

CONFORMED COPY

GRANT NUMBER H539-LA

Financing Agreement

**(Technical Assistance for Capacity Building in the Hydropower
and Mining Sectors Project)**

between

LAO PEOPLE'S DEMOCRATIC REPUBLIC

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated February 8, 2010

GRANT NUMBER 539-LA

FINANCING AGREEMENT

AGREEMENT dated February 8, 2010, entered into between LAO PEOPLE'S DEMOCRATIC REPUBLIC ("Recipient") and INTERNATIONAL DEVELOPMENT ASSOCIATION ("Association"). The Recipient and the Association hereby agree as follows:

ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

- 1.01. The General Conditions (as defined in the Appendix to this 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 General Conditions or in the Appendix to this Agreement.

ARTICLE II — FINANCING

- 2.01. The Association agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a grant in an amount equivalent to five million Special Drawing Rights (SDR 5,000,000) ("Financing") to assist in financing the project described in Schedule 1 to this Agreement ("Project").
- 2.02. The Recipient may withdraw the proceeds of the Financing in accordance with Section IV of Schedule 2 to this Agreement.
- 2.03. The Maximum Commitment Charge Rate payable by the Recipient on the Unwithdrawn Financing Balance shall be one-half of one percent (1/2 of 1%) per annum.
- 2.04. The Payment Dates are June 15 and December 15 in each year.
- 2.05. The Payment Currency is United State Dollars.

ARTICLE III — PROJECT

- 3.01. The Recipient declares its commitment to the objectives of the Project. To this end, the Recipient shall carry out the Project through MEM in accordance with the provisions of Article IV of the General Conditions.
- 3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Recipient and the Association shall otherwise agree, the Recipient shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.

ARTICLE IV — EFFECTIVENESS; TERMINATION

- 4.01. The Additional Condition of Effectiveness consists of the following: the Project Implementation Manual referred to in Section I.A.3(a) of Schedule 2 to this Agreement has been adopted by the Recipient.
- 4.02. The Effectiveness Deadline is the date ninety (90) days after the date of this Agreement.
- 4.03. For purposes of Section 8.05(b) of the General Conditions, the date on which the obligations of the Recipient under this Agreement (other than those providing for payment obligations) shall terminate is twenty (20) years after the date of this Agreement.

ARTICLE V — REPRESENTATIVE; ADDRESSES

- 5.01. The Recipient's Representative is the Minister of Finance.
- 5.02. The Recipient's Address is:

Ministry of Finance
23 Singha Road
Nongbone Village
Saysettha District
Vientiane, Lao PDR

Facsimile: 856-21-412142

5.03. The Association's Address is:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable:	Telex:	Facsimile:
INDEVAS Washington, D.C.	248423 (MCI)	1-202-477-6391

AGREED at Vientiane, Lao People's Democratic Republic, as of the day and year first above written.

LAO PEOPLE'S DEMOCRATIC REPUBLIC

By: /s/ Viengthong Siphandone

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: /s/ Annette Dixon

Authorized Representative

SCHEDULE 1

Project Description

The objective of the Project is to increase human capacity and improve the performance of the Recipient's oversight institutions for the hydropower and mining sectors.

The Project consists of the following parts:

1. Joint Hydropower and Mining Learning Program
 - (a) Provision of technical advisory services, Incremental Operating Costs, and training to Recipient's staff and private practitioners on energy and mining sector management, specific energy and mining hands-on training and cross-cutting issues between said sectors including, *inter alia*: project appraisal; finance; taxation; environmental and social impacts; hydrological data processing; river basin modeling; geo-modeling techniques; and mine planning matters; and provision of goods and civil works to MEM to upgrade its teaching facilities.
 - (b) Provision of goods, technical advisory services, Incremental Operating Costs and training to NUOL and Selected Colleges to assist said educational institutions in, *inter alia*: (i) updating their curricula and teaching methods; (ii) carrying out internships and student exchange programs; and (iii) upgrading their teaching facilities and equipment.
 - (c) Carrying out of minor civil works and provision of Incremental Operating Costs for the rehabilitation and repair of existing buildings and technical advisory services to MEM to set up a physical facility where information be provided on hydropower and mining sector activities and outreach programs and public information campaigns on said sector activities be developed and implemented, including supporting MEM's web design and maintenance.
2. Hydropower Sector Development
 - (a) Provision of goods, technical advisory services, and Incremental Operating Costs to develop the Recipient's national hydropower planning and management capacity by, *inter alia*: (i) updating the national least-cost hydropower development plan; (ii) designing and implementing a national hydrological data collection and processing system, including installing hydrological gauge stations along the Nam Ou River; and (iii) designing and updating models for cascaded hydropower development planning, including carrying out hydropower development planning for the Nam Ou River by supporting data collection, analysis and developing best practice examples.

