

COPY

CONFORMED

CREDIT NUMBER 2844 MAG

Project Agreement

(Energy Sector Development Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

JIRO SY RANO MALAGASY

Dated May 29, 1996

CREDIT NUMBER 2844 MAG

PROJECT AGREEMENT

AGREEMENT, dated May 29, 1996, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and JIRO SY RANO MALAGASY (JIRAMA).

WHEREAS (A) by the Development Credit Agreement of even date herewith between Republic of Madagascar (the Borrower) and the Association, the Association agreed to make available to the Borrower an amount in various currencies equivalent thirty one million eight hundred thousand Special Drawing Rights (SDR 31,800,000) the terms and conditions set forth in the Development Credit Agreement, but only condition that JIRAMA agree to undertake such obligations toward the Association set forth in this Agreement;

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

WHEREAS JIRAMA, 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) shall have the respective meanings therein set forth.

## ARTICLE II

### Execution of the Project

Section 2.01. (a) JIRAMA 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 Part A of the Project with due diligence and efficiency, and in conformity with appropriate administrative, financial, engineering and environmental practices; shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for Part A of the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section, JIRAMA shall carry out Part A of the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement.

Section 2.02. Except as the Association shall otherwise agree, procurement of goods, works and consultants' services required for Part A of the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 2 to this Agreement.

Section 2.03. JIRAMA shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement and Part A of the Project.

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

Section 2.05. (a) JIRAMA shall, at the request of the Association, exchange information with the Association with regard to the progress of Part A 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) JIRAMA shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of Part A of the Project, the accomplishment of the purposes of the Credit, or the performance by JIRAMA of its obligations under this Agreement and under the Subsidiary Loan Agreement.

(c) Without prejudice to the generality of the foregoing, JIRAMA shall participate fully in the annual review referred to in Schedule 4 of the Development Credit Agreement and, to this end, shall: (i) furnish to the Borrower and the Association reports as may be required for that purpose, and in such detail as the Borrower or the Association shall reasonably request, on the progress and status of the Project; following each such review, act promptly and diligently, in order to take, or as requested by the Borrower in taking, any corrective action deemed necessary to remedy any shortcomings noted in the implementation of the Project, or to implement, or assist in the implementation of, such other measures as may have been agreed upon between the parties for the furtherance of the objectives of the Project.

## ARTICLE III

### Management and Operations of JIRAMA

Section 3.01. JIRAMA shall carry on its operations and conduct its affairs in accordance with sound administrative, financial and technical practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. JIRAMA 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 and technical practices.

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

#### ARTICLE IV

##### Financial Covenants

Section 4.01. (a) JIRAMA shall maintain records and accounts adequate to r in accordance with sound accounting practices its operations and financial condi

(b) JIRAMA shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) 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 c not later than six (6) months after the end of each such year (A) certified copies of its financial statements for such yea so audited, and (B) the report of such audit by said auditors 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, accounts and financial statements as well as th audit thereof, as the Association shall from time to time reasonably request.

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

- (i) maintain, or cause to be maintained, in accordance with paragraph (a) of this Section, records and accounts reflectin such expenditures;
- (ii) retain, until at least one year after the Association has rec the audit report for the fiscal year in which the last withdr from the Credit Account or payment out of the Special Account was made, all records (contracts, orders, invoices, bills, re 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 ann audit referred to in paragraph (b) of this Section and that t report of such audit contains a separate opinion by said audi 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.

Section 4.02. (a) Except as the Association shall otherwise agree, JIRAMA not incur any debt unless a reasonable forecast of the revenues and expenditures JIRAMA shows that the estimated net revenues of JIRAMA for each fiscal year duri the term of the debt to be incurred shall be at least 1.5 times the estimated de requirements of JIRAMA in such year on all debt of JIRAMA including the debt to incurred.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of JIRAMA 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 contrac or agreement or other instrument providing for such debt or f 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 (including sinking fund payments, if any of, and interest and other charges on, debt.
- (vi) The term "reasonable forecast" means a forecast prepared by JIRAMA not earlier than twelve months prior to the incurrence of the debt in question, which both the Association and JIRAMA accept as reasonable and as to which the Association has notified JIRAMA of its acceptability, provided that no ev has occurred since such notification which has, or may reasonably be expected in the future to have, a material adve effect on the financial condition or future operating results JIRAMA.
- (vii) Whenever for the purposes of this Section it shall be necessa to value, in terms of the currency of the Borrower, debt paya in another currency, such valuation shall be made on the basi of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for th purposes of servicing such debt, or, in the absence of such r on the basis of a rate of exchange acceptable to the Associat

Section 4.03. (a) Except as the Association shall otherwise agree, JIRAMA take all such measures as shall be required to produce funds from internal cash equivalent to not less than thirty percent (30%) of the annual average of JIRAMA capital expenditures incurred or expected to be incurred during the previous, cu following fiscal year.

