
LOAN NUMBER 3157-NEP(SF)

LOAN AGREEMENT
(Special Operations)

(Third Small Towns Water Supply and Sanitation Sector Project)

between

NEPAL

and

ASIAN DEVELOPMENT BANK

DATED 25 NOVEMBER 2014

NEP 35173

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 25 November 2014 between NEPAL ("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) the Borrower has also applied to the OPEC Fund for International Development ("OFID") for a loan in the amount of approximately twenty million Dollars (\$20,000,000) to be partially administered by ADB for the Project ("OFID Loan");

(C) the Borrower has also applied to the Sanitation Financing Partnership Trust Fund under the Water Financing Partnership Facility for a grant in the amount of approximately one million three hundred thousand Dollars (\$1,300,000) to be administered by ADB for the Project ("WFPF Grant"), upon terms and conditions set forth in the Grant Agreement (as defined below);

(D) the Project will be carried out by the Ministry of Urban Development ("MOUD") and the Town Development Fund ("TDF"), and for this purpose the Borrower will make available to TDF a portion of the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(E) ADB 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 the Project Agreement of even date herewith between ADB and TDF;

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 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however to the following modifications:

(a) Section 2.01(25) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement of even date herewith between ADB and TDF.

- (b) The term “Project Executing Agency” appearing in Section 6.01(a), 8.01(d), 8.01(f), 8.01(k), 9.01(c) and 9.02(c) of the Loan Regulations shall be substituted by the term “TDF” which is a party to the Project Agreement.

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) “CAPP” means the consultation and participation plan prepared for the Project and approved by the Borrower;

(b) “Consulting Guidelines” means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(c) “Consulting Services” means the services to be financed out of the proceeds of the Loan and/or the OFID Loan as described in paragraph 3 of Schedule 1 to this Loan Agreement;

(d) “DWSS” means the Department of Water Supply and Sewerage of MOUD or any successor thereof acceptable to ADB;

(e) “EARF” means the environmental assessment and review framework for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(f) “EIA” means each environmental impact assessment for a Subproject, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the EARF and cleared by ADB;

(g) “EMP” means each environmental management plan for a Subproject, including any update thereto, incorporated in an IEE or EIA;

(h) “Environmental Safeguards” means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

(i) “GESI Action Plan” means the gender equality and social inclusion action plan prepared for the Project, including any update thereto, and agreed between the the Borrower and ADB;

(j) “Goods” means equipment and materials to be financed out of the proceeds of the Loan and/or the OFID Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(k) “Grant Agreement” means the agreement between the Borrower and ADB pursuant to which ADB makes the WFPF Grant available to the Borrower for the purposes of the Project;

(l) “Indigenous Peoples Plan” or “IPP” means each indigenous peoples plan for a Subproject, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the IPPF and cleared by ADB;

(m) “Indigenous Peoples Planning Framework” or “IPPF” means the indigenous peoples planning framework for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(n) “Indigenous Peoples Safeguards” means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;

(o) “Initial Environmental Examination” or “IEE” means each initial environmental examination for a Subproject, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the EARF and cleared by ADB;

(p) “Involuntary Resettlement Safeguards” means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;

(q) “Legislation” means the Water Resources Act, 2049 (1992) and the Local Self Governance Act, 2055 (1999), and any implementing regulations issued thereunder, as amended from time to time;

(r) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2012, as amended from time to time);

(s) “Local Bodies” means Municipalities or VDCs participating in the Project;

(t) “Management Agreement” means the agreement entered into between DWSS on the one part and a WUA or Local Body on the other part, for the operation and maintenance of Project facilities;

(u) “MOF” means the Ministry of Finance of the Borrower and any successor thereof;

(v) “MOUD” means the Ministry of Urban Development of the Borrower and any successor thereof acceptable to ADB;

(w) “Municipality” means a municipal governing authority as defined in the Legislation;

(x) “OBA” means output-based-aid as further described in the PAM;

(y) “OFID” has the meaning given thereto in Recital (B) of this Loan Agreement;

