

CONFORMED COPY

CREDIT NUMBER 2485 UNI

Project Agreement

(Second Multi-State Roads Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

OSUN STATE OF NIGERIA

Dated July 30, 1993

CREDIT NUMBER 2485 UNI

PROJECT AGREEMENT

AGREEMENT, dated July 30, 1993, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and OSUN STATE OF NIGERIA (Osun State).

WHEREAS (A) by the Development Credit Agreement of even date herewith between the Federal Republic of Nigeria (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to sixty one million four hundred thousand Special Drawing Rights (SDR 61,400,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that Osun State agrees to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by a Subsidiary Loan Agreement (the Osun State Subsidiary Loan Agreement) entered into between the Borrower and Osun State, a portion of the proceeds of the credit provided for under the Development Credit Agreement will be relented to Osun State on the terms and conditions set forth in the Osun State Subsidiary Loan Agreement; and

WHEREAS Osun State, 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 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) Osun State 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 A, B, C.1, C.2 and C.3 of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and road maintenance practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for Parts A, B, C.1, C.2 and C.3 of the Project.

(b) Without any limitation or restriction upon Osun State's obligations under paragraph (a) of this Section, Osun State shall:

- (i) provide in its annual budget amounts satisfactory to the Association sufficient to cover: (A) Osun State's counterpart contributions to the costs of the Project, and (B) all recurrent costs for the routine maintenance of state roads such amount not to be less than \$750,000 equivalent per year;
- (ii) open and maintain an account in a commercial bank (the Osun State Project Account) to be used exclusively for expenditures under the Project;
- (iii) deposit into the Osun State Project Account an initial amount equivalent to \$270,000; and
- (iv) thereafter, deposit in the Osun State Project Account each month an amount equivalent to \$270,000.

(c) Osun State shall, for the purposes of the Project, open and thereafter maintain in dollars a special deposit account (the Osun State Special Account) in a commercial bank on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Osun State Special Account shall be made in accordance with the provisions of Schedule 2 to this Agreement.

Section 2.02. (a) Osun State shall: (i) ensure that an increasing share of road maintenance works to be performed under the Project (up to about 70% of all maintenance works carried out by the fifth year of Project execution) are carried out by contractors through contractual arrangements satisfactory to the Association concluded between Osun State and said contractors; (ii) formulate a manpower development action plan for SMOW staff to be agreed upon with the Association; and (iii) promptly implement said action plan as agreed upon with the Association.

(c) Osun State shall not undertake: (i) any investment for roads estimated to cost more than \$4,000,000 equivalent; or (ii) any investment for roads to be financed under the Project which shows an economic rate of return of less than 12%, unless each such

investment has been reviewed and agreed upon with the Association.

(c) Osun State shall: (i) assess the impact on the environment of road works to be undertaken under the Project, and design appropriate measures required to adequately address any environmental concern that may arise during the execution of the Project; and (ii) promptly implement appropriate environmental protection measures as agreed upon with the Association.

(d) Osun State shall: (i) assist the Borrower as required to prepare and carry out the annual review, the mid-term review and the periodic reports referred to in Section 3.03 of the Development Credit Agreement; (ii) reassess periodically in agreement with the Association the rate of the various road users charges with a view to adjusting them as required to ensure an adequate financing of the recurrent costs to be incurred by Osun State for road maintenance; (iii) carry out by June 30, 1995 the axle load survey referred to under Part C.2 (b) of the Project; (iv) review with the Association the results and recommendations of said survey as soon as they are available; and (v) promptly implement the recommendations agreed upon with the Association.

Section 2.03. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for Parts A, B, C.1, C.2 and C.3 of the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.04. Osun State 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 this Agreement and Parts A, B, C.1, C.2 and C.3 of the Project.

Section 2.05. Osun State shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Association shall otherwise agree, Osun State shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Osun State Subsidiary Loan Agreement or any provision thereof.

Section 2.06. (a) Osun State shall, at the request of the Borrower or the Association, exchange views with the Borrower and the Association with regard to the progress of Parts A, B, C.1, C.2 and C.3 of the Project, the performance of its obligations under this Agreement and under the Osun State Subsidiary Loan Agreement, and other matters relating to the purposes of the Credit.

(b) Osun State shall promptly inform the Borrower and the Association of any condition which interferes or threatens to interfere with the progress of Parts A, B, C.1, C.2 and C.3 of the Project, the accomplishment of the purposes of the Credit, or the performance by Osun State of its obligations under this Agreement and under the Osun State Subsidiary Loan Agreement.

ARTICLE III

Financial Covenants

Section 3.01. (a) Osun State shall maintain or cause to be maintained records and accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of Parts A, B, C.1, C.2 and C.3 of the Project of the departments or agencies of Osun State responsible for carrying out Parts A, B, C.1, C.2 and C.3 of the Project.

