

CONFORMED COPY

CREDIT NUMBER 2029 NEP

(ARUN III Access Road Project)

between

KINGDOM OF NEPAL

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated August 8, 1989

CREDIT NUMBER 2029 NEP

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated August 8, 1989, between KINGDOM OF NEPAL (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

WHEREAS the Association has agreed, on the basis, inter alia of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985, with the last sentence of Section 3.02 deleted (the General Conditions) constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement;

(b) "Project Area" means the area known as the Koshi Hills, comprising the Districts of Bhojpur, Sankhuwasabha, Terhathum and portions of Dhankuta and Taplejung in Eastern Nepal;

(c) "DOR" means the Department of Roads of the Borrower's Ministry of Works and Transport;

(d) "Arun III Monitoring Committee" means the Committee established and operating pursuant to the Borrower's Ministry of Water Resources Decisions dated April 21, 1987 and July 21, 1988;

(e) "Project Implementation Unit" means the unit established and operating pursuant to the Borrower's Ministry of Works and Transport Decision dated May 8, 1988;

(f) "Environmental Management Unit" means the unit established and operating pursuant to the Borrower's Ministry of Works and Transport Decision dated October 1, 1988;

(g) "Guidelines" means the Land Acquisition Guidelines 2045 (1989), issued by the Borrower on January 5, 1989, pursuant to the provisions of Sections 16 and 27 of the Borrower's Land Acquisition Act, 2034 (1977), for purposes of providing compensation and rehabilitation measures to the population adversely affected by the carrying out of the Project;

(h) "ARC" means each of the Acquisition, Rehabilitation and Compensation Committees provided for in paragraph 4 of Schedule 4 to this Agreement;

(i) "ACRP" means each of the Acquisition, Compensation and Rehabilitation Plans referred to in paragraph 5 of Schedule 4 to this Agreement; and

(j) "Nepal Rastra Bank" means the Borrower's Central Bank, established and operating under the Borrower's Nepal Rastra Bank Act, 2012 (1955).

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to twenty-four million four hundred thousand Special Drawing Rights (SDR 24,400,000).

Section 2.02. (a) The amount of the Credit may be withdrawn

from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project described in Schedule 2 to this Agreement and to be financed out of the proceeds of the Credit.

(b) The Borrower shall, for the purposes of the Project, open and maintain in dollars a special account in the Nepal Rastra Bank on terms and conditions satisfactory to the Association. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 5 to this Agreement.

Section 2.03. The Closing Date shall be July 31, 1994 or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from a date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or cancelled; and (ii) at the rate set as of June 30 immediately preceding the accrual date or at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied as of the next payment date in that year specified in Section 2.06 of this Agreement, except that the rate set as of June 30, 1988 shall be applied as of July 1, 1988.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one per cent (3/4 of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on March 1 and September 1 in each year.

Section 2.07. (a) Subject to paragraphs (b) and (c) below, the Borrower shall repay the principal amount of the Credit in semi-annual installments payable on each March 1 and September 1 commencing September 1, 1999 and ending March 1, 2029. Each installment to and including the installment payable on March 1, 2009 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever: (i) the Borrower's gross national product per capita, as determined by the Association, shall have exceeded \$790 in constant 1985 dollars for five consecutive years, and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association, and after due

consideration by them of the development of the Borrower's economy, modify the terms of repayment of installments under paragraph (a) above by requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid. If so requested by the Borrower, the Association may revise such modification to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(c) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate engineering, construction, environmental, social, financial and administrative practices, and shall provide, promptly as needed, the funds, facilities, services, land and other resources required for the Project.

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

Section 3.02. Except as the Association shall otherwise agree, procurement of works and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to this Agreement.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower 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 the Project of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof.

(b) The Borrower shall:

(i) have the records and accounts referred to in paragraph (a) of this Section including those for the 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 twelve months after the end of each such year, a certified copy of 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, accounts and the audit thereof as the Association shall from time to time reasonably request including, without any limitation on the foregoing unaudited Project accounts and financial statements for each fiscal year, certified as to their accuracy and authenticity by an independent auditor acceptable to the Association, as soon as available, but not later than six months after the end of each such year.

(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 Account 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 V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (h) of the General Conditions, the following additional event is specified, namely, that the Guidelines shall have been suspended, amended, abrogated, repealed or waived without the prior concurrence of the Association.

Section 5.02. Pursuant to Section 7.01 (d) of the General Conditions, the following additional event is specified, namely, that the event specified in Section 5.01 of this Agreement shall occur.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following is specified as an additional matter, within the meaning of Section 12.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association, namely, that the Guidelines have been duly issued by the Borrower and its provisions are enforceable in accordance with the laws of Nepal.

Section 6.02. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representatives of the Borrower; Addresses

Section 7.01. The Secretary, Ministry of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance
His Majesty's Government of Nepal
Kathmandu, Nepal

Cable address:

ARTHA
Kathmandu, Nepal

Telex:

2249-NP

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:

440098 (ITT)
248423 (RCA) or
64145 (WUI)

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.

