

Memorandum of Understanding
between
Government of India Represented by Ministry of Road Transport and Highways
and
Government of Nepal Represented by Ministry of Physical Infrastructure and Transport
for
Implementation Arrangement on Cost Sharing, Schedules and Safeguard Issues for
Construction of Mechi Bridge under ADB's SASEC Road Connectivity Programme
(Tranche2)
Funded by Government of India

Project Identification

This Project is for up gradation of Kakarvitta (Nepal) to Panitanki Bypass (India) ie. NH-327B covering the construction of a new bridge over Mechi River with a length of 1500 metre including 6 lane approach road of 825 meter starting from Panitanki in India ending at Kakarvitta in Nepal on Asian Highway 02 and the implementation of this component is overseen by National Highways and Infrastructure Development Corporation Limited (NHIDCL) on behalf of the Ministry of Road Transport and Highways (MoRTH), Government of India. Mechi Bridge shall be an important link for facilitating connectivity between India and Nepal, serving immensely, both the countries in strengthening trans-border trade, industrial, social and cultural exchange and fostering development in the region.

The Ministry of Road Transport and Highways, Government of India (hereinafter called the '**First Party**') and the Ministry of Physical Infrastructure and Transport, Government of Nepal (hereinafter called the '**Second Party**'),

Have reached the following Memorandum of Understanding (hereinafter referred to as MoU) as follows:

Both the Parties agree to facilitate the work of construction of a new bridge over Mechi River which connects Kakarvitta junction in Nepal to Panitanki Bypass in India as per the implementation arrangements in Article 4 of this MoU with the objective to facilitate trans-border trade, industrial, social and cultural exchange and to foster development in the region;



Both the Parties agree to ensure that the 'civil works contractor' engaged by the First Party is allowed to operate in Nepal i.e. territory of the Second Party and the Second Party agrees to adhere to the Asian Development Bank Safeguard Policy Statement (ADB SPS) for execution of the project by the First Party.

And both the Parties agree that issuance of the bidding documents of the civil work package for the project by NHIDCL shall be carried out after this MoU comes into effect.

Article I - DEFINITIONS

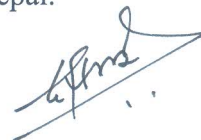
- 1.1 In this MoU, the following expressions, unless the context otherwise states, shall have the meaning hereby respectively assigned to them:
- i) **'Implementing Agency'** means 'NHIDCL' having their Corporate Office at 3rd Floor, PTI Building 4 Parliament Street, New Delhi-110001, and includes its heirs, administrators, executors and assigns.
 - ii) **'Project'** means construction of Mechi Bridge along with approach road across Indo Nepal border at Kakarvitta (Nepal) and Panitanki Bypass (India).
 - iii) **'Contractor'** means the contractor or contractors or suppliers or agencies appointed by the Implementing Agency for the construction work or any other connected work for the project.

Article 2 – RESPONSIBILITIES OF THE 'FIRST PARTY'

- 2.1 The **'First Party'** shall authorize NHIDCL as the Implementing Agency for execution and monitoring of the project and bear the entire cost of the project.
- 2.2 The **'First Party'** shall make necessary arrangement for release of funds for the execution of Civil Works of the Project and other related activities including Land Acquisition, Utility Shifting and Forest Clearance in Indian Territory.

Article 3 – RESPONSIBILITIES OF THE 'SECOND PARTY'

- 3.1 The **Second Party** shall be responsible to provide all statutory clearances for implementation of the project to the Implementing Agency in the territory of Nepal.



