
LOAN NUMBER 2059-NEP(SF)

LOAN AGREEMENT
(Special Operations)

(Kathmandu Valley Water Services Sector Development Project)

between

KINGDOM OF NEPAL

and

ASIAN DEVELOPMENT BANK

DATED 8 APRIL 2004

LAS:NEP 36609

LOAN AGREEMENT (Special Operations)

LOAN AGREEMENT dated 8 April 2004 between KINGDOM OF NEPAL (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called the Bank).

WHEREAS

(A) by a Loan Agreement of even date herewith between the Borrower and the Bank (hereinafter called the Program Loan Agreement), the Bank has 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 (SDR3,473,000) 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;

(B) 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) of even date herewith; provided, however, that upon establishment, the Water Authority (hereinafter called the WA) 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;

(C) in support of the Program, the Borrower has applied to the Bank for a loan for the purposes of the Kathmandu Valley Water Services Sector Development Project (hereinafter called the Project) as more fully described in Schedule 1 to this Loan Agreement (hereinafter called the Loan Agreement);

(D) Part A of the Project shall be carried out by the MWSDB; Part B of the Project shall be carried out by the WA, upon its establishment, to the extent that Part B relates to the WA and the National Water Supply Regulatory Board (hereinafter called the NWSRB); and Part C of the Project shall be carried out by the Nepal Water Supply Corporation (hereinafter called the NWSC); provided, however that the WUO shall, upon its establishment, take over the implementation of Part A of the Project from the MWSDB, Part C of the Project from the NWSC and shall also carry out Part B of the Project, to the extent Part B of the Project relates to the WUO; and

(E) the Bank has, 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 herein and in the Project Agreement (hereinafter called the Project Agreement) of even date herewith between the Bank, of the first part, and the MWSDB and the NWSC of the second part; provided, however that upon establishment, the WA 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;

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 and in the Loan Regulations have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) "Assumption Agreement" means the agreement to be entered into between the Bank, of the first part, and, the WUO of the second part, pursuant whereto the WUO shall assume all rights and obligations of the MWSDB and the NWSC under the Project Agreement;

(b) "Novation Agreement" means the agreement to be entered into between the Bank, of the first part, and, the WA of the second part, pursuant whereto the WA shall be added as an additional party to the Project Agreement;

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

(d) "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;

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

(f) "Subsidiary Loan Agreements" means the NWSC Subsidiary Loan Agreement, the WA Subsidiary Loan Agreement and the WUO Subsidiary Loan Agreement;

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

(h) "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 (SDR6,945,000).

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) the WA, upon establishment of the WA, 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 (SDR347,000), under the NWSC Subsidiary Loan Agreement, upon terms and conditions satisfactory to the Bank; (ii) WA in an amount equivalent to One Hundred Seventy-four Thousand Special Drawing Rights (SDR174,000), under the WA Subsidiary Loan Agreement, upon terms and conditions satisfactory to the Bank; and (iii) the WUO in an amount equivalent to Six Million Four Hundred Twenty-four Thousand Special Drawing Rights (SDR6,424,000), 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, the WA 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 30 June 2011 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, the WA 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, the WA 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, the WA 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 WA shall have, in the opinion of the Bank, failed to perform any of their obligations under the WA 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; and

(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.

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; and

(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.

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 the WA; (b) the WA having entered into the WA Subsidiary Loan Agreement; and (c) the WA added as an additional party to the Project Agreement by having entered into the Novation Agreement; and (ii) upon: (a) the establishment of the WUO; (ii) the WUO having entered into the WUO Subsidiary Loan Agreement; and (iii) the WUO having assumed all the rights and obligations of the MWSDB and the NWSC under the Project Agreement by having entered into an Assumption Agreement, shall be designated as agents of the Borrower for purposes of Sections 7.01, 7.02 and 7.03 of this Loan Agreement.

Section 7.02. Any action taken or any agreement entered into by the MWSDB, and the NWSC 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 and the NWSC 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.

