
GRANT NUMBER 0520-NEP(EF)
(Additional to Grant 0398-NEP[EF])

GRANT AGREEMENT
(Externally Financed – Strategic Climate Fund)
(South Asia Subregional Economic Cooperation
Power System Expansion Project – Additional Cofinancing)

between

NEPAL

and

ASIAN DEVELOPMENT BANK

DATED 18 JANUARY 2017

NEP 44219

**GRANT AGREEMENT
(Externally Financed)**

GRANT AGREEMENT dated 18 January 2017 between NEPAL ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a loan agreement dated 11 July 2014 between the Recipient and ADB ("Special Operations Loan Agreement"), ADB provided the Recipient a loan from ADB's Special Funds resources in an amount in various currencies equivalent to one hundred sixteen million four hundred ninety three thousand Special Drawing Rights (SDR116,493,000) for the purposes of the project described in Schedule 1 to the Special Operations Loan Agreement ("Initial Project");

(B) by an agreement dated 14 November 2014 ("Norway Grant Agreement"), ADB made available to the Recipient a grant from the Government of Norway ("Norway Grant") in an amount equivalent to approximately sixty million Dollars (\$60,000,000) for the purposes of financing a portion of Parts 1 and 4 of the Initial Project;

(C) by an agreement dated 11 July 2014, ADB made available to the Recipient a grant from the Strategic Climate Fund ("SCF") in an amount of eleven million two hundred thousand Dollars (\$11,200,000) for the purposes of financing a portion of Parts 3 and 4 of the Initial Project;

(D) the Recipient has applied to the SCF for an additional grant ("Grant"), to be administered by ADB, for the purposes of the Project described in Schedule 1 to this Grant Agreement;

(E) the Project shall be carried out by the Nepal Electricity Authority ("NEA");

(F) the Recipient shall make available to NEA the proceeds of the Grant for the purposes of the Project in the manner provided for herein, upon terms and conditions satisfactory to ADB; and

(G) ADB, acting in its capacity as an implementing entity of the SCF in accordance with the Financial Procedures Agreement dated 18 March 2010 between the International Bank for Reconstruction and Development ("IBRD") and ADB, has agreed to make a grant to the Recipient from the SCF upon the terms and conditions set forth herein and the Project Agreement;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I**Grant Regulations; Definitions**

Section 1.01. All provisions of the Externally Financed Grant Regulations of ADB, dated 8 April 2009 ("Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

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

(a) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers (2013, as amended from time to time);

(b) "EA" or the "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means NEA or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(c) "EARF" or "Environmental Assessment and Review Framework" means the environmental assessment and review framework for the Project, including any update thereto, prepared and submitted by the Recipient through the EA, and cleared by ADB;

(d) "EMP" or "Environmental Management Plan" means each and any of the environmental management plans for the Project, including any update thereto, incorporated in an IEE;

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

(f) "Financing Arrangement" means the arrangements in respect of the Project between the Recipient and NEA, acceptable to ADB;

(g) "Goods" means equipment and materials to be financed out of the proceeds of the Grant, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance;

(h) "IEE" or "Initial Environmental Examination" means each initial environmental examination, including any update thereto, prepared and submitted by the Recipient through the EA pursuant to the requirements set forth in the EARF, and cleared by ADB;

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

(j) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);

(k) "NRs" means Nepalese rupees;

(l) "PAM" means the project administration manual for the Project dated 18 November 2016 and agreed between the Recipient, the EA, and ADB, as updated from time to time in accordance with the respective administrative procedures of the Recipient and ADB;

(m) "PPA" means a standard power purchase agreement between NEA and a private entity for the provision of grid-connected electricity from a solar photovoltaic system;

(n) "PPMS" means project performance monitoring system;

(o) "private entity" means an independent power producer or renewable energy service company;

(p) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);

(q) "Project facilities" means the facilities to be improved, rehabilitated, modernized, constructed, operated and/or maintained, and the equipment to be installed and maintained under the Project;

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

(s) "Safeguards Monitoring Report" means each report prepared and submitted by the Recipient through the EA to ADB that describes progress with implementation of, and compliance with, the EMP, including any corrective and prevention actions;

(t) "SPS" or "Safeguard Policy Statement" means ADB's Safeguard Policy Statement (2009);

(u) "Subproject" means a project by a private entity to develop, construct and operate a solar photovoltaic system and provide grid-connected electricity to NEA under the relevant PPA, that meets the eligibility criteria referred to in paragraph 6 of Schedule 4 to this Grant Agreement;

(v) "VGF" means viability gap funding to support the PPAs by providing grants to NEA to cover the difference between NEA's cost neutral tariff (NRs 8.14 per kilowatt hour) and the off-take price under its PPAs with private entities; and

(w) "Works" means construction or civil works to be financed out of the proceeds of the Grant, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient a grant from the SCF in the amount of twenty million Dollars (\$20,000,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall:

- (a) make the proceeds of the Grant available to NEA as a grant under the Financing Arrangement upon terms and conditions satisfactory to ADB; and
- (b) cause NEA to apply such proceeds to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement and the Project Agreement.

