Fund's no-objection, a consolidated Annual Work Plan and Budget ("AWPB") containing all Project activities and Eligible Expenditures proposed to be included in the Project in the Beneficiary's following fiscal year, including the Fund's, the Beneficiary's and the Lead Agency's respective shares in the cost of the AWPB;

(ii) the Beneficiary shall ensure that the Project is implemented in accordance with the AWPB (provided, however, that in the event of any conflict between the AWPB and the provisions of this Agreement, the provisions of this Agreement shall prevail) and shall provide, promptly as needed, its share of the Project financing as specified in the AWPB;

(iii) the Beneficiary shall not make or allow to be made any change to the AWPB without prior no-objection in writing by the Fund;

(iv) at a minimum semi-annually, reports on the implementation of the Project including, inter alia, information on the accomplishment of the targets and actions set out in Annex 1 to this Agreement, including the logical framework where relevant, and on the operation and management of the Project facilities, if relevant, as well as reasonably detailed information concerning the Financing, the budgeted and actual cost of the Project, the budgeted and actual expenditure of the contracts financed by the Financing, and the goods and services financed out of such proceeds;

(v) a copy of the audited annual financial statements of the Project, or, if the Project is a part of a larger project implemented by the Lead Agency, a copy of the audited financial statements for that project, provided such financial statements also include information on the Financing;

(vi) if so requested by the Fund, audited financial statements of the use of the Financing, in form and substance acceptable to the Fund, prepared by an independent auditor for the preceding financial year. The cost of such audit may be covered by proceeds of the Financing. If sufficient Financing proceeds are not available, the Fund and the Beneficiary shall agree on how to finance the audit;

(vii) promptly after completion of the Project, but in any event not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Beneficiary and the Fund, a reasonably detailed report, in form and substance acceptable to the Fund, on the use of the proceeds of the Financing, the execution of the Project and the results derived and to be derived from it; and

(viii) any other information the Fund shall reasonably request relating to the Project or the proceeds of the Financing.

8.09 All reports shall be provided electronically unless otherwise requested by the Fund, and shall be provided in English.

8.10 Ownership, title and industrial and property rights in the results of the implementation of the Project and the reports and other related documents shall be vested in the Beneficiary, Implementing Agency or as otherwise agreed between the parties. Notwithstanding the foregoing, the Beneficiary shall ensure that the Fund shall have the right to use free of charge and as it sees fit, all documents deriving from the implementation of the Project, whatever their form, provided that such use does not breach any existing industrial and/or intellectual property rights.

ARTICLE IX

Cancellation and Suspension

9.01 The Beneficiary may by notice to the Fund cancel any undisbursed amount of the Financing in respect of which the Beneficiary has not submitted a disbursement request prior to the giving of such notice. Unless the Fund shall otherwise agree, such notice of cancellation shall be irrevocable.

9.02 If any of the following events of suspension shall have occurred and be continuing, the Fund may, by notice to the Beneficiary, suspend in whole or in part the right of the Beneficiary to draw down the Financing:

- (a) The Beneficiary shall have failed to make payment of principal, charges or any other amount due to the Fund under this Agreement or under any other grant, credit or guarantee agreement between the Beneficiary and the Fund.
- (b) The Beneficiary shall have failed to perform any other obligation under this Agreement.
- (c) The Beneficiary shall have failed to perform any of its obligations (other than payment obligations) under any credit or grant or other financing

agreement with the Fund, which gives the Fund the right to suspend in whole or in part the right of the Beneficiary to make drawings under such agreement.

