

CONFORMED COPY

GRANT NUMBER H435-ZR

Project Agreement

(Urban Water Supply Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

REGIDESO

Dated January 19, 2009

PROJECT AGREEMENT

Agreement dated January 19, 2009, entered into between INTERNATIONAL DEVELOPMENT ASSOCIATION (“Association”) and REGIDESO (“Project Implementing Entity”) (“Project Agreement”) in connection with the Financing Agreement (“Financing Agreement”) of same date between the DEMOCRATIC REPUBLIC OF CONGO (“Recipient”) and the Association. The Association and the Project Implementing Entity hereby agree as follows:

ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

- 1.01. The General Conditions (as defined in Appendix 1 to the Financing Agreement) constitute an integral part of this Agreement.
- 1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the Financing Agreement or the General Conditions.

ARTICLE II — PROJECT

- 2.01. The Project Implementing Entity declares its commitment to the objectives of the Project and the Program. To this end, the Project Implementing Entity shall carry out the Project in accordance with the provisions of Article IV of the General Conditions, and shall provide promptly as needed, the funds, facilities, services and other resources required for the Project.
- 2.02. Without limitation upon the provisions of Section 2.01 of this Agreement, and except as the Association and the Project Implementing Entity shall otherwise agree, the Project Implementing Entity shall carry out the Project in accordance with the provisions of the Schedule to this Agreement.

ARTICLE III — TERMINATION

- 3.01. For purposes of Section 8.05 (c) of the General Conditions, the date on which the provisions of this Agreement shall terminate is twenty years after the date of this Agreement.

ARTICLE IV — REPRESENTATIVE; ADDRESSES

4.01. The Project Implementing Entity's Representative is the *Administrateur Délégué Général*.

4.02. The Association's Address is:

International Development Association
1818 H Street, NW
Washington, DC 20433
United States of America

Cable:

Telex:

Facsimile:

INDEVAS
Washington, D.C.

248423(MCI)

1-202-477-6391

4.03. The Project Implementing Entity's Address is:

REGIDESO
59-63 Boulevard du 30 juin
BP 12599
Kinshasa I – Gombe
Democratic Republic of Congo

AGREED at Kinshasa, Democratic Republic of Congo, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: **/s/ Marie Françoise Marie-Nelly**
Authorized Representative

REGIDESO

By: **/s/ Jacques Mukalayi Mwema**
Authorized Representative

SCHEDULE

Execution of the Project

Section I. Implementation Arrangements

A. Institutional Arrangements

1. Except as the Association shall otherwise agree in writing, the Project Implementing Entity shall: (i) apply the criteria, policies, procedures and arrangements set out in the Project Manuals; and (ii) not amend or waive, or permit to be amended or waived, any of the Project Manuals, or any provision thereof.
2. The Project Implementing Entity shall perform its obligations contemplated in the Subsidiary Agreement in such manner as to accomplish the purposes of the Financing. Except as the Association shall otherwise agree, the Project Implementing Entity shall not assign, amend, abrogate or waive the Subsidiary Agreement of any of its provisions.
3. The Project Implementing Entity shall, at all times during the execution of the Project:
 - (a) maintain IU, in form and with functions satisfactory to the Association, in charge of: (i) coordinating the overall implementation of the Project; (ii) ensuring availability of funds in a timely manner, including the submission of withdrawal applications and supporting documents; (iii) managing all Project activities at the central level (preparation of TORs, bidding documents,..); (iv) maintaining the books and accounts of project activities and producing financial reports; (v) monitoring and evaluating implementation and impacts of the Project and of the Program; and (vi) reporting results to various stakeholders (administration, donors, civil society, Inter-Ministerial Steering Committee) as defined in the Project Manuals.
 - (b) maintain IU with staff in adequate numbers, including at least the following staff with qualifications, experience and terms of reference satisfactory to the Association: (i) one Project coordinator; (ii) one deputy Project coordinator; (iii) one certified accountant; (iv) two procurement experts; (v) one financial management manager; (vi) one senior internal auditor; (vii) two water and sanitation engineers; (viii) two socio-environmental experts; and (ix) one monitoring and evaluation expert.
 - (c) cause IU to enter into an agreement satisfactory to the Association with COPIREP to entrust COPIREP with all procurement activities in connection with Part B.1 and B.3 of the Project.

- (d) review annually, jointly with the Association, the performance of IU, being understood that unsatisfactory performance may result in the replacement of the Project coordinator or any other staff of the IU, under conditions satisfactory to the Association.