Section 3.02. The proceeds of the Grant shall be allocated and withdrawn in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. (a) Except as ADB may otherwise agree, the Recipient shall cause all items of expenditure financed out of the proceeds of the Grant to be used exclusively in the carrying out of the Project; and

(b) Except as ADB may otherwise agree, the Recipient shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Grant in accordance with the provisions of Schedule 3 to this Grant Agreement. ADB may refuse to finance a contract where any such item has 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 3.04. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2022 or such other date as may from time to time be agreed between the Recipient and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement.

Section 4.02. ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

Section 4.03. The Recipient shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.04. The Recipient acknowledges and agrees that this Grant Agreement is entered into by ADB, not in its individual capacity, but as an implementing entity of the SCF in respect of funds made available by IBRD, acting as trustee to the said Fund. Accordingly, the Recipient agrees that (i) it may only withdraw Grant proceeds to the extent that ADB has received proceeds for the Grant from the SCF, and (ii) that ADB does not assume any obligations or responsibilities of the SCF in respect of the Project or the Grant other than those set out in this Grant Agreement.

ARTICLE V

Effectiveness

Section 5.01. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of this Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Secretary, Ministry of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Secretary
Ministry of Finance
Singha Durbar
Kathmandu, Nepal

Facsimile Number:

+977 1 421-1165

For ADB

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

Facsimile Numbers:

+63 2 636-2444
+63 2 636-2338.

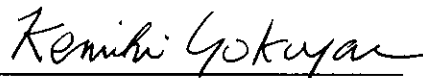
IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of ADB

NEPAL

By 

SHANTA RAJ SUBEDI
Secretary
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 

KENICHI YOKOYAMA
Country Director
Nepal Resident Mission

SCHEDULE 1**Description of the Project**

1. The objective of the Project is to increase capacity of the national power grid and to enhance renewable energy development.
2. The Project shall comprise:
 - Part 1:** Providing VGF under NEA's PPAs with private entities.
 - Part 2:** Providing consulting services for the capacity development of NEA and facilitation of solar project transactions, including:
 - (a) Recruitment of a solar power engineer to assist in system design;
 - (b) Recruitment of a procurement specialist to facilitate bidding process;
 - (c) Recruitment of a financial expert to assist in managing financial arrangements;
 - (d) Recruitment of an environmental specialist; and
 - (e) Project management, including monitoring, reporting and verification.
3. The Project is expected to be completed by 30 June 2022.

SCHEDULE 2**Allocation and Withdrawal of Grant Proceeds**General

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

Basis for Withdrawal from the Grant Account

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

Reallocation

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

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

Disbursement Procedures

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

Condition for Withdrawals from Grant Account

5. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from the Grant Account until the Financing Arrangement, upon terms and conditions satisfactory to ADB, shall have been duly agreed on by the Recipient and NEA.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (South Asia Subregional Economic Cooperation Power System Expansion Project – Additional Financing)			
Number	Item	Total Amount Allocated for SCF Financing (\$) Category	Basis for Withdrawal from the Grant Account
1	VGF**	\$18,500,000	100% of total expenditure claimed*
2	Consulting Services**	\$1,500,000	100% of total expenditure claimed*
	TOTAL	\$20,000,000	

* Exclusive of taxes and duties imposed within the territory of the Recipient.

** Subject to the condition for withdrawal as described in paragraph 5 of Schedule 2.

SCHEDULE 3**Procurement of Goods, Works and Consulting Services**General

1. The procurement of Goods and Works shall be subject to and governed by the Procurement Guidelines.
2. All terms used in this Schedule and not otherwise defined in this Grant Agreement shall have the meanings provided in the Procurement Guidelines.

Procurement for Goods and Works for the Subprojects

3. (a) NEA shall select the private entities in a transparent manner by adopting competitive bidding procedures acceptable to ADB.
(b) NEA shall cause the private entity to apply its own procedures for procurement of Goods and Works, provided such procedures are applied in a transparent manner, preferably through competitive bidding procedures.
(c) The selection of the private entities may be from member countries of ADB, and may also be from non-member countries of ADB.

