

**CREDIT NUMBER 3995-LSO**

# **Project Agreement**

**Water Sector Improvement Project**

**between**

**INTERNATIONAL DEVELOPMENT ASSOCIATION**

**and**

**WATER AND SEWERAGE AUTHORITY**

**Dated December 7, 2004**

**CREDIT NUMBER 3995-LSO**

**PROJECT AGREEMENT**

AGREEMENT dated December 7, 2004, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and WATER AND SEWERAGE AUTHORITY (WASA).

WHEREAS (A) by the Development Credit Agreement of even date herewith between the Kingdom of Lesotho (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to nine million six hundred thousand Special Drawing Rights (SDR 9,600,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that WASA agree to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by a subsidiary loan agreement to be entered into between the Borrower and WASA, a portion of the proceeds of the credit provided for under the Development Credit Agreement will be made available to WASA on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS WASA, in consideration of the Association's entering into the Development Credit Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

**ARTICLE I**

**Definitions**

Section 1.01. Unless the context otherwise requires, the several terms defined in the Development Credit Agreement, the Preamble to this Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

**ARTICLE II**

**Execution of the Project**

Section 2.01. (a) WASA declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Credit Agreement, and, to this end, shall carry out Parts B and C of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering, environmental and water supply

practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for Parts B and C of the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Association and WASA shall otherwise agree, WASA shall carry out Parts B and C of the Project in accordance with the Implementation Program set forth in Schedule 4 to the Development Credit Agreement.

Section 2.02. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for Parts B and C of the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to the Development Credit Agreement.

Section 2.03. (a) WASA shall carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of Parts B and C of the Project.

(b) For the purposes of Section 9.06 of the General Conditions and without limitation thereto, WASA shall:

- (i) prepare, jointly with the Borrower, on the basis of guidelines acceptable to the Association and furnish to the Association not later than six (6) months before the Closing Date or such later date as may be agreed for this purpose between the Association and WASA and the Borrower, a plan for the future operation of facilities under Parts B and C of the Project; and
- (ii) afford the Association a reasonable opportunity to exchange views with WASA and the Borrower on the said plan.

Section 2.04. WASA shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Association shall otherwise agree, WASA shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) WASA shall, at the request of the Association, exchange views with the Association and the Borrower with regard to the progress of the Project, the performance of its obligations under this Agreement and under the Subsidiary Loan Agreement, and other matters relating to the purposes of the Credit.

(b) WASA shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Credit, or the performance by WASA of its obligations under this Agreement and under the Subsidiary Loan Agreement.

### **ARTICLE III**

#### **Management and Operations of WASA**

Section 3.01 (a) WASA shall carry on its operations and conduct its affairs in accordance with sound administrative, financial, engineering, environmental and water supply practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

(b) Without limitation to the provisions of paragraph 1 above, WASA shall recruit and thereafter maintain throughout the duration of the Project an environmental specialist and a community water and sanitation specialist with qualifications and experience acceptable to the Association.

Section 3.02. WASA shall at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial, environmental and water supply practices.

Section 3.03. WASA shall take out and maintain with responsible insurers, or make other provision satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

Section 3.04. WASA shall: (a) carry out the EMP and the PFLAC, all in accordance with the provisions, modalities and procedures detailed in Schedule 4 to the Development Credit Agreement; and (b) take all measures required to ensure that acquisition of any land required for works for Parts B of the Project is carried out in accordance with modalities detailed in the PFLAC.

### **ARTICLE IV**

#### **Financial Covenants**

Section 4.01. (a) WASA shall establish and maintain a financial management system, including records and accounts, and prepare financial statements, in accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect its operations and financial condition and to register separately the operations, resources and expenditures related to Parts B and C the Project.

(b) WASA shall:

(i) have its financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year (or other period agreed to by the Association) commencing with the fiscal year in which the first withdrawal under the Project Preparation Advance was made, audited, in accordance with

consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association;

- (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year (or such other period agreed to by the Association), (A) certified copies of the financial statements referred to in paragraph (a) of this Section, for such year (or such other period agreed to by the Association), as so audited, and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and
- (iii) furnish to the Association such other information concerning such records and accounts and the audit of such financial statements, and concerning said auditors, as the Association may from time to time reasonably request.

Section 4.02. (a) Without limitation upon WASA's reporting obligations set out in Section 4.01 of this Agreement, WASA shall prepare and furnish to the Association a financial monitoring report, in form and substance satisfactory to the Association, which:

- (i) sets forth sources and uses of funds for Parts B and C of the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Credit, and explains variances between the actual and planned uses of such funds;
- (ii) describes physical progress in implementation of Parts B and C of the Project, both cumulatively and for the period covered by said report, and explains variances between the actual and planned implementation for Parts B and C of the Project; and
- (iii) sets forth the status of procurement under Parts B and C of the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Association not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Association not later than 45 days after each subsequent calendar quarter, and shall cover the period not covered by the previous FMR until the end of such calendar quarter.