- (d) The Fund shall have suspended in whole or in part the right of the Beneficiary to make drawings under any other grant or credit agreement with the Fund because of a failure by the Beneficiary to perform any of its obligations under such agreement.
- (e) As a result of events which have occurred after the date of this Agreement, an extraordinary situation shall have arisen which shall make it improbable that the Project can be carried out or that the Beneficiary will be able to perform its obligations under this Agreement.
- (f) A representation made by the Beneficiary in or pursuant to this Agreement, or any statement furnished in connection therewith, and intended to be relied upon by the Fund in extending the Financing, shall have been incorrect in any material respect.
- (g)
 - (i) (A) The right of the Beneficiary to draw down the proceeds of any grant or credit made to the Beneficiary for financing of the Project shall have been suspended, cancelled or terminated in whole or in part, pursuant to the terms of the agreement providing therefor, or

(B) Any such credit shall have become due and payable prior to the agreed maturity thereof.
 - (ii) Subparagraph (i) of this paragraph shall not apply if the Beneficiary establishes to the satisfaction of the Fund that (A) such suspension, cancellation, termination or prematuring is not caused by the failure of the Beneficiary to perform any of its obligations under such agreement; and (B) adequate funds for the Project are available to the Beneficiary from other sources on terms and conditions consistent with the obligations of the Beneficiary under this Agreement.
- (h) The Beneficiary has failed to pay any of its external debt to a multilateral financial institution.
- (i) The Fund shall have determined, with respect to the Project or any contract to be financed in full or in part out of the proceeds of the Financing, that Prohibited Practices were engaged in by representatives of the Beneficiary or any other beneficiary or potential beneficiary of the Financing during the procurement of goods and services, consultant selection or the execution of a contract, without the Beneficiary having taken timely and appropriate action satisfactory to the Fund to remedy the situation; or the Fund shall have determined that the procurement of any goods or services to be financed out

of the proceeds of the Financing is inconsistent with the relevant procedure agreed on between the Beneficiary and the Fund.

- (j) Payments to the Beneficiary are prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

The right of the Beneficiary to draw down the Financing shall continue to be suspended in whole or in part, as the case may be, until the event or events which gave rise to such suspension shall have ceased to exist, unless the Fund shall have notified the Beneficiary that the right to draw down has been restored in whole or in part, as the case may be.

9.03 If (a) the conditions precedent have not been fulfilled 180 calendar days after the date of this Agreement, (b) the right of the Beneficiary to draw down the Financing shall have been suspended with respect to any amount of the Financing for a continuous period of thirty days, (c) at any time, the Fund determines, after consultation with the Beneficiary, that an amount of the Financing will not be required to finance the Project's costs to be financed out of the proceeds of the Financing, (d) at any time the Fund determines, with respect to any contract to be financed in full or in part out of the proceeds of the Financing, that Prohibited Practices were engaged in by representatives of the Beneficiary or any other beneficiary or potential beneficiary of the Financing during the procurement of goods and services, consultants' selection or the execution of a contract, without the Beneficiary having taken timely and appropriate action satisfactory to the Fund to remedy the situation, or (e) after the Closing Date, an amount of the Financing shall remain undrawn, the Fund may, by notice to the Beneficiary, terminate the right of the Beneficiary to draw down such amount. Upon the giving of such notice, such amount of the Financing shall be cancelled.

9.04 Notwithstanding any cancellation or suspension, all the provisions of this Agreement shall continue in full force and effect except as specifically provided in this Article.

ARTICLE X

Acceleration of Maturity

10.01 If any of the following events shall occur and shall continue for the period specified below, if any, then at any subsequent time during the continuance thereof, the Fund, at its option, may by notice to the Beneficiary declare the principal of the Credit then outstanding to be due and payable immediately together with the charges thereon, and upon any such declaration such principal amount, together with such charges, shall become due and payable immediately:

(a) A default shall occur in the payment of principal or any other payment required under this Agreement and such default shall continue for a period of thirty (30) days.

(b) A default shall occur in the payment by the Beneficiary of principal or any other amount due to the Fund under any other grant, credit or guarantee agreement between the Beneficiary and the Fund and such default shall continue for a period of thirty (30) days.

(c) A default shall occur in the performance of any other obligation on the part of the Beneficiary under this Agreement, and such default shall continue for a period of sixty (60) days after notice thereof shall have been given by the Fund to the Beneficiary.

