
LOAN NUMBER 4043-PHI

LOAN AGREEMENT
(Ordinary Operations)

(Epifanio de los Santos Avenue Greenways Project)

between

REPUBLIC OF THE PHILIPPINES

and

ASIAN DEVELOPMENT BANK

DATED DEC 29 2020

PHI 51117

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated DEC 29 2020 between REPUBLIC
OF THE PHILIPPINES ("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) by a loan agreement of even date herewith (the "B Loan Agreement"), the Borrower has also applied to ADB for a loan (the "B Loan") in the amount of fifteen million Dollars (\$15,000,000) for the purposes of the Project to be funded by ADB entirely from a participation in the B Loan by ASEAN Infrastructure Fund ("AIF") under its ASEAN Catalytic Green Finance Facility; and

(C) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of ADB's Ordinary Operations Loan Regulations, dated 1 January 2017 ("Loan Regulations"), are hereby made 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 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;
- (b) "DOTr" means the Department of Transportation of the Borrower, or any successor thereto;
- (c) "Environmental Management Plan" or "EMP" means each 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) "GAP" means the gender action plan prepared for the Project, including any update thereto, and agreed to between the Borrower, through DOTr, and ADB;
- (f) "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;
- (g) "IEE" means each initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (h) "Indigenous Peoples Safeguards" means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;
- (i) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;
- (j) "km" means kilometer;
- (k) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (l) "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;
- (m) "O&M" means operation and maintenance;
- (n) "PAM" means the project administration manual for the Project dated 12 October 2020 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;
- (o) "PMO" means the Project Management Office under DOTr;
- (p) "Procurement Plan" means the procurement plan for the Project dated 29 September 2020 and agreed between the Borrower, through DOTr, and ADB, as updated from time to time in accordance with the Procurement Policy, the Procurement Regulations, and other arrangements agreed with ADB;



- (q) "Procurement Policy" means ADB's Procurement Policy – Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (r) "Procurement Regulations" means ADB's Procurement Regulations for ADB Borrowers - Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (s) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means the DOTr or any successor thereto acceptable to ADBs that is responsible for carrying out the Project;
- (t) "Project facilities" means the facilities to be constructed and the Goods to be provided under the Project;
- (u) "RP" means each resettlement plan for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (v) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower, through DOTr, to ADB that describes progress with implementation of and compliance with the EMPs and the RPs (as applicable), including any corrective and preventative actions;
- (w) "Services" means Consulting Services and Nonconsulting Services;
- (x) "SPS" means ADB's Safeguard Policy Statement (2009); and
- (y) "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.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of one hundred twenty three million Dollars (\$123,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 19 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (b) 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 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of:

- (a) LIBOR;
- (b) 0.60% as provided by Section 3.02 of the Loan Regulations less a credit of 0.10% as provided by Section 3.03 of the Loan Regulations; and
- (c) a maturity premium of 0.20% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing 60 days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 1 June and 1 December in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to subsection (a) hereinabove that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(f) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.



ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower, through DOTr, shall cause the proceeds of the Loan to be applied exclusively 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. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 31 December 2023 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 4 to this Loan Agreement.

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

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.



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

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

Section 4.04. Any cancellation by the Borrower of any unwithdrawn amount of the Loan under Section 9.03 of the Loan Regulations shall be made pro-rata with the cancellation of the B Loan for Works: at 86.74% in respect of the Loan and 13.26% in respect of the B Loan or as otherwise provided in the PAM.

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 9.01(m) of the Loan Regulations: the B Loan shall have become liable for suspension or cancellation.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 9.07(a)(iv) of the Loan Regulations: the event specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 10.01(f) of the Loan Regulations: the B Loan agreement will have been duly executed and delivered and all conditions precedent to its effectiveness, other than a condition requiring the effectiveness of this Loan Agreement, shall have been fulfilled.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 10.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: the B Loan Agreement has been duly authorized or approved by, and executed and delivered on behalf of, the Borrower and is legally binding upon the Borrower in accordance with its terms.



