

CONFORMED COPY

CREDIT NUMBER 2239 NEP

(Urban Water Supply and Sanitation Rehabilitation Project)

between

KINGDOM OF NEPAL

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated October 10, 1991

CREDIT NUMBER 2239 NEP

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated October 10, 1991, between KINGDOM OF NEPAL (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS: (A) 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;

(B) the Borrower intends to contract from the United Nations Development Programme (UNDP) a grant (the UNDP Grant) in an aggregate amount equivalent to three million three hundred sixty four thousand dollars (\$3,364,000) to assist in financing Parts A.1 (i) and A.2 of the Project on terms and conditions set forth in an agreement (the UNDP Grant Agreement); and

(C) the Project will be carried out by Nepal Water Supply Corporation (NWSC) with the Borrower's assistance and, as part of such assistance, the Borrower will make available to NWSC the proceeds of the Credit as provided in this Agreement; and

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 and in the Project Agreement of even date herewith between the Association and NWSC;

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 and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Project Preparation Advance" means the project preparation advance granted by the Association to the Borrower pursuant to two exchanges of letters, the first dated September 26, 1989, as amended by telex dated October 26, 1989, and November 20, 1989, and the second dated February 25, 1990, and March 26, 1990, between the Borrower and the Association;

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

(c) "FYDP" means the NWSC's Fifteen-Year Development Program of July 1989;

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

(e) "Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and NWSC pursuant to Section 3.01 (b) of this Agreement, as the same may be amended from time to time, and such term includes any schedules to the Subsidiary Loan Agreement;

(f) "NWSC" means Nepal Water Supply Corporation, a corporation wholly owned by the Borrower, established by virtue of the Nepal Water Supply Corporation Act, 1989;

(g) "NWSC Act" means the Nepal Water Supply Corporation Act, 1989;

(h) "Fiscal Year" and "FY" mean July 16 to July 15;

(i) "Project Agreement" means the agreement between the Association and NWSC, of even date herewith, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the Project Agreement; and

(j) "NR" means Nepalese Rupee, the currency of the Borrower.

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 forty five million five hundred thousand Special Drawing Rights (SDR 45,500,000).

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 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 deposit account in 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 3 to this Agreement.

(c) Promptly after the Effective Date, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and pay to itself the amount required to repay the principal amount of the Project Preparation Advance withdrawn and outstanding as of such date and to pay all unpaid charges thereon. The unwithdrawn balance of the authorized amount of the Project Preparation Advance shall thereupon be cancelled.

Section 2.03. The Closing Date shall be March 31, 1999 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 the 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 the 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 from the next payment date in that year specified in Section 2.06 of this Agreement.

(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 April 15 and October 15 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 April 15 and October 15 commencing October 15, 2001 and ending April 15, 2031. Each installment to and including the installment payable on April 15, 2011 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.

Section 2.09. NWSC is designated as representative of the Borrower for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 (a) of this Agreement and Article V 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, without any limitation or restriction upon any of its other obligations under the Development Credit Agreement, shall cause NWSC to perform in accordance with the provisions of the Project Agreement all the obligations of NWSC therein set forth, shall take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable NWSC to perform such obligations, shall take all necessary measures to cause DOR to fully collaborate with NWSC in order to ensure that the road cutting activities, which are required for purposes of Parts B and C of the Project, shall take place in a timely and efficient manner, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) The Borrower shall relend to NWSC an amount equivalent to seventeen million five hundred thousand Special Drawing Rights (SDR 17,500,000), or such other amount as the Borrower and the Association may otherwise agree from time to time, under a subsidiary loan agreement to be entered into between the Borrower and NWSC, under terms and conditions which shall have been approved by the Association which shall include, inter alia, interest at a rate of 9% per annum, repayment of principal in 19 years, including a grace period of 4 years, and the provision that the Borrower shall bear the foreign exchange risk. The Borrower shall make the balance of the Credit available to NWSC as a grant.

(c) The Borrower shall exercise its rights under the Sub-sidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit, and except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the Subsidiary Loan Agreement or any provision thereof.

Section 3.02. Except as the Association shall otherwise agree, procurement of the goods, 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 1 to the Project Agreement.

Section 3.03. The Borrower and the Association hereby agree that 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) shall be carried out by NWSC pursuant to Section 2.03 of the Project Agreement.

Section 3.04. The Borrower shall: (i) undertake not to revise, alter or in any manner modify the strategies contemplated by the FYDP except in agreement with the Association; (ii) take all necessary measures as shall be appropriate to ensure, in a manner satisfactory to the Association, full and timely payment by the Borrower's departments, agencies and entities of all water and sewerage charges to NWSC that are more than 30 days overdue; and (iii) make full and timely payment of standpost charges to NWSC, within 30 days following receipt by it of bills substantiating such charges.

ARTICLE IV

Financial Covenants

Section 4.01. (a) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditures, the Borrower shall:

(i) maintain or cause to be maintained in accordance with sound accounting practices, records and accounts reflecting such expenditures;

(ii) ensure that all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures are retained until at least one year after the Association has received the audit report for the fiscal year in which the last withdrawal from the Credit Account was made; and

(iii) enable the Association's representatives to examine such records.

(b) The Borrower shall:

(i) have the records and accounts referred to in paragraph (a) (i) of this Section and 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 the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested, including 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; 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.

