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LOAN NUMBER 2534-GEO(SF)

LOAN AGREEMENT  
(Special Operations)

(Municipal Services Development Project - Phase II)

between

GEORGIA

and

ASIAN DEVELOPMENT BANK

DATED 20 AUGUST 2009

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LAS:GEO 43171

**LOAN AGREEMENT  
(Special Operations)**

LOAN AGREEMENT dated 20 August 2009 between GEORGIA (the "Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of a project described in Schedule 1 to this Loan Agreement (the "Project");

(B) the Project shall be carried out by the Borrower's Municipal Development Fund ("MDF") and for this purpose the Borrower will make available to MDF the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(C) ADB, on the basis *inter alia* of the foregoing, has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein and in an agreement of even date herewith between ADB and MDF (the "Project Agreement");

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 (the "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. The definitions set forth in the Loan Regulations are applicable to this Loan Agreement, unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "ADB's Loan Disbursement Handbook" means the ADB's Loan Disbursement Handbook dated January 2007, as amended from time to time;

(b) "Charter" means the charter of MDF approved by Government Decree No. 118 dated 23 July 2005 as amended from time to time;

(c) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers dated February 2007, as amended from time to time;

(d) "EARF" means the Environmental Assessment and Review Framework for the Project, as agreed between MDF and ADB under the MSDP-I, as amended from time to time;

(e) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;

(f) "grant" means a grant made or proposed to be made by MDF out of the proceeds of the Loan to an MG for a subproject;

(g) "Investment Financing Agreement" means an agreement to be entered into between MDF and an MG for financing a subproject as further described in paragraph 8 of the Schedule to the Project Agreement;

(h) "Lari" means the lawful currency of the Borrower;

(i) "MDF" means the Municipal Development Fund of the Borrower, established under Presidential Decree No. 294 dated 7 June 1997, as amended from time to time;

(j) "MG" means a municipal government within the Project Area to which MDF makes a loan and/or grant for a subproject;

(k) "MSDP-I" means the ADB-financed Municipal Services Development Project (Loan No.2441-GEO[SF]);

(l) "Operations Manual" means the Operations Manual adopted by MDF and agreed with ADB for the MSDP-I, as amended from time to time);

(m) "Procurement Guidelines" means ADB's Procurement Guidelines dated February 2007, as amended from time to time;

(n) "Procurement Plan" means the procurement plan for the Project dated 10 June 2009 and agreed between MDF and ADB, as updated from time to time in accordance with the Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(o) "Project Area" means the urban areas in the territory of the Borrower;

(p) "Project Agreement" has the meaning given in Recital (C) of this Loan Agreement;

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

(r) "Project Implementation Agreement" means the agreement to be entered into between the Borrower and MDF for the Project as referred to in Section 3.01 of the Loan Agreement;

- (s) "SAR" means a subproject appraisal report to be prepared by MDF for subproject estimated to cost the equivalent of \$2,000,000 and more;
- (t) "SSR" means a subproject summary report to be prepared by MDF for a subproject estimated to cost less than the equivalent of \$2,000,000;
- (u) "subloan" means a loan made or proposed to be made by MDF out of the proceeds of the Loan to an MG for a subproject;
- (v) "subproject" means a specific development project that meets the eligibility criteria set out in paragraph 2 of the Schedule to the Project Agreement;
- (w) "Window 1" means a financing window providing a combination of subloans and grants as described in paragraph 3(i) of Schedule 5 of this Loan Agreement;
- (x) "Window 2" means a financing window providing grants as described in paragraph 3(ii) of Schedule 5 of this Loan Agreement; and
- (y) "Works" means construction or civil works to be financed out of the proceeds of the Loan, and including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

## ARTICLE II

### The Loan

- Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to nineteen million three hundred seventy-four thousand Special Drawing Rights (SDR19,374,000).
- Section 2.02. The Borrower shall pay to ADB an interest charge at the rate of one and six-tenth percent (1.6%) per annum on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.
- Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 March and 15 September in each year.
- Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.
- Section 2.05. The currency of repayment of the principal of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

**ARTICLE III****Use of Proceeds of the Loan**

Section 3.01. The Borrower shall make the proceeds of this Loan available on a non-refundable basis to MDF for the purposes of its capacity development and financing specific development subprojects in accordance with the Charter, this Loan Agreement and the Project Agreement. The Borrower shall enter into the Project Implementation Agreement, providing *inter alia* for the use of the proceeds of the Loan by MDF in carrying out the Project, and the rights of the Borrower and ADB with respect thereto. Such Project Implementation Agreement shall be in form and on terms and conditions acceptable to ADB, and shall be without prejudice to, and without limitation on, the obligations of the Borrower under this Loan Agreement.

