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GRANT NUMBER 0157-NEP(SF)

PROJECT AGREEMENT

(Second Small Towns Water Supply and Sanitation Sector Project)

between

ASIAN DEVELOPMENT BANK

and

TOWN DEVELOPMENT FUND

DATED \_\_\_\_\_

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PAG:NEP 41022

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated \_\_\_\_\_ between ASIAN DEVELOPMENT BANK ("ADB") and Town Development Fund ("TDF").

### **WHEREAS**

(A) by a grant agreement of even date herewith (the "Grant Agreement") between NEPAL (the "Recipient") and ADB, ADB has agreed to provide to the Recipient a grant of Forty-five million and one hundred thousand dollars (\$45,100,000) on the terms and conditions set forth in the Grant Agreement, but only on the condition that a portion of the proceeds of the Grant be made available to TDF and that TDF agrees to undertake certain obligations towards ADB as set forth in this Project Agreement; and

(B) TDF, in consideration of ADB entering into the Grant Agreement with the Recipient, has agreed to undertake the obligations set forth in this Project Agreement;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Definitions**

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the terms defined in the Grant Agreement and in the Grant Regulations (as so defined) have the respective meanings therein set forth, except that for purposes of this Project Agreement, the term "the Project" means Component 2 of the Project, as described in Schedule 1 to the Grant Agreement so far as it applies to TDF.

## **ARTICLE II**

### **Particular Covenants**

Section 2.01. (a) TDF shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental and water and sanitation practices.

(b) In the carrying out of the Project and operation of the Project facilities, TDF shall perform all obligations set forth in Schedule 4 to the Grant Agreement to the extent that they are applicable to TDF.

Section 2.02. TDF shall make available, promptly as needed, the funds, facilities, services and other resources which are required, in addition to the proceeds of the Grant, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, TDF shall employ competent and qualified staff.

(b) Except as ADB may otherwise agree, all goods and services to be financed out of the proceeds of the Grant shall be procured in accordance with the provisions of Schedule 2 and Schedule 3 to the Grant Agreement. ADB may refuse to finance a contract where goods or services have not been procured under procedures substantially in accordance with those agreed between the Recipient and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. TDF shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. TDF shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. TDF shall maintain, or cause to be maintained, records and accounts adequate to identify the goods and services and other items of expenditure financed out of the proceeds of the Grant, to disclose the use thereof in the Project, to record the progress of the Project and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.06. (a) ADB and TDF shall cooperate fully to ensure that the purposes of the Grant will be accomplished.

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

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

Section 2.07. (a) TDF shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Grant and the expenditure of the proceeds thereof; (ii) the goods and services and other items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of TDF; (v) financial and institutional capacities of WUSCs; and (vi) any other matters relating to the purposes of the Grant.

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

reports and such reports referred to section 2.07(a) are consolidated with the reports to be prepared by DWSS under paragraph 32 of Schedule 4 to the Grant Agreement.

(c) Promptly after physical completion of the Project, but in any event not later than six (6) months thereafter or such later date as ADB may agree for this purpose, TDF shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by TDF of its obligations under this Project Agreement and the accomplishment of the purposes of the Grant. Such Project completion report shall be consolidated with the report to be prepared by DWSS under paragraph 32 of Schedule 4 to the Grant Agreement.

Section 2.08. (a) TDF shall (i) maintain separate accounts for the Project and for its overall operations; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related statements) audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (iii) furnish to ADB, promptly after their preparation but in any event not later than 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 (including the auditors' opinion on the use of the Grant proceeds and compliance with the financial covenants of the Grant Agreement, all in the English language. TDF shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) TDF shall enable ADB, upon ADB's request, to discuss TDF's financial statements and its financial affairs from time to time with the auditors appointed by TDF pursuant to Section 2.08(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of TDF unless TDF shall otherwise agree.

Section 2.09. TDF shall enable ADB's representatives to inspect the Project, the works financed out of the proceeds of the Grant and any relevant records and documents.

Section 2.10. (a) TDF shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its business.

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

Section 2.11. Except as ADB may otherwise agree, TDF shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Grant Project Agreement.

Section 2.12. Except as ADB may otherwise agree, TDF shall apply the proceeds of the Grant to the financing of expenditures on the Project in accordance with the provisions of the Grant Agreement and this Project Agreement, and shall ensure that all goods and services financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.13. Except as ADB may otherwise agree, TDF shall duly perform all its obligations under the Subsidiary Loan Agreement, the Town Project Agreements, the Subproject Financing Agreements and the Subloan Agreements, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under any such agreement.

Section 2.14. TDF shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of the Town Development Fund Act, 2053 (1997) and any of its governing rules and bylaws, and shall afford ADB an adequate opportunity to comment on such proposal prior to taking any action thereon.

### **ARTICLE III**

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

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

Section 3.02. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Grant Agreement.

### **ARTICLE IV**

#### **Miscellaneous**

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

For ADB

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

Facsimile Numbers:

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

For TDF

Town Development Fund  
GPO Box 5144  
Kathmandu, Nepal

Facsimile Number:

(977-1)447-1227.

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

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

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

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

ASIAN DEVELOPMENT BANK

By \_\_\_\_\_

TOWN DEVELOPMENT FUND

By \_\_\_\_\_  
Authorized Representative