(z) “OFID Loan” has the meaning given thereto in Recital (B) of this Loan Agreement;

(aa) "Output" means each Project output described in Schedule 1 to this Loan Agreement;

(bb) "PAM" means the project administration manual for the Project dated 21 July 2014 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;

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

(dd) "Procurement Guidelines" means ADB's Procurement Guidelines (2013, as amended from time to time);

(ee) "Procurement Plan" means the procurement plan for the Project dated 21 July 2014 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(ff) "Project facilities" means each and any of the facilities to be constructed under the Project;

(gg) "Project town" means a town which has been selected in accordance with the provisions of the PAM for participation in the Project and which will enter into a Subproject Financing Agreement;

(hh) "Resettlement Framework" or "RF" means the resettlement framework for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(ii) "Resettlement Plan" or "RP" means each resettlement plan for a Subproject, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the RF and cleared by ADB;

(jj) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);

(kk) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of, and compliance with, the EMPs, the RPs and the IPPs (as applicable), including any corrective and preventative actions;

(ll) "SEIU" means the sector efficiency improvement unit established in MOUD;

(mm) "Subproject" means a subproject to construct Project facilities in a Project town selected in accordance with the provisions of the PAM;

(nn) "Subproject Financing Agreement" means each and any agreement entered into between TDF on the one part and a WUA or Local Body on the other part, for the financing of a Subproject;

(oo) "Subsidiary Loan Agreement" means the agreement entered into between the Borrower and TDF referred to in Section 3.01 of this Loan Agreement;

(pp) "TDF" means the Town Development Fund constituted under the Town Development Fund Act, 2053 (1997), and any successor thereof acceptable to ADB;

(qq) "VDC" means a village development committee as defined in the Legislation;

(rr) "WFPF Grant" has the meaning given thereto in Recital (C) of this Loan Agreement;

(ss) "Works" means construction or civil works to be financed out of the proceeds of the Loan and/or the OFID Loan, 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;

(tt) "WSS" means water supply and sanitation;

(uu) "WUA" means a water users association constituted and recognized under the Legislation and any successor thereof; and

(vv) "WUSC" means a water users and sanitation committee acting as the executive body of a WUA as defined in the Legislation.

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 thirty eight million nine hundred and twenty one thousand Special Drawing Rights (SDR 38,921,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in subsection (a) 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 2.03. 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 amount 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. In respect of Output 1 of the Project, the Borrower shall provide a portion of the proceeds of the Loan to WUAs and Local Bodies as grant, and relend eighteen million Dollars (\$18,000,000) of the proceeds of the Loan as subloan to TDF under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB, and shall cause TDF to apply such proceeds to the financing of expenditures for the Subprojects in accordance with the financing allocations for each Subproject as set out in the PAM. Except as ADB shall otherwise agree, the terms and conditions of the subloan to TDF shall include a repayment period of twenty eight (28) years, inclusive of grace period of eight (8) years. The Borrower shall assume the foreign exchange risk on all sums due and owing under the Subsidiary Loan Agreement. TDF shall onlend the proceeds of the Loan to WUAs and Local Bodies under Subproject Financing Agreements on terms and conditions satisfactory to ADB, which shall include interest at a rate not exceeding 5% per annum, and a repayment period of up to 25 years, inclusive of grace period of 5 years.

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 and/or the OFID Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan and/or the OFID Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 July 2021 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 the Project and operation of the Project facilities, 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. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.03. (a) The Borrower shall (i) maintain, or cause to be maintained, separate accounts and records for the Project and each Subproject; (ii) prepare annual financial statements for the Project in accordance with accounting principles 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 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 this Loan Agreement as well as on the use of the procedures for imprest fund(s) and statement of expenditures) 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 FY2018, and 6 months after the close of FY2019, FY2020 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) The Borrower 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 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 the Borrower, unless the Borrower shall otherwise agree.

