

Memorandum of Understanding

Between

THE GOVERNMENT OF NEPAL

And

THE GOVERNMENT OF REPUBLIC OF INDIA

Regarding Strengthening of Road Infrastructure in the Terai area of Nepal

The government of Nepal [hereinafter referred to as "GON"] and the Government of Republic of India [hereinafter referred to as "GOI"], hereinafter jointly referred to as the "Parties";

Bearing in mind the close and friendly relations between the two countries and their peoples:

Recalling the assistance of GoI to GoN in the transport sector, particularly in the construction of road infrastructure in Nepal;

Noting the need for development of infrastructure for facilitating better connectivity within Nepal and between Nepal and India;

Desirous of further strengthening cooperation in the development of connectivity infrastructure of Nepal;

In pursuance of the completion of remaining works in Packages 2, 3, 4, 5 and 6 as envisaged in the Memorandum of Understanding signed between GON and GOI on January 15, 2010;

Have reached the following understanding:

Article I

1.1 GoI will provide grant assistance to GoN for the completion of the remaining work in Package 2, 3, 4, 5 and 6 as envisaged in the Memorandum of Understanding signed between GON and GOI on January 15, 2010 [hereinafter referred to as the "Project"]. The cost of the Project is initially estimated by GoN as INR 5000 million [Five thousand million Indian Rupees] or approximately NRs 8000 million [eight thousand million Nepalese Rupees]. The quantum of grant assistance will be finalized by GoI based on the actual tendered costs, subject to the ceiling of INR 5000 million

1.2 The Grant assistance received through GoI for the strengthening of 17 roads infrastructure under Packages 2, 3, 4, 5 and 6 in the Terai area of Nepal listed in ANNEX-A will be channeled through the Redbook and Treasury System of GoN.





1.3 The construction/repair/strengthening/widening of the bridges exceeding 6 m span on the candidate roads as enlisted in ANNEX-A shall be the responsibility of GoN and shall be undertaken in tandem with the up-gradation of roads included in the Project.

1.4 GoN will secure the road construction corridor land, including right of way, for at least 15 metres on each side, on its own cost. Availability of at least 90% of the land would be ensured by GoN before the tenders are awarded for the Project.

1.5 The Project cost will be based on Detailed Project Report prepared by M/s RITES Ltd. To be updated by Hulaki Rajmarga Project for the remaining works.

1.6 The Ministry of Physical Infrastructure and transport [MoPIT], GoN will be the Executing Agency and Department of Roads will be the Implementing Agency of this Project on behalf of GoN.

Article II

2.1 GoN will appoint an Indian Consultant, whose Terms of Reference will be mutually agreed upon by GoN and GoI, and the payment for the Consultant will be made directly by the GoI. The Consultant will work under the Project Directorate.

2.2 GoN will appoint Contractors [Indian, Nepalese or Joint Venture Indian/Nepalese firms] for the execution of the Project in consultation with GoI.

2.3 GoN will create a Project Directorate [PD] for the smooth implementation of project activities under the Department of Roads and appoint a Project Coordinator Director, Project Director of Hulaki Rajmarga Project of the Department of Roads, who will be the Ex-officio Project Coordinator responsible for implementation of the project and will act as necessary liaison official between the Consultant/Contractor and GoN/other authorities to facilitate provision of necessary facilities by the authorities concerned and various exemptions to ensure successful and timely completion of the Project. PD will be responsible for overall implementation of the project activities, and report periodically to the Joint Project Monitoring Committee [JPMC].

Article III

3.1 The Project will be completed within three years of the signing of this MoU.

Article IV

4.1 GoI will arrange and make available all finances required for the successful implementation of the Project according to the fund flow arrangement specified in Article 4.2.

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4.2 GoI will release 25 [twenty five] per cent of the approved, tendered cost, including, including mobilization advance of 10 [ten] per cent, to GoN at the earliest after the tender is awarded. The remaining amount will be paid by GoI to GoN on the basis of physical progress in three equal installments.

4.3 Joint Project Monitoring Committee [JPMC] will recommend the fund on the basis of the physical progress achieved, in conformity with prescribed/agreed quality standards.

4.4 GoN will open an imprest account in the name of PD at Nepal Rastra Bank in INR and GoI will provide its grants amount in this account.

4.5 The imprest account will be operated jointly by the Project Coordinator and any PD officials as authorized by Ministry of Finance [MoF], GoN on the recommendation of MoPIT.

4.6 The actual expenditures incurred and provided through GoN treasury will be reimbursed from the imprest account and further replenished by GoI on the imprest account.

4.7 All expenditures on procurement of project activities will be in accordance with the existing Public Procurement Act and Public Procurement Rules of Nepal for Nepalese and or Indian/Nepalese Joint Venture of Indian Nepalese contractors/Consultant(s).