(b) For the purposes of this paragraph:

- (i) the term "funds from internal sources" means the difference between:
  - (A) the sum of gross revenues from all sources related to JIRAMA's operations, contributions in aid of construction, net non-operating income and any reduction in non-cash working capital; and
  - (B) the sum of all expenses of the JIRAMA's operations, including maintenance and administration (excluding depreciation and other non-cash operating charges), interest and other charges on debt excluding interest financed under a loan contract), repayment of loans (including sinking fund payments, if any), all taxes or payments in lieu of taxes, all cash dividends and other cash distributions of surplus, increase in non-cash working capital and any other cash outflows other than cash expenditures related to the operations of JIRAMA;

- (ii) the term "capital expenditures" means all expenditures incur on account of capital assets, including interest during construction, related to the operations of JIRAMA;
- (iii) "gross revenue" means the revenue earned and received for the services provided by JIRAMA;
- (iv) "expenses" means the sum of all operating expenses, taxes on income and profits, depreciation and interest charged on all debentures, bonds and loans;
- (v) "operating expenses" means the cost of operation and maintenance, service management and administrative expenses, and all taxes accruing during the financial year, other than on income and profits of JIRAMA;
- (vi) "taxes on income and profits" consists of income taxes and other levies accrued by JIRAMA according to the provisions of any legislation or regulation applicable in this respect;
- (vii) "depreciation" means the applicable provision derived pursuant to the requirements stipulated in the appropriate electricity legislation;
- (viii) "interest charged on all debentures, bonds and loans" means a interest, excluding interest during construction, accrued by JIRAMA during the financial year and all other charges on debt.

Section 4.04. JIRAMA shall take all actions required to ensure, starting with fiscal year beginning on January 1, 1996, that accounts receivable in respect of sales shall not exceed, at any time, an average of the equivalent of sixty days' sales, in the case of private sector clients, and ninety days' worth of sales, in the public sector and local governments.

Section 4.05. Pending the establishment of the regulatory agency provided under Part C.1 of the Project, and implementation of the tariffs study under Part the Project, JIRAMA shall continue to adjust its electricity tariffs periodically in accordance with the tariff adjustment principles and indexation formulae set forth in Arr't No. 7800-92 of December 31, 1992.

Section 4.06. JIRAMA shall, with effect from May 31, 1996, take appropriate measures with a view:

- (a) to open separate bank accounts and to separate cash management in respect of its electricity and water sections, respectively;
- (b) to ensure that all receipts and payments arising out of the activities of the respective sections of JIRAMA shall be credited, or charged, as the case may be, to the appropriate account; and
- (c) to maintain its debt service to the Borrower on a current basis.

Section 4.07. JIRAMA shall, as soon as possible and in any event not later than May 31, 1996, deposit into the bank account for its water section an amount of F billion as liquid working capital, and shall, for this purpose, make an appropriate allowance for the corresponding amount in the accounts of JIRAMA.

Section 4.08. JIRAMA shall, as soon as possible and in any event not later than May 31, 1996, ensure that any funds generated by, or accruing to, its electricity section shall not be used for any purpose not directly related to the activities of the section (including payment of dividends), unless the financial requirements for operations of the electricity section, debt service, additional working capital investments have been fully met.

Section 4.09. For purposes of Sections 4.02 and 4.03 of this Article, all references to JIRAMA and to the operations of JIRAMA shall be construed as references to the electricity section of JIRAMA and to its electricity operations, respectively.

#### ARTICLE V

Effective Date; Termination;  
Cancellation and Suspension

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

Section 5.02. (a) This Agreement and all obligations of the Association and JIRAMA 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 fifteen 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 promptly notify JIRAMA of this event.

Section 5.03. All the provisions of this Agreement shall continue in full 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 given or made when it shall be delivered by hand or by mail, telegram, cable, telex, radiogram to the party to which it is required or permitted to be given or made or to the party's address hereinafter specified or at such other address as such party shall designate 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 JIRAMA:

149, Rue Rainandriamampandry  
Antananarivo  
B.P. 200  
Madagascar

Cable address:

Telex:

JI.RA.MA

222-28  
JIRADG MG

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 JIRAMA, JIRAMA on behalf of JIRAMA under the Development Credit Agreement, may be taken or executed by the Director General, or such other person or persons as the Director General shall designate in writing, and JIRAMA shall furnish to the Association 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 the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Callisto E. Madavo  
Regional Vice President  
Africa

JIRO SY RANO MALAGASY

By /s/ Pierrot Rajaonarivelo  
Authorized Representative  
(Section 2.02)

Procurement and Consultants' Services

Section I: Procurement of Goods and Works

Part A: International Competitive Bidding

1. Except as provided in Part D hereof, goods shall be procured under contract awarded in accordance with procedures consistent with those set forth in Section II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1992 (the Guidelines), and in accordance with the following additional procedures:

(a) When contract award is delayed beyond the original bid validity period, such period may be extended once, subject to and in accordance with the provisions of paragraph 2.59 of the Guidelines, by the minimum amount of time required to complete the evaluation, obtain necessary approvals and clearances and award the contract. The bid validity period may be extended a second time only if the bidding documents or the request for extension shall provide for appropriate adjustment of the bid price to reflect changes in the cost of inputs for the contract over the period of extension. Such increase in the bid price shall not be taken into account in the bid evaluation. For each contract made subject to the Association's prior review in accordance with the provisions of Part C of this Section, the Association's prior approval will be required for (i) a first extension of the bid validity period if the period of extension exceeds 30 days; and (ii) any subsequent extension of the bid validity period.