Section 4.04. The Borrower shall take all actions which shall be necessary on its part to enable TDF, DWSS, the WUAs and the Local Bodies to perform their respective obligations under the Project Agreement, the Subsidiary Loan Agreement, any Subproject Financing Agreements and any Management Agreements and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreement, and shall cause TDF to exercise its rights under the Subproject Financing Agreements, and DWSS to exercise its rights under the Management Agreements,

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 Subsidiary Loan Agreement, Subproject Financing Agreements, or Management Agreements shall be assigned, amended, 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) any material change to the Legislation that will or may adversely affect the implementation of the Project;
- (b) the Borrower shall have failed to perform any of its obligations under the Grant Agreement; and
- (c) the OFID Loan shall have become liable for suspension or cancellation prior to its agreed maturity date.

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.

ARTICLE VI

Effectiveness

Section 6.01. A date 90 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

Miscellaneous

Section 7.01. The Secretary of MOF is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Ministry of Finance
Singha Durbar
Kathmandu, Nepal

Facsimile Number:

(977) 1-421-1665.

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2293.

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.

NEPAL

By 
SUMAN PRASAD SHARMA
Secretary
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 
KENICHI YOKOYAMA
Country Director
Nepal Resident Mission

SCHEDULE 1

Description of the Project

1. The objective of the Project is to deliver gender-focused and sustainable water supply and sanitation services in Project towns.

2. The Project shall comprise the following Outputs:

Output 1: Improved WSS infrastructure. Output 1 will finance in Project towns:

- (a) upgrading and construction of water supply systems for up to 26 small towns;
- (b) construction of approximately 20,300 additional private toilets with septic tanks on OBA basis for the identified poor and vulnerable;
- (c) provision of septage management facilities and equipment, and decentralized wastewater treatment facilities in identified small towns;
- (d) preparation of drainage master plans and provision of priority drains in Project towns with flooding risks;
- (e) rehabilitation of existing water supply systems; and
- (f) maintenance of nonrevenue water at around 10% in Project towns' water supply systems.

Output 2: Strengthened sector policy, regulatory and institutional capacity and service delivery. Output 2 will finance:

- (a) preparation, adoption and implementation of tariff guidelines for Project towns;
- (b) strengthening of institutional capacity, including (i) the establishment of a new institutional support and service advisory unit in DWSS; (ii) construction of a DWSS building, and (iii) completion and implementation of business plans for DWSS, its national water supply and sanitation training centre, SEIU and WUAs;
- (c) strengthening of TDF's financial intermediation functions;
- (d) preparation and completion of solid waste management plans for Project towns;
- (e) provision of technical, financial and utility management trainings to participating WUAs and Local Bodies, including computerization of their billing and collection system;

- (f) provision of leadership training to female executive members of Project, WUAs and Local Bodies; and
- (g) increase in public awareness on solid waste management, water conservation, and water, sanitation, and hygiene in Project towns.

Output 3: Improved project implementation. Output 3 will finance project management, design and construction supervision support for the Project.

3. The Project will include the provision of Consulting Services to assist the Borrower in the implementation of each Output.

4. The Project is expected to be completed by 31 January 2021.

SCHEDULE 2**Amortization Schedule****(Third Small Towns Water Supply and Sanitation Sector Project)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 Mar 2023	810,854
15 Sep 2023	810,854
15 Mar 2024	810,854
15 Sep 2024	810,854
15 Mar 2025	810,854
15 Sep 2025	810,854
15 Mar 2026	810,854
15 Sep 2026	810,854
15 Mar 2027	810,854
15 Sep 2027	810,854
15 Mar 2028	810,854
15 Sep 2028	810,854
15 Mar 2029	810,854
15 Sep 2029	810,854
15 Mar 2030	810,854
15 Sep 2030	810,854
15 Mar 2031	810,854
15 Sep 2031	810,854
15 Mar 2032	810,854
15 Sep 2032	810,854
15 Mar 2033	810,854
15 Sep 2033	810,854
15 Mar 2034	810,854
15 Sep 2034	810,854
15 Mar 2035	810,854
15 Sep 2035	810,854
15 Mar 2036	810,854
15 Sep 2036	810,854
15 Mar 2037	810,854
15 Sep 2037	810,854
15 Mar 2038	810,854
15 Sep 2038	810,854
15 Mar 2039	810,854
15 Sep 2039	810,854
15 Mar 2040	810,854
15 Sep 2040	810,854
15 Mar 2041	810,854
15 Sep 2041	810,854

