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LOAN NUMBER 3612-IND

LOAN AGREEMENT  
(Ordinary Operations)

(Bihar Urban Development Investment Program – Project 2)

between

INDIA

and

ASIAN DEVELOPMENT BANK

DATED 23 FEBRUARY 2018

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IND 41603

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated 23 February 2018 between INDIA acting by its President ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

**WHEREAS**

(A) by a framework financing agreement dated 31 January 2012 between the Borrower and ADB, ADB has agreed to provide a multitranche financing facility to the Borrower for the purposes of financing projects under the Bihar Urban Development Investment Program ("Investment Program");

(B) by a periodic financing request dated 10 July 2017 submitted by the Borrower ("PFR"), the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(C) the Project will be carried out by the State of Bihar ("State") acting through the Urban Development and Housing Department ("UDHD"), and for this purpose the Borrower will make available to the State the proceeds of the Loan provided for herein upon terms and conditions mutually satisfactory to ADB and the Borrower; and

(D) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB on the one hand, and the State and Bihar Urban Infrastructure Development Corporation ("BUIDCo") on the other hand.

NOW THEREFORE the parties hereto agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of ADB's Ordinary Operations Loan Regulations dated 1 January 2017 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

- (a) "BUIDCo" means the Bihar Urban Infrastructure Development Corporation acting as an implementing agency responsible for the day to day implementation of the Project;

- (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 as described in paragraph 2 of Schedule 1 to this Loan Agreement;
- (d) "EA" or "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means the State acting through the UDHD or any successor thereto acceptable to ADB that is responsible for carrying out the Project;
- (e) "Environmental Assessment and Review Framework" or "EARF" means the environmental assessment and review framework for the Investment Program, including any update thereto, prepared and submitted by the Borrower through the EA and cleared by ADB, and incorporated by reference in the FFA;
- (f) "Environmental Management Plan" or "EMP" means each environmental management plan for the Project, including any update thereto, incorporated in an IEE;
- (g) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (h) "Facility" means the multitranche financing facility provided by ADB to the Borrower for purposes of financing projects under the Investment Program;
- (i) "FFA" means the framework financing agreement dated 31 January 2012 between ADB and the Borrower with respect to the Facility;
- (j) "Financing Arrangements" means the arrangements between the Borrower and the State as per current policy of the Borrower, and acceptable to ADB;
- (k) "GAP" means the gender action plan prepared for the Project, including any update thereto, and agreed to between the Borrower and ADB;
- (l) "GIS" means geographic information system;
- (m) "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;
- (n) "IEE" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower

through the State pursuant to the requirements set forth in the EARF and cleared by ADB;

- (o) "Investment Program" means the Bihar Urban Development Investment Program;
- (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) "IPPF" means the indigenous peoples planning framework for the Investment Program, including any update thereto, prepared and submitted by the Borrower through the State and cleared by ADB, and incorporated by reference in the FFA;
- (r) "km" means kilometer;
- (s) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (t) "MLD" means millions of liters per day;
- (u) "PAM" means the project administration manual for the Project dated 19 September 2017 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;
- (v) "PFR" means the periodic financing request submitted or to be submitted by the Borrower, for the purposes of each loan under the Facility, and for the purpose of this Loan Agreement means the periodic financing request dated 10 July 2017;
- (w) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);
- (x) "Procurement Plan" means the procurement plan for the Project dated 19 September 2017 and agreed between the Borrower, the State and ADB, and included in the PAM, as also updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;
- (y) "Project facilities" means the facilities to be constructed and the Goods to be provided under the Project;
- (z) "RF" means the resettlement framework for the Investment Program, including any update thereto, prepared and submitted by the Borrower through the EA and cleared by ADB, and incorporated by reference in the FFA;

- (aa) "RP" means the resettlement plan for the Project, including any update thereto, prepared and submitted by the Borrower through the EA pursuant to the requirements set forth in the RF and cleared by ADB;
- (bb) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);
- (cc) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of, and compliance with, the EMP, and the RP, including any corrective and preventative actions;
- (dd) "State" means the State of Bihar;
- (ee) "Subproject" means each subproject that is in compliance with the "Selection Criteria and Approval Procedure for Subprojects" attached as Schedule 4 to the FFA, and as further described in the PAM;
- (ff) "UDHD" means the Urban Development and Housing Department of the State of Bihar;
- (gg) "ULBs" means the urban local bodies; and
- (hh) "Works" means construction or civil works to be financed out of the proceeds of the 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.

