

Public Disclosure Authorized

CONFORMED COPY

CREDIT NUMBER 3911-NEP

Project Agreement

(Second Rural Water Supply and Sanitation Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

**RURAL WATER SUPPLY AND SANITATION FUND
DEVELOPMENT BOARD**

Dated September 14, 2004

CREDIT NUMBER 3911-NEP

PROJECT AGREEMENT

AGREEMENT, dated September 14, 2004, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and RURAL WATER SUPPLY AND SANITATION FUND DEVELOPMENT BOARD (the Board).

WHEREAS (A) by the Development Credit Agreement of even date herewith between the KINGDOM OF NEPAL (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to seventeen million Special Drawing Rights (SDR 17,000,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that the Board agrees to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by a Subsidiary Grant Agreement to be entered into between the Borrower and the Board, the proceeds of the Credit provided for under the Development Credit Agreement will be made available to the Board on the terms and conditions set forth in said Subsidiary Grant Agreement; and

WHEREAS the Board, 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, the Preamble to this Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. (a) The Board 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 the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, technical and engineering practices, and shall

provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Association and the Board shall otherwise agree, the Board shall carry out the Project in accordance with Implementation Manuals, EMP, EMAP, IPDP, Formation Order, the Rules and the Implementation Program set forth in Schedule 2 to this Agreement.

(c) The Board shall exercise its rights in relation to financing provided by it to communities in such manner as to: (i) protect the interests of the Borrower, the Association and the Board; (ii) comply with its obligations under this Agreement and the Subsidiary Grant Agreement; and (iii) achieve the purposes of the Project.

Section 2.02. Except as the Association shall otherwise agree, procurement of the goods, works and 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 this Agreement.

Section 2.03. (a) The Board shall carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, and 9.07 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, and maintenance, respectively) in respect of this Agreement.

(b) For the purposes of Section 9.06 of the General Conditions and without limitation thereto, the Board shall:

- (i) prepare, on the basis of guidelines acceptable to the Association and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Association and the Board, a plan for the future operation of the Project; and
- (ii) afford the Association a reasonable opportunity to exchange views with the Board on said plan.

Section 2.04. The Board shall duly perform all its obligations under the Subsidiary Grant Agreement and, except as the Association shall otherwise agree, the Board shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Grant Agreement or any provision thereof.

Section 2.05. (a) The Board shall, at the request of the Association, exchange views with the Association with regard to the progress of the Project, the performance of its obligations under this Agreement and under the Subsidiary Grant Agreement, and other matters relating to the purposes of the Credit.

(b) The Board shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Credit, or the performance by the Board of its obligations under this Agreement and under the Subsidiary Grant Agreement.

ARTICLE III

Management and Operations of the Board

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

Section 3.02. The Board 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, financial and economic practices.

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

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Board shall maintain a financial management system, including records and accounts, and prepare financial statements, in accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect its operations and financial condition and to register separately the operations, resources and expenditures related to the Project; and

- (b) The Board shall:
- (i) have its financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year, audited, in accordance with consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association;
 - (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year, (A) certified copies of the financial statements referred to in paragraph (a) of this Section, for such year, as so audited, and

- (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and
- (iii) furnish to the Association such other information concerning such records and accounts and the audit of such financial statements, and concerning said auditors, as the Association may from time to time reasonably request.

Section 4.02. (a) Without limitation upon the Board's reporting obligations set out in paragraph 5 of Schedule 2 to this Agreement, the Board shall prepare and furnish to the Association a Financial Monitoring Report (FMR), in form and substance satisfactory to the Association, which:

- (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Credit, and explains variances between the actual and planned uses of such funds;
- (ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and
- (iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Association not later than forty-five (45) days after the end of the first calendar trimester after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar trimester; thereafter, each FMR shall be furnished to the Association not later than forty five (45) days after each subsequent calendar trimester, and shall cover the period not covered by the previous FMR until the end of such calendar trimester.

ARTICLE V

Effective Date; Termination; Cancellation and Suspension

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

Section 5.02. (a) This Agreement and all obligations of the Association and of the Board 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 twenty (20) years after the date of this Agreement.

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a)(ii) of this Section, the Association shall promptly notify the Board of this event.