(d) An event specified in paragraph (e), (f) or (h) of section 9.02 of this Agreement shall occur and shall continue for a period of sixty (60) days after notice thereof shall have been given by the Fund to the Beneficiary.

(e) The event specified in clause (g)(i)(B) of section 9.02 of this Agreement shall occur, subject to the proviso of subparagraph (g)(ii) of that section.

ARTICLE XI

Governing Law and Arbitration

Failure to Exercise Rights

Waiver of Immunity

11.01 The rights and obligations of the Beneficiary and the Fund under this Agreement shall be valid and enforceable in accordance with the terms hereof notwithstanding the law of any state or political subdivision thereof to the contrary. Neither the Beneficiary nor the Fund shall be entitled in any proceeding under this Article to assert any claim that any provision of this Agreement is invalid or unenforceable because of any provision of the Articles of Agreement or the Statutes of the Fund.

11.02 Any dispute, controversy or claim arising out of or relating to the interpretation, application or performance of this Agreement, including its existence, validity or termination, which has not been settled by agreement of the parties within 60 calendar days, shall be settled by final and binding arbitration under the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States, as in effect on the date of this Agreement.

The place of arbitration shall be Paris, France and the language of the arbitral proceedings shall be English.

11.03 Service of any notice of process in connection with any proceeding under this Article may be made in the manner provided for in section 12.02 hereof. The parties hereto waive any and all other requirements for the service of any such notice of process.

11.04 No delay in exercising or omission to exercise any right, power or remedy accruing to any party under this Agreement upon default or otherwise shall impair any such right, power or remedy or be construed to be a waiver thereof, nor shall any action of such party in respect of any default affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

11.05 The parties hereby expressly (a) recognise that this Agreement is an agreement of commercial nature, and (b) waive any right of immunity they might have on the grounds of sovereignty or otherwise in connection with any arbitration proceeding pursuant to section 11.02 hereof or with the enforcement of any arbitral award pursuant thereto.

ARTICLE XII

Miscellaneous Provisions

12.01 The Minister of Finance of the Beneficiary is designated as representative of the Beneficiary for the purposes of signing and executing on behalf of the Beneficiary any documents used in connection with this Agreement. This notwithstanding, the Executing Agency and the Fund may agree in writing upon any change to, or further specification of, Annex 1, Project Description, provided that the amount of the Financing will not be increased, and any such change or further specification shall be deemed as an integral part of this Agreement.

12.02 Any notice or request required or permitted to be given or made under this Agreement shall be made in writing in the English language and may be delivered (i) by airmail or internationally recognised courier service, (ii) by telefax, or (iii) by email to the party to which it is required or permitted to be given or made, at such party's address specified below or at such other address as such party shall have designated by notice to the other party. Any notice expressly required under this Agreement shall, if given by telefax or email, promptly be confirmed by letter.

For the Fund:

Nordic Development Fund
P.O. Box 185
FIN-00171 Helsinki
Finland
Telefax: +358-9-622 1491
Email: info.ndf@ndf.fi

For the Beneficiary:

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

For the Executing Agency:

Ministry of Public Works and Transport
P.O. Box 2158
Lane Xang Avenue
Vientiane Capital, Lao People's Democratic republic

12.03 This Agreement is made in two copies each of which shall be an original.

12.04 The following annex forms part of this Agreement:

Annex 1 Project Description
Annex 2 Procurement
Annex 3 Eligible Expenditures

ARTICLE XIII

Ratification

This Agreement shall be ratified in accordance with the appropriate constitutional procedures prior to becoming binding on the Beneficiary. Such binding effect shall be reflected in the legal opinion referred to in Paragraph 3.01(d)(i) hereof.

If this Agreement has not become fully binding on the Beneficiary by latest one year after the signing of this Agreement, the Fund shall be entitled to declare this Agreement null and void.