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 10.04 of the Loan Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. The Secretary of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

Department of Finance
DOF Building
Roxas Boulevard
Manila, Philippines

Facsimile Numbers:

+632 8 523-9216
+632 8 521-9495

For ADB

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


Facsimile Numbers:

+632 8 636-2444
+632 8 636-2015.



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 THE PHILIPPINES

By 
CARLOS G. DOMINGUEZ
Secretary
Department of Finance
DEC 29 2020



ASIAN DEVELOPMENT BANK

By 
KELLY BIRD
Country Director
Philippines Country Office

SCHEDULE 1**Description of the Project**

1. The objective of the Project is to increase the walking activity and usage of the public transportation.
2. The Project shall comprise the following:

Component 1: Construction and improvements of pedestrian walkways

It includes improving the pedestrian environment in Balintawak, Cubao, Guadalupe and Taft station areas by constructing, replacing or widening approximately 5 km of elevated walkways, footbridges and ancillary facilities.
3. The Project is expected to be completed by 30 June 2023.

SCHEDULE 2

Amortization Schedule

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

Payment Due	Installment Share (Expressed as a %)
1 June 2030	2.500000
1 December 2030	2.500000
1 June 2031	2.500000
1 December 2031	2.500000
1 June 2032	2.500000
1 December 2032	2.500000
1 June 2033	2.500000
1 December 2033	2.500000
1 June 2034	2.500000
1 December 2034	2.500000
1 June 2035	2.500000
1 December 2035	2.500000
1 June 2036	2.500000
1 December 2036	2.500000
1 June 2037	2.500000
1 December 2037	2.500000
1 June 2038	2.500000
1 December 2038	2.500000
1 June 2039	2.500000
1 December 2039	2.750000
1 June 2040	2.750000
1 December 2040	2.750000
1 June 2041	2.750000
1 December 2041	2.750000
1 June 2042	2.750000
1 December 2042	2.750000
1 June 2043	2.750000
1 December 2043	2.750000
1 June 2044	2.750000
1 December 2044	2.750000
1 June 2045	2.750000
1 December 2045	2.750000

1 June 2046	2.750000
1 December 2046	2.750000
1 June 2047	2.750000
1 December 2047	2.750000
1 June 2048	2.750000
1 December 2048	3.000000
Total	100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

- (a) to the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule; and
- (b) any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within 2 calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

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.)

Basis for Withdrawal from the Loan Account

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

Reallocation

3. 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

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

5. Disbursement from the Loan shall be made pro-rata to disbursements from the B Loan for Works: at 86.74% in respect of the Loan and 13.26% in respect of the B Loan or as otherwise provided in the PAM.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS			
Number	Item	Total Amount Allocated for ADB Financing (\$)	Basis for Withdrawal from the Loan Account
1	Works	98,163,000	86.74% of total expenditure claimed*
2	Consulting Services	8,700,000	100% of total expenditure claimed*
3	Unallocated	16,137,000	
	TOTAL	123,000,000	

*Exclusive of taxes and duties imposed within the territory of the Borrower.

SCHEDULE 4

Execution of Project; Financial Matters

Implementation Arrangements

1. The Borrower shall, through DOTr, 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.

2. The Borrower shall, through DOTr, employ sufficient staff for the duration of the Project with adequate and relevant expertise in the field of project management, financial management, engineering, procurement, environmental and social safeguards implementation. DOTr shall ensure that all staff employed for the Project are equipped with adequate office space, facilities, equipment, support staff and telecommunications and management information systems for the entire duration of the project. The Borrower shall, through DOTr, undertake best efforts to ensure that the same persons will continue to be assigned to key officers in the PMO for the entire duration of the Project, including, without limitation, the directors or project manager of the PMO.

Procurement

3. The Borrower shall, through DOTr, ensure that:

- (a) the procurement of Goods, Works and Services is carried out in accordance with the Procurement Policy and the Procurement Regulations;
- (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, through DOTr, 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;
- (c) Goods, Works and Services may also be procured under the Project from non-member countries of ADB; and
- (d) (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.