Section 4.02. The Borrower shall contribute in the course of FY92 the sum of NRS. 22,000,000 to NWSC in the form of a subsidy, such sum to be payable in quarterly equal installments on October 15, 1991, January 15, 1992, April 15, 1992 and July 15, 1992, respectively.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (h) of the General Conditions, the following additional events are specified:

(a) NWSC shall have failed to perform any of its obligations under the Project Agreement.

(b) As a result of events which have occurred after the date of the Development Credit Agreement, an extraordinary situation shall have arisen which shall make it improbable that NWSC will be able to perform its obligations under the Project Agreement.

(c) NWSC Act shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of NWSC to perform any of its obligations under the Project Agreement.

(d) The Borrower or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of NWSC or for the suspension of its operations.

Section 5.02. Pursuant to Section 7.01 (d) of the General Conditions, the following additional events are specified:

(a) any event specified in paragraph (a) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Association to the Borrower; and

(b) any event specified in paragraphs (c) and (d) of Section 5.01 of this Agreement shall occur.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01 (b) of the General Conditions:

(a) the Subsidiary Loan Agreement shall have been duly executed on behalf of the Borrower and NWSC;

(b) NWSC shall have revised its water tariffs, and put such revision into effect, to levels which will increase its projected revenues by at least 50% and shall have increased its sewerage charges from their present levels to a new level equivalent, in the case of each consumer residing in a sewerred area, to 50% of the metered water charges periodically billed to such consumer, irrespective of whether the said consumer is connected to the sewer system or not;

(c) a contract providing for NWSC's obligation to retain and deploy a management team, whose members' qualifications, experience and terms and conditions of employment are satisfactory to the Association, shall have been signed; and

(d) the Borrower shall have (i) made full payment to NWSC of all standpost charges that are more than 30 days overdue; (ii) caused the Borrower's departments, agencies and entities to make a full payment to NWSC of all water and sewerage charges that are more than 30 days overdue; and (iii) caused NWSC to make full payment to Nepal Electricity Authority of all electricity charges that are more than 30 days overdue.

Section 6.02. The following are specified as additional matters, 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:

(a) that the Project Agreement has been duly authorized or ratified by NWSC, and is legally binding upon NWSC in accordance with its terms; and

(b) that the Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and NWSC and is legally binding upon the Borrower and NWSC in accordance with its terms.

Section 6.03. 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.

Section 6.04. The obligations of the Borrower under Sections 4.01 (a) and 4.01 (b) of this Agreement shall cease and determine on the date on which the Development Credit Agreement shall terminate or on the date 20 years after the date of this Agreement, whichever shall be the earlier.

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

Telex:

2249-NP
Kathmandu, Nepal

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:

197688 (TRT)
248423 (RCA)

64145 (WUI) or
82987 (FTCC)

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/ Narayan D. Shrestha
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Daniel Ritchie
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 Financed	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be
(1) Civil works:	26,500,000	
(a) procured foreign and ex- national competitive bidding		100% of expenditures 70% of local penditures
(b) procured under other procurement methods		70%
(2) Equipment and foreign material	6,600,000	100% of expenditures, 100% of local expenditures (ex-factory

items		cost) and 70%	
		of local	
		expenditures	
		for other	
locally		procured	
(3)	Consultants' services	6,200,000	100%
(4)	Training and consumer education	1,300,000	100%
(5)	Refunding Project Preparation Advance	1,100,000	Amounts due pursuant to Section 2.02 (c) of this Agreement
(6)	Unallocated	3,800,000	
	TOTAL	45,500,000	

2. For the purposes of this Schedule:

(a) the term "foreign expenditures" means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower;

(b) the term "local expenditures" means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower; and

(c) 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 to exceed SDR 2,300,000 may be made in respect of Categories 1(b), (2) and (3) on account of payments made for expenditures before that date but after June 1, 1990.

SCHEDULE 2

Description of the Project

The objectives of the Project are: (i) to assist the Borrower in strengthening NWSC's financial, technical, managerial and operations and maintenance capabilities; (ii) to increase utilization of existing water and sewerage systems; (iii) to ensure the efficient delivery of good quality water to consumers; and (iv) to improve public health.

The Project, which constitutes part of the first phase of the FYDP, 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: NWSC

1. Carrying out of:

(i) a management support and training program; and

(ii) technical assistance in, inter alia, the areas of engineering design, project supervision and future

project preparation.

2. Development and implementation of consumer education programs relating to, inter alia, water, hygiene and consumer awareness.

Part B: Kathmandu Valley Towns

1. Repair and rehabilitation of, inter alia, tubewells, surface and spring sources, water spouts, water treatment facilities, reservoirs, meters, sewerage treatment facilities, water dis-tribution networks, and sewer networks.

2. Construction of water treatment facilities and tubewells.

3. Extension of water and sewer distribution systems.

4. Provision of facilities, vehicles, materials and equipment for NWSC.

5. Carrying out of:

(i) a leak detection and control program; and

(ii) an on-site sanitation program.

Part C: Towns Outside the Kathmandu Valley

1. Repair and rehabilitation of tubewells, surface and spring sources, transmission mains, water treatment facilities, reservoirs, water distribution systems, facilities and plant.

2. Construction of a new intake and ancillary works at Pokhara.

3. Construction of water treatment facilities.

4. Provision of facilities, vehicles, materials and equipment for NWSC.

5. Carrying out of an on-site sanitation program.

* * *

The Project is expected to be completed by March 31, 1998.

SCHEDULE 3

Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1), (2), (3) and (4) 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 of \$2,500,000 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, 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.

