
LOAN NUMBER 3110-NEP (SF)

LOAN AGREEMENT
(Special Operations)

(Melamchi Water Supply Project – Additional Financing)

between

NEPAL

and

ASIAN DEVELOPMENT BANK

DATED 7 APRIL 2014

NEP 31624

LOAN AGREEMENT (Special Operations)

LOAN AGREEMENT dated 7 April 2014 between NEPAL ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by an amended and restated loan agreement dated 6 April 2008 between the Borrower and ADB ("Initial Loan Agreement"), which amended and restated an earlier loan agreement between the same parties dated 24 January 2001, ADB provided the Borrower a loan ("Initial Loan") of ninety three million two hundred fifty three thousand Special Drawing Rights (SDR93,253,000) from ADB's Special Funds resources for the purpose of the Project described in Schedule 1 of the Initial Loan Agreement;

(B) the Borrower has applied to ADB for an additional loan for the purposes of completing Part A (Melamchi River Water Diversion Subproject) of the Project;

(C) the Project will be carried out by the Borrower's Ministry of Urban Development ("MOUD") through the Melamchi Water Supply Development Board;

(D) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein.

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

(a) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2012, as amended from time to time); and

(b) "PAM" means the project administration manual for the Project dated 19 December 2013 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB.

ARTICLE II

The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to sixteen million two hundred fifteen thousand Special Drawing Rights (SDR16,215,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 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 subsection (a) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 January and 1 July in each year.

Section 2.04. 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 1 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

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

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 and Schedule 5 to the Initial Loan Agreement.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure 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, Works, and Consulting Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Works and Consulting Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and
- (b) Goods, Works, and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2017 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations, as relevant, set forth in Schedule 3 to this Loan Agreement.

Section 4.02. (a) The Borrower shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for imprest fund(s) and statement of expenditures) and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) The Borrower shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Borrower's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of the Borrower, unless the Borrower shall otherwise agree.

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

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following is specified as additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations: the suspension provision of the Initial Loan Agreement shall have been triggered.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: the event specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. 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 7.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Ministry of Finance
Singha Durbar
Kathmandu, Nepal

Facsimile Number:

+977 1 421-1164.

For ADB

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

Facsimile Numbers:

+63 2 636-2444

+63 2 636-2293.

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

NEPAL

By 
MADHU KUMAR MARASINI
Joint Secretary
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 
KENICHI YOKOYAMA
Country Director
Nepal Resident Mission

SCHEDULE 1

Amortization Schedule

(Melamchi Water Supply Project – Additional Financing)

Date Payment Due	Payment of Principal (expressed in Special Drawing Rights)*
01 July 2022	337,813
01 January 2023	337,813
01 July 2023	337,813
01 January 2024	337,813
01 July 2024	337,813
01 January 2025	337,813
01 July 2025	337,813
01 January 2026	337,813
01 July 2026	337,813
01 January 2027	337,813
01 July 2027	337,813
01 January 2028	337,813
01 July 2028	337,813
01 January 2029	337,813
01 July 2029	337,813
01 January 2030	337,813
01 July 2030	337,813
01 January 2031	337,813
01 July 2031	337,813
01 January 2032	337,813
01 July 2032	337,813
01 January 2033	337,813
01 July 2033	337,813
01 January 2034	337,813
01 July 2034	337,813
01 January 2035	337,813
01 July 2035	337,813
01 January 2036	337,813
01 July 2036	337,813
01 January 2037	337,813
01 July 2037	337,813
01 January 2038	337,813
01 July 2038	337,813
01 January 2039	337,813
01 July 2039	337,813
01 January 2040	337,813
01 July 2040	337,813
01 January 2041	337,813
01 July 2041	337,813
01 January 2042	337,813
01 July 2042	337,813
01 January 2043	337,813
01 July 2043	337,813
01 January 2044	337,813

01 July 2044	337,813
01 January 2045	337,813
01 July 2045	337,813
01 January 2046	337,789
TOTAL	16,215,000

* The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

SCHEDULE 2

Allocation and Withdrawal of Loan Proceeds

General

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

Basis for Withdrawal from the Loan Account

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

Interest Charge

3. The amount allocated to Category 2 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

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

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

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

Disbursement Procedures

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

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Melamchi Water Supply Project – Additional Financing)			
Category			ADF Financing
Number	Item	Total Amount Allocated for ADB Financing (SDR)	Percentage and Basis for Withdrawal from the Loan Account
1	Civil Works	12,842,000	87% of total expenditure
2	Interest Charge	389,000	100% of total amount due
3	Unallocated	2,984,000	
	Total	16,215,000	

SCHEDULE 3

Execution of Project

Implementation Arrangements

1. The Borrower and the Project Executing Agency shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM and Schedule 5 of the Initial Loan Agreement, as relevant, except that all references to MPPW in the Initial Loan Agreement shall be replaced with MOUD. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

2. Without limiting the generality of the foregoing and Section 6.06 of the Loan Regulations, the Borrower shall ensure that counterpart funds are made available in a timely manner to assure efficient further implementation of the Project.

Governance and Corruption

3. The Borrower and the Project Executing Agency shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and 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 (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

4. The Borrower and the Project Executing Agency shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.