- (b) Provision of technical advisory services and Incremental Operating Costs to strengthen MEM's capacity in managing hydropower projects, including its capacity to design, execute, implement and supervise concession agreements and power purchase agreements.
- (c) Provision of goods, technical advisory services, training and Incremental Operating Costs to build MEM's hydropower management capacity to implement the NPSH by, *inter alia*: (i) updating the NPSH in line with the Recipient's legal and institutional framework; (ii) updating and implementing MEM's guidelines, technical standards and administrative procedures for effective NPSH implementation; and (iii) supporting the implementation of the NPSH in Selected Provinces.

3. Mining Sector Development

- (a) Provision of goods, technical advisory services, Incremental Operating Costs, and training to the Recipient to develop a mining legal and regulatory framework to improve sector governance and the enabling environment by: *inter alia*, (i) supporting the drafting of mining regulations, procedures, development policies and standard investment agreements; (ii) negotiation skills to training relevant MEM staff; and (iii) assisting in analyzing mining taxation and administration issues.
- (b) Provision of goods and technical advisory services, Incremental Operating Costs, and training to strengthen the Recipient's oversight capacity by, *inter alia*: (i) implementing and rendering a functional monitoring and evaluation system on exploration and mine operations through standardized reporting templates and systems; (ii) reinforcing mine environment and inspection activities to ensure compliance with relevant technical, environmental and social, occupational health and safety regulations; (iii) developing and implementing public information campaigns to build awareness on laws and regulations in the mining sector; and (iv) strengthening capacities and functions of the cadastre and mine registry office.
- (c) Provision of goods, technical advisory services, training, and Incremental Operating Costs to MEM to develop and upgrade its geological information base by, *inter alia*, (i) expanding the availability of geo-science and mining information; (ii) provision of training in geological mapping techniques of one geological prospective area; and (iii) upgrading an existing geological testing laboratory, including acquiring laboratory equipment.

4. Project Administration and Management

Provision of goods, technical advisory services, Incremental Operating Costs and training to the Project Secretariat to support the implementation of the Project.

SCHEDULE 2

Project Execution

Section I. Implementation Arrangements

A. Institutional Arrangements

1. The Recipient shall establish and maintain, throughout the period of implementation of the Project, a Steering Committee, which shall be: (i) headed by the vice-minister of MEM; (ii) composed of representatives from MEM line departments, government agencies and educational institutions involved in the hydropower and mining sectors; and (iii) responsible for providing overall strategic guidance, support and oversight of Project implementation.
2. The Recipient shall maintain within MEM, throughout the period of implementation of the Project, the following bodies, acceptable to the Association, with sufficient resources, appropriately qualified and competent staff in adequate numbers and with terms of reference satisfactory to the Association:
 - (a) the Project Secretariat, which shall be: (i) chaired by a representative of MEM; (ii) comprising, *inter alia*, a Project coordinator, a procurement officer, a financial management officer; and (iii) responsible for, *inter alia*: managing the implementation of the Project on a daily basis, including financial management, procurement, budgeting, monitoring, reporting and evaluation matters; and reporting to the Steering Committee on Project implementation;
 - (b) an Energy Sector Sub-committee composed of representatives from relevant MEM line departments and entities involved in the energy sector, which shall be responsible for providing technical advice on the Project; and
 - (c) a Mining Sector Sub-committee composed of representatives from relevant MEM line departments, which shall be responsible for providing technical advice on the Project.
3. The Recipient shall:
 - (a) adopt and thereafter carryout a Project Implementation Manual satisfactory to the Association, which manual shall include, *inter alia*: (i) the Financial Management Manual incorporating policy and procedures satisfactory to the Association regarding accounting, reporting and internal control mechanisms and procedures in respect of the Project, including the management, control and auditing of the

