

Public Disclosure Authorized

CONFORMED COPY

CREDIT NUMBER 4172-YEM

Project Agreement

(Power Sector Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

PUBLIC ELECTRICITY CORPORATION

Dated July 11, 2006

CREDIT NUMBER 4172-YEM

PROJECT AGREEMENT

AGREEMENT dated July 11, 2006, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and PUBLIC ELECTRICITY CORPORATION (PEC).

WHEREAS (A) by the Development Credit Agreement of even date herewith between Republic of Yemen (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to thirty five million Special Drawing Rights (SDR35,000,000), on the terms and conditions set forth in the Development Credit Agreement, but only on conditions that PEC agree to undertake such obligations toward the Association as are set forth in this Agreement;

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

WHEREAS PEC, 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) PEC 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, engineering and environmental 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 PEC shall otherwise agree, PEC shall carry out the Project in accordance with the Environmental Management Plan, the Resettlement Policy Framework and the Implementation Program set forth in Schedule 2 to this Agreement.

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, as said provisions may be further elaborated in the Procurement Plan.

(b) PEC shall update the Procurement Plan in accordance with guidelines acceptable to the Association, and furnish such update to the Association not later than twelve (12) months after the date of the preceding Procurement Plan, for the Association's approval.

Section 2.03. (a) PEC shall carry out 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) in respect of the Project Agreement.

(b) For the purposes of Section 9.06 of the General Conditions and without limitation thereto, PEC 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 PEC, a plan for the future operation of the Project; and
- (ii) afford the Association a reasonable opportunity to exchange views with PEC on said plan.

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

Section 2.05. (a) PEC 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 Loan Agreement, and other matters relating to the purposes of the Credit.

(b) PEC 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 PEC of its obligations under this Agreement and under the Subsidiary Loan Agreement.

ARTICLE III

Management and Operations of PEC

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

Section 3.02. PEC 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 environmental practices.

Section 3.03. PEC 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) PEC shall establish not later than the Effective Date and thereafter 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.

- (b) PEC shall:
- (i) have its financial statements referred to in paragraph (a) of this Section (balance sheets, statements of income and expenses and related statements) for each fiscal year (or other period agreed to by the Association), 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 (6) months after the end of each such year (or such other period agreed to by the Association), (A) certified copies of the financial statements referred to in paragraph (a) of this Section, for such year (or such other period agreed to by the Association), 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 PEC's reporting obligations set out in Schedule 2 to this Agreement, PEC shall prepare and furnish to the Association a financial monitoring report, 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 quarter 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 quarter; thereafter, each FMR shall be furnished to the Association not later than forty five (45) days after each subsequent calendar quarter, and shall cover the period not covered by the previous FMR until the end of such calendar quarter.

Section 4.03. (a) PEC shall, except as may otherwise be agreed with the Association: (i) for fiscal year 2006, produce total revenues equivalent to not less than the sum of its (x) total operating expenses and (y) interest expenses and other charges on debt which are normally chargeable to operations; (ii) produce funds from internal sources equivalent to not less than 10% for fiscal years 2006-2008, and, for each of the following fiscal years, 15% of the annual average of PEC's capital expenditures incurred (or expected to be incurred) during such year, the preceding fiscal year and the following fiscal year; and (iii) not incur a debt, unless a reasonable forecast of its estimated funds from internal sources during the term of the debt to be incurred shall be at least 1.5 times PEC's estimated debt service requirements in such year on all its debt, including the debt to be incurred.

(b) By September 30 of each year, on the basis of forecasts prepared by PEC and satisfactory to the Association, PEC shall review with the Association its proposed investment program for the following year, together with its ability to meet the requirements stated in paragraph (a) of this Section. If any such review shows that PEC would not meet the requirements set forth in paragraph (a), PEC shall promptly take all necessary measures (including, without limitation, adjustments in the structure or levels of its tariffs) in order to meet such requirements.

(c) For purposes of this Section:

- (i) The term "total revenues" means the sum of total operating revenues and net non-operating income.
- (ii) The term "total operating revenues" means revenues from all sources related to operations.