Section 5.03. All the provisions of this Agreement shall continue in full force and 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 duly given or made when it shall be delivered by hand or by mail, telex or facsimile to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. Deliveries made by facsimile transmission shall also be confirmed by mail. 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:	Telex:	Facsimile:
INDEVAS Washington, D.C.	248423 (MCI) or 64145 (MCI)	(202) 477-6391

For the Board:

Rural Water Supply and Sanitation Fund
Development Board
Kathmandu, Nepal

Facsimile:

(977-1) 4417899

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 the Board, or by the Board on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by its Executive Director or such other person or persons as the Board shall designate in writing, and its Executive Director shall furnish to the Association sufficient 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 Kathmandu, Kingdom of Nepal, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Kenichi Ohashi

Country Director, Nepal
South Asia Region

RURAL WATER SUPPLY AND SANITATION FUND
DEVELOPMENT BOARD

By /s/ Arjun Narsing Rayamajhi

Authorized Representative

SCHEDULE 1

Procurement

Section I. Procurement of Goods and Works

Part A: General

Goods and works shall be procured in accordance with: (i) the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits", published by the Bank in January 1995 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines); and (ii) the provisions of the following Parts of this Section I.

Part B: International Competitive Bidding

1. Except as otherwise provided in Part C of this Section, goods shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.
2. The following provision shall apply to goods to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B:

Preference for Domestically Manufactured Goods

The provisions of paragraphs 2.54 and 2.55 of the Guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Borrower.

Part C: Procurement Procedures

1. National Competitive Bidding

(a) Goods estimated to cost less than \$100,000 equivalent per contract, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

(b) In order to ensure economy, efficiency, transparency and broad consistency with the provisions of Section 1 of the Guidelines:

- (i) invitations to bid shall be advertised in at least one (1) widely circulated national daily newspaper, at least thirty (30) days prior to the deadline for the submission of bids;
- (ii) bid documents shall be made available, by mail or in person, to all who are willing to pay the required fee;

- (iii) evaluation of bids shall be made in strict adherence to the criteria disclosed in the bidding documents, in a format and specified period agreed with the Association;
- (iv) bids shall be opened in public in one place, immediately after the deadline for submission of bids;
- (v) foreign bidders shall not be precluded from bidding and no preference of any kind shall be given to national bidders;
- (vi) qualification criteria (in case pre-qualifications were not carried out) shall be stated in the bidding documents, and if a registration process is required, a foreign firm declared as the lowest evaluated bidder shall be given a reasonable opportunity of registering, without let or hindrance;
- (vii) contracts shall be awarded to the lowest evaluated bidders;
- (viii) post-bidding negotiations shall not be allowed with the lowest evaluated bidders or any other bidders;
- (ix) bids shall not be rejected merely on the basis of a comparison with an official estimate without the prior concurrence of the Association;
- (x) contracts shall not be awarded on the basis of nationally negotiated rates;
- (xi) re-bidding shall not be carried out without the prior concurrence of the Association;
- (xii) all bidders/contractors shall provide bid/performance security as indicated in the bidding/contract documents;
- (xiii) a bidder's bid security shall apply only to a specific bid, and a contractor's performance security shall apply only to the specific contract under which it was furnished;
- (xiv) split award or lottery in award of contracts shall not be carried out. When two or more bidders quote the same lowest price, an investigation shall be made to determine any evidence of collusion, following which: (A) if collusion is determined, the parties involved shall be disqualified and the award shall then be made to the next lowest evaluated and qualified bidder; and (B) if no evidence of collusion can be confirmed, then fresh bids

shall be invited after receiving the concurrence of the Association.

- (xv) extension of bid validity shall not be allowed without the prior concurrence of the Association: (A) for the first request for extension if it is longer than eight (8) weeks; and (B) for all subsequent requests for extension irrespective of the period;
- (xvi) bids shall not be invited on the basis of percentage premium or discount over the estimated cost; and
- (xvii) there shall not be any restrictions on the means of delivery of the bids.

2. National Shopping

Goods estimated to cost less than \$25,000 equivalent per contract, may be procured under contracts awarded on the basis of national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

3. Direct Contracting

Goods costing \$1,000 equivalent or less per contract may, with the Association's prior approval, be procured in accordance with the provisions of paragraph 3.7 of the Guidelines.

4. Community Contracting

For the purposes of carrying out Schemes under Part B.2 of the Project:

- (a) labor may be provided by a community at market rates or as part of their in-kind contribution towards the capital costs their respective Scheme; and
- (b) materials may be procured by a community under contracts awarded on the basis of national shopping procedures in accordance with the provisions of the Implementation Manuals.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods shall be undertaken in accordance with such

procurement plan as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

With respect to the first two contracts in each Batch under Part B.2 of the Project, starting from Batch 5, and each contract for equipment and materials for the Board estimated to cost the equivalent of \$50,000 or more, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

Part A: General

Consultants' services shall be procured in accordance with: (a) the provisions of the Introduction and Section IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers", published by the Association in January 1997 and revised in September 1997, January 1999 and May 2002 (the Consultant Guidelines); and (b) the provisions of the following Parts of this Section II.

Part B: Quality- and Cost-based Selection

1. Except as otherwise provided in Part C of this Section, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Guidelines, paragraph 3 of Appendix 1 thereto, Appendix 2 thereto, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality- and cost-based selection of consultants.

