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LOAN NUMBER 2059-NEP(SF)

AMENDED AND RESTATED LOAN AGREEMENT  
(Special Operations)  
(Kathmandu Valley Water Services Sector Development Project)

between

NEPAL

and

ASIAN DEVELOPMENT BANK

DATED 6 April 2008

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LAS:NEP 36609

**AMENDED AND RESTATED LOAN AGREEMENT  
(Special Operations)**

AMENDED AND RESTATED LOAN AGREEMENT dated 6 April 2008 between NEPAL (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called the Bank).

WHEREAS

(A) by a loan agreement dated 24 January 2001 between the Borrower and the Bank (hereinafter called the Melamchi Loan Agreement), the Bank agreed to provide the Borrower from the Bank's Special Fund resources an amount in various currencies equivalent to ninety three million, two hundred and fifty three thousand Special Drawing Rights (SDR 93,253,000) for the purposes of the Melamchi Water Supply Project, as more fully described in Schedule 1 to the Melamchi Loan Agreement;

(B) by a loan agreement dated 8 April 2004 between the Borrower and the Bank (hereinafter called the Program Loan Agreement), the Bank had agreed to provide to the Borrower from the Bank's Special Fund resources an amount in various currencies equivalent to three million four hundred seventy-three thousand Special Drawing Rights (SDR 3,473,000) for the purposes of the Kathmandu Valley Water Services Sector Development Program (hereinafter called the Program), as more fully described in Schedule 1 to the Program Loan Agreement;

(C) to implement the Program, the Bank, of the first part, and the Melamchi Water Supply Development Board ((hereinafter called the MWSDB) of the second part, have entered into a Program Agreement (hereinafter called the Program Agreement) dated 8 April 2004; provided, however, that upon establishment, the Kathmandu Valley Water Supply Management Board (hereinafter called KVWSMB) and the Water Utility Operator (hereinafter called the WUO) shall take over the implementation of the Program from the MWSDB and shall assume all rights and obligations under the Program Agreement as if originally named therein as parties thereto;

(D) by a loan agreement between the Bank and the Borrower dated 8 April 2004 (hereinafter called the Original Loan Agreement), the Bank Agreed to provide a loan to the Borrower for the purposes of financing the Kathmandu Valley Water Services Sector Development Project (hereinafter called the Project) as more fully discussed in Schedule 1 hereto;

(E) the Bank had, on the basis inter alia of the foregoing, agreed to make a loan to the Borrower from the Bank's Special Fund resources upon the terms and conditions set forth in the Original Loan Agreement and in the Project Agreement (hereinafter called the Project Agreement) dated 8 April 2004 between the Bank, of the first part, and the MWSDB and the NWSC of the second part; provided, however that upon establishment, the KVWSMB shall be made a party to the Project Agreement as if originally named therein as a party thereto and the WUO shall assume all rights and obligations of the MWSDB and the NWSC under the Project Agreement as if originally named therein as a party thereto;

(F) the Borrower and the Bank have agreed to amend certain terms and conditions of the Melamchi Loan Agreement as set out in the amended and restated Melamchi Loan Agreement of even date herewith (hereinafter called the Amended and Restated Melamchi Loan Agreement);

(G) due to the delay in implementation of the Project, certain events have occurred which require the Original Loan Agreement to be amended and restated as set out herein;

(H) the Bank has agreed to continue to provide the Loan to the Borrower from the Bank's Special Funds resources upon the terms and conditions of the Original Loan Agreement, as such agreement is amended and restated herein and the Project Agreement;

(I) the Bank confirms that the conditions for loan effectiveness set out in Sections 6.01 (other than paragraph (e) thereof) and 6.02 (other than paragraph (d) thereof) have been satisfied; and

(J) the Parties agree that the Original Loan Agreement is hereby amended and restated upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

## **ARTICLE I**

### **Loan Regulations; Definitions**

Section 1.01. All the provisions of the Special Operations Loan Regulations of the Bank, dated 7 December 1982, 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 thereof (said Special Operations Loan Regulations as so modified being hereinafter called the Loan Regulations):

(a) Section 2.01(17) is deleted and the following is substituted therefor:

17. The term "dollar" or "dollars" or the sign "\$" means dollar or dollars in the currency of the United States of America.

(b) Section 2.01(27) is deleted and the following is substituted therefor:

27. The term "interest charge" means a charge made on the Loan pursuant to Section 3.02, and includes a portion to cover administrative expenses and a portion that does not.

(c) The term "service charge" wherever it appears in the Loan Regulations shall be substituted by the term "interest charge".

(d) Section 4.05 is deleted and Sections 4.06, 4.07 and 4.08 are renumbered as Sections 4.05, 4.06 and 4.07, respectively.

(e) Section 5.02 is deleted and the following is substituted therefor:

**Commitment Letters by the Bank.** Upon the Borrower's request, the Bank may issue commitment letters to pay amounts in respect of the cost of goods and services to be financed under the Loan Agreement notwithstanding any subsequent suspension or cancellation.

