PREDLOG ZAKONA

O POTVRĐIVANJU UGOVORA O ZAJMU (IZGRADNJA AUTOPUTA E-80 NIŠ-MERDARE, DEONICA NIŠ-PLOČNIK, FAZA 1) IZMEĐU REPUBLIKE SRBIJE I EVROPSKE BANKE ZA OBNOVU I RAZVOJ

Član 1.

Potvrđuje se Ugovor o zajmu (Izgradnja autoputa E-80 Niš-Merdare, deonica Niš-Pločnik, faza 1) između Republike Srbije i Evropske banke za obnovu i razvoj, koji je potpisan u Beogradu, 25. novembra 2020. godine, u originalu na engleskom jeziku.

Član 2.

Tekst Ugovora o zajmu (Izgradnja autoputa E-80 Niš-Merdare, deonica Niš-Pločnik, faza 1) između Republike Srbije i Evropske banke za obnovu i razvoj, u originalu na engleskom i prevodu na srpski jezik glasi:

(Operation Number 50086)

**LOAN AGREEMENT**

**(CONSTRUCTION OF HIGHWAY E-80 NIS – MERDARE, SECTION NIS – PLOCNIK, PHASE 1)**

between

**REPUBLIC OF SERBIA**

and

**EUROPEAN BANK**

**FOR RECONSTRUCTION AND DEVELOPMENT**

Dated 25 November 2020

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LOAN AGREEMENT

**AGREEMENT** dated 25 November 2020 between **REPUBLIC OF SERBIA** represented by Siniša Mali, Minister of Finance of the Republic of Serbia, on behalf of the Government as representative of the Republic of Serbia **(**the "Borrower") and **EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT** (the "Bank").

**PREAMBLE**

**WHEREAS,** the Bank has been established to provide financing for specific projects to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiative in certain countries committed to and applying the principles of multiparty democracy, pluralism and market economics;

**WHEREAS,** the Borrower is planning to construct a highway section, approximately 39.4 km in length between Nis and Plocnik in the Republic of Serbia which is part of the E-80 Nis-Merdare road, sector Nis – Plocnik (Phase 1) (the “Project”);

**WHEREAS,** the Project will be carried out by Koridori Srbije d.o.o., a limited liability company registered under the laws of the Republic of Serbia and owned by the Republic of Serbia (the "Project Entity"), with the participation of the Ministry of Construction, Transport and Infrastructure of the Republic of Serbia (the “Beneficiary”);

**WHEREAS,** the Borrower has requested assistance from the Bank in financing the Project;

**WHEREAS,** the Bank has arranged technical cooperation funds on a grant basis for a total amount of EUR 250,000 (two hundred fifty thousand Euros) to assist the Project Entity in development and implementation of procurement practices and providing training opportunities for young people during the Project’s construction phase as described in Part 3 of the Project and to hire a lender’s monitoring consultant as described in Part 4 of the Project;

**WHEREAS,** the Bank has agreed on the basis of, *inter alia*, the foregoing to make a loan to the Borrower in the amount of EUR 85,000,000 (eighty five million Euros) (the “Loan”) for Part 1 of the Project, subject to the terms and conditions set forth or referred to in this Agreement and in the project agreement dated the date hereof between the Republic of Serbia and the Project Entity and the Bank (the "Project Agreement") as defined in the Standard Terms and Conditions;

**WHEREAS,** the Borrower has contracted a loan from the European Investment Bank (“EIB”) in the amount of EUR 100 million and a grant from the European Union (“EU”) through the Western Balkans Investment Framework (“WBIF”) in the amount of EUR 40.60 million (together the “Co-financiers”) to assist in financing of Part 1 and Part 2 of the Project.

**NOW, THEREFORE,** the parties hereby agree as follows:

# ARTICLE I - STANDARD TERMS AND CONDITIONS; DEFINITIONS

## Section 1.01. Incorporation of Standard Terms and Conditions

All of the provisions of the Bank's Standard Terms and Conditions dated 1 October 2018 are hereby incorporated into and made applicable to this Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications (such provisions as so modified are hereinafter called the "Standard Terms and Conditions"):

(a) The Project Agreement is hereby specified as a Project Agreement for the purposes of the Standard Terms and Conditions;

(b) The Project Entity is specified as a Project Entity for the purposes of the Standard Terms and Conditions.