KINGDOM OF NEPAL

By Bhanu P. Acharya
Bhanu P. Acharya
Secretary
Ministry of Finance

ASIAN DEVELOPMENT BANK

By S. Hafeez Rahman
S. Hafeez Rahman
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 performance based Management Contract; (ii) implementation assistance for the three (3) entities to be established under the Program, namely the WA, the WUO and the NWSRB; 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: Performance Based Management Contract

3. The Project shall introduce Private Sector Participation in the operation of water supply and wastewater services in the Kathmandu Valley through the recruitment of a Management Contractor on a performance based Management Contract. The Management Contractor shall be responsible for the operation and management of the water supply and wastewater services and shall also bear responsibility for the execution of investment programs to improve distribution networks in the 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 the WA, the WUO and the NWSRB, in order to facilitate smooth transition of water supply and wastewater services within the Kathmandu Valley from the NWSC management, to the WA and the WUO management. Consultants, including legal consultants, shall be engaged to provide representation on legal issues related to the Management Contract. 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 NWSC shall continue its program to computerize its billing and accounting systems in its branch offices serving the Kathmandu Valley area. The Project is expected to be completed by 31 December 2010.

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

* 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 2

<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 and subject to paragraph 5 of this Schedule,

(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 2001, 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 2001, 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 Fifty Thousand Dollars (\$50,000).

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 in accordance with the provisions of the Act that shall articulate, *inter alia*, principles and a schedule, acceptable to the Bank, for further adjustments of tariffs for water supply and wastewater services in real terms to ensure that the revenues of the WA and the WUO are sufficient to cover debt service, depreciation of fixed assets, and all operation and maintenance (O&M) costs, including the performance based bonuses paid to the Management Contractor.

10. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for or by the WUO: (i) until 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; and (ii) until the Assumption 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.

11. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for or by the WA: (i) until the WA 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 WA and shall have become fully effective and binding upon the Borrower and the WA in accordance with its terms; and (ii) until the Novation Agreement shall have been duly executed and delivered on behalf of the WA and shall have become fully effective and binding upon the WA in accordance with its terms.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Kathmandu Valley Water Services Sector Development Project)					
CATEGORY				PERCENTAGE OF BANK FINANCING	
Number	Item	Amount Allocated [SDR]		Percentage	Basis for Withdrawal from the Loan Account
		Category	Subcategory		
1	Equipment	278,000		100	percent of foreign expenditure
2	Consulting Services	6,042,000			
2A	Performance Based Management Contract		5,625,000	100	percent of foreign expenditure
				50	percent of local expenditure ¹
2B	Implementation Assistance		347,000	100	percent of foreign expenditure
				67	percent of local expenditure
2C	Computerized Billing and Accounting Systems		70,000	100*	percent of local expenditure
3	Interest Charge	271,000		100	percent of amounts due
4	Unallocated	354,000			
	Total	6,945,000			

*Exclusive of local taxes

¹ 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

1. Except as the Bank may otherwise agree, the procedures referred to in the following paragraphs of this Schedule shall apply in the procurement of goods and services to be financed out of the proceeds of the Loan. In this Schedule and the Attachment hereto, the term "goods" includes equipment and materials; the term "services" does not include consulting services.

2. Procurement of goods and services shall be subject to the provisions of the "Guidelines for Procurement under Asian Development Bank Loans" dated February 1999 (hereinafter called the Guidelines for Procurement), as amended from time to time, which have been furnished to the Borrower.

3. Procurement of goods and services shall be made without any restriction against, or preference for, any particular supplier or contractor or any particular class of suppliers or contractors.

4. (a) Each supply contract for equipment or materials estimated to cost the equivalent of \$500,000 or less (other than minor items) shall be awarded on the basis of international shopping as described in Chapter III of the Guidelines for Procurement.

(b) Each draft invitation to bid and related bid document shall be submitted to the Bank for approval before they are issued.