(f) Section 5.03 is deleted and the following is substituted therefor:

**Application for Withdrawal.** When the Borrower shall desire to withdraw any amount from the Loan Account or to request the Bank to issue commitment letters pursuant to Section 5.02, the Borrower shall deliver to the Bank an application in such form and containing such statements and agreements, as the Bank shall reasonably request. Except as the Bank and the Borrower shall otherwise agree, applications for withdrawal, with the necessary documentation as hereinafter in this Article provided, shall be made promptly in relation to expenditures for the Project.

(g) Section 8.03 is deleted and the following is substituted therefor:

**Cancellation by the Bank.** If (i) the right of the Borrower to make withdrawals from the Loan Account shall have been suspended with respect to any amount of the Loan for a continuous period of thirty (30) days, or (ii) at any time the Bank determines, after consultation with the Borrower, that any amount of the Loan will not be required for the purposes of the Project, or (iii) at any time the Bank determines, with respect to any contract to be financed out of the proceeds of the Loan, that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Loan during the procurement/consultant selection or the execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation, or (iv) at any time, the Bank determines that the procurement of any contract to be financed out of the proceeds of the Loan is inconsistent with the procedures set forth or referred to in the Loan Agreement, or (v) by the date specified in the Loan Agreement as the closing date for withdrawals an amount of the Loan shall remain unwithdrawn from the Loan Account, the Bank may by notice to the Borrower and the Guarantor, if any, terminate the right of the Borrower to make withdrawals with respect to such amount or contract. Upon the giving of such notice, the amount of the Loan or the relevant portion thereof shall be cancelled.

- (h) Section 8.04 is deleted and the following is substituted therefor:

**Amounts Subject to Commitment Letters.** No cancellation or suspension shall apply to amounts subject to any commitment letter issued by the Bank pursuant to Section 5.02 except as expressly provided in such commitment letter.

Section 1.02. Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in Section 1.02 of the Program Loan Agreement, the Loan Regulations, and in the Amended and Restated Melamchi Loan Agreement have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) "CBP Team" means the team of senior managers and consultants to be recruited by WUO on terms and conditions satisfactory to the Bank which shall include a general manager, finance manager an operations manager and project consultants, and who will provide capacity building and public private partnership support to the WUO;

(b) "KVWSMB Project Agreement" means the agreement to be entered into between the Bank, of the first part, and, KVWSMB of the second part, pursuant whereto KVWSMB agrees to implement certain components of the Project;

(c) "KVWSMB Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and the KVWSMB, referred to in Section 3.01 of this Loan Agreement;

(d) "NWSC Novation Agreement" means the agreement to be entered into between the Borrower, NWSC and the WUO, whereby there is novated to WUO the benefit and obligations of NWSC under the NWSC Subsidiary Loan Agreement, in a form satisfactory to the Bank;

(e) "NWSC Subsidiary Loan Agreement" means the agreement between the Borrower and the NWSC dated 5 October 2004, referred to in Section 3.01 of this Loan Agreement;

(f) "Procurement Plan" means the Procurement Plan for the Project dated 4 April 2008 and agreed between the Borrower and the Bank, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines and other arrangements agreed with the Bank;

(g) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means the MPPW which is responsible for the carrying out of the Project;

(h) "Project facilities" mean facilities provided or to be provided under the Project;

(i) "Subsidiary Loan Agreements" means the NWSC Subsidiary Loan Agreement, KVWSMB Subsidiary Loan Agreement and the WUO Subsidiary Loan Agreement;

(j) "WUO Novation Agreement" means the agreement to be entered into between the Bank, of the first part, and, the WUO of the second part, pursuant to which the WUO shall assume all rights and obligations under the Project Agreement; and

(k) "WUO Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and the WUO, referred to in Section 3.01 of this Loan Agreement.

## **ARTICLE II**

### **The Loan**

Section 2.01. The Bank agrees to lend to the Borrower from the Bank's Special Funds resources an amount in various currencies equivalent to six million nine hundred forty-five thousand Special Drawing Rights (SDR 6,945,000).

Section 2.02. (a) The Borrower shall pay to the Bank an interest charge at the rate of one percent (1%) per annum during the grace period, and one and one-half percent (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 paragraph (a) of this Section means the period prior to payment of the first principal amount of the Loan on the 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 May and 15 November in each year.

Section 2.04. (a) Subject to the provisions of paragraphs (b) and (c) below, 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.

(b) If the Bank shall determine, after due consideration by its Board of Directors, that (i) the Borrower's gross national product per capita (per capita GNP) has exceeded the Bank's per capita GNP operational cutoff in respect of the Bank's Special Funds resources for five consecutive years and (ii) the Borrower has achieved the capacity to borrow from the Bank's ordinary capital resources, the Bank may, by notice to the Borrower, modify the terms of repayment of the Loan by increasing by 100 percent the amount of each maturity due thereafter until the principal amount of the Loan shall have been fully repaid. However, at the request of the Borrower, the Bank may, in lieu of so increasing any such maturity amounts, charge interest, at an annual rate to be agreed between the Borrower and the Bank, on the principal amount of the Loan withdrawn and outstanding from time to time in such a manner and to such extent as to yield the same grant element as would be obtained under the above-stated increase of maturity amounts.