IN WITNESS WHEREOF the parties hereto, acting through their duly authorised representatives, have caused this Agreement to be signed with their respective names as of 07 FEB 2017 (date).

LAO PEOPLE'S DEMOCRATIC REPUBLIC

By:


Thipphakong CHANTHAVONGSA
Deputy Minister of Finance
NORDIC DEVELOPMENT FUND

By:



Pasi Hellman

Managing Director



Erik Holmqvist

Country Program Manager/Procurement Specialist

PROJECT DESCRIPTION

BACKGROUND

The overall project development objective is to improve climate resilient road connectivity in selected provinces in Lao People's Democratic Republic (Lao PDR). Being a land-locked country, the transport sector in Lao PDR is dominated by the road sector. The road network is highly susceptible to climate change impacts and the risk increases considerably if current climate change projections are taken into account. The local transport infrastructure is particularly vulnerable to this threat as a result of generally low standards, lack of adequate maintenance, and technical designs that have not accounted for increased climate variability. The growing impacts of natural disasters have increased the pressures on the emergency repair budget. The importance of increased climate resilience for roads is now recognised by the government as a potentially significant factor in reducing the demand for emergency and repairs, spot improvements and periodical repairs, thereby easing the pressure on the budget.

At the institutional level, the sector faces important capacity gaps for effective sector financing, strategic planning, and the management of road assets resilient to climate change. Road maintenance and rehabilitation responsibility for provincial roads has been delegated to provincial governments, which need significant support to build capacity to manage this task properly. National roads are managed at national level; also here the need for capacity building is great.

This project (the "Project") builds on the openly demonstrated proactive approach of Lao PDR in the climate change area. It is also a direct response to identified needs and priorities, and it will enable an effective utilization of NDF's road transport experience gathered from the region and from other continents.

OBJECTIVES

The general program objectives to which NDF and World Bank funding will contribute are: (i) improved climate resilient road connectivity in selected provinces; and (ii) strengthened climate resilient and efficient road asset management practices at national and provincial levels.

THE PROJECT

The NDF financing is provided in parallel to World Bank financing for the Road Sector Project 2 (LRSP2). The following project description is for the full World Bank/NDF Project. It should be noted that the European Investment Bank and the EU Asia Investment Facility may provide additional funding to the Project.

The Project builds on the achievements of the LRSP to support the national program of provincial roads maintenance. The Project will develop a maintenance investment framework and policy framework for the overall program that will be designed to maximize the effectiveness of public expenditures in the roads sector. The overall objective of the program is to incrementally increase the length of the provincial roads network in good and fair condition in the six selected provinces,

to improve the climate resiliency and safety of the network, and to strengthen the national systems of road maintenance that will allow this to happen.

The maintenance investment framework will address the overall maintenance needs in Lao PDR at the program level, and in doing so, continue to strengthen the institutional capacity of the Ministry of Public Works and Transport (MPWT) and the provincial Departments of Public Works and Transport (DPWT), and mainstream the use of existing budgeting and maintenance management systems into the decision making process. The policy framework will address the more structural and policy level issues of the program through a series of technical assistance activities. Four main areas of focus have been identified which include a sustainable financing framework for the sector, clarity on the roles and responsibilities of MPWT and DPWT, further development of asset management systems, and capacity building.

The investment and policy frameworks will form the basis for future financing of the roads sector by government, development partners and other potential financiers. The Nordic Development Fund (NDF) will provide parallel financing and fund civil works and institutional capacity development.

Component 1: Support to provincial maintenance program: This component will support the overall maintenance program in the six project provinces based on the prioritized maintenance program developed through the PROMMS maintenance management system. The PROMMS system will prioritize routine maintenance for roads in good and fair condition to protect existing investments. It will then prioritize periodic maintenance activities for remaining roads to increase the overall climate resilience and safety of the road network, and allow for routine maintenance of such roads.