Section 3.02. (a) The amount of the Loan may be withdrawn from the Loan Account to finance (i) the reasonable foreign-currency cost of Goods, Works and consulting services and other items of expenditures required for a subproject and (ii) a portion of the local-currency cost of Goods, Works and consulting services required for a subproject.

(b) Except as ADB may otherwise agree, the proceeds of the Loan shall be used only for making a subloan or grant to a qualified MG in respect of which such Loan proceeds were withdrawn from the Loan Account, and shall be applied exclusively to the cost of Goods, Works and consulting services and other items of expenditure required to carry out the subproject in respect of which such Loan proceeds were withdrawn.

(c) Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Withdrawals from the Loan Account in respect of Goods, Works, and consulting services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Works and consulting services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and
- (b) Goods, Works and consulting services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.04. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2014 or such other date as may from time to time be agreed between the Borrower and ADB.

**ARTICLE IV****Particular Covenants**

Section 4.01. (a) The Borrower shall comply with and cause MDF to comply with Section 6.08 of the Loan Regulations.

(b) In the carrying out of the Project, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement and the Project Agreement.

Section 4.02. In addition to the reports and information set forth in Section 6.05 of the Loan Regulations, the Borrower shall furnish, or cause to be furnished, to ADB all such reports and information as ADB shall reasonably request, with regard to the Project, concerning (i) the MGs, the subprojects, subloans and grants; and (ii) the administration, operations and financial condition of MDF.

Section 4.03. The Borrower shall enable ADB's representatives to inspect, with regard to the Project, any MG, any subproject, the Goods, Works and consulting services financed out of the proceeds of the Loan, and any relevant records and documents maintained by MDF.

Section 4.04. The Borrower shall promptly take all action which shall be necessary to enable MDF to perform its obligations under the Project Agreement and shall not take or permit any action which would interfere with MDF's performance of its obligations.

Section 4.05. (a) The Borrower shall exercise its rights under the Project Implementation Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Project Implementation Agreement shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

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

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations:

(a) the Borrower or MDF shall have failed to perform any of its material obligations under the Project Implementation Agreement and/or any Investment Financing Agreement.

(b) The Charter as of the date hereof shall have been subsequently amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of MDF to perform any of its obligations under the Project Agreement; or

(c) The Borrower or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of MDF or for the suspension of its operations.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: any of the events specified in Section 5.01 of this Loan Agreement shall have occurred and continued for the period of ninety (90) days.

## ARTICLE VI

### Effectiveness

Section 6.01. A date sixty (60) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

## ARTICLE VII

### Delegation of Authority

Section 7.01. The Borrower hereby designates MDF as its agent for the purposes of taking any action or entering into any agreement required or permitted under Section 3.02 of this Loan Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Loan Regulations.

Section 7.02. Any action taken or any agreement entered into by MDF pursuant to the authority conferred under Section 7.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 7.03. The authority conferred on MDF under Section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

**ARTICLE VIII****Miscellaneous**

Section 8.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

External Relations Department  
Ministry of Finance  
16 Gorgasali Street, 0114  
Tbilisi, Georgia

Facsimile Number:

(99532) 261 461

For ADB

Asian Development Bank  
P.O. Box 789  
0980 Manila, Philippines

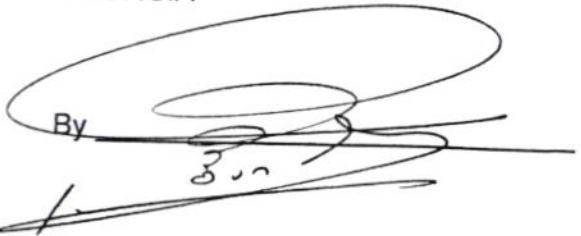
Facsimile Numbers:

(632) 636-2444

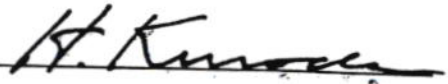
(632) 636-4284.

IN WITNESS WHEREOF the parties hereto, acting through the representatives thereunto duly authorized, have caused this Loan Agreement to be signed their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

GEORGIA

By 

ASIAN DEVELOPMENT BANK

By   
HARUHIKO KURODA  
President