(c) If, at any time after a modification of the lending terms pursuant to the provisions of paragraph (b) above, the Bank shall, after due consideration by its Board of Directors, determine that the Borrower's economic condition has deteriorated significantly, the Bank may, at the request of the Borrower, restore the original lending terms with respect to the remaining amount of the Loan withdrawn and outstanding.

### ARTICLE III

#### Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall make available to (i) NWSC; (ii) KVWSMB, upon establishment of KVWSMB, and (iii) the WUO, upon establishment of the WUO, the proceeds of the Loan in an equal blend of grant and sub-loan (hereinafter called the Sub-Loan). The Borrower shall relend the proceeds of the Sub-Loan to: (i) NWSC in an amount equivalent to three hundred forty-seven thousand Special Drawing Rights (SDR 347,000), under the NWSC Subsidiary Loan Agreement, upon terms and conditions satisfactory to the Bank; (ii) KVWSMB in an amount equivalent to one hundred and four thousand Special Drawing Rights (SDR 104,000), under the KVWSMB Subsidiary Loan Agreement, upon terms and conditions satisfactory to the Bank; and (iii) the WUO in an amount equivalent to six million four hundred ninety-four thousand Special Drawing Rights (SDR 6,494,000), under the WUO Subsidiary Loan Agreement, upon terms and conditions satisfactory to the Bank. Except as the Bank shall otherwise agree, the terms for each of the Sub-Loan shall include interest at the rate of nine percent (9%) per annum and a repayment period of thirty (30) years including a grace period of five (5) years. The Borrower shall bear foreign exchange risk.

(b) The Borrower shall cause the NWSC, KVWSMB and the WUO to apply the proceeds of the Loan 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 goods and services to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such goods and services shall be 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 the Bank.

Section 3.03. Except as the Bank may otherwise agree, all goods and services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 and Schedule 5 to this Loan Agreement. The Bank may refuse to finance a contract where goods or services have not been procured under procedures substantially in accordance with those agreed between the Borrower and the Bank or where the terms and conditions of the contract are not satisfactory to the Bank.

Section 3.04. Except as the Bank may otherwise agree, the Borrower shall cause all goods and services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. Withdrawals from the Loan Account in respect of goods and services shall be made only on account of expenditures relating to

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

Section 3.06. The closing date for withdrawals from the Loan Account for the purposes of Section 8.03 of the Loan Regulations shall be 31 December 2014 or such other date as may from time to time be agreed between the Borrower and the Bank.

## **ARTICLE IV**

### **Particular Covenants**

Section 4.01. (a) The Borrower shall cause the MWSDB, the NWSC, KVWSMB and the WUO to carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental and water supply and wastewater services practices.

(b) In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 6 to this Loan Agreement.

Section 4.02. The Borrower shall make available to the MWSDB, the NWSC, KVWSMB and the WUO promptly as needed, the funds, facilities, services, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 4.03. The Borrower shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.04. The Borrower shall furnish, or cause to be furnished, to the Bank all such reports and information as the Bank shall reasonably request concerning (i) the Loan, and the expenditure of the proceeds and maintenance of the service thereof; (ii) the goods and services financed out of the proceeds of the Loan; (iii) the Project; (iv) the administration, operations and financial condition of the MWSDB, the NWSC, KVWSMB and the WUO and any other agencies of the Borrower responsible for the carrying out of the Project and operation of the Project facilities, or any part thereof; (v) financial and economic conditions in the territory of the Borrower and the international balance-of-payments position of the Borrower; and (vi) any other matters relating to the purposes of the Loan.

Section 4.05. The Borrower shall enable the Bank's representatives to inspect the Project, the goods financed out of the proceeds of the Loan, and any relevant records and documents.

Section 4.06. The Borrower shall take all action which shall be necessary on its part to enable MWSDB and NWSC to perform their obligations under the Project Agreement and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.07. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreements in such a manner as to protect the interests of the Borrower and the Bank and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Loan Agreements shall be assigned, amended, or waived without the prior concurrence of the Bank.

Section 4.08. (a) It is the mutual intention of the Borrower and the Bank that no other external debt owed a creditor other than the Bank shall have any priority over the Loan by way of a lien on the assets of the Borrower. To that end, the Borrower undertakes (i) that, except as the Bank may otherwise agree, if any lien shall be created on any assets of the Borrower as security for any external debt, such lien will ipso facto equally and ratably secure the payment of the principal of, and interest charge and any other charge on, the Loan; and (ii) that the Borrower, in creating or permitting the creation of any such lien, will make express provision to that effect;

(b) The provisions of paragraph (a) of this Section shall not apply to (i) any lien created on property, at the time of purchase thereof, solely as security for payment of the purchase price of such property; or (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

(c) The term "assets of the Borrower" as used in paragraph (a) of this Section includes assets of any political subdivision or any agency of the Borrower and assets of any agency of any such political subdivision, including the NRB and any other institution performing the functions of a central bank for the Borrower.