4.8 The internal audit of the Project will be conducted as per the GoN system.

4.9 The annual external audit of the Project will be conducted by the Office of the Auditor General [OAG/N] of Nepal. The external audit report will be shared with GoI.

4.10 A copy of the audited Annual Financial report, as otherwise specified by PD or as per GoN annual reporting format, will be shared with GoI through PD.

Article V

5.1 GoN will make available to the Consultant and the Contractors, at the earliest, the land required for the project, free of cost and free from all physical and legal encumbrances. GoN will ensure that at least 90% of the land is available before the tendering for the project is undertaken. GoN will be responsible for providing bulk electricity and water supply for the project. However, the cost of the electricity and water supply and other office costs, except office premises and salary of GoN staffs will be borne by the project fund.

5.2 GoN will be responsible for the resolution of administrative or legal encumbrances, if any, in the execution of the Project and for payment of compensation, if any, and settlement of claims or disputes arising in connection thereof.

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Article VI

6.1 GoN will provide the following facilities to the Consultant and the Contractor(s):

6.1.1 Space for appropriate office/residential accommodations for the personnel deployed by the Consultant at or near the site(s) of the Project execution. GoN will also facilitate acquisition of suitable space by the Contractor(s) at or near the site(s) of the Project execution for appropriate office/residential accommodations for their personnel and for their labor camps/construction yards.

6.1.2 Necessary security to the personnel deployed by the Consultant and the Contractor(s) and their teams and at related Project sites to enable smooth implementation of the Project.

6.1.3 Validation of the Indian Driving Licenses of expatriate drivers employed within Nepal by the Consultant and the Contractor(s) for the project, and facilitation of the movement of the personnel deployed by the Consultant and the Contractor(s) and their teams in Nepal, in accordance with the rules and regulations of GoN.

6.1.4 All administrative, environmental, legal, technical and other clearances, as necessary for the implementation of the Project, most expeditiously, without delay and without any financial implication for GoI, if a request for such clearance is made by the Consultant and the Contractor(s).

6.1.5 All reference documents related to GoN requirements will be made available to the Consultant and the Contractor(s) through the Project Coordinator.

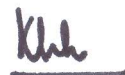
Article VII

7.1 The recruitment of administrative, technical and other personnel for the implementation of the Project will be confined to the nationals of either country. GoN will issue identity cards to such personnel and also arrange for their security during the implementation of the Project.

Article VIII

8.1 In order to conduct joint review of the project activities, to monitor the implementation of the project, and to ensure the smooth operation of project, a Joint Project Monitoring Committee [JPMC] will be formed comprising of the following members:

- (a) Secretary, Ministry of Physical Infrastructure and Transport, GoN [Chairperson].
- (b) Joint Secretary, Ministry of Physical Infrastructure and Transport, GoN.
- (c) Joint Secretary, Ministry of External Affairs [MEA], GoI.



- (d) Two representative of Department of Roads, Nepal.
- (e) One representative of Ministry of Finance, GoN.
- (f) One representative of Ministry of Foreign Affairs, GoN.
- (g) Representative of Ministry of Road Transport and Highways, Gol.
- (h) Representative of Finance Division, MEA, Gol.
- (i) Head of Wing [Economic Cooperation Wing], Embassy of India, Kathmandu.
- (j) Second Secretary [Executive Engineer], Embassy of India, Kathmandu.

8.2 Joint Secretary, Ministry of Physical Infrastructure and Transport, GoN will be the Member-Secretary of the JPMC.

8.3 The Project Coordinator appointed by GoN will be invited as special invitee to all meetings of the JPMC and will be responsible to report progress of the project activities.

8.4 The JPMC may, should there be any specific requirement, co-opt any other person related with the Project for the purpose of consultation, and will report the progress of the Project to the two Governments periodically.

8.5 Meeting of the JPMC will be convened during the implementation of the Project, normally once every six months, or with such periodicity as deemed necessary by its Member-Secretary.

8.6 The Project Director will fully apprise the JPMC at each meeting about the progress in implementation of the Project.

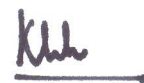
8.7 The JPMC will review the physical progress of project at regular intervals to ascertain conformity of construction with the prescribed/agreed quality standards.

Article IX

9.1 No funds provided by Gol will be used directly for tax payment.

9.2 GoN will provide a counterpart fund to make payment to the contractors and consultants for the payment of VAT against their invoice.

9.3 GoN will provide exemption of Customs Duty and other fees except VAT payable to the customs office by the contractors and consultants to import construction materials, machinery and equipments on the basis of approved master list. For this purpose, contractors and consultants will submit list of materials to be imported to the Hulaki Rajmarga Project. Hulaki Rajmarga Project will facilitate the approval process from MoF through MoPIT.