## **ARTICLE II**

### **The Loan**

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of eighty-four million Dollars (\$84,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 20 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (b) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of:

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

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

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 April and 15 October in each year.

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

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

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

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

### **ARTICLE III**

#### **Use of Proceeds of the Loan**

Section 3.01 The Borrower shall make the proceeds of the Loan available to the EA upon terms and conditions mutually satisfactory to ADB and shall cause the EA to apply such proceeds to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured by the EA, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 31 December 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 of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed by the EA, 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. ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

Section 4.04. In so far as it relates to the Project, the Borrower shall cause the State to take all actions which shall be necessary on its part to enable the EA to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) In so far as it relates to the Project, the Borrower shall exercise its rights under the Financing Arrangements in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) In so far as it relates to the Project, no rights or obligations under the Financing Arrangements shall be assigned, amended, abrogated or waived without prior notice to ADB.

**ARTICLE V****Effectiveness**

Section 5.01. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

**ARTICLE VI****Miscellaneous**

Section 6.01. The Secretary, Additional Secretary, Joint Secretary, Director, or Deputy Secretary, in the Department of Economic Affairs of the Ministry of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

**For the Borrower**

The Secretary to the Government of India  
Department of Economic Affairs  
Ministry of Finance  
North Block  
New Delhi – 110001  
India

Facsimile Number:

(91-11) 2309-4075

**For ADB**

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

Facsimile Numbers:

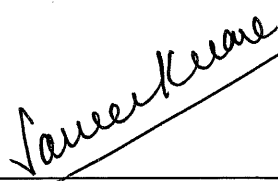
(63-2) 636-2444  
(63-2) 636-2293.



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.

INDIA

By

  
\_\_\_\_\_  
Sameer Kumar Khare  
Joint Secretary (MI)  
Department of Economic Affairs

ASIAN DEVELOPMENT BANK

By

  
\_\_\_\_\_  
Kenichi Yokoyama  
Country Director

## SCHEDULE 1

### Description of the Project

1. The objective of the Project will be improved access to sustainable urban services especially for vulnerable households in Bhagalpur and Gaya.
2. The Project shall comprise the following components that will also be assisted through provision of Consulting Services as applicable:

Component 1- Construction and rehabilitation of water supply infrastructure.

This component includes:

- a) In Gaya: (i) construction of 24 tube wells augmenting water source by 58 MLD; (ii) rehabilitation of 29 tube wells with combined 68 MLD capacity; (iii) construction of water distribution system including transmission mains (approximately 30.2 km) and distribution network (approximately 447.8 km); (iv) provision of 75,000 household connections; (v) construction of 200 public stand posts; (vi) construction of storage reservoirs totaling 26.53 MLD capacity; (vii) construction of 32 monitoring stations; (viii) construction of 6 customer service centers; (ix) construction of 11 pump houses; and (x) installation of 92 electromagnetic flow meters.
- b) In Bhagalpur: (i) construction of one new 140 MLD river water intake; (ii) one jack well and 3 pump houses; (iii) installation of 6 raw water pumps and 13 clear water pumps; (iv) construction of approximately 2.55 km of raw water transmission mains and approximately 28.7 km clear water transmission mains; (v) construction of a 90 MLD capacity water treatment plant; (vi) construction of 9.1 MLD capacity clear water reservoir; and (vii) installation of 'supervisory control and data acquisition' system.

Component 2- Improving staffing and skills for water supply operations. In Gaya this includes: (i) engagement of build and operation contractors for operations and maintenance of the renewed water supply system based on the national service standards; (ii) preparation of operations and maintenance manuals for the Gaya water supply system; (iii) development of georeferenced cadastral maps with thematic layers on a GIS domain; (iv) development of an integrated water supply and sanitation asset and consumer database; (v) development of a water supply and sewerage utility management system; and (vi) supervisory control and data acquisition with programmable logic controllers.