4.03 (a) Except as the Association shall otherwise agree, WASA shall produce for each of its fiscal year funds from internal sources not less than 10% of the annual WASA capital expenditure incurred for that year on account of Part B of the Project.

(b) Before September 30 of each fiscal year, WASA shall, on the basis of forecasts prepared by it and satisfactory to the Association, review whether it would meet the requirements set forth in paragraph (a) above in respect of such year and the following fiscal year, and shall promptly furnish to the Association with a copy of the said review.

(c) If any such review shows that WASA would not meet the requirements set forth in paragraph (a) for WASA's fiscal years covered by such review, WASA shall promptly take all necessary measures in order to meet such requirements.

(d) For the purposes of this Section:

(i) The term "funds from internal sources" means the difference between:

(A) the sum of revenues from all sources related to operations, consumer deposits and consumer contributions in aid of construction, net non-operating income, any reduction in working capital other than cash, and counterparts funds related to Parts B and C of the Project; and

(B) the sum of all expenses related to operations, including administration, maintenance and taxes and payments in lieu of taxes (excluding provision for depreciation and other non-cash operating charges), debt service requirements, all cash dividends and other cash distributions of surplus, increase in working capital other than cash and other cash outflows other than capital expenditures.

(ii) The term "net non-operating income" means the difference between:

(A) revenues from all sources other than those related to operations; and

(B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.

(iii) The term "working capital other than cash" means the difference between current assets excluding cash and current liabilities at the end of each fiscal year.

- (iv) The term “current assets excluding cash” means all assets other than cash, which could in the ordinary course of business be converted into cash within twelve months, including accounts receivable, inventories and pre-paid expenses properly chargeable to operating expenses within the next fiscal year.
- (v) The term “current liabilities” means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve months, including accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes.
- (vi) The term “debt service requirements” means the aggregate amount of repayments of, and interest and other charges on, debt.
- (vii) The term “capital expenditures” means all expenditures incurred on account of fixed assets, including interest charged to construction, related to operations.
- (viii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Association.

Section 4.04. (a) Except as the Association shall otherwise agree, WASA shall not incur any debt unless a reasonable forecast of the revenues and expenditures of WASA shows that the estimated net revenues of WASA for each fiscal year during the term of the debt to be incurred shall be at least 1.2 times the estimated debt service requirements of WASA in such year on all debt of WASA including the debt to be incurred.

(b) For the purposes of this Section:

- (i) The term “debt” means any indebtedness of WASA maturing by its terms more than one year after the date on which it is originally incurred.
- (ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been

entered into.

- (iii) The term "net revenues" means the difference between:
  - (A) the sum of revenues from all sources related to operations and net non-operating income; and
  - (B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.
- (iv) The term "net non-operating income" means the difference between:
  - (A) revenues from all sources other than those related to operations; and
  - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (v) The term "debt service requirements" means the aggregate amount of repayments of, and interest and other charges on, debt.
- (vi) The term "reasonable forecast" means a forecast prepared by WASA not earlier than twelve months prior to the incurrence of the debt in question, which both the Association and WASA accept as reasonable and as to which the Association has notified WASA of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of WASA.
- (vii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Association.



## **ARTICLE V**

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

### **Cancellation and Suspension**

Section 5.01. This Agreement shall come into force and effect on the date upon which the Development Credit Agreement becomes effective.

Section 5.02. (a) This Agreement and all obligations of the Association and of WASA thereunder shall terminate on the earlier of the following two dates:

- (i) the date on which the Development Credit Agreement shall terminate in accordance with its terms; or
- (ii) the date 25 years after the date of this Agreement.

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a) (ii) of this Section, the Association shall promptly notify WASA of this event.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

## **ARTICLE VI**

### **Miscellaneous Provisions**

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this 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, telex or facsimile to the party to which it is required or permitted to be given or made at such party's 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. Deliveries made by facsimile transmission shall also be confirmed by mail. The addresses so specified are:

For the Association:

International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:	Telex:	Facsimile:
INDEVAS Washington, D.C.	248423 (MCI) or 64145 (MCI)	(202) 477 6391

For WATER AND SEWERAGE AUTHORITY:

P. O. Box 426  
Maseru 100  
Lesotho

Facsimile:  
266 22 31 0006

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of WASA, or by WASA on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by its Chief Executive, or such other person or persons as the Chief Executive shall designate in writing, and WASA shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Maseru, the Kingdom of Lesotho, of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Ritva Reinikka

Authorized Representative

WATER AND SEWERAGE AUTHORITY

By /s/ Refiloe Tlali

Authorized Representative