Routine Maintenance: The priority for the program will be to implement routine maintenance contracts on all maintainable provincial and district roads. Provinces will be responsible for contract design and management but it is envisaged that a combination of community based contracting and area wide contracts would be used.

Climate Resilient Periodic Maintenance and Spot Improvements: Many existing roads are in too poor a condition for routine maintenance to be effective. The project will undertake periodic maintenance and spot improvements to bring the condition up to a point where the roads will be maintainable going forward with routine maintenance. Where required, climate resilience interventions may include elevating flood prone road sections, paving road sections with steep slopes and sections passing through large communities, drainage improvement or construction, and slope improvement and stabilization. Under this component road safety issues would be considered, such as improvements in road furniture.

Component 2: Institutional Strengthening: The institutional strengthening program has been designed to complement the activities of other development partners already providing technical assistance in the sector as parallel financing. NDF will be providing support for design and supervision of the program, upgrade of asset management systems to address climate resilience and capacity building. The Asian Development Bank and Japan International Cooperation Agency will be financing improvements to PROMMS and RMS. This project will finance the following activities.

Component 2.1: Sector Strategic Planning: This sub-component will provide high-level policy advice in the following areas: (a) Updating and operationalizing the Sector Strategy to 2025 and Action Plan to 2020; (b) develop the strategic planning framework for provinces; (c) provide advice

on a sustainable financing framework with particular focus on debt management, road fund management and to look at alternative revenue sources; and (d) provide advice on the organizational structure for road management including the respective roles and responsibilities of MPWT and DPWT.

Component 2.2: Sector Governance and Asset Management: This sub-component will provide support to improving transparency in the roads sector through more effective monitoring of project outcomes and expenditures: (a) improve the integrated asset management system (IRAM) to (i) support procurement, management, monitoring, and information disclosure and e-archive, (ii) cover local roads, and (iii) support roll out of the ICT platform to DPWTs; (b) upgrade the RMF and DPWTs' accounting system and development of expenditure tracking tools; and (c) strengthen internal controls through: (i) the rolling out of the road sector technical audit guidelines to provincial level, (ii) the strengthening of technical capacities of provincial level internal control units, and (iii) supporting the inspection tasks in six pilot provinces.

Component 2.3: Road traffic safety: This sub-component would provide technical Assistance to the National Traffic Safety Council and Department of Transport (DoT), including update and implementation of the traffic safety action plan, and roll out of public awareness raising campaigns.

Component 2.4: Sector Capacity Building and Project Management Support: This sub-component will project capacity building and project management support to ensure that all personnel have the expertise and resources to effectively implement and manage the road maintenance program. Specific capacity building for PPP projects and performance based road maintenance contracts will be provided. For the main climate change resilience capacity building, see "Components financed by the Fund" below.

COMPONENT(S) FINANCED BY THE FUND

The NDF grant will finance Technical Assistance (TA) for Detailed Design, Project Implementation Supervision and Support (DDPIS) and Climate Resilient Road Planning, Asset Management Support and Capacity Building (CRRPAM). The World Bank and possibly the EU Asia Investment Facility (AIF) will provide additional TA funds.

The NDF grant will finance the following activities:

- a. Support to MPWT for: (a) development of a climate change action plan as described in Lao PDR's INDC; and (b) participation in the cross-ministerial National Disaster Management Committee;
- b. Operationalization of existing hazard maps by transforming them into practical vulnerability maps for use by engineers in planning of infrastructure maintenance or investments;
- c. Review and revision of current planning tools to: (a) include risk-based planning by identifying sections vulnerable to extreme weather; and (b) operationalise the existing ICT platform by including hazard risks and link it to provincial levels;
- d. Support the analysis and input of data into relevant tools for risk-based planning;
- e. Reviews of national design standards and guidelines in cooperation with other development partners in the sector (mainly ADB, JICA and KfW) to incorporate climate resilience aspects;

- f. Project implementation support to the MPWT and the six selected provinces, including design of maintenance works, procurement and contract management;
- g. Capacity building of relevant stakeholders on climate-resilient design and maintenance, contract management and supervision, maintenance planning and prioritisation, data collection and analysis etc.