## Section 1.02. Definitions

Wherever used in this Agreement (including the Preamble and Schedules), unless stated otherwise or the context otherwise requires, the terms defined in the Preamble have the respective meanings given to them therein, the terms defined in the Standard Terms and Conditions have the respective meanings given to them therein and the following terms have the following meanings:

"Borrower's Authorised

Representative" means the Minister of Finance of the Borrower or any other person duly authorised by the Borrower’s Government as may be notified in writing by the Borrower to the Bank from time to time.

"Enforcement Policy and

Procedures" means the Bank’s Enforcement Policy and Procedures dated 4 October 2017.

"Environmental and Social

Action Plan" means the Environmental and Social Action Plan which is attached as Schedule 1 to the Project Agreement, as such plan may be amended from time to time with a prior written consent of the Bank.

"Last Availability Date" means the last availability date specified in Section 2.02 (f).

"PIU" means the Project Implementation Unit referred to in Section 5.01 (c) of this Agreement.

"Procurement Plan" means the Procurement Plan prepared for the Project and approved by the Project Entity and the Co-financiers on 3 July 2020, as such plan may be amended from time to time with a prior written consent of the Bank.

"PE Roads of Serbia" means Public Enterprise “Roads of Serbia”, a company registered under the laws of the Republic of Serbia and 100% owned by the Borrower.

"Service Level Agreement" means an agreement between the Government of the Republic of Serbia and the Roads of Serbia governing the relationship between the parties to such agreement, setting out responsibilities for the Roads of Serbia as the supplier of services and levels of funding from the Government of the Republic of Serbia as the buyer of services.

"Subsidiary

Agreement" means the subsidiary agreement to be entered into between the Borrower and the Project Entity pursuant to Section 3.01(a), as such agreement may be amended from time to time.

## Section 1.03. Interpretation

In this Agreement, a reference to a specified Article, Section or Schedule shall, except where stated otherwise in this Agreement, be construed as a reference to that specified Article or Section of, or Schedule to, this Agreement.

# ARTICLE II - PRINCIPAL TERMS OF THE LOAN

## Section 2.01. Amount and Currency

The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, the amount of EUR 85,000,000 (eighty five million Euros).

## Section 2.02. Other Financial Terms of the Loan

(a) The Minimum Drawdown Amount shall be EUR 250,000.

(b) The Minimum Prepayment Amount shall be EUR 1,000,000.

(c) The Minimum Cancellation Amount shall be EUR 1,000,000.

(d) The Interest Payment Dates shall be 25 April and 25 October of each year.

(e) (1) The Borrower shall repay the Loan in 22 equal (or as nearly equal as possible) semi-annual instalments on 25 April and 25 October of each year, with the first Loan Repayment Date being 25 October 2024 and the last Loan Repayment Date being 25 April 2035.

(2) Notwithstanding the foregoing, in the event that the Borrower does not draw down the entire Loan amount prior to the first Loan Repayment Date specified in this Section 2.02.(e), then the amount of each drawdown made on or after the first Loan Repayment Date shall be allocated for repayment in equal amounts to the several Loan Repayment Dates which fall after the date of such drawdown (with the Bank adjusting the amounts so allocated as necessary so as to achieve whole numbers in each case). The Bank shall, from time to time, notify the Borrower of such allocations.

(f) The Last Availability Date shall be 31 December 2026, or such later date that the Bank may in its discretion establish and notify to the Borrower.

(g) The rate of the Commitment Charge shall be 0.5% per annum.

(h) The Loan is subject to a Variable Interest Rate. Notwithstanding the foregoing, the Borrower may, as an alternative to paying interest at a Variable Interest Rate on all or any portion of the Loan then outstanding, elect to pay interest at a Fixed Interest Rate on such portion of the Loan in accordance with Section 3.04(c) of the Standard Terms and Conditions.

## Section 2.03. Drawdowns

The Available Amount may be drawn down from time to time in accordance with the provisions of Schedule 2 to finance (1) expenditures made (or, if the Bank so agrees, to be made) in respect of the reasonable cost of goods, works and services required for the Project and (2) the Front-end Commission.