(c) Notwithstanding paragraph 3.03(b) of the Guidelines for Procurement, any award of contract shall be subject to prior Bank approval.

Direct Procurement

5. Certain minor items of equipment, which are estimated to cost, in the aggregate, the equivalent of \$100,000 or less, may be procured in accordance with procedures acceptable to the Bank. After the award, three copies of each contract for such items shall be furnished to the Bank.

Intellectual Property

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

(b) The Borrower shall ensure that all Bank-financed contracts for the procurement of goods and services 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.

Preference for Domestically Manufactured Goods

1. In the procurement of goods through international competitive bidding, goods manufactured in the territory of the Borrower may be granted a margin of preference in accordance with the following provisions, provided that the bidder shall have established to the satisfaction of the Borrower and the Bank that the domestic value added equals at least 20 percent of the ex-factory bid price of such goods. The 20 percent domestic value added applies to the total ex-factory bid price of the goods and not only to one item in a list.

(a) For application of domestic preference, all responsive bids shall first be classified into the following three categories:

Category I -- bids offering goods manufactured in the territory of the Borrower which meet the minimum domestic value added requirement;

Category II -- bids offering other goods manufactured in the territory of the Borrower; and

Category III -- bids offering imported goods.

(b) The lowest evaluated bid of each category shall then be determined by comparing all evaluated bids in each category among themselves, without taking into account customs duties and other import taxes levied in connection with the importation, and sales and similar taxes levied in connection with the sale or delivery, pursuant to the bids, of the goods.

(c) Such lowest evaluated bids shall next be compared with each other and if, as a result of this comparison, a bid from Category I or Category II is found to be the lowest, it shall be selected for the award of contract.

(d) If, however, as a result of the comparison under subparagraph (c) above, the lowest bid is found to be from Category III, it shall be further compared with the lowest evaluated bid from Category I. For the purpose of this further comparison only, an upward adjustment shall be made to the lowest evaluated bid price of Category III by adding either

(i) the amount of customs duties and other import taxes which a nonexempt importer would have to pay for the importation of the goods offered in such Category III bid; or

(ii) 15 percent of the CIF bid price of such goods if the customs duties and import taxes referred to above exceed 15 percent of the CIF bid price.

If, after such further comparison, the Category I bid is determined to be the lowest, it shall be selected for the award of contract; if not, the lowest evaluated bid from Category III shall be selected for the award.

2. (a) Bidders applying for the preference shall provide evidence necessary to establish the eligibility of a bid for the preference, including the minimum domestic value added.

(b) The bidding documents shall clearly indicate the preference to be granted, the information required to establish the eligibility of a bid for the preference claimed, and the procedures to be followed in the comparison of bids, all as set forth above.

SCHEDULE 5

Consultants

Consultants for PART A and PART C of the Project

1. The Management Contractor shall be recruited as a company or consortium under Part A of the Project. The terms of reference of the Management Contractor shall be as determined by agreement between the Bank and the Borrower.

2. The selection, engagement and services of the Management Contractor shall be subject to the provisions of this Schedule and the provisions of the "Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers" dated April 2002 (hereinafter called the Guidelines on the Use of Consultants), as amended from time to time, which have been furnished to the Borrower and the MWSDB.

3. The Management Contractor shall be selected and engaged by the KVWSMSC, on behalf of the MWSDB and the MPPW, using the quality-and-cost-based selection (QCBS) method with some adjustments in accordance with the following procedures. Consultants for Part C of the Project shall also be selected and engaged by the NWSC using the QCBS method.