(b) For fixed-price contracts, the invitation to bid referred to in paragraph 2.13 of the Guidelines shall provide that, when the contract is delayed beyond the bid validity period, the successful bidder's bid price will be increased for each day of delay by two predetermined correction factors acceptable to the Association, one applied to all foreign currency components and the other to the local currency component of the bid price. Such an increase shall not be taken into account in the bid evaluation.

(c) In the procurement of goods in accordance with this Part A, JIRAMA shall use the relevant standard bidding documents issued by the Bank, with such modifications thereto as the Association shall have agreed to be necessary for the Project. Where no relevant standard bidding documents have been issued by the Bank, JIRAMA shall use bidding documents based on other internationally recognized standard forms agreed with the Association.

2. Goods procured in accordance with the procedures described in paragraph 1 above shall be exempted from preshipment price inspection by third parties.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A.1 hereof, goods manufactured in Madagascar may be granted a margin of preference.

in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

#### Part C: Other Procurement Procedures

1. Fuel oil processing equipment and other such specialized equipment, estimated to cost the equivalent of \$300,000 or less per contract, up to an aggregate amount equivalent to \$700,000, may be procured under contracts awarded through limited competitive bidding procedures on the basis of evaluation and comparison of bids from a list acceptable to the Association of qualified suppliers eligible under the Guidelines, and in accordance with procedures set forth in Sections I and II of the Guidelines (excluding paragraphs 2.8, 2.9, 2.55 and 2.56 thereof).

2. Measuring instruments and data processing equipment required under Part A of the Project, up to an aggregate amount equivalent to \$200,000, may be procured under contracts awarded on the basis of comparison of price quotations obtained from a list of three suppliers from at least two different countries eligible under the Guidelines in accordance with procedures acceptable to the Association.

3. Contracts for the purchase of proprietary spare parts for hydro and thermal equipment estimated to cost the equivalent of \$400,000 or less per contract, up to an aggregate amount equivalent to \$2,100,000, may, for purposes of ensuring compatibility with existing equipment, be awarded after direct negotiations with suppliers, in accordance with procedures acceptable to the Association.

#### Part D: Review by the Association of Procurement Decisions

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

(a) With respect to each contract for goods estimated to cost the equivalent of \$250,000 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) shall be furnished to the Association prior to the making of the payment out of the 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 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 paragraph 3 shall be furnished to the Association as part of the evidence furnished pursuant to paragraph 4 of Schedule 5 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.

2. The figure of 15% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

#### Section II. Employment of Consultants

1. In order to assist JIRAMA in carrying out Part A of the Project, JIRAMA 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.

2. Notwithstanding the provisions of paragraph 1 of this Section, the provisions of the Consultant Guidelines requiring prior Association review or approval of budget lists, selection procedures, letters of invitation, proposals, evaluation reports shall not apply to: (a) contracts for the employment of consulting firms estimated to cost less than \$100,000 equivalent each, or (b) contracts for the employment of individuals estimated to cost less than \$50,000 equivalent each. However, said exceptions to Association review shall not apply to: (a) the terms of reference for such contracts, (b) single-source selection of consulting firms, (c) assignments of a critical nature reasonably determined by the Association, (d) amendments to contracts for the employment of consulting firms raising the contract value to \$100,000 equivalent or more, or (e) amendments to contracts for the employment of individual consultants.



raising the contract value to \$50,000 equivalent or above.<sup>~</sup>  
(Section 2.01 (b))

#### Implementation Program

1. JIRAMA shall, in conjunction with the Borrower and the Association, conduct annual review of its proposed investment program in the electricity subsector; and with the approval of the Borrower and the Association, and on the basis of satisfactory evidence of economic and technical viability, shall not engage in any capital investment in the electricity subsector, involving an amount in excess of \$2 million.
  2. JIRAMA shall, not later than December 31, 1996, and in consultation with the Borrower and municipalities concerned, establish a mechanism designed to ensure recovery of the costs incurred by JIRAMA to provide public lighting and use of electricity in public buildings within the confines of such municipalities; taking into account the statutory powers of the municipalities concerned to impose a surcharge on electricity bills or, where appropriate, to vary such surcharge.
  3. JIRAMA shall take appropriate steps to expedite procurement actions under the Project and, to this end, shall ensure that, not later than two months after the date of submission of bids, (a) all bids shall have been reviewed, and a bid evaluation report prepared, and (b) based on the findings thereof, a final determination shall have been made by JIRAMA, and communicated forthwith to MEM for information.
  4. For purposes of works undertaken under the Project, JIRAMA shall take adequate steps to ensure that such works shall be conducted with due regard to the need for adequate safeguards for the protection of the environment, and that adequate provisions to that effect are included in the relevant works contracts.
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