- (iii) The term “net non-operating income” means the difference between: (A) revenues from all sources other than those related to operations; and (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (iv) The term “total operating expenses” means all expenses related to: operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, and provision for depreciation based on the average current gross value of PEC’s fixed assets in operation, or other basis acceptable to the Association, but excluding interest and other charges on debt.
- (v) The average current gross value of PEC’s fixed assets in operation shall be calculated as one half of the sum of the gross value of PEC’s fixed assets in operation at the beginning and at the end of the fiscal year, as valued from time to time in accordance with sound and consistently maintained methods of valuation satisfactory to the Association.
- (vi) The term “funds from internal sources” means the difference between: (A) the sum of revenues from all sources related to operations, consumer deposits, net non-operating income and any reduction in working capital other than cash; and (B) the sum of all expenses related to operations, including administration, adequate maintenance and taxes and payments in lieu of taxes (excluding provision for depreciation and other non-cash operating charges), debt service requirements, all cash dividends and other cash distributions of surplus, increase in working capital other than cash and other cash outflows, other than capital expenditures.
- (vii) The term “working capital other than cash” means the difference between current assets excluding cash and current liabilities at the end of each fiscal year.
- (viii) The term “current assets excluding cash” means all assets other than cash which could in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable securities, inventories and prepaid expenses properly chargeable to operating expenses within the next fiscal year.

- (ix) the term “current liabilities” means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve months, including accounts payable, customer advances, debt services requirements, taxes and payments in lieu of taxes and dividends.
- (x) The term “debt” means any indebtedness of PEC maturing by its terms more than one year after the date on which it is originally incurred.
- (xi) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.
- (xii) The term “debt service requirements” means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.
- (xiii) The term “reasonable forecast” means a forecast prepared by PEC not earlier than twelve months prior to the incurrence of the debt in question, which both the Association and PEC accept as reasonable and as to which the Association has notified PEC of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of PEC.
- (xiv) The term “capital expenditures” means all expenditures incurred on account of fixed assets, including interest charged to construction, related to operations.
- (xv) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Association.

Section 4.04. PEC shall take all measures necessary on its part to ensure that its accounts receivable from all consumers from the Borrower's departments, public and semi-public enterprises and cooperatives shall not, except as the Association shall otherwise agree, exceed the equivalent of three months of PEC's annual average electricity sales revenues.

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 PEC 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 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 PEC 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 Public Electricity Corporation:

P.O. Box 178
Sana'a
Republic of Yemen

Facsimile:

967 1 328 150

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 PEC, or by PEC on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by PEC's Managing Director or such other person or persons as PEC shall designate in writing, and PEC 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 the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Christiaan J. Poortman

Regional Vice President
Middle East and North Africa

PUBLIC ELECTRICITY CORPORATION

By /s/ Abdulwahab A. Hajjri

Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I. General

A. All goods, works and services (other than consultants' services) shall be procured in accordance with the provisions of Section I of the "Guidelines: Procurement under IBRD Loans and IDA Credits" dated May 2004 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants' services shall be procured in accordance with Sections I and IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" dated May 2004 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Association of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

Section II. Particular Methods of Procurement of Goods, Works and Services (other than Consultants' Services)

A. International Competitive Bidding. Except as otherwise provided in Part B of this Section, contracts shall be awarded on the basis of International Competitive Bidding. The provisions of paragraphs 2.55 and 2.56 of the Procurement Guidelines, providing for domestic preference in the evaluation of bids, shall apply to goods manufactured in the territory of the Borrower and works to be carried out by domestic contractors.

B. Other Procurement Procedures

1. National Competitive Bidding. (a) Goods estimated to cost less than \$100,000 equivalent per contract and works estimated to cost less than \$1,000,000 equivalent per contract, may be procured under contracts awarded on the basis of National Competitive Bidding, including the clarifications set forth in paragraph (b) of this Part B.1 required for compliance with the provisions of the Guidelines.

(b) The procedures to be followed for National Competitive Bidding under this Part B.1 shall be those set forth in Law No. 3 for 1997 concerning Government Tenders, Auctions and Stores, and its Regulations, with the following modifications required for compliance with paragraph 3.3 of the Guidelines:

- (i) a Borrower-owned enterprise in the Republic of Yemen shall be eligible to bid only if it can establish that it is legally and financially autonomous, operates under commercial law, and is not a dependent agency of the Borrower;
- (ii) bidding (or pre-qualification, if required) shall not be restricted to any particular class of contractors or suppliers, and non-registered contractors and suppliers shall also be eligible to participate;
- (iii) tenders shall be advertised for at least two (2) consecutive days in two (2) local newspapers of wide circulation;
- (iv) prospective bidders shall be allowed a minimum of thirty (30) days for the preparation and submission of bids, such thirty (30) days to begin with the availability of the bidding documents or the advertisement, whichever is later;
- (v) until national standard bidding documents acceptable to the Association are available, bidding documents approved by the Association shall be used, and may be prepared in Arabic;
- (vi) registration shall not be used to assess bidders' qualifications; qualification criteria (in case pre-qualification was not carried out) and the method of evaluating the qualification of each bidder shall be stated in the bidding documents, and before contract award the bidder having submitted the lowest evaluated responsive bid shall be subject to post-qualification;
- (vii) a foreign bidder shall not be required to register or to appoint an agent as a condition for submitting its bid and, if determined to be the lowest evaluated responsive bidder, shall be given reasonable opportunity to register, without let or hindrance; the registration process shall not be applicable to sub-contractors;
- (viii) all bids shall be submitted in sealed envelopes and may be submitted, at the bidder's option, in person or by courier service;
- (ix) all bids shall be opened at the same time in a public bid opening which bidders shall be allowed to attend and which shall follow immediately after the deadline for submission of bids;