B. Management Contract

1. The Project Implementing Entity shall, no later than eight months from the Effective Date, enter into, and thereafter maintain at all times during the implementation of the Project, the Management Contract under terms and conditions satisfactory to the Association, including, *inter alia*:
 - (a) a detailed description of the services to be rendered by the Private Operator, including the proposed schedule for carrying out its mission, as well as technical standards to be complied with;
 - (b) a detailed description of the financing mechanisms made available to the Project Implementing Entity, including this Financing, and the resulting fiduciary or other requirements and obligations undertaken by the Project Implementing Entity;
 - (c) a detailed list of objectives to be attained, along with expected achievement dates and performance indicators;
 - (d) a detailed description of personnel to be provided by the Private Operator, together with the required qualifications and experience, and to include the following: the general manager, the technical director, the financial director, the commercial director and the human resources director;
 - (e) a detailed description of: (i) the corporate structure within the Project Implementing Entity, including the composition of the board of directors; (ii) the corporate powers granted to, and mandates to be exercised by, the Private Operator; and (iii) the decision process, and the implementation arrangements including communication channels with the Management Contract Oversight Committee;
 - (f) a list of deliverables and report or strategies to be delivered by the Project Implementing Entity, including: (i) the submission, no later than six months after the signing of the Management Contract, of an assessment of all key indicators (baseline and target values) to which the Private Operator shall be accountable for and to be audited by the Performance Auditors; (ii) the production of financial statements; and (iii) the production of regular progress reports;

- (g) the main respective rights and obligations of the Recipient and of the Project Implementing Entity in connection with the management of the urban water sector in the Recipient's territory;
 - (h) at least the two following annexes: the Performance Contract and the Cahier des Charges;
 - (i) provisions with respect to any change of laws or regulations and its effects over the Management Contract, including in connection with the transformation of the Project Implementing Entity into a private sector corporation operating on a commercial basis, and the obligation for the Recipient, in consultation with the Private Operator and the Association, to promptly take and, as the case may be, cause to be taken by the Project Implementing Entity, all necessary governmental and corporate actions to allow for the attainment of the objectives of the Project and of the Management Contract; and
 - (j) provisions with respect to the recruitment of the Performance Auditors and provisions with respect to periodic review of the performance of Private Operator.
2. Within six weeks from the date of signing of the Management Contract, the Project Implementing Entity shall have proceeded with any corporate nominations prescribed by the applicable laws, including, any representative from the Private Operator pursuant to the Management Contract.
 3. Unless otherwise agreed in writing with the Association, the Project Implementing Entity shall not, at any time during the Implementation of the Project, amend, suspend, abrogate, repeal or waive or transfer the Management Contract.

C. Sanitation Strategies

1. The Project Implementing Entity shall prepare, in collaboration with the Ministry of the Environment (PNA), the Ministry of public Works and Infrastructure (OVD) and the Ministry of Plan (CNAEA), and relevant provincial and municipal authorities and submit no later than thirty months from the Effective Date to the Inter-Ministerial Steering Committee and the Association for their respective review and approval, a strategic plan for the carrying out of sanitation strategies in selected cities.

D. Information

1. The Project Implementing Entity and the Association shall cooperate fully to assure that the purposes of the Financing and the objectives of the Project will be accomplished. To that end, the Project Implementing Entity and the Association shall: (a) from time to time, at the request of either one of them, exchange views on the Project, the Financing, and

the performance of their respective obligations under the Financing Agreement and this Agreement and furnish to the other party all such information related to such matters as it shall reasonably request; and (b) promptly inform each other of any condition which interferes with, or threatens to interfere with, such matters.

E. Coordination

1. The Project Implementing Entity shall ensure proper information of all stakeholders involved in the water sector reform supported under the Project and shall ensure and take all necessary actions for the due cooperation of all concerned parties at the central and at the local level to allow for the smooth and prompt implementation of the Project.

F. Anti-Corruption

1. The Project Implementing Entity shall carry out the Project in accordance with the provisions of the Anti-Corruption Guidelines and of the Anti-Corruption Plan.