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 Mar 2042	810,854
15 Sep 2042	810,854
15 Mar 2043	810,854
15 Sep 2043	810,854
15 Mar 2044	810,854
15 Sep 2044	810,854
15 Mar 2045	810,854
15 Sep 2045	810,854
15 Mar 2046	810,854
15 Sep 2046	810,862
TOTAL	38,921,000

* The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

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 disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Interest Charge

3. The amount allocated to Category 5 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. 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, by notice to 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, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

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

Retroactive Financing

6. Withdrawals from the Loan Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with items to be retroactively financed, subject to a maximum amount equivalent to 10% of the Loan amount.

Condition for Withdrawals from Loan Account

7. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from Category 1A until (a) the Subsidiary Loan Agreement, satisfactory to ADB, shall have been duly executed and delivered and (b) a form of Subproject Financing Agreement shall have been finalized in form and substance satisfactory to ADB.

8. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from Category 1A in respect of a Subproject unless and until (a) a relevant WUA is constituted as a legal entity with WUSC authorized to act on its behalf; (b) a legally binding and operative Management Agreement and Subproject Financing Agreement have been executed by the applicable WUSC or Local Body, on terms and conditions acceptable to ADB; and (c) the relevant WUSC or Local Body has taken all necessary steps to (i) acquire the required land, rights in land and water, and rights-of-way to carry out expeditious implementation of the Subproject; and (ii) obtain all required permits in connection therewith.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Third Small Towns Water Supply and Sanitation Sector Project)				
Number	Item	Total Amount Allocated for ADB Financing (SDR)		Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Works	25,104,000		
1A	Civil Works- Water Supply and Sanitation Systems (including OBA and rehabilitation) *		23,807,000	73% of total expenditure claimed
1B	Civil Works- DWSS Building		1,297,000	86% of total expenditure claimed
2	Consulting Services and Capacity Building	5,125,000		88% of total expenditure claimed
3	Incremental recurrent costs	1,232,000		57% of total expenditure claimed
4	Vehicles and Office Equipment	454,000		100% of total expenditure claimed
5	Interest During Construction	1,038,000		100% of total amount due
6	Unallocated	5,968,000		
	Total	38,921,000		

* Subject to the condition for withdrawal described in paragraphs 7 and 8 of Schedule 3.

SCHEDULE 4

Procurement of Goods, Works and Consulting Services

General

1. The procurement of Goods, Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:
 - (a) International Competitive Bidding;
 - (b) National Competitive Bidding;
 - (c) Shopping; and
 - (d) Community Participation in Procurement.
4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Domestic Preference

5. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

National Competitive Bidding

6. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Borrower and ADB.

Community Participation in Procurement

7. The Borrower may use community participation in procurement for Works contracts for septage management facilities, sanitary facilities, or related facilities in accordance with the agreed procedures set out in the Procurement Plan.

Conditions for Award of Contract

8. The Borrower shall not award any Works contract for a Subproject which involves environmental impacts until the Borrower has:

- (a) obtained ADB's clearance of the relevant IEE or EIA;
- (b) obtained the final approval of the relevant IEE or EIA from the Borrower's Ministry of Science, Technology and Environment; and
- (c) incorporated the relevant provisions from the EMP into the Works contract.

9. The Borrower shall not award any Works contract for a Subproject which involves involuntary resettlement impacts until the Borrower has prepared and submitted to ADB the final RP for such Subproject based on the Subproject's detailed design, and obtained ADB's clearance of such RP.

10. The Borrower shall not award any Works contract for a Subproject which involves impacts on indigenous peoples until the Borrower has prepared and submitted to ADB the final IPP and obtained ADB's clearance of such IPP.