Condition for Award of PPA

4. The Recipient shall ensure, or cause NEA to ensure, to not award any PPA until ADB has provided its no objection to such PPA.

Condition for Award of Contracts under Subprojects

5. The Recipient shall ensure, or cause NEA to ensure, that each private entity executing a Subproject:
 - (a) obtain the final approval of the Ministry of Energy of the relevant IEE before any Works commence or before the award of any Works contract, as applicable; and
 - (b) has incorporated the relevant provisions from the EMP into the Works contract, if applicable.

Consulting Services

6. The Recipient shall apply quality- and cost-based selection for Consulting Services.
7. The Recipient shall recruit the individual consultants for procurement specialist in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

8. (a) The EA shall cause the private entity to ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

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

SCHEDULE 4**Execution of Project; Financial Matters**Implementation Arrangements

1. The Recipient and the EA shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Recipient and ADB. In the event of any discrepancy between the PAM and this Grant Agreement, the provisions of this Grant Agreement shall prevail.
2. (a) The EA shall ensure that towards smooth implementation of the Project, grievances if any from stakeholders, relating to any project implementation or use of funds are addressed effectively and efficiently.

(b) The Recipient shall ensure that the EA complies with all the requirements and obligations in its part as included in this Grant Agreement and the Project Agreement to meet the objectives of the project in a timely and efficient manner.
3. The Recipient and the EA shall enable ADB's representatives to review and examine the Subprojects, the Goods and Works, and any relevant records and documents. The Recipient and the EA shall ensure that all contracts financed by ADB in connection with the Subproject shall include provisions specifying the right of ADB to review and examine the records and accounts of the Recipient, the EA, private entities, and all contractors, suppliers, consultants, and other service providers as they related to any Subproject. The Recipient and the EA shall allow and assist ADB's representatives to carry out random spot checks on the work in progress and utilization of funds for the Project, and shall ensure that all contracts financed by ADB in connection with the Subproject shall include such provision.

Counterpart Funds

4. The Recipient shall ensure, or cause NEA to ensure:
 - (a) sufficient counterpart funds, in a timely manner, for the efficient implementation of the Project; and
 - (b) that the private entity ensures adequate funds towards operations and maintenance of Project facilities during and after the Project's completion.
5. The Recipient shall ensure, or cause the EA to ensure, that the PPAs provide for sufficient funds required for timely and effective implementation of the Project, including, without limitation, any funds required (a) to meet any shortfall between cost and revenues for the operation and maintenance of Project facilities; (b) to mitigate unforeseen environmental or social impacts; and (c) to meet any additional costs arising from design changes, price escalation in construction costs and/or unforeseen circumstances.

Selection Criteria and Approval Process for the Subprojects

6. The Recipient shall ensure, or cause the EA to ensure, that each Subproject meets the eligibility criteria, and is selected in accordance with the Subproject approval procedures set forth in the PAM. Except as ADB may otherwise agree, each Subproject shall:

- (a) be found to be technically, institutionally, financially and economically feasible based on due diligence conducted by the EA in accordance with indicators, policies and procedures acceptable to ADB;
- (b) not be classified as Category A in terms of environmental impacts within the meaning of the SPS;
- (c) not involve any involuntary resettlement or indigenous peoples impacts within the meaning of the SPS;
- (d) adhere to the safeguards requirements set forth in paragraphs 9 to 16 of this Schedule; and
- (e) comply with ADB's policy on social dimensions.

7. The Recipient shall ensure, or cause the EA to ensure, that all documents forming the basis for screening and selection of private entities and Subprojects are made available to ADB upon request and are kept available for such purposes for a minimum period of five years from the date of the project completion report for the Project.

Project Website

8. Within 12 months after the Effective Date, the Recipient shall ensure, or cause the EA to ensure, that a Project website is created to disclose information about various matters in regards to the Subprojects, including procurement. With regard to procurement, the website shall disclose the following information in relation to: (a) private entities procured for each Subproject: (i) the list of participating bidders, (ii) the name of the winning bidder, (iii) basic details on bidding procedures adopted, and (iv) the amount of contract awarded; and (b) goods and services procured for a Subproject: (i) the list of participating bidders; (ii) the name of the winning bidder; (iii) basic details on bidding/procurement procedures adopted; (iv) the amount of contract awarded; and (v) the list of goods/services procured. The Project website need not be separate from an existing website of the EA, as long as it is comprehensive and easily accessible by the public.