## ARTICLE V

### **Suspension; Cancellation; 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 8.02(l) of the Loan Regulations:

(a) the Borrower has, in the opinion of the Bank, failed to perform any of its obligations under the Program Loan Agreement;

(b) the Borrower or the NWSC shall have, in the opinion of the Bank, failed to perform any of their obligations under the NWSC Subsidiary Loan Agreement;

(c) the Borrower or KVWSMB shall have, in the opinion of the Bank, failed to perform any of their obligations under the KVWSMB Subsidiary Loan Agreement;

(d) the Borrower or the WUO shall have, in the opinion of the Bank, failed to perform any of their obligations under the WUO Subsidiary Loan Agreement; and

(e) any of the: (i) Act; (ii) NWSC Act; (iii) the articles of association of the WUO; and (iv) the shareholders' agreement of the WUO shall have been repealed, suspended, amended, revoked or superseded in a manner which in the reasonable opinion of the Bank may adversely affect the carrying out of the Project.

Section 5.02. The following is specified as an additional event or 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. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

(a) the Program Loan Agreement shall have been duly executed and delivered on behalf of the Borrower, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled;

(b) the Program Agreement shall have been duly executed and delivered on behalf of the MWSDB and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled;

(c) the NWSC Subsidiary Loan Agreement, in form and substance satisfactory to the Bank, shall have been duly executed and delivered on behalf of the Borrower and the NWSC and shall have become fully effective and binding upon the Borrower and the NWSC in accordance with its terms;

(d) the Request for Proposals documents for the recruitment of the Management Contractor shall have been issued to short-listed companies/consortia, acceptable to the Bank; and

(e) this Amended and Restated Loan Agreement, in form and substance satisfactory to the Bank, shall have been duly executed and delivered by the Bank and the Borrower.

Section 6.02. The following are specified as additional matters, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to the Bank:

(a) that the Program Loan Agreement has been duly authorized by, and executed and delivered on behalf of, the Borrower and is legally binding upon the parties in accordance with its terms;

(b) that the Program Agreement has been duly authorized by, and executed and delivered on behalf of the MWSDB and is legally binding upon the parties in accordance with its terms;

(c) that the NWSC Subsidiary Loan Agreement has been duly authorized by, and executed and delivered on behalf of, the Borrower and the NWSC and is legally binding upon the parties in accordance with its terms; and

(d) that this Amended and Restated Loan Agreement has been duly authorized by, and executed and delivered on behalf of the Borrower and is legally binding upon the Borrower in accordance with its terms.

Section 6.03. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.03 of the Loan Regulations.

## **ARTICLE VII**

### **Delegation of Authority**

Section 7.01. The Borrower hereby designates the MWSDB and the NWSC as its agents for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02, 3.03 and 3.06 of this Loan Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Loan Regulations; provided, however that: (i) upon (a) the establishment of KVWSMB; (b) KVWSMB having entered into the KVWSMB Subsidiary Loan Agreement; and (c) KVWSMB having entered into the KVWSMB Project Agreement; and (ii) upon: (a) the establishment of the WUO, (b) the WUO having entered into the WUO Subsidiary Loan Agreement; (c) the WUO having assumed all the rights and obligations of the MWSDB and the NWSC under the Project Agreement by having entered into a WUO Novation Agreement; and (d) the WUO having assumed all the rights and obligations of the NWSC under the NWSC Subsidiary Loan Agreement by having entered into the NWSC Novation Agreement, each of KVWSMB and WUO shall be designated as agents of the Borrower for purposes of Sections 7.01, 7.02 and 7.03 of this Loan Agreement with respect to their respective areas of responsibility under the Project.

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

Section 7.03. The authority conferred on the MWSDB, NWSC, KVWSMB and WUO under Section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and the Bank.

## **ARTICLE VIII**

### **Miscellaneous**

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

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

#### For the Borrower

Secretary  
Ministry of Finance  
His Majesty's Government of Nepal  
Singh Durbar, Kathmandu  
Nepal

Cable Address:

ARTHA  
KATHMANDU

Telex Number:

NP 2249 ARTHA

Facsimile Number:

(977) 1 425 9891.

#### For the Bank

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

Cable Address:

ASIANBANK  
MANILA

Telex Numbers:

29066 ADB PH (RCA)  
42205 ADB PM (ITT)  
63587 ADB PN (ETPI)

Facsimile Numbers:

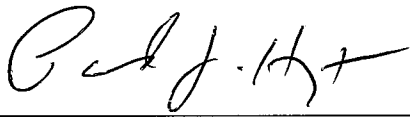
(632) 636-2444  
(632) 636-2293.

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 and to be delivered at the principal office of the Bank, as of the day and year first above written.