- 3.2 The **Second Party** shall provide necessary security to the contractors and their team deployed at the project sites/office in the territory of Nepal for smooth implementation of the project.
- 3.3 The **Second Party** shall make all the statutory payments to the local Government or any other statutory body or bodies relating to the Project in its territory.
- 3.4 The **Second Party** shall validate the Indian Driving License of the Construction staff deployed for driving and movement within Nepal for implementation of the project.
- 3.5 The **Second Party** shall ensure completion of the land acquisitions, Resettlement & Rehabilitation (R&R), Utility Shifting and environmental/forest clearance process in Nepal's territory and bear associated cost before award of the contract by the Implementing Agency.
- 3.6 The **Second Party** shall facilitate the Implementing Agency in carrying out the project in Nepal and provide below mentioned facilities to the Implementing Agency:-
- i) Ensuring smooth and fact customs clearance and all other statutory approvals for materials, equipment and machinery imported from India into Nepal including Master List.
 - ii) Exemption from payment of all customs duties, local taxes including VAT, cesses and levies on any material or equipment imported from India by Implementing Agency for implementation of the project.
 - iii) Refund of VAT and related taxes, in respect of any material or equipment purchased or procured in Nepal for the project. The Implementing Agency shall submit the necessary requests with VAT bills so the Inland Revenue Office of the Government of Nepal for reimbursement and Inland Revenue Office shall reimburse the paid VAT within the prescribed time, in accordance with the VAT Act and Regulations of the Government of Nepal.
 - iv) Double Tax Avoidance Agreement signed between the two countries shall be applicable in the case of income tax for any Indian national or Indian firm employed by the Implementing Agency in connection with the Project to be carried out in Nepal.
 - v) Timely intervention for facilitating requisite supplies/inputs from the Second Party (if required), for the construction of this projects.

Article 4 – IMPLEMENTATION ARRANGEMENTS

4. The Implementation Arrangements for the Project in this MoU are listed as under.

4.1 Civil Works Activities:

- i) The **First Party** shall engage a contractor for the construction work.
- ii) The **Second Party** shall ensure the issuance of necessary permits for the contractor complete the works in its territory in a timely manner.



- iii) The **Second Party** shall cooperate with the **First Party**, its contractor or consultants, to efficiently execute the project in Nepal's territory and shall identify a Nodal Officer **responsible for liaising** with the Implementing Agency and contractor and coordinating with other departments of the Government of Nepal for all necessary clearance and approvals for construction of the project and shall convey their details to the First Party.
- iv) **Both the Parties** shall ensure at least 90% availability of encumbrance free land before award of work for the project.

4.2 **Cost Sharing:**

- i) The Construction Cost of the project shall be borne by the Government of India.
- ii) The Government of Nepal shall bear the cost for the activities for utility shifting, land acquisition, R&R and forest clearance in Nepal's territory for project implementation.

4.3 **Safeguard Policy:**

- i) Apart from complying with the laws and regulations of the Government of Nepal, Second Party shall ensure that the all safeguard activities, land acquisitions, resettlement, forest clearance etc., shall strictly comply with ADB SPS (2009) and follow the provisions in the Resettlement Plan (RP) and Initial Environmental Examinations (IEE) as approved by ADB and uploaded on ADB website.

4.4 **Monitoring Activities:**

- i) The First Party and ADB shall inspect the project implementation progress periodically. Independent consultants shall be recruited for this purpose. The Second Party shall ensure full cooperation for the activities, such as sharing the necessary information, issuing entry permits and assigning relevant counterpart officials to efficiently conduct such inspections. If required, a Project Steering Committee/Project Monitoring Committee shall be constituted for steering the implementation of the project in a timely manner. This committee shall be constituted by officials from both the Parties, ADB, the Implementing Agency and the Contractor.

Article 5 – DURATION OF PROJECT

- 5.1 The date of the Project's commencement and completion shall be certified by the **Implementing Agency**. Time limit for civil works construction is 3 year with 4 years defect liability period.

Article 6 – MODIFICATION or TERMINATION OF MoU

- 6.1 Modification to any of the Terms and conditions of this MoU may only be made by written agreement between the First Party and the Second Party.



6.2 Any differences regarding the interpretation or implementation or application of any provision of this MoU shall be resolved through mutual consultation and negotiation. If a resolution is not possible, either of the Party can terminate the MoU at any time giving the other party 3 (three) months notice. In such case, both the parties shall be equally liable for resultant loss/damages including payments to the Contractor engaged by the First Party.

In witness whereof the undersigned have signed this MoU at New Delhi, India on this Twenty fourth day of August 2017 in two original copies in English.

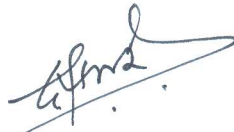
On behalf of "**First Party**"



Secretary

Ministry of Road Transport and Highways
Government of India

On behalf of "**Second Party**"



Secretary

Ministry of Physical Infrastructure and Transport
Government of Nepal