The Terms of Reference for consultants to carry out the above work will include a training needs assessment to ensure that the capacity building is well coordinated, targeting identified needs.

The NDF credit funding will finance civil works for climate resilient road infrastructure rehabilitation and maintenance. The NDF credit would finance road sections in the project provinces which have been identified as high priority for improving climate resilience.

IMPLEMENTATION

The Project will be implemented over 6 years beginning in the last quarter of 2016. Most technical assistance is expected to be completed by the end of 2018, while physical works (including project implementation support) are expected to be completed by the last quarter of 2022. Financing (credit and grant) closing will be on 31 December 2022.

COST ESTIMATE AND FINANCING

Activity	IDA USD m	NDF USD m	RMF USD m	Province USD m	Total USD m
Component 1: Climate Resilient Road Maintenance	17.2	9.7	7.0	3.0	36.9
Component 2: Institutional Strengthening	5.8	2.7	0.0	0.0	8.5
Component 3: Project Management	2.0	0.0	0.0	0.0	2.0
Component 4: Contingent Emergency Response	0.0	0.0	0.0	0.0	0.0
Sub-total 1+2+3+4	25.0	12.4	7.0	3.0	47.4
Total Financing Required	25.0	12.4	7.0	3.0	47.4

PROCUREMENT

Reference is made to the Fund's General Procurement Guidelines. The procurement provisions of this Annex 2 take preference over the General Procurement Guidelines in case of conflict of wording or figures between the two.

Procurement Methods

The two consultancy contracts (firms) to be financed by NDF (DDPIS and CRRPAM) shall be procured using the quality and quality based selection method (QCBS) with a technical:financial scoring ratio of 80:20. The MPWT shall provide NDF with the Request for Expressions of Interest before publication, in order to allow NDF to publish at its website simultaneously with the MPWT. Prior review will apply to the procurement processes for both contracts, and all documentation must be in English language. Please see below regarding requirements for No Objection from NDF.

Any other consultancy contracts to be procured using NDF funding shall be agreed with NDF beforehand, and NDF will inform MPWT in writing as to the procurement method etc.

For the civil works (periodic road maintenance, spot improvements etc.), Lao Harmonized National Competitive Bidding as agreed by the Fund, with appropriate modifications to incorporate specific Fund requirements, will be used for procurement of works under the National Competitive Bidding threshold. National Competitive Bidding will apply for contracts estimated to cost less than USD 2 million. Prior review shall apply to any contracts estimated to cost more than USD 1 million.

Additional NCB Provisions

The procurement procedure to be followed for National Competitive Bidding shall be based on the public bidding procurement method as defined in the Decree No. 03/PM on Government Procurement of Goods, Construction, Maintenance and Services, dated January 9, 2004 and the Implementing Rules and Regulations, dated March 12, 2004 as amended on May 5, 2009; provided that such procedure shall be subject to the provisions of Section I and Paragraphs 3.3 and 3.4 of the Guidelines: Procurement of Goods, Works and Non-consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers" dated January 2011 and revised in July 2014(the "Procurement Guidelines") and the following additional provisions:

- (a) Eligibility: The eligibility of bidders to participate in a procurement process and to be awarded a contract financed by the Fund shall be as defined under Section I of the Procurement Guidelines; accordingly, no bidder or potential bidder shall be declared ineligible for contracts financed by the Fund for reasons other than those provided in Section I of the Procurement Guidelines.
- (b) Domestic Preference: No domestic preference may be applied in bid evaluation on the basis of bidder nationality, the origin of goods, services or labor, and/or preferential programs.