9.4 In the case of Indian Consultant/Contractor(s), GoN will not levy any taxes or duties of any kind on machinery, equipments and Vehicles [including second-hand vehicles] payable to the customs offices when these are exported to India upon completion of the project. For this purpose, contractors and consultants will submit the list of such machinery, equipments, and Vehicles to be exported to Hulaki Rajmarga Project. Hulaki Rajmarga Project will facilitate obtaining approval within a fortnight from MoF through MoPIT. However, if the machinery, equipments and Vehicles are not exported to India and sold in Nepal, then all taxes and/or duties as applicable will be paid by the contractor/consultant or the buyer.

9.5 The income tax levied on the Indian contractor/consultant will be regulated as per the provisions of the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income concluded between GoN and Gol.

9.6 GoN will provide duty-free import facilities to Indian nationals engaged by the Consultant or the Contractor(s) for the Project implementation. However, with regard to import of vehicles for the personal use, such a vehicle should be exported from Nepal within a period of three months after relinquishment of charge by the beneficiary concerned. If such a vehicle is disposed off in Nepal, taxes and duties will be payable by the beneficiary as per the prevailing laws of Nepal.

Article X

10.1 The personnel of Gol and the Indian deployed by the Consultant and the Contractor(s) working on the project in Nepal will, at all times, respect the laws of Nepal. However, no suit, proceedings, except in the case of gross negligence or willful misconduct, will be instituted against any such person for anything done or purported to be done in good faith, in the course of discharging their official duties for the successful and expeditious implementation of the project.

Article XI

11.1 After the completion of the Project and the approval of the JPMC, the Consultant/Contractor will hand over the roads and all other assets created under the Project to GoN, which will be responsible for the entire management of the roads. The JPMC will cease to exist after handing over of the completed Project to GoN.

Article XII

12.1 Both Parties will undertake a detailed needs assessment for the smooth functioning of the Project. Gol will depute personnel for imparting training etc., at its cost, to the extent possible, if it is so requested by GoN.

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12.2 GoN will provide adequate number of qualified officers and staff to manage the Hulaki Rajmarga Project. GoN will further provide regular operational and budgetary support for the smooth functioning and maintenance of the Project.

Article XIII

13.1 Any difference regarding the interpretation and implementation or application of any provision of this Memorandum of Understanding will be resolved through mutual consultations or negotiations between the Parties and will be recorded through the letter of exchange.

Article XIV

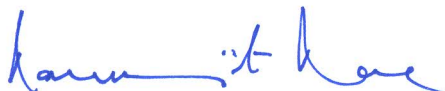
14. This Memorandum of Understanding will enter into force from the date of its signing and will remain in force until the completion and handing over of the Project to GoN.

Article XV

15.1 The Memorandum of Understanding may be extended, amended or modified at any time by mutual written consent of the Parties through exchange of Notes.

15.2 In WITNESS WHEREOF the undersigned being duly authorized thereto by their respective Governments, have signed this Memorandum of Understanding.

Signed at Delhi on this 20th **day of February 2016** in the two originals in English Language.



On behalf of


Government of the Republic of India

[Ranjit Rae]

Ambassador

Ministry of External Affairs

Government of India



On behalf of

Government of Nepal

[Arjun Kumar Karki]

Secretary

Ministry of Physical Infrastructure & Transport

Government of Nepal

Remaining Roads [Left out work] as per MoU of January 15, 2010

S.N	Name of Road	District	Approximate Length, Km
112	Nepalgunj Baghauda	Banke	44.50
113	Bharigaun Guleria Martiya	Bardiya	36.00
121	Lamahi Koilabas	Dang	34.00
109	Tamagadhi Simraungarh	Bara	39.31
110	Manmat Kalaiya Maitirba	Bara	27.00
120	Birgunj Thori	Parsa	52.83
107	Maisthan Gaushala Shamsi	Mahottari	27.20
108	Naya Road Barathawa Madhubani	Sarlahi	40.31
117	Jaleswor Hardi Road	Mahottari	27.20
119	Nawalpur Malangwa	Sarlahi	26.59
105	Birendrabazar Yudkuwa Mahinathpur	Dhanusha	32.35
106	Janakpur Yudkuwa	Dhanusha	17.05
115	Janakpur Jatahi	Dhanusha	12.60
118	Janakpur Jaleswor	Dhanusha/Mahottari	18.75
101	Charali Chandragadhi Kechana	Jhapa	40.00
102	Kanepokhari Rangeli	Morang	25.37
103	Kalyanpur Barsain Subaranpatti	Saptari	17.29
		Total	518.05

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