# ARTICLE III - EXECUTION OF THE PROJECT

## Section 3.01. Other Affirmative Project Covenants

In addition to the general undertakings set forth in Articles IV and V of the Standard Terms and Conditions, the Borrower shall, unless the Bank otherwise agrees:

1. Make available to the Project Entity, pursuant to the Subsidiary Agreement, the proceeds of the Loan on terms and conditions acceptable to the Bank;
2. Exercise its rights under the Subsidiary Agreement in such manner as to protect the interests of the Borrower and the Bank, to comply with the provisions of this Agreement and to accomplish the purposes for which the Loan is made;
3. Not, except as the Bank otherwise agrees, assign, amend, abrogate or waive any provision of the Subsidiary Agreement;

(d) Cause, including through the Beneficiary, the Project Entity to perform all of its obligations under the Project Agreement;

(e) Provide or cause to be provided, including through the Beneficiary, when requested, all governmental licences, approvals or consents required for the financing and carrying out of the Project by the Project Entity and for carrying on of the Project Entity’s business;

(f) Take, or cause to be taken, all additional actions necessary to provide adequate funds for the completion of the Project, including the governmental contributions, if required;

(g) Procure, including through the Beneficiary, that the Project Entity shall, at all times, comply with the Procurement Plan and the requirements of the Procedural Framework between the EBRD and the EIB in respect to the Mutual Reliance for Procurement in joint co-financed public sector operations outside the European Union as agreed in the Project Implementation Agreement between the EBRD and EIB dated 22 July 2020;

(h) Procure that not later than 31 December of the year of the first anniversary of the Effective Date, the Project Entity will provide the Bank with a medium term business plan, in form and substance satisfactory to the Bank, which plan shall be then updated and approved by the Project Entity on an annual basis by 31 December of each subsequent year;

(i) Exempt from VAT and customs duties all goods, works and services (including consultancy services), procured by the Project Entity for the Project and financed from the proceeds of the Loan or any technical cooperation funds made available by the Bank, or provide for their reimbursement;

(j) By 31 March 2021, adopt the Service Level Agreement (“SLA”) between the Government of the Republic of Serbia and the PE Roads of Serbia.

# ARTICLE IV - SUSPENSION; ACCELERATION; CANCELLATION

## Section 4.01. Suspension

The following are specified for purposes of Section 7.01(a)(xvii) of the Standard Terms and Conditions:

(a) The legislative and regulatory framework applicable to the construction sector in the territory of the Borrower shall have been amended, suspended, abrogated, repealed or waived in a manner that would have a material adverse effect on the Project or the ability of the Borrower or the Project Entity to perform their obligations under this Agreement and/or the Project Agreement;

(b) The Statute shall have been amended, suspended, abrogated, repealed or waived in a manner that would have a material adverse effect on the Project or the ability of the Project Entity to perform its obligations under this Agreement and/or the Project Agreement;

(c) Control of the Project Entity shall have been transferred to a party other than the Borrower; and

(d) The Project Entity shall have failed to perform any of its obligations under the Project Agreement.

## Section 4.02. Acceleration of Maturity

The following are specified for purposes of Section 7.06(f) of the Standard Terms and Conditions: any of the events specified under Section 4.01 shall have occurred and continued without remedy for thirty (30) days after the notice thereof has been given by the Bank to the Borrower.

# ARTICLE V - EFFECTIVENESS

## Section 5.01. Conditions Precedent to Effectiveness

The following are specified for the purposes of Section 9.02(c) of the Standard Terms and Conditions as additional conditions to the effectiveness of this Agreement and the Project Agreement:

(a) The Subsidiary Agreement, in form and substance satisfactory to the Bank, has been executed and delivered and all conditions precedent to its effectiveness or to the right of the Project Entity to make the drawings thereunder, except only the effectiveness of this Agreement, have been fulfilled;

(b) Ratification of this Agreement by the Parliament of the Republic of Serbia and publication of such ratification in the Official Gazette of the Republic of Serbia; and

(c) The PIU has been established by the Project Entity, in form and substance satisfactory to the Bank, including, without limitation, with adequate resources and suitably qualified personnel.

## Section 5.02. Legal Opinions

1. For purposes of Section 9.03(a) of the Standard Terms and Conditions, the opinion shall be given on behalf of the Borrower by the Ministry of Justice and, in relation to the Subsidiary Agreement, shall be procured by the Ministry of Finance of the Borrower from the Public Attorney Office with the following to be specified as additional matters to be included in the opinion to be furnished to the Bank:

(1) the Subsidiary Agreement has been duly authorised by, and delivered on behalf of, the Borrower and constitute a valid and legally binding obligation of the Borrower, enforceable in accordance with its terms.