NEPAL

By   
\_\_\_\_\_  
VIDYADHAR MALLIK  
Secretary  
Ministry of Finance

ASIAN DEVELOPMENT BANK

By   
\_\_\_\_\_  
PAUL HEYTENS  
Country Director  
Nepal Resident Mission

## SCHEDULE 1

### Description of the Project

1. The aim of the Project is to improve, on a sustainable basis, the operation of the water supply and wastewater services within the metropolitan and urban areas of the Kathmandu Valley. The objective of the Project is to support the water sector institutional reforms introduced under the Program and the scope of the Project includes: (i) introduction of the CBP Team; (ii) implementation assistance for the three (3) entities to be established under the Program, namely KVWSMB, the WUO and the WSTFC; and (iii) completion of the process, already commenced by the NWSC, of computerization of the billing and accounting systems for the NWSC branches in the Kathmandu Valley.
2. The Project consists of the following components.

#### PART A: CBP Team

3. The Project shall support the capacity building of staff and systems of WUO through the recruitment of the CBP Team. The purpose of the CBP Team shall be to strengthen the WUD's capacity and capability with respect to the operation and management of the water supply and wastewater services system and implementation of the investment works to improve water supply networks and wastewater facilities in Kathmandu valley.

#### PART B: Implementation Assistance (Advisory Consulting Services and Civil Society/NGO Monitoring)

4. Consultants and temporary staff shall be engaged to work in conjunction with KVWSMB, the WUO and the WSTFC, in order to facilitate smooth transition of water supply and wastewater services within the Kathmandu Valley from the NWSC management, to KVWSMB and the WUO management. Consultants, including legal consultants, shall be engaged to provide representation on legal issues relating to the recruitment of and contractual documentation for the CBP Team. Separate consultants shall be engaged to (i) explore outsourcing some of WUO's operations to private contractors for rehabilitation, construction, and maintenance of existing and new assets; (ii) design combined contract packages for design, construction, operation and maintenance; and (iii) prepare procurement documents for such combined contract packages. In addition, periodic monitoring/performance benchmarking of the water supply and wastewater service sector delivery under the new institutional framework as well as evaluation of the effectiveness of the new institutional framework itself shall be carried out by qualified civil society groups/NGOs.

#### PART C: Computerized Billing and Accounting Systems

5. The WUO shall complete the program to computerize its billing and accounting systems in its branch offices serving the Kathmandu Valley area. This component also includes geographic information system installation and other information technology services.

6. Provision of incremental administration costs.
7. The Project is expected to be completed by 30 June 2014.

**SCHEDULE 2****Amortization Schedule****(Kathmandu Valley Water Services Sector Development Project)**

<u>Date Payment Due</u>		<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 May	2012	144,687
15 November	2012	144,687
15 May	2013	144,687
15 November	2013	144,687
15 May	2014	144,687
15 November	2014	144,687
15 May	2015	144,687
15 November	2015	144,687
15 May	2016	144,687
15 November	2016	144,687
15 May	2017	144,687
15 November	2017	144,687
15 May	2018	144,687
15 November	2018	144,687
15 May	2019	144,687
15 November	2019	144,687
15 May	2020	144,687
15 November	2020	144,687
15 May	2021	144,687
15 November	2021	144,687
15 May	2022	144,687
15 November	2022	144,687
15 May	2023	144,687
15 November	2023	144,687
15 May	2024	144,687
15 November	2024	144,687
15 May	2025	144,687
15 November	2025	144,687
15 May	2026	144,687
15 November	2026	144,687
15 May	2027	144,687
15 November	2027	144,687

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\* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

<u>Date Payment Due</u>		<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 May	2028	144,687
15 November	2028	144,687
15 May	2029	144,687
15 November	2029	144,687
15 May	2030	144,687
15 November	2030	144,687
15 May	2031	144,687
15 November	2031	144,687
15 May	2032	144,687
15 November	2032	144,687
15 May	2033	144,687
15 November	2033	144,687
15 May	2034	144,687
15 November	2034	144,687
15 May	2035	144,687
15 November	2035	144,711
	Total	----- 6,945,000 =====

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\* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity 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 goods, services and other items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table and reference to "Subcategory" or "Subcategories" in this Schedule is to a Subcategory or Subcategories of a Category.)

Taxes

2. No withdrawals from the Loan Account shall be made in respect of any local taxes.

Percentages of the Bank Financing

3. Except as the Bank may otherwise agree, the items of the Categories and Subcategories listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

4. Notwithstanding paragraph 5 of this Schedule, any contract awarded to a local supplier after effective international competitive bidding or international shopping pursuant to the relevant provisions of Schedule 4 to this Loan Agreement shall be financed out of the proceeds of the Loan on the following basis:

(a) where the goods procured from a local supplier are manufactured locally, 100 percent of the ex-factory price of the goods supplied (exclusive of any taxes); and

(b) where the goods procured from a local supplier have been entirely imported, 100 percent of the foreign-currency component of the contract price.