Operational

9. The Recipient and NEA shall ensure that all requests for proposal and PPAs are in a form and substance acceptable to ADB, and shall submit drafts of such documents to ADB for approval prior to issuance or execution.

10. NEA shall include specific provisions acceptable to ADB in the bidding documents and the PPAs to ensure compliance by the private entity with relevant ADB

policies and procedures, including those on procurement, safeguards, social dimensions, and anticorruption.

Resources

11. The Recipient shall ensure that NEA shall have adequate staff, resources, and facilities to implement the Project.

Grievance Redress Mechanism

12. The grievance redress mechanism established under the Initial Project shall address any grievances arising out of the Project, including those from affected peoples concerning land acquisition, environment and any other social issues in a timely manner.

Safeguards and Social

Safeguards

13. The Recipient shall ensure, or cause the EA to ensure, that construction works under the Subprojects do not involve significant adverse environmental impacts which may be classified as category A under the SPS or its related rules/manuals.

14. The Recipient shall ensure, or cause the EA to ensure, that the Subprojects do not involve any resettlement or indigenous people risks or impacts within the meaning of the SPS.

Environment

15. The Recipient shall ensure, or cause the EA to ensure, that the preparation, design, construction, implementation, operation and decommissioning of the Subprojects, and all Subproject facilities comply with (a) all applicable laws and regulations of the Recipient relating to environment, health, and safety; (b) the Environmental Safeguards; (c) the EARF; and (d) all measures and requirements set forth in the IEE and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Involuntary Resettlement and Indigenous Peoples

16. The Recipient shall ensure, or cause the EA to ensure, that the Subprojects do not have any indigenous peoples or involuntary resettlement impacts, all within the meaning of SPS. In the event that any Subproject does have any such impact, the Recipient shall take steps, or cause the EA to take steps, to ensure that the preparation, design, construction, implementation and operation of the relevant Subproject comply with (a) all applicable laws and regulations of the Recipient; (b) the SPS; (c) the RF and the IPPF, as applicable; and (d) any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Human and Financial Resources to Implement Safeguards Requirements

17. The Recipient shall ensure, or cause the EA to ensure, that private entities make available all necessary budgetary and human resources to fully implement the EMP as required.

Safeguards-Related Provisions in Bidding Documents and Works Contracts

18. The Recipient shall ensure, or cause the EA to ensure, that the private entities for Works:

- (a) comply with the measures and requirements relevant to the contractor set forth in the IEE and the EMP, and any corrective or preventative actions set forth in a Safeguard Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the EA with a written notice of any unanticipated environmental risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE or the EMP;
- (d) adequately record the condition of roads, agricultural land the other infrastructure prior to starting to transport materials and construction; and
- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

19. The Recipient shall do, or cause the EA to do, the following:

- (a) submit semi-annual Safeguards Monitoring Reports to ADB, and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Subprojects that were not considered in the IEE or the EMP, as applicable, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any breach of compliance with the measures and requirements set forth in the EMP promptly after becoming aware of the breach.

Social

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

Prohibited List of Investments

21. The Recipient shall ensure, or cause the EA to ensure, that no proceeds of the Grant under the Project are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Governance and Anticorruption

22. The Recipient and NEA shall comply with ADB's Anticorruption Policy (1998, as amended to date) and (a) shall ensure that the anticorruption provisions acceptable to ADB, the Recipient and NEA are included in all bidding documents and contracts for Subprojects whose PPAs are financed by ADB in connection with the Project, including provisions specifying the right of ADB to review and examine the records and accounts of NEA, private entities, and all contractors, suppliers, consultants, and other service providers as they relate to the Project, and as included in the PAM, (b) shall allow and assist ADB's representatives to carry out random spot checks on the work in progress and utilization of funds for the Project; (c) acknowledge that ADB reserves the right to investigate directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (d) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation, and as included in detail in the PAM.

PPMS

23. (a) The EA shall, within 3 months of the Effective Date, establish a PPMS, in form and substance acceptable to ADB, in accordance with the performance indicators agreed with ADB.

(b) The EA shall undertake periodic performance review of the Project in accordance with the PPMS to evaluate the scope, implementation arrangements, progress and achievement of the objectives of the Project.

24. Notwithstanding the generality of Section 2.08 of the Project Agreement, the EA shall also include in the semi-annual progress reports on Project implementation, any benefit monitoring for the Project undertaken pursuant to the PPMS.

Review

25. ADB, the Recipient and NEA shall meet regularly as required to discuss the progress of the Project and any changes in the implementation arrangements or remedial measure required to be taken to achieve the objectives of the Project.