Component 3- Improving systems for water supply service delivery management. This includes for Gaya and Bhagalpur combined: (i) training of 400 ULB staff on management and operations and maintenance of urban infrastructure including water supply systems; (ii) training of 400 staff on program and operate supervisory control and data acquisition system; (iii) operationalizing new accounting system in Gaya; (iv) implementation of user

charges for water supply; (v) preparation of annual water operations financial statements; and (vi) conducting public consultation and awareness campaigns of project information.

3. The Project is expected to be completed by 30 September 2021.

**SCHEDULE 2****Amortization Schedule**

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

<u>Date Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 April 2023	2.500000
15 October 2023	2.500000
15 April 2024	2.500000
15 October 2024	2.500000
15 April 2025	2.500000
15 October 2025	2.500000
15 April 2026	2.500000
15 October 2026	2.500000
15 April 2027	2.500000
15 October 2027	2.500000
15 April 2028	2.500000
15 October 2028	2.500000
15 April 2029	2.500000
15 October 2029	2.500000
15 April 2030	2.500000
15 October 2030	2.500000
15 April 2031	2.500000
15 October 2031	2.500000
15 April 2032	2.500000
15 October 2032	2.500000
15 April 2033	2.500000
15 October 2033	2.500000
15 April 2034	2.500000
15 October 2034	2.500000
15 April 2035	2.500000
15 October 2035	2.500000
15 April 2036	2.500000
15 October 2036	2.500000
15 April 2037	2.500000

<u>Date Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 October 2037	2.500000
15 April 2038	2.500000
15 October 2038	2.500000
15 April 2039	2.500000
15 October 2039	2.500000
15 April 2040	2.500000
15 October 2040	2.500000
15 April 2041	2.500000
15 October 2041	2.500000
15 April 2042	2.500000
15 October 2042	2.500000
Total	100.000000

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

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

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

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

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

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

**SCHEDULE 3****Allocation and Withdrawal of Loan Proceeds****General**

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table).

**Basis for Withdrawal from the Loan Account**

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

**Reallocation**

3. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, in consultation with and by notice to the Borrower and the EA, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures; and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, in consultation with and by notice to the Borrower and the EA, reallocate such excess amount to any other Category.

**Disbursement Procedures**

4. Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook, and detailed arrangements agreed upon between ADB and the Borrower.

**Retroactive Financing**

5. Withdrawals from the Loan Account may be made to finance eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS			
Number	Item	Total Amount Allocated for ADB Financing (\$) Category	Basis for Withdrawal from the Loan Account
1	Works and Equipment	66,983,000	73.5% of total expenditure claimed
2	Project management and design supervision, capacity development and administrative costs	4,800,000	80% of total expenditure claimed
3	Unallocated	12,217,000	
	<b>TOTAL</b>	<b>84,000,000</b>	



## **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. Except as ADB may otherwise agree, Goods and Works shall be procured and Consulting Services shall be selected and engaged only on the basis of the procurement methods and the selection methods set forth below. These methods are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower and EA may only modify the procurement methods and the selection methods or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.
3. 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

4. Goods and Works shall be procured on the basis of the methods of procurement set forth below:
  - (a) International Competitive Bidding;
  - (b) National Competitive Bidding; and
  - (c) Shopping.

#### 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.

#### National Competitive Bidding

6. The State's standard bidding documents and procurement procedures, used for national competitive bidding (civil works / goods) under ongoing ADB Loan No. 2861-IND as in use by the State were reviewed by ADB. These were found consistent with ADB's requirements, and shall apply to the Project. Modifications if any to such bidding documents will be subject to mutual agreement between the Borrower, EA and ADB.

#### Conditions for Award of Contract; commencement of Works

7. The Borrower shall ensure, or cause the EA and BUIDCo to ensure, that no Works contract is awarded for a Subproject which involves environmental impacts until the EA and/or BUIDCo has incorporated the relevant provisions from the EMP into the Works contract.