(b) For purposes of Section 9.03(c) of the Standard Terms and Conditions, the opinion shall be given on behalf of the Project Entity by the head of legal department of the Project Entity and shall confirm that the Project Agreement has been duly authorised by the Project Entity and constitutes valid and legally binding obligations of the Project Entity, enforceable in accordance with its terms the following are specified as additional matters to be included in the opinion to be furnished to the Bank:

(1) the Subsidiary Agreement has been duly authorised by, and delivered on behalf of, the Project Entity and constitute a valid and legally binding obligation of the Project Entity, enforceable in accordance with its terms.

## Section 5.03. Termination for Failure to Become Effective

The date 180 days after the date of this Agreement is specified for purposes of Section 9.04 of the Standard Terms and Conditions.

# ARTICLE VI - MISCELLANEOUS

## Section 6.01. Notices

The following addresses are specified for purposes of Section 10.01 of the Standard Terms and Conditions:

For the Borrower:

Ministry of Finance of the Republic of Serbia

Kneza Milosa 20

11000 Belgrade

Serbia

Attention: Minister of Finance

Fax: + 381 11 361 8961

E-mail address: kabinet@mfin.gov.rs

For the Bank:

European Bank for Reconstruction and Development

One Exchange Square

London

EC2A 2JN

United Kingdom

Attention: Operation Administration Department

Fax: +44-20-7338-6100

E-mail address: OAD@ebrd.com

**IN WITNESS WHEREOF,** the parties hereto, acting through their duly authorised representatives, have caused this Agreement to be signed in six copies in the English language and delivered at Belgrade, the Republic of Serbia as of the day and year first above written.

**REPUBLIC OF SERBIA**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Siniša Mali

Title: Minister of Finance

**EUROPEAN BANK**

**FOR RECONSTRUCTION AND DEVELOPMENT**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Zsuzsana Hargitai

Title: Regional Director of Western Balkans

SCHEDULE 1 - DESCRIPTION OF THE PROJECT

1. The purpose of the Project is to assist the Borrower in construction of a highway section, approximately 39.4 km in length, to semi-motorway standard, between Nis and Plocnik in the Republic of Serbia which is part of the E-80 Nis-Merdare road.

2. The Project consists of the following Parts, subject to such modifications thereof as the Bank and the Borrower may agree upon from time to time:

Part 1: Construction works relating to the construction of a highway section, approximately 39.4 km in length, to semi-motorway standard, between Nis and Plocnik in the Republic of Serbia;

Part 2: Consultancy services for implementation support and works supervision of Part 1;

Part 3: Consultancy services to assist the Project Entity in development and implementation of procurement practices and providing training opportunities for young people during Part 1 of the Project;

Part 4: A lender’s monitoring consultant to assist the Bank in the monitoring of the implementation of the Project including the implementation of the Environmental and Social Action Plan.

3. The Project is expected to be completed by 31 December 2026.

SCHEDULE 2 - CATEGORIES AND DRAWDOWNS

1. The table attached to this Schedule sets forth the Categories, the amount of the Loan allocated to each Category and the percentage of expenditures to be financed in each Category.

2. Notwithstanding the provisions of paragraph 1 above,

(a) no Drawdown shall be made in respect of expenditures incurred prior to the date of the Loan Agreement effectiveness.

(b) No Drawdown shall be made prior to the following conditions being satisfied:

(1) qualified consultants to support the PIU during project implementation and engineering supervision shall have been appointed by the Project Entity and are acceptable to the Bank;

(2) the Bank is satisfied with implementation of the Environmental and Social Action Plan and with compliance with the EBRD Environmental and Social Policy relating to the Project preparation activities;

(3) the recommendations of the road safety audit consultant and climate resilience measures have been incorporated into the Project’s design;

(4) the Bank shall have received the Resettlement Action Plan for the Project, in forma and substance satisfactory to the Bank;

(5) a requirement shall have been introduced in the tender documents requiring contractors to engage in inclusive procurement practices to offer effective apprenticeships and work based learning to young engineers and students during the construction; and

(6) the rights over the land have been acquired by the Project Entity in the manner satisfactory to the Bank prior to the commencement of construction on any lot.

**Attachment to Schedule 2**

|  |  |  |
| --- | --- | --- |
| **Category** | **Amount of the Loan (EUR)** | **% of Expenditures to be financed** |
| (1) Part 1 of the Project: construction works in relation to a section of the highway between Nis and Plocnik | 84,150,000 | 100%  (excluding Taxes) |
| (2) Front-end Fee | 850,000 | 100% |
| **Total Loan :** | **85,000,000** |  |