Designated Account; (ii) measures to implement the Approaches and Actions to Manage Potential Environmental and Social Safeguards Issues and Risks; (iii) procurement procedures, as set forth in Section III of this Schedule; (iv) the management structures of the Project including *inter alia* definition of the roles, mandates and responsibilities of the parties; (v) decision making authorities; and (vi) reporting and accountabilities;

- (b) undertake not to amend, suspend, abrogate, repeal and waive any provisions of the Project Implementation Manual without the prior agreement to the Association; and
 - (c) by no later than three (3) months of effectiveness of the Project update the Financial Management Manual, in a manner satisfactory to the Association.
4. The Recipient shall, no later than one (1) month of effectiveness of the Project:
- (a) engage a financial management consultant, with appropriate experience and qualifications, and under terms of reference acceptable to the Association, to assist MEM and the Project Secretariat with the overall financial management tasks of the Project; and
 - (b) engage a procurement consultant, with appropriate international experience and qualifications, and under terms of reference acceptable to the Association, to assist MEM and the Project Secretariat with the overall procurement tasks of the Project.
5. The Recipient shall every six (6) months, starting one (1) month after the effectiveness of the Project, prepare and furnish to the Association for review and concurrence, a draft semi-annual training and workshops plan identifying activities and beneficiaries and proposed expenditures to be incurred.

B. Anti-Corruption

The Recipient shall ensure that the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines.

C. Safeguards

The Recipient shall implement the Project in accordance with the Approaches and Actions to Manage Potential Environmental and Social Safeguards Issues and Risks. The Recipient shall not amend, suspend or waive said document or any provision thereof, without the prior concurrence of the Association.

Section II. Project Monitoring, Reporting and Evaluation**A. Project Reports**

1. The Recipient 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 indicators agreed with the Association. Each Project Report shall cover the period of one (1) calendar quarter, and shall be furnished to the Association not later than forty five (45) days after the end of the period covered by such report.

B. Financial Management, Financial Reports and Audits

1. The Recipient shall maintain or cause to be maintained a financial management system in accordance with the provisions of Section 4.09 of the General Conditions.
2. The Recipient shall prepare and furnish to the Association as part of the Project Report, interim unaudited financial reports for the Project covering the quarter, in form and substance satisfactory to the Association.
3. The Recipient shall have its Financial Statements audited in accordance with the provisions of Section 4.09(b) of the General Conditions. Each audit of the Financial Statements shall cover the period of one (1) fiscal year of the Recipient, commencing with the fiscal year in which the first withdrawal was made under the Preparation Advance for the Project. The audited Financial Statements for each such period shall be furnished to the Association not later than six (6) months after the end of such period.

Section III. Procurement**A. General**

1. **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.
2. **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.
3. **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 in accordance with the Recipient’s Decree of the Prime Minister on Government Procurement of Goods, Construction, Maintenance and Services, 03/PM dated January 9, 2004, and the Implementing Rules and Regulations on Government Procurement of Goods, Works, Maintenance and Services dated March 12, 2004, subject to the procedures listed in the Annex to this Schedule 2
(b) Shopping

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) Quality Based Selection
(b) Selection Based on Consultant Qualifications
(c) Selection of Individual Consultants
(d) Single Source Selection

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.