G. Safeguards

1. The Project Implementing Entity shall ensure that the Project is implemented in accordance with the provisions of the ESDs, and except as the Association shall otherwise agree in writing, shall not amend or waive, or permit to be amended or waived, any provision of any of the ESDs.
2. The Project Implementing Entity shall: (a) before commencing the implementation of any activity listed in Schedule 1 to the Financing Agreement with respect to which the completion of an EMP or a RAP is necessary in accordance with the ESMF or the RPF, prepare and furnish to the Association said EMP or RAP specific to such activity, in form and substance satisfactory to the Association, describing: (i) the potential adverse environmental and social impact of such activity; (ii) the measures for the offsetting, reducing, or mitigating of such impact; and (iii) the arrangement for monitoring and implementing such measures; (b) no later than three months before the start of any works publicly disclose the EMP or RAP; as the case may be, and (c) carry out such activity in accordance with the provisions of the EMP or RAP, as the case may be.
3. The Project Implementing Entity shall: (a) maintain at all time during Project implementation an environmental and social unit with staff in adequate numbers and with experience satisfactory to the Association in charge of supervising the implementation of social and environmental safeguards under the Project, including, without limitation the provisions of the ESD; and (b) carry out, together with the Association, a semi-annual review of the implementation for safeguards under the Project.

H. Change of legislation

1. The Project Implementing Entity shall with sufficient prior notice, consult with the Association and the Private Operator on any proposed change of legislation or regulations that may affect materially and adversely the objective of the Project or its ability to be carried out or the implementation of the Management Contract and, based on such consultations with the Association and the Private Operator, take all appropriate actions to allow for the prompt and due implementation of the Project and the Management Contract under such new legal or regulatory framework.

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

1. The Project Implementing Entity shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of the indicators set forth in Appendix 2 to the Financing Agreement. The Project Report shall include a review of the extent and quality of compliance with the implementation procedures, including the Anti-Corruption Plan. Each Project Report shall cover the period of one calendar quarter and shall be furnished to the Association not later than forty five days after the end of the period covered by such report.
2. The Project Implementing Entity shall provide to the Recipient not later than three months after the Closing Date, for incorporation in the report referred to in Section 4.08 (c) of the General Conditions all such information as the Recipient or the Association shall reasonably request for the purposes of such Section.

B. Financial Management, Financial Reports and Audits

1. The Project Implementing Entity shall, through IU, no later than three months from the Effective Date: (a) recruit a financial management manager, an additional accountant; and a senior internal auditor, all with qualifications, experience, and terms of reference satisfactory to the Association; (b) install a computerized financial management and accounting software satisfactory to the Association and train its users; and (c) recruit independent auditors acceptable to the Association.
2. The Project Implementing Entity shall maintain a financial management system and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Association, both in a manner adequate to reflect the operations and financial condition of the Project Implementing Entity, including the operations, resources and expenditures related to the Project.

3. The Project Implementing Entity shall have its financial statements referred to above periodically audited by independent auditors acceptable to the Association, in accordance with consistently applied auditing standards acceptable to the Association. Each audit of these financial statements shall cover the period of one fiscal year of the Project Implementing Entity. The audited financial statements for each period shall be furnished to the Association not later than six months after the end of the period. The Project Implementing Entity shall also furnish to the Association such other information concerning the audited financial statements and such auditors as the Association may from time to time reasonably request.

Section III. Procurement

A. General

1. The Project Implementing Entity shall, through IU, no later than three months from the Effective Date, recruit two procurement specialists, with qualifications, experience, and terms of reference satisfactory to the Association.
2. **Goods and Works.** All goods and works required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section.
3. **Consultants' Services.** All consultants' services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines, and with the provisions of this Section.
4. **Definitions.** The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Association of particular contracts, refer to the corresponding method described in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

B. Particular Methods of Procurement of Goods and Works

1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods and works shall be procured under contracts awarded on the basis of International Competitive Bidding.
2. **Other Methods of Procurement of Goods and Works.** The following table specifies the methods of procurement, other than International Competitive Bidding, which may be used for goods and works. The Procurement Plan shall specify the circumstances under which such methods may be used:

Procurement Method
(a) National Competitive Bidding (NCB)
(b) Shopping
(c) Direct Contracting
(d) Force Account

C. Particular Methods of Procurement of Consultants' Services

1. **Quality- and Cost-based Selection.** Except as otherwise provided in paragraph 2 below, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection.
2. **Other Methods of Procurement of Consultants' Services.** The following table specifies methods of procurement, other than Quality- and Cost-based Selection, which may be used for consultants' services. The Procurement Plan shall specify the circumstances under which such methods may be used.

Procurement Method
(a) Selection under a Fixed Budget (FBS)
(b) Least Cost Selection (LCS)
(c) Selection Based on the Consultants' Qualification (CQS)
(d) Selection of individual consultant IC
(e) Single-Source Selection (SSS)

D. Review by the Association of Procurement Decisions

The Procurement Plan shall set forth those contracts which shall be subject to the Association's Prior Review. All other contracts shall be subject to Post Review by the Association.