- (c) Registration and Inclusion in the Reference List of Suppliers/Contractors: Registration and inclusion in the reference list shall not be used as a basis for or as a substitute for assessing the bidders' qualifications.
- (d) Bidding Documents: Procuring entities shall use the appropriate standard bidding documents acceptable to the Fund, which documents shall be prepared to ensure economy, efficiency, transparency, and broad consistency with the provisions of Section I of the Procurement Guidelines.
- (e) Bid Opening: All bids must be opened in public immediately on the deadline set for the bid submission at the date, time and place stipulated in the tender documents. Bids shall be opened in public, that is, the bidders or their representatives may attend the bid opening. The tender committee shall announce the names of the bidders and the price offered by each bidder. A record of the bid opening shall be prepared and shall contain the names of the bidders, bid price, discounts and the names and signatures of persons in attendance and the organizations they represent. A copy of this record shall be promptly sent to the Fund and to all bidders who submitted bids on time.
- (f) Rejection of Bids and Re-bidding: All bids (or the sole bid if only one bid is received) shall not be rejected, negotiations shall not take place at any time with a bidder, the procurement process shall not be cancelled, or new bids shall not be solicited without the Fund's prior written concurrence.
- (g) Contract Modifications: The Beneficiary shall obtain the Fund's no objection before agreeing to: (i) a material extension of the stipulated time for performance of a contract; (ii) any substantial modification of the contract scope of services or other significant changes to the terms and conditions of the contract; (iii) any variation order or amendment; or (iv) the proposed termination of the contract. A copy of all signed contract amendments shall be provided to the Fund for its record.
- (h) Bid and Contract Securities: All bid and contract securities shall be in the format specified in the bidding documents.
- (i) Fraud and Corruption: The bidding documents and contract shall include the NDF Anticorruption Policy either by reference or as an annex.
- (j) Inspection and Audit Rights: In accordance with the Procurement Guidelines, each bidding document and contract financed out of the proceeds of the Financing shall provide that bidders, suppliers and contractors, and their subcontractors, agents, personnel, consultants, service providers, or suppliers, shall permit the Fund to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Fund or the Lead Agency. Acts intended to materially impede the exercise of the Fund's inspection and audit rights provided for in the Procurement Guidelines constitute an obstructive practice as defined in the Procurement Guidelines.

NDF's review and formal No Objection, in writing (by way of email or letter, as preferred by the IA) is required for terms of reference, requests for expression of interest, expression of interest evaluation reports including the proposed short list, requests for proposals, proposal evaluation reports, bidding documents, bid advertisements, bid evaluation reports, and negotiated draft

contracts. In addition, any provisions in paragraph 6 of the Nordic Development Fund General Procurement Guidelines for Grant-financed Projects (December 2009) shall apply unless otherwise agreed with the Fund.

Procurement thresholds

Procurement Method	Contract Value Threshold (USD)	Prior Review Threshold (USD)
ICB (Goods)	>=600,000	All ICB contracts
NCB (Goods)	100,000 - <600,000	All NCB contracts
Shopping (Goods)	<100,000	All contracts
ICB (Works)	>= 2,000,000	All ICB contracts
NCB (Works)	200,000 - <2,000,000	All contracts above USD 1 million
Shopping (Works)	<200,000	First two contracts
Community participation	None	First contract

ELIGIBLE EXPENDITURES

The Financing shall go towards the following types of expenditures, which are the Eligible Expenditures unless otherwise agreed in writing between the NDF and the Beneficiary:

The Grant

The Grant may be used to finance consultancy services under the following two technical assistance assignments:

1. Climate Resilient Road Planning, Asset Management Support and Capacity Building; and
2. Detailed Design, Project Implementation Supervision and Support

The consultancy contracts may include necessary goods, works and services as further defined in the consultancy contracts. No taxes (including value added tax, sales tax or similar tax), levies or other similar fees may be financed from the Grant.

The Credit

The Credit may be used to finance civil works for road maintenance, including road rehabilitation, spot improvement etc. as necessary, in the six Project provinces.