8. (a) The Borrower shall ensure, or cause the EA and BUIDCo to ensure, that no commencement of Works is allowed under any Works contract under any Subproject which involves environmental impacts and requires environmental clearances, until the EA and/or BUIDCo has obtained the final approval of (i) the IEE from ADB; and (ii) environmental clearance including approval of the environmental assessment report, from the relevant environment authority of the Borrower and the State.

(b) The Borrower shall ensure, or cause the EA and BUIDCo to ensure, that no Works under Bhagalpur water supply subproject 2 shall commence until the IEE and EMP have been updated and cleared by ADB after the finalization of the detailed design for the Works.

9. The Borrower shall ensure, or cause the EA and BUIDCo to ensure, that no Works contract involving involuntary resettlement impacts is awarded until the EA and/or BUIDCo has prepared and submitted to ADB the final RP for relevant Subproject based on the Subproject's detailed design, and obtained ADB's clearance of such RP.

#### Consulting Services

10. Except as set forth in the paragraph below, the EA and BUIDCo shall apply Quality- and Cost-Based Selection for Consulting Services.

11. The Borrower shall ensure or cause the EA and BUIDCo to recruit the individual consultants in accordance with procedures acceptable to ADB for recruiting individual consultants.

#### Industrial or Intellectual Property Rights

12. (a) The Borrower shall ensure, or cause the EA and BUIDCo to 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, or cause the EA and BUIDCo to 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.

13. The Borrower shall ensure, or cause the EA and BUIDCo to 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

14. 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; Financial Matters**

#### Implementation Arrangements

1. The Borrower, the EA, and BUIDCo 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, the State, BUIDCo and ADB. In the event of any discrepancy between the PAM and this Loan Agreement and the Project Agreement, the provisions of this Loan Agreement and the Project Agreement shall prevail.

2. (a) The EA and BUIDCo shall ensure that towards smooth implementation of the Project, grievances if any from stakeholders, relating to any Subproject implementation or use of funds are addressed effectively and efficiently.

(b) The Borrower shall ensure that the EA and BUIDCo comply with all the requirements and obligations on their part as included in this Loan Agreement and the Project Agreement to meet the objectives of the Project in a timely and efficient manner.

#### Subproject Selection and Implementation

3. The Borrower shall cause the EA and BUIDCo to ensure that all Subprojects are selected, processed for approval, and implemented in accordance with the criteria and procedures included under Schedule 4 to the FFA and safeguard requirements included under Schedule 5 to the FFA.

#### Safeguards

##### Environment

4. The Borrower shall cause the EA and BUIDCo to ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project, and all Subprojects' facilities comply with (a) all applicable laws and regulations of the Borrower and the State 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 and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

##### Land Acquisition and Involuntary Resettlement

5. The Borrower shall ensure, or cause the EA and BUIDCo to ensure, that all land and all rights-of-way required for the Project, and all Project/Subproject 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 and the EA 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 a Safeguards Monitoring Report.

6. Without limiting the application of the Involuntary Resettlement Safeguards, the RF or the RP, the Borrower shall ensure, or cause the EA and BUIDCo to ensure, that no physical or economic displacement takes place in connection with any 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.

#### Human and Financial Resources to Implement Safeguards Requirements

7. The Borrower shall ensure, or cause the EA and BUIDCo to ensure, that all necessary budgetary and human resources to fully implement the EMP and RP are made available.

#### Indigenous Peoples

8. The Borrower shall ensure, or cause the EA and BUIDCo to ensure, that the Project does not involve any indigenous peoples risks or impacts within the meaning of the SPS. In the event that the Project does have any such impact, the Borrower shall take, or cause the EA and BUIDCo to take, all steps required to ensure that the Project complies with (a) all applicable laws and regulations of the Borrower and the State relating to indigenous peoples; (b) the Indigenous Peoples Safeguards; and (c) the IPPF.

#### Safeguards – Related Provisions in Bidding Documents and Works Contracts

9. The Borrower shall ensure, or cause the EA and BUIDCo to ensure, that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures and requirements relevant to the contractor set forth in the IEE, the EMP, and the RP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set out in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide BUIDCo 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, the EMP, or the RP;
- (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, or cause the EA and BUIDCo to ensure, the following:
- (a) submit semi-annual 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, the EMP, 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 or the RP promptly after becoming aware of the breach.