Section IV. Withdrawal of the Proceeds of the Financing

A. General

1. The Recipient may withdraw the proceeds of the Financing in accordance with the provisions of Article II of the General Conditions, this Section, and such additional instructions as the Association shall specify by notice to the Recipient (including the "World Bank Disbursement Guidelines for Projects" dated May 2006, as revised from time to time by the Association and as made applicable to this Agreement pursuant to such instructions), to finance Eligible Expenditures as set forth in the table in paragraph 2 below.
2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Financing ("Category"), the allocations of the amounts of the Financing to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

<u>Category</u>	<u>Amount of the Grant Allocated (expressed in SDR)</u>	<u>Percentage of Expenditures to be Financed (inclusive of Taxes)</u>
(1) Goods, Civil Works, Consultants' Services, Training and Workshops and Incremental Operating Costs	4,680,000	100%
(2) Refund of Preparation Advance	320,000	Amount payable pursuant to Section 2.07 of the General Conditions
TOTAL AMOUNT	5,000,000	

B. Withdrawal Conditions; Withdrawal Period

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made for payments made prior to the date of this Agreement.
2. The Closing Date is September 30, 2014.

**ANNEX
to
SCHEDULE 2**

National Competitive Bidding Procedures

1. Bidding documents and contracts under national competitive bidding procedures financed by the Association shall include a provision requiring suppliers contractors and their subcontractors to permit the Association to inspect their accounts and records relating to the bid submission and the performance of the supplier and/or contractor, as the case may be, and to have them audited by auditors appointed by the Association, if so required by the Association. The deliberate and material violation by the supplier, contractor or subcontractor of such provision may amount to obstructive practice.
2. Immediately after completion of the bid opening proceedings, a copy of the bid opening record shall be posted at a prominent location, accessible to the public, outside the office of the concerned procuring entity and shall be retained at the same location until the award of contract has been notified. A copy of the bid opening record shall be provided to all bidders who submitted bids.
3. The Recipient shall publish the following information on contract award on a free or open access website when it becomes operational or on another means of publication acceptable to the Association: (a) name of each bidder who submitted a bid; (b) bid prices as read out at bid opening; (c) name and evaluated price of each bid that was evaluated; (d) name of bidders whose bid were rejected and the reasons for rejection; (e) name of the winning bidder, contract price, explanation if it is different that bid price as well as the duration and summary scope of the contract awarded; and (f) contract variation orders. This publication shall be updated quarterly.
4. The eligibility of bidders shall be as defined under section I of the Bank's Guidelines for Procurement under IBRD Loans and IDA Credits, published by the Bank in October 2006; accordingly, a firm or individual previously declared ineligible by the Association based on determination by the Association that this firm or individual has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices shall be declared ineligible to be awarded a contract financed by Association.
5. The Association shall declare a firm or individual ineligible, either indefinitely or for a stated period, to be awarded a contract financed by the Association and the Recipient, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, an Association-financed contract.

APPENDIX**Section I. Definitions**

1. “Anti-Corruption Guidelines” means the “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006.
2. “Approaches and Actions to Manage Potential Environmental and Social Safeguards Issues and Risks” means the document dated November 23, 2009, adopted by the Recipient, setting forth, *inter alia*, the approaches and actions to be taken by the Recipient to manage potential environmental and social safeguards issues and risks arising under or related to the Project.
3. “Category” means a category set forth in the table in Section IV of Schedule 2 to this Agreement.
4. “Consultant Guidelines” means the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” published by the Bank in May 2004 and revised in October 2006.
5. “Energy Sector Sub-committee” means the committee referred to in Section I.A.2.(b) of Schedule 2 of this Agreement which has been established by MEM’s Decision No. 1545/MEM dated December 12, 2008.
6. “Financial Management Manual” means the manual dated August 20, 2007 adopted by the Recipient, setting forth, *inter alia*, the financial management arrangements and procedures for the Project including the flow of funds, accounting policy and procedures, budgeting, recording, financial reporting, auditing and disbursement arrangements; as such manual may be amended from time to time by agreement between the Recipient and the Association.
7. “General Conditions” means the “International Development Association General Conditions for Credits and Grants”, dated July 1, 2005 (as amended through October 15, 2006), with the modifications set forth in Section II of this Appendix.
8. “Incremental Operating Costs” mean reasonable expenditures directly related to the Project incurred by the Recipient which expenditures would not have been incurred without the Project, including expenditures for Project staff travel, lodging and per diem, office, supplies, communications services (including telephone and internet costs), publication services, translation services, and maintenance of office equipment and vehicles, but excluding civil services salaries of officials of the Recipient’s civil service.