Local Expenditure

5. Except as the Bank may otherwise agree, no withdrawals from the Loan Account shall be made in respect of any local expenditure on the Project.

Interest Charge

6. The amount allocated to Category 3 is for financing interest charge on the Loan during the implementation period of the Project. The Bank shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest charge.

Reallocation

7. 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, the Bank 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 the Bank, 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 then allocated to any Category appears to exceed all agreed expenditures in that Category, the Bank may, by notice to the Borrower, reallocate such excess amount to any other Category.

Imprest Account; Statement of Expenditures

8. (a) Except as the Bank may otherwise agree, the Borrower shall establish immediately after the Effective Date, an imprest account at NRB. The imprest account shall be established, managed, replenished and liquidated in accordance with the Bank's "Loan Disbursement Handbook" dated January 2007, as amended from time to time, and detailed arrangements agreed upon between the Borrower and the Bank. The initial amount to be deposited into the imprest accounts shall not exceed six (6) months of estimated expenditures and not more than the equivalent of 10% of total loan amount whichever is less.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account, in accordance with the Bank's "Loan Disbursement Handbook" dated January 2007, as amended from time to time, and detailed arrangements agreed upon between the Borrower and the Bank. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of one hundred thousand Dollars (\$100,000).

Condition of Withdrawals from Loan Account

9. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for Part A and Part B of the Project until tariffs for water supply and wastewater services in the Kathmandu Valley shall have been adjusted and thereafter maintained in accordance with the provisions of the Act that sets out *inter alia*, principles and a schedule, acceptable to the Bank, for further adjustments of tariffs for water supply and wastewater services or an equivalent subsidy shall have been provided to the WUO as interim measures in the event the tariff adjustment is not in effect to ensure that the revenues of KVWSMB and the WUO are sufficient to cover debt service, depreciation of fixed assets, and all operation and maintenance (O&M) costs.

Schedule 3

10. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for or by KVWSMB until: (i) the KVWSMB Subsidiary Loan Agreement, in form and substance satisfactory to the Bank, shall have been duly executed and delivered on behalf of the Borrower and KVWSMB and shall have become fully effective and binding upon the Borrower and KVWSMB in accordance with its terms; and (ii) the KVWSMB Project Agreement shall have been duly executed and delivered on behalf of the KVWSMB and shall have become fully effective and binding upon KVWSMB in accordance with its terms.

11. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for or by the WUO, until: (i) the WUO Subsidiary Loan Agreement, in form and substance satisfactory to the Bank, shall have been duly executed and delivered on behalf of the Borrower and the WUO and shall have become fully effective and binding upon the Borrower and the WUO in accordance with its terms; (ii) the WUO Novation Agreement shall have been duly executed and delivered on behalf of the WUO and shall have become fully effective and binding upon the WUO in accordance with its terms; and (iii) the NWSC Notation Agreement shall have been duly executed and delivered on behalf of each of the parties thereto and shall have become fully effective and binding upon each of them in accordance with its terms.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Kathmandu Valley Water Services Sector Development Project)</b>					
<b>CATEGORY</b>				<b>PERCENTAGE OF BANK FINANCING</b>	
<b>Number</b>	<b>Item</b>	<b>Amount Allocated [SDR]</b>		<b>Percentage</b>	<b>Basis for Withdrawal from the Loan Account</b>
		<b>Category</b>	<b>Subcategory</b>		
1	Equipment	552,000		100	percent of foreign expenditure
				100*	percent of local expenditure
2	Consulting Services	5,518,000			
2A	CBP team		4,690,000	100	percent of foreign expenditure
				100*	percent of local expenditure <sup>1</sup>
2B	Implementation Assistance		552,000	100	percent of foreign expenditure
				100*	percent of local expenditure
2C	Computerized Billing and Accounting Systems		276,000	100	percent of foreign expenditure
				100*	percent of local expenditure
3	Incremental Administration	496,000		100*	percent of local expenditure
4	Interest Charge	271,000		100	percent of amounts due
5	Unallocated	108,000			
	Total	6,945,000			

\*Exclusive of local taxes

<sup>1</sup> This will include the local expenditure to be incurred in connection with the base fee and the performance-based bonus to be paid to the Management Contractor.

## SCHEDULE 4

### Procurement and Consulting Services

#### A. General

1. All Goods and consulting services to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines and Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and Consulting Guidelines, as applicable.

#### B. Procurement for Goods and Works

3. Except as ADB may otherwise agree, Goods shall only be procured on the basis of the methods of procurement set forth below:

International Shopping

The method of procurement is 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.

4. Domestic Preference. 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.

#### C. Selection of Consulting Services

5. Quality- and Cost-Based Selection. Except as the Bank may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.
6. The Borrower shall apply the following methods for selecting and engaging the specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

Consultants' Qualifications Selection for the consulting services whose contract price is less than \$200,000.