(b) Osun State shall:

(i) have the records and accounts referred to in paragraph (a) of this Section (including those for the Osun State Special Account) for each

fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;

- (ii) furnish to the Association as soon as available, but in any case not later than four months after the end of each such year, the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and
- (iii) furnish to the Association such other information concerning said records and accounts and the audit thereof as the Association shall from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditure, the Borrower shall:

- (i) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and accounts reflecting such expenditures;
- (ii) retain, until at least one year after the Association has received the audit for the fiscal year in which the last withdrawal from the Credit was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Association's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

ARTICLE IV

Effective Date; Termination;
Cancellation and Suspension

Section 4.01. This Agreement shall come into force and effect on the date upon which the Development Credit Agreement becomes effective.

Section 4.02. (a) This Agreement and all obligations of the Association and of Osun State 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 Osun State of this event.

Section 4.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation

or suspension under the General Conditions.

ARTICLE V

Miscellaneous Provisions

Section 5.01. 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, telegram, cable, telex or radiogram 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. 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:

INDEVAS
Washington, D.C.

Telex:

248423 (RCA)
82987 (FTCC)
64145 (WUI) or
197688 (TRT)

For Osun State:

The Honourable Commissioner
Ministry of Works, Lands and Physical
Planning
PMB 4308
Osogbo, Osun State
Nigeria

Section 5.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of Osun State, or by Osun State on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by the State Commissioner responsible for works or such other person or persons as the State Commissioner responsible for works shall designate in writing, and Osun State shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.03. 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 the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Edward V. K. Jaycox
Regional Vice President
Africa

OSUN STATE OF NIGERIA

By /s/ Zubair M. Kazaure
Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I: Procurement of Goods and Works

Part A: International Competitive Bidding

1. Except as provided in Part C hereof, goods and works shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1992 (the Guidelines).

2. Bidders for civil works shall be prequalified as provided in paragraph 2.10 of the Guidelines, except that for works to be carried out during the first year of Project execution bidders may be postqualified as provided for in paragraph 2.57 of the Guidelines.

3. To the extent practicable, contracts for civil works and goods shall be grouped into bid packages estimated to cost the equivalent of \$500,000 or more for civil works and \$100,000 or more for goods.

Part B: Preference for Domestic Contractors

In the procurement of works in accordance with the procedures described in Part A.1 hereof, Osun State may grant a margin of preference to domestic contractors in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraph 5 of Appendix 2 thereto.

Part C: Other Procurement Procedures

1. Contracts for civil works estimated to cost less than \$500,000 equivalent per contract up to an aggregate amount equivalent to \$4,600,000, may be procured under contracts awarded on the basis of competitive bidding, advertised locally, in accordance with procedures satisfactory to the Association.

2. Contracts for small works estimated to cost less than the equivalent of \$50,000 per contract up to an aggregate amount not exceeding the equivalent of \$500,000 may be procured under contracts awarded on the basis of selective tendering, in accordance with procedures acceptable to the Association.

3. Contracts for goods estimated to cost less than the equivalent of \$50,000 per contract up to an aggregate amount not exceeding the equivalent of \$400,000 may be procured under contracts awarded on the basis of prudent shopping.

Part D: Review by the Association of Procurement Decisions

1. Review of prequalification:

With respect to the prequalification of bidders as provided in Part A.2 hereof, the procedures set forth in paragraph 1 of Appendix 1 to the Guidelines shall apply.

2. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to each contract for civil works estimated to cost the equivalent of \$500,000 or more, and each contract for goods estimated to cost the equivalent of \$100,000 or more, the

procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Association pursuant to paragraph 2 (d) of said Appendix shall be furnished to the Association prior to the making of the first payment out of the Osun State Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Osun State Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Association pursuant to said paragraph 3 shall be furnished to the Association as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 2 to this Agreement.

(c) The provisions of the preceding subparagraph (b) shall not apply to contracts on account of which withdrawals from the Credit Account are to be made on the basis of statements of expenditure.

3. The figure of 10% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II: Employment of Consultants

In order to assist Osun State in carrying out the Project, Osun State shall employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Association. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Association on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by The World Bank as Executing Agency" published by the Bank in August 1981.

SCHEDULE 2

Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1)(b), (2)(b), (3)(b) and (4)(b) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;

(b) the term "eligible expenditures" means expenditures in respect of the reasonable cost of goods and services required for Parts A, B, C.1, C.2 and C.3 of the Project and to be financed out of the proceeds of the Credit allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and

(c) the term "Authorized Allocation" means an amount equivalent to \$ 1,500,000 to be withdrawn from the Credit Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule.

2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Association has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for

a deposit or deposits which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount or amounts as the Borrower shall have requested.

- (b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposits into the Special Account at such intervals as the Association shall specify.
- (ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures.

All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement; or

(b) once the total unwithdrawn amount of the Credit allocated to the eligible Categories for Parts A, B, C.1, C.2 and C.3 of the Project, less the amount of any outstanding special commitment entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to Parts A, B, C.1, C.2 and C.3 of the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit allocated to the eligible Categories for Parts A, B, C.1, C.2 and C.3 of the Project shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of the Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the Special Account (or, if the Association shall so request, refund to the Association)

an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into the Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Association made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