(a) Invitation for technical and financial proposals. The invitation to submit technical and financial proposals (hereinafter called the Request for Proposals) and all related documents shall be approved by the Bank before they are issued. For this purpose, three copies of the draft Request for Proposals , the names of consultants to be short-listed, the proposed criteria for evaluation of both proposals, a draft Management Contract, and other related documents shall be submitted to the Bank. A period of at least sixty (60) days shall be allowed for submission of both proposals. A copy of the final Request for Proposals as issued, together with all related documents, shall be furnished to the Bank for information promptly after issuance. The validity period for the technical and financial proposals as provided in the Request for Proposals shall usually not exceed three (3) months from the date specified for submission of the technical and financial proposals. The approval of the Bank shall be obtained for any request to extend such validity period. Except as the Bank may otherwise agree, the validity period, including any extensions, shall not exceed a maximum total period of six (6) months. If the contract is not signed within the validity period in accordance with the Guidelines on the Use of Consultants, the selection shall be invalid and the selection and engagement process as provided in this paragraph shall be followed again.

(b) Evaluation and scoring of technical proposals. Immediately after the technical proposals have been evaluated and scored, approval of the Bank shall be obtained to the evaluation and scoring of the technical proposals. For this purpose, the Bank shall be furnished with three copies of the technical proposals.

(c) Public opening of financial proposals. The financial proposals of the firms whose technical proposals meet the minimum qualifying technical score shall be opened publicly after adequate notice is given to such firms or their representatives to attend the opening of the financial proposals.

(d) Evaluation and scoring of financial proposals and ranking of technical and financial proposals. After the financial proposals have been evaluated and scored, the ranking of the technical and financial proposals shall be made. Before negotiations are started with the first-ranked consultants, approval of the Bank shall be obtained to the evaluation and scoring of the financial proposals and the ranking of the technical and financial proposals. For this purpose, the Bank shall be provided with three copies of (i) the evaluation and scoring of the financial proposals and (ii) the ranking of the technical and financial proposals.

(e) Execution of Management Contract. After the conclusion of negotiations but before the signing of the Management Contract, the Bank shall be furnished with contract as negotiated for approval. Promptly after the Management Contract is signed, the Bank shall be furnished with three copies of the signed Management Contract. If any substantial amendment of the Management Contract is proposed after its execution, the proposed changes shall be submitted to the Bank for prior approval.

Consultants for PART B of the Project

4. The civil society groups/NGOs shall be selected and engaged by the WA and the WUO using the QCBS method in accordance with the following procedures.

(a) Invitation for technical and financial proposals. The invitation to submit biodata technical and financial proposals (hereinafter called the RFP) and all related documents shall be approved by the Bank before they are issued. For this purpose, three copies of the draft RFP, the names of consultants to be short-listed, the proposed criteria for evaluation of both proposals, a draft consultancy contract, and other related documents shall be submitted to the Bank. A period of at least thirty (30) days shall be allowed for submission of both proposals. A copy of the final RFP as issued, together with all related documents, shall be furnished to the Bank for information promptly after issuance. The validity period for the technical and financial proposals as provided in the RFP shall usually not exceed three (3) months from the date specified for submission of the biodata technical and financial proposals. The approval of the Bank shall be obtained for any request to extend such validity period. Except as the Bank may otherwise agree, the validity period, including any extensions, shall not exceed a maximum total period of six (6) months. If the contract is not signed within the validity period in accordance with the Guidelines on the Use of Consultants, the selection shall be invalid and the selection and engagement process as provided in this paragraph shall be followed again.

(b) Evaluation and scoring of technical proposals. Immediately after the technical proposals have been evaluated and scored, approval of the Bank shall be obtained to the evaluation and scoring of the technical proposals. For this purpose, the Bank shall be furnished with three copies of the technical proposals.

(c) Public opening of financial proposals. The financial proposals of the firms whose technical proposals meet the minimum qualifying technical score shall be opened publicly after adequate notice is given to such firms or their representatives to attend the opening of the financial proposals.

Schedule 5

(d) Evaluation and scoring of financial proposals and ranking of technical and financial proposals. After the financial proposals have been evaluated and scored, the ranking of the technical and financial proposals shall be made. Before negotiations are started with the first-ranked consultants, approval of the Bank shall be obtained to the evaluation and scoring of the financial proposals and the ranking of the technical and financial proposals. For this purpose, the Bank shall be provided with three copies of (i) the evaluation and scoring of the financial proposals and (ii) the ranking of the technical and financial proposals.