Prohibited List of Investments

11. The Borrower shall ensure, or cause the EA and BUIDCo to ensure, that no proceeds of the Loan under the Project are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Procurement

12. The EA and/or BUIDCo shall announce the Project and business opportunities (i.e., invitation of potential bids) associated with the Project on BUIDCo's website. The website shall disclose the following information in relation to works, goods and services procured for the Project and Subprojects: (a) the list of participating bidders; (b) the name of the selected bidder; (c) the amount of the contracts awarded; and (d) the works, goods and services procured. In accordance with the Procurement Guidelines, the published information for International Competitive Bidding contracts shall also include the bid prices as read out at bid opening, the reasons for rejection of unsuccessful bidders, and the duration of the awarded contract.

Labor Standards

13. The Borrower shall ensure, or cause the EA and BUIDCo to ensure, that Works contracts under the Project follow all applicable labor laws of the Borrower and the EA and that these further include provisions to the effect that contractors: (a) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction; and (b) follow and implement all statutory provisions on labor (including not employing or using children as labor, and equal pay for equal work), health, safety, welfare, sanitation, and working conditions. Such contracts shall also include clauses for termination in case of any breach of the stated provisions by the contractors.

Gender and Development

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

Coordination with Ongoing Initiatives

15. Notwithstanding the generality of the paragraph 1 of this Schedule 5, the Borrower shall ensure or cause the EA to ensure that:

- (a) for development and installation of GIS based water management system, georeferenced cadastral maps of Bhagalpur and Gaya with thematic layers on a GIS domain shall be made available to the consultants and contractors engaged under the Facility; and
- (b) progress in adoption of the accrual based double entry accounting system software by the ULBs of Bhagalpur and Gaya, shall be made available to the consultants and contractors engaged under the Facility.

Skills Upgrading

16. The EA shall ensure that the candidates for the skills upgrading program under the Project are selected from the officials in the municipal cadre in Bhagalpur and Gaya to ensure that the trained human resources will be retained in ULBs.

17. The EA shall ensure and cause the ULBs of Bhagalpur and Gaya to undertake each of the activities listed in the Urban Service Financial Governance and Delivery Improvement Action Plan as set out in Schedule 1 to the FFA, and implement these in accordance with the time frame set against the relevant measure.

Sustainability

18. The EA shall ensure that the water tariff collection by ULBs in Bhagalpur and Gaya shall have commenced by no later than 1 June 2021, and shall include updates on the progress of water tariff collection in its quarterly progress reports to ADB. The EA shall ensure that progress is made towards achieving a level of water tariff collection that is adequate to cover the full operation and maintenance of the water supply operations.

Undertakings

19. The Borrower, the EA and BUIDCo shall carry out the relevant undertakings included in Schedule 6 to the FFA on a timely basis.

Counterpart Support and Financial Management

20. The Borrower shall ensure or cause the EA to make available the Loan proceeds to BUIDCo under appropriate arrangements acceptable to ADB, and ensure:

- (a) sufficient counterpart funds are allocated from its budget for each fiscal year, in a timely manner, for the efficient implementation of the Project;
- (b) adequate funds towards operations and maintenance of the Project facilities, through budgetary allocations or other means, to be provided to BUIDCo, during and after the Subprojects' completion; and
- (c) in addition to the foregoing, the EA shall ensure that BUIDCo has sufficient funds to satisfy its liabilities arising from any Works, Goods and/or Consulting Services contract.

Governance and Anticorruption

21. The Borrower shall ensure, or cause the EA and BUIDCo to ensure, compliance with ADB's Anticorruption Policy (1998, as amended to date) and (a) shall ensure that the anticorruption provisions acceptable to ADB, the Borrower, the EA and BUIDCo are included in all bidding documents and contracts financed by ADB in connection with the Project, including provisions specifying the right of ADB to review and examine the records and accounts of BUIDCo and all contractors, suppliers, consultants, and other service providers as they relate to the Subprojects and the Project, and as included in the PAM; (b) shall allow and assist ADB's representatives to carry out random spot checks on the work in progress and utilization of funds for the Project; (c) 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 (d) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation, and as included in the PAM.