9. “Mining Sector Sub-committee” means the committee referred to in Section I.A.2.(c) of Schedule 2 of this Agreement which has been established by MEM’s Decision No. 1545/MEM dated December 12, 2008.
10. “Ministry of Energy and Mines” or “MEM” means the Recipient’s ministry responsible for implementing the Project or any other successor thereto.
11. “Nam Ou River” means a river located between Phongsaly and Luang Prabang Provinces.
12. “National Policy on Environmental and Social Sustainability in Hydropower Development” or “NPSH” means the Recipient’s policy adopted in 2005 which applies to all large hydropower dams in the territory of the Recipient.
13. “NUOL” means the National University of Lao People’s Democratic Republic established under the Prime Minister’s decree No. 50/PM dated June 9, 1995.
14. “Preparation Advance” means the advance referred to in Section 2.07 of the General Conditions, granted by the Association to the Recipient pursuant to the letter agreement signed on behalf of the Association on March 5, 2009, and on behalf of the Recipient on April 24, 2009.
15. “Procurement Guidelines” means the “Guidelines: Procurement under IBRD Loans and IDA Credits” published by the Bank in May 2004 and revised in October, 2006.
16. “Procurement Plan” means the Recipient’s procurement plan for the Project, dated December 4, 2009 and referred to in paragraph 1.16 of the Procurement Guidelines and paragraph 1.24 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.
17. “Project Implementation Manual” means the manual referred to in Section I.A.3 (a) of Schedule 2 to this Agreement.
18. “Project Secretariat” means the Project implementing unit referred to in Section I.A.2.(a) of Schedule 2 of this Agreement which has been established by MEM’s Decision No. 1545/MEM dated December 12, 2008.
19. “Selected Colleges” mean, collectively: (i) the Lao-German Technical School; (ii) the Vocational and Technical School; and (iii) the Polytechnic Institute; or any other institutions selected by the Recipient and acceptable to the Association, which will be receiving goods, technical assistance and training out of the proceeds of the Grant.

20. “Selected Provinces” means, collectively, Attapeu Province, Luang Prabang Province, Vientiane Province and Bolikhamxay Province or any other Province selected by the Recipient and acceptable to the Association.
21. “Steering Committee” means the committee referred to in Section I.A.1 of Schedule 2 of this Agreement.
22. “Training and Workshops” means training and workshops conducted in the territory of the Recipient or abroad, including purchase and publication of materials, rental of facilities, courses fees, and travel, accommodation and subsistence of trainees.

Section II. Modifications to the General Conditions

The modifications to the General Conditions for Credits and Grants of the Association, dated July 1, 2005 (as amended through October 15, 2006) are as follows:

1. Section 2.07 is modified to read as follows:

“Section 2.07. *Refinancing Preparation Advance*

If the Financing Agreement provides for the repayment out of the proceeds of the Financing of an advance made by the Association or the Bank (“Preparation Advance”), the Association shall, on behalf of the Recipient, withdraw from the Financing Account on or after the Effective Date the amount required to repay the withdrawn and outstanding balance of the advance as at the date of such withdrawal from the Financing Account and to pay all accrued and unpaid charges, if any, on the advance as at such date. The Association shall pay the amount so withdrawn to itself or the Bank, as the case may be, and shall cancel the remaining unwithdrawn amount of the advance.”

2. Paragraph (i) of Section 6.02 is modified to read as follows:

“Section 6.02. *Suspension by the Association*

... (1) *Ineligibility*. The Association or the Bank has declared the Project Implementing Entity ineligible to receive proceeds of any financing made by the Association or the Bank or otherwise to participate in the preparation or implementation of any project financed in whole or in part by the Association or the Bank, as a result of a determination by the Association or the Bank that the Project Implementing Entity has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of any financing made by the Association or the Bank.”

3. The following terms and definitions set forth in the Appendix are modified or deleted as follows, and the following new terms and definitions are added in alphabetical order to the Appendix as follows, with the terms being renumbered accordingly:

(a) The term “Project Preparation Advance” is modified to read “Preparation Advance” and its definition is modified to read as follows:

“‘Preparation Advance’ means the advance referred to in the Financing Agreement and repayable in accordance with Section 2.07.”