7. The Borrower's standard Procedures for recruiting individual consultants may be used for recruiting individual domestic consultants, subject to any modifications set out in the Procurement Plan which are hereby incorporated by reference.

**D. Industrial or Intellectual Property Rights**

8. The Borrower shall ensure that all Bank-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.

9. The Borrower shall ensure that all Goods procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated with other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

**E. Bank's Review of Procurement Decisions**

10. All contracts for Goods and consulting services shall be subject to prior review by the Bank, unless otherwise agreed between the Recipient and the Bank and set forth in the Procurement Plan.

## SCHEDULE 5

### Execution of Project and Operation of Project Facilities; Financial Matters

#### Project Execution and Implementation Arrangements

1. The MPPW shall be the Project Executing Agency. The WUO shall be the implementing agency for Part A of the Project and as from the Transfer Date shall take over as implementing agency for Part C of the Project. Upon establishment, KVWSMB shall be the implementing agency for Part B of the Project, to the extent that Part B of the Project relates to KVWSMB and the WSTFC. The WUO shall also act as implementing agency for Part B of the Project, to the extent that Part B of the Project relates to the WUO.

#### Project Coordination Office and Contract Compliance Unit

2. Until the establishment of the WUO, the KVWSMSC shall be the Project Coordination Office in charge of overall management and coordination of the Project. The KVWSMSC shall facilitate the required actions for institutional reforms with the Borrower's agencies concerned. During this initial period, the Executive Secretary of the KVWSMSC shall report all Project-related issues and activities to the Secretary of the MPPW through the MWSDB.

3. The Borrower shall ensure that WUO shall establish a project management unit, which will be headed by the General Manager of the WUO, and shall be responsible (except as provided below) for overall administration of the Project components for which the WUO is responsible under paragraph 1 above. The Borrower shall also ensure that such project management unit shall not be engaged in any activity associated with recruitment of the CBP Team. WUO will establish up a special unit (whose members will be agreed by the WUO and the Bank) to exclusively handle the recruitment of the CBP Team, including preparing requests for proposals and related contract documents.

#### Accounting, Audit and Reporting

4. The Borrower shall ensure that an audit of the Project shall be conducted annually in compliance with international audit standards and the Borrower's specific audit regulations. Project accounts and the corporate accounts of KVWSMB and the WUO shall be audited annually or sooner if so required under the relevant acts under which they are to be established. The accounts of the NWSC shall be separated accordingly into those for KVWSMB, the WUO and the out-of-valley assets and operations. The Borrower shall ensure that independent auditors, acceptable to the Bank annually audit the imprest account and the financial statements, and shall furnish to the Bank within nine (9) months after the close of the fiscal year to which they relate, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (together with the auditors' opinion) in English.

#### Counterpart Funds

5. The Borrower shall allocate and make available, in a timely manner, sufficient funds from its budget for each fiscal year for the implementation of the Project.

Project Review

6. The Project shall be reviewed jointly by the MPPW, KVWSMB, the WUO and the Bank to assess the progress semi-annually and at mid-term. The mid-term review shall pay particular attention to the level of skills transfer which has taken place between the CBP Team and staff of WUO by this time and shall assess the likelihood that the WUO will be in a position to manage and operate the water supply and wastewater services in a sustainable manner and without external support by the end of the CBP Team contract period.

Project Performance Monitoring and Evaluation

7. The Borrower shall ensure that in accordance with the Bank's *Project Performance Management System Handbook*, a short-list of verifiable performance indicators for monitoring and evaluation shall be prepared. Project Performance and Monitoring System (hereinafter called the PPMS) activities shall be conducted periodically to gather information through multiple sources, including the civil society groups/NGOs which shall carry out periodic monitoring/performance benchmarking of the water supply and wastewater service delivery and evaluation of the effectiveness of the new institutional framework, so as to determine whether the Project has rendered expected benefits to the intended beneficiaries. The PPMS shall also seek to detect any deficiency and/or discrepancy between the plan and the execution of the Project in using the resources efficiently so that timely corrections can be made to adjust the design of the Project.

Water Utility Operator

8. The Borrower shall ensure that should the appointment of the CBP Team be terminated either by the WUO or the CBP Team in accordance with the standard termination clauses included in the CBP Team Contract, a replacement CBP Team, on terms and conditions acceptable to the Bank, shall be appointed without delay and in accordance with transparent international competitive bidding procedures. The Borrower shall further ensure that appropriate management arrangements are in place within the WUO until the appointment of the replacement CBP Team to bridge the gap that may arise due to the termination of the CBP Team Contract.

9. The Borrower shall cause the WUO, as soon as reasonably practicable from the date hereof, to enter into the Assumption Agreement with the Bank.

10. The Borrower shall ensure that, at all times, the WUO Board of Directors will act independently and impartially in accordance with the articles of association of the WUO and the shareholders' agreement entered into among the stakeholders of the WUO. In addition, the Borrower shall ensure that the non-executive directors of the WUO shall be selected in accordance with the criteria agreed with the Bank. The articles of association, shareholders' agreement, (and any amendments from time to time thereto) and criteria for the selection of the non-executive directors shall be subject to the Bank's prior approval.