Consulting Services

11. Except as ADB may otherwise agree and except as set forth in the paragraphs below, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

12. The Borrower shall recruit the individual consultants for sanitation management and institutional development support related services in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

13. (a) The Borrower shall ensure that all Goods and Works procured (including without limitation 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.

(b) The Borrower shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

14. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the Consulting Services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

ADB's Review of Procurement Decisions

15. Contracts procured under international competitive bidding procedures and contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

SCHEDULE 5

Execution of Project and Operation of Project Facilities; Financial Matters

Implementation Arrangements

1. The Borrower and TDF shall 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.

Coordination Among the Borrower's Agencies

2. The Borrower is fully committed to the Project and shall ensure that all its ministries, agencies and divisions involved in the implementation of the Project, including the Local Bodies and WUAs, give their full cooperation to ensure smooth implementation of the Project. DWSS and TDF shall disburse proceeds of the Loan under the Subproject Financing Agreement on a timely basis to WUAs or Local Bodies, as applicable, for the implementation of the Subprojects.

Environment

3. The Borrower shall ensure that the preparation, design, construction, implementation, operation, maintenance and decommissioning of each Subproject 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; (c) the EARF; and (d) all measures and requirements set forth in the respective IEE or EIA, EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

4. The Borrower shall ensure that all land and all rights-of-way required for the Project, each Subproject and all Project facilities 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; (c) the RF; and (d) all measures and requirements set forth in the respective RP, and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

5. The Borrower shall ensure that the Involuntary Resettlement Safeguards and the RF are followed in any involuntary or voluntary land acquisitions or government land clearing activities in preparation for the future Subproject or any component of such future Subproject.

6. Without limiting the application of the Involuntary Resettlement Safeguards, the RF or the RP, the Borrower shall ensure that no physical or economic displacement takes place in connection with a Subproject until:

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

Indigenous Peoples

7. The Borrower shall ensure that the preparation, design, construction, implementation and operation of the Project, each Subproject and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to indigenous peoples; (b) the Indigenous Peoples Safeguards; (c) the IPPF; and (d) all measures and requirements set forth in the respective IPP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Human and Financial Resources to Implement Safeguards Requirements

8. The Borrower shall make available necessary budgetary and human resources to fully implement the EMPs, the RPs and the IPPs.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

9. The Borrower shall 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 IEE or EIA, the EMP, IPP, 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 IEE or EIA, the EMP, the RP or the IPP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

10. The Borrower shall do the following:
- (a) submit semiannual Safeguards Monitoring Reports 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 IEE or EIA, the EMP, the IPP or the RP, 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 EMP, IPP, or the RP promptly after becoming aware of the breach.

Prohibited List of Investments

11. The Borrower shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor Standards

12. The Borrower shall ensure that Works contracts and bidding documents under the Project include specific provisions requiring contractors to comply with all (a) applicable labor laws and core labor standards on (i) prohibition of child labor as defined in national legislation for construction and maintenance activities; (ii) equal pay for equal work of equal value regardless of gender, ethnicity or caste; and (iii) elimination of forced labor; and (b) the requirement to disseminate information on sexually transmitted diseases including HIV/AIDS to employees and local communities.

Gender and Development

13. The Borrower shall ensure that (a) the GESI Action Plan 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 GESI Action Plan; (c) adequate resources are allocated for implementation of the GESI Action Plan; and (d) progress on implementation of the GESI Action Plan, including progress toward achieving key gender outcome and output targets, is regularly monitored and reported to ADB.

Counterpart Support

14. The Borrower shall make available all counterpart funds required for timely and effective implementation of the Project, including any funds required to meet additional costs arising from unforeseen circumstances.

Project Website

15. Within 12 months of Effective Date, DWSS shall create a Project website to disclose information about various matters on the Project, including procurement. With regard to procurement, the website shall include information on the list of participating bidders, name of the winning bidder, basic details on bidding procedures, amount of contract awarded, and the list of goods and services procured.