KINGDOM OF NEPAL

By /s/ Mohan Man Sainju
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Amnon Golan
Acting Regional Vice President
Asia

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

Category	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(1) Civil works under Parts A and B of the Project	16,430,000	83%
(2) Consultants' services under Parts D (i) and D (ii) of the Project	2,900,000	100%
(3) Training under Part D (iii) of the Project	80,000	100%
(4) Unallocated	4,990,000	
TOTAL	<hr/> 24,400,000	

2. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding the equivalent of \$3,300,000 may be made in respect of all Categories of the table in paragraph 1 of this Schedule on account of payments made for expenditures before that date but after January 1, 1989.

SCHEDULE 2

Description of the Project

The objectives of the Project are to assist the Borrower in: (a) providing access to the construction site of the future Arun III Hydroelectric Power Project; (b) strengthening the capabilities of its departments and agencies to manage the social and environmental impacts of development projects; and (c) improving the transportation of goods to and from the Project Area to the Eastern Terai.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

Part A:

Construction of a gravel-surfaced road of about 192 kilometers long, about 4.5 meters wide and about 6.5 meters formation to connect the site of the dam and associated works of the future Arun III Hydroelectric Power Project to be located near Num with the existing road at Basantapur, including retaining structures, required bridges, and about 6 kilometers spur road to the Chainpur Town.

Part B:

Construction and operation of a road maintenance depot at Tumlingtar, including administrative offices, stores, a workshop for the repair and maintenance of vehicles, and staff quarters.

Part C:

Compensation and rehabilitation of the families adversely affected by the carrying out of Parts A and B of the Project.

Part D:

Provision of technical assistance for the:

- (i) supervision of the construction of the road and maintenance depot under Parts A and B of the Project;
- (ii) preparation of, and supervision of the implementation of, the ACRP; and
- (iii) training of the DOR maintenance personnel and mechanics.

* * * *

The Project is expected to be completed by January 31, 1994.

SCHEDULE 3

Procurement and Consultants' Services

Section I. Procurement of Works

Part A: International Competitive Bidding

1. 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 1985 (the Guidelines).

2. Bidders for the works included under Parts A and B of the Project shall be prequalified as described in paragraph 2.10 of the Guidelines.

Part B: Preference for Domestic Contractors

In the procurement of works in accordance with the procedures described in Part A.1 hereof, the Borrower 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: 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 works, 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 said paragraph 2 (d) shall be furnished to the Association prior to the making of the first payment out of the Special Account in respect of such contract.

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

Section II. Employment of Consultants

In order to assist the Borrower in carrying out the Project, the Borrower 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 4

Implementation Program

1. The Borrower shall maintain the Arun III Monitoring Committee with such powers, functions, membership and responsibilities as shall be required to enable it to provide overall Project management.

2. The Borrower shall maintain, within DOR the Project Implementation Unit headed by an officer with qualifications and experience acceptable to the Association, such Unit to be assigned with such powers, functions, responsibilities, funds, staffing and other resources as shall be required to enable it to adequately carry out the day-to-day implementation of the Project.

3. The Borrower shall maintain within DOR the Environmental Management Unit headed by an officer with qualifications and experience acceptable to the Association, such unit to be assigned with such powers, functions, responsibilities, funds, staffing and other resources as shall be required to enable it to adequately undertake, inter alia: (a) preparation of environmental impact assessments of road development projects; (b) review overall work program of DOR with respect to environmental issues and social impact; and (c) preparation of planning and engineering practices and procedures for road projects consistent with environmental and social requirements.

4. The Borrower shall in the Sankhuwasabha and Terhathum Districts in the Project Area maintain committees chaired by the respective Chief District Officer and to include the following members from the respective Districts: the Land Revenue Officer or

the Land Reform Officer, and the representative of the District Panchayat. The Project Manager shall be the member-secretary of such committees. Each ARC shall be provided with such functions, responsibilities, funds, staffing and other resources as shall be required to enable them to carry out the activities entrusted with under the Guidelines.

5. The Borrower shall carry out Part C of the Project in accordance with the principles, objectives and provisions of the Guidelines and pursuant to ACRP for each construction year, satisfactory to the Association. For such purposes, on November 1, 1989 and April 1, 1990, or such other dates as the Borrower and the Association shall otherwise agree, the Borrower shall prepare and furnish to the Association, for its concurrence, a proposed ACRP for the second and third Project construction year, respectively, and thereafter carry out such ACRPs, satisfactory to the Association; provided, however, that on October 1, 1989 and March 1, 1990, the Borrower shall prepare and furnish to the Association, for its review and comments, an ACRP implementation review report, and thereafter, taking into account the Association's comments, if any, make the required revision to the respective ACRP for its further implementation.

6. The Borrower shall cause its Ministry of Forest and Soil Conservation to carry out in the Project Area a forestry supervision plan, satisfactory to the Association.

SCHEDULE 5

Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories 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 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 \$2,200,000 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 made 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, 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 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 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; (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.