2. The following provisions shall apply to consultants' services to be procured under contracts awarded in accordance with the provisions of the preceding paragraph. The short list of consultants for services for the Project, estimated to cost less than \$300,000 equivalent per contract, may comprise entirely national consultants in accordance with the provisions of paragraph 2.7 of the Consultant Guidelines.

Part C: Other Procedures for the Selection of Consultants

1. Quality-based Selection

Services may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 through 3.4 of the Consultant Guidelines.

2. Least-cost Selection

Services for legal experts and water quality testing training estimated to cost less than \$100,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

3. Selection Based on Consultants' Qualifications

Services costing less than \$200,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.7 of the Consultant Guidelines.

4. Single Source Selection

Services which are estimated to cost less than \$10,000 equivalent per contract, may, with the Association's prior agreement, be procured in accordance with the provisions of paragraphs 3.8 through 3.11 of the Consultant Guidelines.

5. Individual Consultants

Services for tasks that meet the requirements set forth in paragraph 5.1 of the Consultant Guidelines shall be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.1 through 5.4 of the Consultant Guidelines.

Part D: Review by the Association of the Selection of Consultants

1. Selection Planning

Prior to the issuance to consultants of any requests for proposals, the proposed plan for the selection of consultants under the Project shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Consultant Guidelines. Selection of all consultants' services shall be undertaken in accordance with such selection plan as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

(a) With respect to each contract for the employment of consulting firms estimated to cost the equivalent of \$100,000 or more, the procedures set forth in paragraphs 2, 3 and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to each contract for the employment of individual consultants estimated to cost the equivalent of \$50,000 or more, the qualifications, experience, terms of reference and terms of employment of the consultants shall be

furnished to the Association for its prior review and approval. The contract shall be awarded only after the said approval shall have been given.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Consultant Guidelines shall apply.

SCHEDULE 2

Implementation Program

1. The Board shall:

(a) enter into arrangements with each SO and WSUGs, as the case may be, under such terms and conditions, satisfactory to the Association, which shall include, *inter alia*, that: (i) each SO shall maintain separate accounts in respect of each Scheme being carried out by such SO under the Project in accordance with the accounting manual prepared by the Board as part of its Implementation Manuals; (ii) each SO shall furnish to the Board prior to each payment an updated Scheme accounts; and (iii) the Board shall not make any payment to such SO until the accounts referred to in subparagraph (ii) herein have been found satisfactory by the Board;

(b) (i) ensure that eligibility criteria for the selection of SOs and Schemes are satisfactory to the Association; (ii) select SOs and Schemes in accordance with such eligibility criteria; and (iii) review, at the end of the Implementation Phase of each Batch, the adequacy of such eligibility criteria and shall, if necessary, revise such criteria in a manner satisfactory to the Association to accomplish the purposes of the Project; and

(c) The Board shall implement the IPDP, in accordance with the objectives, policies, procedures, time schedules and other provisions set forth therein, to ensure that indigenous people in the Project area shall benefit fully from the activities financed under the Project.

2. (a) In respect of each Batch, the Board shall enter into:

(i) a Development Phase agreement with SOs as appropriate; and

(ii) an Implementation Phase tripartite agreement with a SO and WSUC.

(b) Each agreement to be entered into pursuant to paragraph (a) above shall be entered in the case of the Development Phase agreement prior to commencement of the Development Phase, and in case of the Implementation Phase agreement prior to commencement of the Implementation Phase.

(c) Each agreement to be entered into pursuant to paragraph (a) above shall be made on terms and conditions satisfactory to the Association, including: (i) a clear definition of the role and responsibilities of each party thereto; (ii) in respect of any Scheme for renovation or construction under Part B of the Project, communities for whom such Schemes are carried out will be required to contribute, up-front and through the relevant WSUG, all skilled and unskilled labor, whether in cash or in kind; and (iii) an under

taking by benefiting communities for the provision, in cash or in kind of Operations and Maintenance of their respective Schemes.

3. The Board shall: (i) ensure that any private land needed for water supply and other construction under the Project has been provided by the owner of such land in a voluntary manner, and in accordance with a memorandum of understanding, agreed with the Association, between the WSUGs and the owner of such land; and (ii) not commence such works in locations where such land is needed until such a memorandum of understanding has been concluded.

4. The Board shall: (i) carry out its activities under the Project in accordance with the procedures, principles and practices set forth in the Implementation Manuals; and (ii) take all measures necessary to ensure that activities of WSUGs, SAs and SOs under the Project are carried out in conformity with the Implementation Manuals, EMP, EMAP, and IPDP.

5. The Board shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Association, the carrying out of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Association, and furnish to the Association, on or about January 31, 2007, a Mid-Term review report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Association, by February 28, 2007, or such later date as the Association shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association's views on the matter.