OBA

16. The Borrower shall develop and implement OBA in accordance with the guidelines for OBA to be set out in the PAM to ensure delivery of sanitation services primarily to the poor and vulnerable groups in Project towns.

Financial Covenants

17. The Borrower shall cause TDF to implement adequate loan monitoring, recovery and collection mechanisms to ensure that its aggregate recovery rate of the subloans under Subproject Financing Agreements for any financial year does not fall below 70%, where recovery rate is calculated as: (the total collections from WUAs or Local Bodies during the year under the Subproject Financing Agreements)/ (current and arrear demands raised to WUAs or Local Bodies during the year).

18. The Borrower shall ensure that TDF maintains its own financial sustainability by (a) making adequate provisions for nonperforming loans, (b) maintaining a debt-equity ratio of 80:20 (i.e., TDF shall not incur any debt, if after the incurrence of such debt the debt-equity ratio shall be greater than 80:20) and (c) instituting and observing such other due diligence and good banking practices as required for a prudent financial institution. For purposes of this paragraph, the term 'debt' means any indebtedness of TDF maturing by its terms more than one year after the date on which it is originally incurred and 'equity' means the sum of the total impaired paid-up capital, retained earnings and reserves of TDF not allocated to cover specific liabilities.

Governance

19. The Borrower shall cause all participating WUAs and Local Bodies to implement appropriate measures necessary to maintain at all time a sufficient level of cash flow to meet the expected expenditures including the costs of operation and maintenance and debt service.

20. The Borrower shall cause WUAs and Local Bodies to make available, on written request, all records of its financial transactions to any auditor appointed by the DWSS.

21. To ensure financial sustainability of Subprojects, TDF shall (a) examine the Subproject costs; (b) review the financial and economic viability of each Subproject; and (c) provide subloans to WUAs and Local Bodies pursuant to Subproject Financing Agreements in line with the terms and conditions set forth in this Loan Agreement.

22. The Borrower shall ensure that the WUAs and Local Bodies, and TDF agree on the proportion of cost-sharing for each Subproject as set forth in the PAM. TDF shall ensure that WUAs and Local Bodies secure sufficient budget allocation to cover the repayment of their subloans, operations and maintenance among other expenditures, through tariff collection for water supply and/or other measures.

23. TDF shall provide advisory services for each Subproject with respect to WUSCs' and Local Bodies' financial matters related to tariff and accounting which include: (a) recommending appropriate levels of water tariffs to WUSCs and Local Bodies, in line with the terms and conditions and the tariff guidelines set forth in the Management Agreement; (b) ensuring that the WUSCs and Local Bodies take appropriate measures to effect proper collection of outstanding water bills; and (c) developing, as appropriate, a suitable tariff accounting framework for WUSCs and Local Bodies and monitoring water tariffs in the Project towns to ensure that they are collected and recorded appropriately.

24. Furthermore, in the event of default or significant delay in repayment in any manner by WUAs and/or Local Bodies under the existing Subloan Agreement (as defined and used in the Second Small Towns Water Supply and Sanitation Sector Project, Grant Number 0157-NEP) or any Subproject Financing Agreements which, in the reasonable opinion of ADB will or may adversely affect the repayment or performance of TDF's obligations under this Loan Agreement, Project Agreement or Subsidiary Loan Agreement, the Borrower shall agree to modify the repayment schedule or convert to equity any such TDF loan, as necessary, in such manner as to maintain TDF's debt-equity ratio of at least 80:20.

Governance and Anticorruption

25. The Borrower, TDF, WUAs, and Local Bodies 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.

26. In addition, the Borrower, TDF, WUAs, and Local Bodies shall comply with the provisions of Nepal's Anticorruption Act 2059.

27. The Borrower, TDF, WUAs, and Local Bodies shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to review 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.

Review of Town Development Fund Act and Other Related Policies and Regulations

28. The Borrower shall review the Town Development Fund Act, 2053 (1997) and other relevant policies and regulations of TDF, and cause revisions to the same, as necessary to provide flexibility to TDF to reinvest its own funds in water supply and sanitation sector.