(e) Execution of contract. After the conclusion of negotiations but before the signing of the contract, the Bank shall be furnished with the contract as negotiated for approval. Promptly after the contract is signed, the Bank shall be furnished with three copies of the signed contract. If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to the Bank for prior approval.

5. The services of individual consultants shall be utilized in the carrying out of Part B of the Project. The terms of reference of the consultants shall be as determined by agreement between the Bank and the Borrower.

6. The individual consultants shall be selected and engaged by the NWSC, the WA and the WUO in accordance with the following procedures.

(a) A list of the candidates together with their qualifications and their ranking and a draft contract shall be furnished to the Bank for approval before the selection of consultants.

(b) Promptly after the contract is signed, the Bank shall be furnished with the evaluation of the candidates and a brief justification for the selection, together with three copies of the signed contract.

(c) If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to the Bank for prior approval.

Intellectual Property

7. 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.

SCHEDULE 6

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 MWSDB shall be the implementing agency for Part A of the Project and the NWSC shall be the implementing agency for Part C of the Project. Upon establishment, the WA shall be the implementing agency for Part B of the Project, to the extent that Part B of the Project relates to the WA and the NWSRB. Upon establishment, the WUO shall take over as implementing agency from: (i) the MWSDB for Part A of the Project; and (ii) the NWSC for Part C of the Project, and 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, and shall carry out the recruitment of the Management Contractor on behalf of the MWSDB and the MPPW. 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. Upon establishment of the WUO, a Contract Compliance Unit shall be established within the Board of the WUO to coordinate, with the assistance of consultants, the implementation of Part A and Part C of the Project and of Part B of the Project, to the extent that Part B of the Project relates to the WUO, until the end of the Project Loan implementation.

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 the WA 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 the WA, 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, the WA, the WUO and the Bank to assess the progress semi-annually and at mid-term. The mid-term review of the Project shall concentrate on assessing the performance of the Management Contractor and shall decide whether the option should be given to the Management Contractor to continue the management of the water supply and wastewater systems in the Kathmandu Valley. Independent technical and financial auditors, acceptable to the Bank, shall assist the MPPW, the WA, the WUO and the Bank in this assessment exercise. The mid-term review shall also pay particular attention to the level of skills transfer which has taken place 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 extended management 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 Management Contract be terminated either by the WUO or the Management Contractor in accordance with the standard termination clauses included in the Management Contract, a replacement management contractor, 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 until the appointment of the replacement management contractor to bridge the gap that may arise due to the termination of the Management Contract.

9. The Borrower shall cause the WUO, upon its establishment, 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 criteria for the selection of the non-executive directors shall be subject to the Bank's prior approval.

Water Authority

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

Management Contractor

12. The Borrower shall cause the WUO to require the Management Contractor to: (i) improve the long-term performance and efficiency, and expand the coverage of water supply and wastewater services in the Kathmandu Valley; (ii) improve services to the poor through a targeted program of connections and service improvements in low-income communities in the Kathmandu Valley; (iii) improve 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) assist 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) improve the effectiveness of the WUO's human resources through a coordinated capacity building program in the Kathmandu Valley; (vi) manage, in collaboration with the WA and NWSRB, 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) coordinate 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) facilitate 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 Management 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* and the Bank's *Policy on Indigenous People*.

14. The Borrower shall ensure that irrespective of the institutional restructuring to be undertaken under the Program, the resettlement plan for MWSP shall remain in full force and effect and binding upon the Borrower and shall be implemented by the Borrower as originally planned and agreed with the Bank under the Loan Agreement dated 24 January 2001 between the Borrower and the Bank.

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*, the Bank's environmental guidelines as set forth in *Environmental Assessment Guidelines (2003)*, 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*.