- (x) evaluation of bids shall be carried out in strict adherence to the criteria declared in the bidding documents and contracts shall be awarded to the lowest evaluated responsive bidder, without resorting to the rejection of bids above or below a certain percentage of the pre-bid estimate (bid price bracketing);
- (xi) no bidder shall be requested or permitted to modify its bid after the bid closing date shall have elapsed and bids submitted after the deadline for submission of bids shall be returned to the bidder unopened;
- (xii) post-bidding negotiations with the lowest or any other bidder shall not be permitted;
- (xiii) under exceptional circumstances, the procuring entity may, before the expiration of bid validity, request all bidders in writing to extend the validity of their bids, in which case bidders shall not be requested nor permitted to amend the price or any other condition of their bids; a bidder shall have the right to refuse to grant such an extension without forfeiting its bid security, but any bidder granting such extension shall be required to provide a corresponding extension of its bid security;
- (xiv) price adjustment provisions may be included in contracts for works with a duration of more than one year;
- (xv) rejection of all bids is justified when there is lack of effective competition, or bids are not substantially responsive, however, lack of competition shall not be determined solely on the basis of the number of bidders; and
- (xvi) each contract financed from the proceeds of the Credit shall provide that the contractor or supplier shall permit the Association, at its request, to inspect their accounts and records relating to the performance of the contract and to have such accounts and records audited by auditors appointed by the Association.

2. Shopping. Goods estimated to cost less than \$10,000 equivalent per contract, may be procured under contracts awarded on the basis of Shopping.

Section III. Particular Methods of Procurement of Consultants' Services

A. Quality- and Cost-based Selection. Except as otherwise provided in Part B of this Section, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection. For purposes of paragraph 2.7 of the Consultant Guidelines, the short list of consultants for services estimated to cost less than \$100,000 equivalent per contract may comprise entirely national consultants.

B. Other Procedures

1. Quality-based Selection. Services for assignments which the Association agrees meet the requirements set forth in paragraph 3.2 of the Consultant Guidelines may be procured under contracts awarded on the basis of Quality-based Selection in accordance with the provisions of paragraphs 3.1 through 3.4 of the Consultant Guidelines.

2. Least-cost Selection. Services for assignments which the Association agrees meet the requirements of paragraph 3.6 of the Consultant Guidelines may be procured under contracts awarded on the basis of Least-cost Selection in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

3. Selection Based on Consultants' Qualifications. Services 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, 3.7 and 3.8 of the Consultant Guidelines.

4. Single Source Selection. Services for tasks in circumstances which meet the requirements of paragraph 3.10 of the Consultant Guidelines for Single Source Selection, may, with the Association's prior agreement, be procured in accordance with the provisions of paragraphs 3.9 through 3.13 of the Consultant Guidelines.

5. Individual Consultants. Services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines. Under the circumstances described in paragraph 5.4 of the Consultant Guidelines, such contracts may be awarded to individual consultants on a sole-source basis.

Section IV. 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.

SCHEDULE 2

Implementation Program

1. PEC shall carry out the Project in accordance with the Environmental Management Plan and the Resettlement Policy Framework. Except as the Association shall otherwise agree, PEC shall not amend or waive any provision of the Environmental Management Plan or the Resettlement Policy Framework if, in the opinion of the Association, such amendment or waiver may materially and adversely affect the carrying out of the Project or the achievement of the objectives thereof.
2. Throughout the life of the Project, the PMU shall be maintained within PEC with organization, staffing, qualifications and terms of reference satisfactory to the Association, to ensure the proper management of the Project.
3. In carrying out the Project, PEC shall: (a) maintain the EMP and Resettlement Policy Framework in substance satisfactory to the Association; (b) implement the EMP and Resettlement Policy Framework in accordance with the objectives, policies, procedures, time schedules and other provisions set forth therein; (c) furnish to the Association semi-annual reports incorporating the results of the monitoring and evaluation activities together with any revisions required to meet the objectives of the EMP and Resettlement Policy Framework, as shall have been approved by the Association; and (d) refrain from taking any action which shall prevent or interfere with the implementation of said EMP and Resettlement Policy Framework.
4. PEC 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 June 30, 2009, a 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 September 30, 2009, 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.