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LOAN NUMBER 3157-NEP(SF)

PROJECT AGREEMENT

Third Small Towns Water Supply and Sanitation Sector Project

between

ASIAN DEVELOPMENT BANK

and

TOWN DEVELOPMENT FUND

DATED 25 NOVEMBER 2014

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NEP 35173

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 25 November 2014 between ASIAN DEVELOPMENT BANK ("ADB") and Town Development Fund ("TDF").

### **WHEREAS**

(A) by a Loan Agreement of even date herewith between NEPAL ("Borrower") and ADB, ADB has agreed to make to the Borrower a loan in various currencies equivalent to thirty-eight million nine hundred and twenty one thousand Special Drawing Rights (SDR38,921,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that a portion of the proceeds of the loan be made available to TDF and that TDF agrees to undertake certain obligations towards ADB set forth herein; and

(B) TDF, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

## **ARTICLE I**

### **Definitions**

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth, except that for purposes of this Project Agreement:

- (a) the term "Project" means the financing of Subprojects under Output 1 of the Project and Output 2(c), each as described in Schedule 1 to the Loan Agreement; and
- (b) the term "Loan" means the portion of the Loan proceeds that will be relented to TDF for the purposes of the Project.

## **ARTICLE II**

### **Particular Covenants**

Section 2.01. (a) TDF shall carry out the Project with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project TDF shall perform or cause Local Bodies and WUSCs to perform all obligations set forth in the Loan Agreement and in Schedule 5 to the Loan Agreement to the extent that they are applicable to TDF, Local Bodies and/or WUSCs, and all obligations set forth in this Project Agreement including the Schedule to this Project Agreement.

Section 2.02. TDF shall make available, promptly as needed, and on terms and conditions acceptable to ADB, facilities, services, and other resources as required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 2.03. (a) TDF shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, TDF undertakes to insure, or cause to be insured, the Goods to be imported for the Project against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.04. TDF shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in each Subproject, to record the progress of the Project and of each Subproject (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.05. (a) ADB and TDF shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) TDF shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement and the Subproject Financing Agreements, or the accomplishment of the purposes of the Loan.

(c) ADB and TDF shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, TDF and the Loan.

Section 2.06. (a) TDF shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the items of expenditure financed out of the proceeds; (iii) the Project and each Subproject; (iii) the administration, operations and financial condition of TDF; and (iv) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, TDF shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after the Loan Closing Date, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, TDF shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including their cost, the performance by TDF of its obligations under this Project Agreement and accomplishment of the purposes of the Loan.

Section 2.07. (a) TDF shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements for the Project audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement 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 9 months after the close of FY2015 and FY 2016, 8 months after the close of FY2017 and FY 2018, and 6 months after the close of FY2019, FY 2020 and FY2021, 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 30 days of the date of their receipt by posting them on ADB's website.

(c) In addition to annual audited financial statements referred to in subsection (a) hereinabove, TDF shall (i) provide its annual financial statements prepared in accordance with national accrual-based financing reporting standards acceptable to ADB; (ii) have its financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; and (iii) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements in the English language and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(d) TDF shall enable ADB, upon ADB's request, to discuss the financial statements for the Subprojects and TDF and its financial affairs where they relate to the Project with the auditors confirmed 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 TDF, unless TDF shall otherwise agree.

Section 2.08. TDF shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, and any relevant records and documents.

Section 2.09. (a) TDF shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its operations.

(b) TDF shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

Section 2.10. Except as ADB may otherwise agree, TDF shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.11. Except as ADB may otherwise agree, TDF shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement, this Project Agreement, and Subproject Financing Agreement as applicable, and shall ensure that all items of expenditures financed out of such proceeds of Loan are used exclusively in the carrying out of the Project.

Section 2.12. Except as ADB may otherwise agree, TDF shall duly perform all its obligations under the Subsidiary Loan Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Subsidiary Loan Agreement.

Section 2.13. TDF shall promptly notify ADB of any proposal to amend or repeal any provision of the Town Development Fund Act, 2053 (1997) and any of its governing rules and bylaws, which, if implemented, could adversely affect the carrying out of the Project, Subprojects, or the operation of the Project facilities. TDF shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

### **ARTICLE III**

#### **Effective Date; Termination**

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement comes into force and effect. ADB shall promptly notify TDF of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

**ARTICLE IV****Miscellaneous**

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Facsimile Numbers:

(63-2) 636-2444  
(63-2) 636-2293.

For TDF

Town Development Fund  
GPO Box 5144  
Kathmandu, Nepal

Facsimile Number:

(977-01) 447-1227.

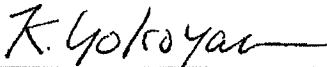
Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of TDF may be taken or executed by its Executive Director or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) TDF shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

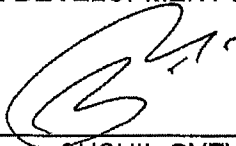
Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project 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.

ASIAN DEVELOPMENT BANK

By   
KENICHI YOKOYAMA  
Country Director  
Nepal Resident Mission

TOWN DEVELOPMENT FUND

By   
SUSHIL GYEWALI  
Executive Director

**SCHEDULE 1****Execution of Project; Financial Matters**

1. In addition to the obligations set forth in Section 2.09(c), as part of each audit of TDF, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement and a management letter (which sets out the deficiencies in the internal control of the TDF that were identified in the course of the audit, if any)).