Kathmandu Valley Water Supply Management Board

11. The Borrower shall cause KVWSMB, upon establishment, to enter into the KVWSMB Project Agreement, with the Bank.

CBP Team

12. The Borrower shall cause the WUO to require the CBP Team to assist the WUO in: (i) improving the long-term performance and efficiency, and expand the coverage of water supply and wastewater services in the Kathmandu Valley; (ii) improving services to the poor through a targeted program of connections and service improvements in low-income communities in the Kathmandu Valley; (iii) improving the operation and management of the water and wastewater systems through mechanisms such as more efficient revenue collection, implementation of computerized billing and accounting, management information systems, improved customer service, occupational safety and maintenance practices, reduced leakage, etc., in the Kathmandu Valley; (iv) assisting and advise the WUO Board of Directors, in particular, its non-executive directors, in relation to strategic planning, budget preparation, and tariff settings in the Kathmandu Valley; (v) improving the effectiveness of the WUO's human resources through a coordinated capacity building program in the Kathmandu Valley; (vi) managing, in collaboration with KVWSMB and WSTFC, the implementation of an investment program to improve the water distribution network, including bulk water metering, properly-sequenced network rehabilitation and renewal of connections in the Kathmandu Valley; (vii) coordinating the distribution network improvement investment programs associated with the construction of the Melamchi diversion scheme and water treatment plant in the Kathmandu Valley; and (viii) facilitating a change in the culture and operating practices of the WUO in a manner that will permit local managers and engineers to continue to operate these services, in the Kathmandu Valley, in an effective manner after the end of the CBP Team Contract.

Resettlement and Gender Issues

13. The Borrower shall ensure that no persons shall be adversely affected in terms of the Bank's *Policy on Involuntary Resettlement* (1995) and the Bank's *Policy on Indigenous People* (1998).

14. The Borrower shall ensure that irrespective of the institutional restructuring to be undertaken under the Program, the resettlement action plan for MWSP shall remain in full force and effect and binding upon the Borrower and shall be implemented by the Borrower subject to and in accordance with the Amended and Restated Melamchi Loan Agreement.

15. The Borrower shall ensure that the Project shall be carried out in accordance with the Bank's *Policy on Gender and Development*.

Environment

16. The Borrower shall ensure that the Project shall be carried out in accordance with the Borrower's environmental rules and regulations, the Bank's *Environment Policy* (2002), and the results of the environmental impact assessment for the MWSP.

Water Policy

17. The Borrower shall ensure compliance with the relevant provisions of *Water for All: The Water Policy of the Asian Development Bank*.

Project Documentation

18. The Borrower shall procure that each of KVWSMB Subsidiary Loan Agreement, KVWSMB Project Agreement, NWSC Novation Agreement, WUO Novation Agreement and the WUO Subsidiary Loan Agreement shall be duly executed and delivered by each of KVWSMB, NWSC and WUO, respectively, by no later than 30 April 2008.

Anti Corruption Measures

19. (a) The Borrower shall comply with, and shall cause MPPW and all implementing agencies to comply with ADB's *Anticorruption Policy* (1998, as amended to date) and the Policy relating to *Enhancing ADB's Role in Combating Money Laundering and the Financing of Terrorism* (2003). The Borrower (i) acknowledges ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; (ii) agrees to cooperate fully with, and to cause MPPW and all implementing agencies to cooperate fully with any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation; and (iii) agrees to refrain, and cause MPPW and all implementing agencies to refrain, from engaging in money laundering activities or financing of terrorism and shall allow, and cause MPPW and all implementing agencies to allow, ADB to investigate any violation or potential violation of these undertakings.

(b) Without limiting the generality of the preceding paragraph, the Borrower shall (i) ensure that MPPW and all implementing agencies conduct periodic inspections on the contractors' activities related to fund withdrawals and settlements and (ii) ensure and cause MPPW and all implementing agencies to ensure that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of all contractors, suppliers, consultants and other service providers as they relate to the Project.

NWSC Personnel

20. The Borrower shall strictly continue the policy of freezing new recruitments, transfers and promotions for both permanent and contractual staff positions under NWSC's In-Kathmandu Valley (IKV) operations until WUO actually takes over the operational and staff responsibilities under the Lease and License Agreement.

21. The Borrower shall ensure that any staff liabilities remaining with NWSC are settled before the transfer of in-valley staff to KVWSMB and that no outstanding staff or other liabilities are transferred to WUO as earlier agreed.

22. The Borrower shall ensure that the voluntary retirement scheme (VRS) is implemented in two phases, as agreed with the Bank, and that there are adequate funding resources to compensate the staff willing to take the second round of VRS after 9 months of WUO's operations.

Public Communications Policy

23. The Borrower shall comply with the Bank's *Public Communications Policy* (2005) in respect of any document required for public disclosure in relation to the Project and the Program.