4. The Borrower, through DOTr, shall not award any Works contract which involves environmental impacts until:

- (a) the Borrower, through DOTr, has updated the relevant IEE and/or EMP based on Project's detailed design and obtained ADB's clearance thereof; and
- (b) the Borrower, through DOTr, has incorporated the relevant provisions from the relevant EMP into the Works contract.

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

Safeguards

Environment

6. The Borrower shall ensure, through DOTr, 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 IEEs, the EMPs, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

7. The Borrower shall ensure, through DOTr, 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; and (c) all measures and requirements set forth in the RPs, and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

8. Without limiting the application of the Involuntary Resettlement Safeguards or the RPs, the Borrower shall ensure, through DOTr, that no physical or economic displacement takes place in connection with the Project until:

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

Indigenous Peoples

9. The Borrower shall ensure, through DOTr, that the Project does not have indigenous people's impacts within the meaning of the Safeguard Policy Statement (2009) (SPS). If due to unforeseen circumstances, the Project has indigenous people's impacts, the Borrower shall, through DOTr, take all steps necessary or desirable to ensure that the Project complies with all applicable laws and regulations of the Borrower and with the SPS.

Human and Financial Resources to Implement Safeguards Requirements

10. The Borrower shall make available, or cause DOTr to make available, necessary budgetary and human resources to fully implement the EMPs and the RPs.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

11. The Borrower, through DOTr, 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 applicable 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 applicable 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

12. The Borrower, through DOTr, do the following:

- (a) submit semi-annual Safeguards Monitoring Reports in relation to the EMPs and quarterly Safeguards Monitoring Reports in relation to the RPs to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEEs, the EMPs, and the RPs, promptly inform

ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and

- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMPs and the RPs promptly after becoming aware of the breach.

Prohibited List of Investments

13. The Borrower, through DOTr, shall ensure that no proceeds of the Loan and Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor Standards, Health and Safety

14. The Borrower shall ensure, through DOTr, that the core labor standards and the Borrower's applicable laws and regulations are complied with during Project implementation. The Borrower shall, through DOTr, include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Borrower's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women.

15. The Borrower, through DOTr, shall strictly monitor compliance with the requirements set forth in paragraph 14 above and provide ADB with regular reports.

Gender and Development

16. The Borrower shall ensure, through DOTr, that (a) the Gender Action Plan (GAP) is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for implementation of the GAP; and (d) progress on implementation of the GAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

Counterpart Support

17. The Borrower, through DOTr, shall ensure that counterpart funds necessary for the Project is provided on a timely basis. In addition to the foregoing, the Borrower shall ensure that DOTr has sufficient funds to satisfy its liabilities arising from any Works, Goods and/or Services contract.

Governance and Anticorruption

18. The Borrower and DOTr 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.

19. The Borrower shall, through DOTr, 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.

Operation and Maintenance

20. Borrower shall, through DOTr, establish and maintain an asset management system for the Project facilities for the effective O&M of such facilities.

21. Borrower shall, through DOTr, ensure that appropriate budgetary and human resources allocations are made for the continued O&M of the Project facilities once they have been constructed or installed.

22. Notwithstanding the foregoing, Borrower shall, through DOTr, ensure that O&M for Project facilities such as walkways, elevators and other associated facilities are provided by DOTr until such time as DOTr makes appropriate arrangements with a private sector entity, a government owned and controlled corporation, and/or a relevant local government unit, for continued O&M by such entity for routine O&M. Prior to completion of civil works for the Project facilities, the Borrower shall, through DOTr, decide on the most optimal option for O&M, which may include: (a) entering into an O&M arrangement with the mall owners connected to the walkways, a government owned and controlled corporation and/or a relevant local government unit; (b) competitively select a private sector O&M company; and/or (c) DOTr granting advertisement rights on the walkways together with O&M obligations to a competitively selected private O&M company. Under all circumstances, the O&M arrangement shall ensure that the ownership of the Project facilities remain with DOTr, and that DOTr is solely responsible for any non-routine O&M, including any major repairs resulting from earthquake and/or other damages.