



PACIFIC SUBREGIONAL OFFICE

6 April 2020

Honorable Aiyaz Sayed-Khaiyum
Attorney-General and Minister for Economy, Public Enterprises, Civil Service and
Communications
Level 7 Suvavou House, 400 Victoria Parade
Suva, Republic of Fiji

Dear Minister,

**Loan No. 3210-FIJ: Transport Infrastructure Investment Sector Project
–Amendment to Loan Agreement**

We refer to the Loan Agreement dated 12 December 2014 between Republic of Fiji (“Borrower”) and Asian Development Bank (“ADB”) for the captioned project (“Loan Agreement”). All capitalized terms used but not defined herein shall have the meaning given thereto in the Loan Agreement, unless the context requires otherwise.

Following a request from the Borrower dated 8 November 2019, ADB approved, on 16 March 2020, a change in the Project concerning the procurement arrangements for the project. To give effect to the change, ADB proposes that the Loan Agreement be amended as set out in the attachment hereto.

Save and except to the extent set out in the attachment hereto, the Loan Agreement remains unchanged.

Pursuant to ADB’s Access to Information Policy (2018) (“AIP”), the amendments to the Loan Agreement will be posted on ADB’s website within 2 weeks from the date that the amendments become effective, after removing any information that falls within the AIP exceptions as specified by the Borrower.

Please indicate the Borrower’s concurrence to the amendments set out in the attachment hereto and to the terms of this letter agreement by countersigning each of the two original of this letter agreement in the space indicated below. Please retain one signed original of this letter agreement for your records and return the other to ADB. The proposed amendments shall take effect on the date of receipt by ADB of a signed original of this letter agreement.

Yours sincerely,

Masayuki Tachiiri
Regional Director

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A. Accepted and agreed.

B. Confirmed that the amendments to the Loan Agreement do not contain information falling within the AIP exceptions.

For and on behalf of Borrower

Name: Mr. Aiyaz Sayed-Khaiyum

Designation: Attorney-General and Minister for Economy, Public Enterprises, Civil Service and Communications

Signature: _____

Date: _____

cc: Mrs. Makereta Konrote, Permanent Secretary, Ministry of Economy
Mr. Jonathan Moore, Chief Executive Officer, Fiji Roads Authority

**Loan No. 3210-FIJ: Transport Infrastructure Investment Sector Project
Amendments to Loan Agreement**

1. The definition of "Consulting Guidelines" in Section 1.02(a) of the Loan Agreement shall be deleted and all references in the Loan Agreement to the term "Consulting Guidelines" shall be deleted.

2. The definition of "Consulting Services" in the current Section 1.02(b) of the Loan Agreement shall be revised to read as follows:

"Consulting Services" means consulting services as described in the Procurement Regulations and set out in the Procurement Plan, and to be financed out of the proceeds of the Loan;"

3. The definition of "Goods" in the current Section 1.02(l) of the Loan Agreement shall be revised to read as follows:

"Goods" means equipment and materials as set out in the Procurement Plan and to be financed out of the proceeds of the Loan, including any related Nonconsulting Services such as transportation, insurance, installation, commissioning, training, and initial maintenance;"

4. The following definition of "Nonconsulting Services" shall be inserted in Section 1.02 of the Loan Agreement:

"Nonconsulting Services" means nonconsulting services as described in the Procurement Regulations and set out in the Procurement Plan, and to be financed out of the proceeds of the Loan;"

5. The definition of "Procurement Guidelines" in the current Section 1.02(s) of the Loan Agreement shall be deleted and all references in the Loan Agreement to the term "Procurement Guidelines" shall be replaced with the term "Procurement Policy".

6. The following definition of "Procurement Policy" shall be inserted in Section 1.02 of the Loan Agreement:

"Procurement Policy" means ADB's Procurement Policy - Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);"

7. The definition of "Procurement Plan" in the current Section 1.02(t) of the Loan Agreement shall be revised to read as follows:

"Procurement Plan" means the procurement plan for the Project dated 10 February 2016 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Policy, the Procurement Regulations, and other arrangements agreed with ADB;"

8. The following definition of "Procurement Regulations" shall be inserted in Section 1.02 of the Loan Agreement:

"Procurement Regulations" means ADB's Procurement Regulations for ADB Borrowers - Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);"

9. The following definition of "Services" shall be inserted in Section 1.02 of the Loan Agreement:

"Services" means Consulting Services and Nonconsulting Services;"

10. The definition of "Works" in the current Section 1.02(y) of the Loan Agreement shall be revised to read as follows:

"Works" means construction or civil works as set out in the Procurement Plan and to be financed out of the proceeds of the Loan, including any related Nonconsulting Services and project related services that are provided as part of a single responsibility or turnkey contract."

11. Section 4.04 of the Loan Agreement shall be revised to read as follows:

"Section 4.04. The Borrower shall enable ADB's representatives to inspect the Project, any Goods, Works and Services, and any relevant records and documents."

12. Schedule 4 of the Loan Agreement shall be deleted in its entirety and consequently Schedule 5 of the Loan Agreement shall be renumbered to Schedule 4 and all cross-references in the Loan Agreement to "Schedule 5" shall be replaced with "Schedule 4".

13. The following paragraphs shall be inserted in Schedule 4 of the Loan Agreement (as revised):

"Procurement

28. The Borrower shall ensure, or cause FRA to ensure, that:

- (a) the procurement of Goods, Works and Services is carried out in accordance with the Procurement Policy and the Procurement Regulations; and
- (b) Goods, Works and Services shall be procured based on the detailed arrangements set forth in the Procurement Plan, including the procurement and selection methods, the type of bidding documents, and ADB's review requirements. The Borrower may modify the detailed arrangements set forth in the Procurement Plan only with the prior agreement of ADB, and such modifications must be set out in updates to the Procurement Plan; and
- (c) (i) all Goods and Works procured and Services obtained (including 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; and (ii) all contracts for the procurement of Goods, Works and Services contain appropriate representations, warranties and, if appropriate, indemnities from the contractor, supplier, consultant or service provider with respect to the matters referred to in this subparagraph.

29. The Borrower shall not award, and ensure FRA does not award, any Works or Nonconsulting Services contract for a Subproject which involves environmental impacts until FRA has:

- (a) obtained the final approval of the EIA from the Department of Environment of the Borrower; and

- (b) updated the EMP based on the detailed design; and
- (c) incorporated the relevant provisions from the corresponding EMP into the Works or Nonconsulting Services contract.

30. The Borrower shall not award, and ensure FRA does not award, any Works or Nonconsulting Services contract for a Subproject involving involuntary resettlement impacts until the Borrower, through FRA, has prepared and submitted to ADB the final LARP for such Subproject based on the Subproject's detailed design, and obtained ADB's clearance of such LARP.