CO-FINANCING AGREEMENT
(Second National Urban Water Sector Reform Project)

Between

INTERNATIONAL DEVELOPMENT ASSOCIATION

And

AGENCE FRANÇAISE DE DÉVELOPPEMENT

Dated March 20, 2013
COFINANCING AGREEMENT

This agreement (hereinafter referred to as the “Co-Financing Agreement”), made and entered into on the 20th of March 2013, between the INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter referred to as “Association”) and the AGENCE FRANÇAISE DE DÉVELOPPEMENT (hereinafter referred to as “AFD”)

WHEREAS:

(A) The Association has entered into a Development Credit Agreement number 4086-UNI with the FEDERAL REPUBLIC OF NIGERIA (hereinafter referred to as the “Borrower”) dated July 15, 2005 as amended to date under which the Association has agreed to provide the Borrower, on the terms and conditions set forth or referred to therein, a credit in an amount equivalent to one hundred thirty two million seven hundred thousand Special Drawing Rights (SDR 132,700,000) to finance the costs of goods, works and services required for the Second National Urban Water Sector Reform Project (hereinafter referred to as the “Project”) described in Schedule 2 to the Development Credit Agreement;

(B) The Borrower has requested that the Association and AFD provide additional financing for the Project;

(C) In response to the Borrower’s request, the Association intends to enter into a Financing Agreement (Amending and Restating the Development Credit Agreement) with the Borrower (hereinafter referred to as the “IDA Financing Agreement”) under which the Association will agree to provide the Borrower, on the terms and conditions set forth or referred to therein, an additional credit in an amount in Special Drawing Rights equivalent to One Hundred and Twenty Million US Dollars (USD 120M) to finance part of the additional activities and costs of the Project;

(D) In response to the Borrower’s request, AFD intends to enter into a Credit Facility Agreement with the Borrower (hereinafter referred to as the “AFD Credit Agreement”) under which AFD will agree to provide the Borrower, on the terms and conditions therein set forth or referred to therein, a credit in the amount of Seventy Seven million, Seven Hundred and Thirty one Thousand US Dollars (USD 77,73,000) to co-finance part of the additional activities and costs of the Project;

(E) The IDA Financing Agreement and the AFD Credit Agreement are hereinafter referred to collectively as the “Financing Agreements” and individually as “Financing Agreement”;

(F) The Association and AFD (hereinafter referred to collectively as the “Co-financiers” and individually as “Co-financier”) consider it desirable to coordinate the administration of their respective additional financings (collectively the “Cofinancers’ Financings”) for the additional activities and costs related to the Project and advise each other of relevant matters concerning the Project, the Borrower’s performance under the Project, and other matters of common interest. Capitalized terms used herein and not otherwise defined herein have the meaning set forth in the IDA Financing Agreement.

NOW THEREFORE, the Co-financiers hereby agree as follows:
ARTICLE 1

Cooperation; Consultation; and Exchange of Information

Section 1.01 Each Co-financier shall, in conformity with and subject to its respective policies and practices with respect to access to information:

(a) keep the other Co-financier informed of the progress of the Project and, at the request of either party, exchange views through their representatives with regard to the Project and any other matters relating to their respective financing thereof, including but not limited to:

   (i) the financial condition and economy of the Borrower;
   (ii) the progress achieved by the Borrower in the implementation of the Project; and
   (iii) fiduciary, safeguards and other relevant administration and supervision matters related to the implementation and financing of the Project;

(b) inform the other Co-financier sufficiently in advance of any proposed supervision missions for the Project so as to afford a reasonable opportunity to the other party to participate in such missions. The Co-financier conducting such mission shall inform the other Co-financier of the main findings and results of such mission;

(c) exchange views with respect to Project documentation prepared and sent by the Borrower pursuant to the Financing Agreements, including the periodic project reports and the final reports on the execution of the Project with related plans;

(d) promptly inform the other Co-financier of any of the following events:

   (i) any event which a Co-financier becomes aware of and which, in the opinion of such Co-financier, is likely to materially interfere with, or seriously hinder or impair, the implementation of the Project, or to adversely and materially interfere with the performance by the Borrower of its obligations under the Financing Agreement to which such Co-financier is a party;

   (ii) a determination by such Co-financier that any disbursement of the financing provided pursuant to its Financing Agreement: (A) was made in respect of any expenditure or any amount not eligible for financing under such Financing Agreement; or (B) was not justified by the evidence furnished pursuant to such Financing Agreement; and

   (iii) any notice given by the Borrower to prepay the whole or any part of the financing disbursed pursuant to the Financing Agreement to which such Co-financier is a party and any amount thereof actually prepaid.

Section 1.02. The Co-financiers shall inform each other promptly of any significant modification to their respective Financing Agreements with the Borrower and of any contractual remedy that is applied in respect thereof. Without prejudice to the independent right of decision and action of each Co-financier under its respective Financing Agreement, and subject to each Co-financier’s applicable policies and procedures, each Co-financier will give notice to, and to the extent reasonably practicable consult with, the other Co-financier before effecting any such modification or exercising any such contractual remedy. Such modifications or contractual remedies include, but are not limited to, the following:
(a) material amendment to the Co-financier’ respective Financing Agreement with the Borrower or any action which might result in the termination of such Financing Agreement;

(b) cancellation, in whole or in part, of the proceeds of the financing provided for under the respective Financing Agreement with the Borrower;

(c) suspension or termination, in whole or in part, of the right of the Borrower to make withdrawals under the respective Financing Agreement;

(d) refund, in whole or in part, of the proceeds of the financing provided under the respective Financing Agreement;

(e) acceleration of the maturity of the financing provided under the respective Financing Agreement; or

(f) extension to the disbursement deadline (closing date) under the respective Financing Agreement.

Section 1.03. The Financing Agreements to be concluded in connection with the Project may include cross-default clauses and cross-effectiveness provisions. Each Co-financier shall use its best efforts to expedite the timely effectiveness of their respective Financing Agreement with the Borrower.

Section 1.04. Each Co-financier shall retain its independent right of action and decision under its respective Financing Agreement with the Borrower except as otherwise stated in this Co-Financing Agreement.

ARTICLE 2

Project Implementation

Section 2.01. The supervision of the Project shall be done in accordance with the Association’s policies and procedures, as detailed in this Co-Financing Agreement.

Section 2.02. The Borrower shall be responsible for the execution of the Project co-financed under this Co-Financing Agreement, including the procurement/selection, award and implementation of contracts thereunder in accordance with the Association’s applicable policies and procedures.

ARTICLE 3

Procurement Administration

Section 3.01. Unless otherwise stipulated in this Co-Financing Agreement or agreed between the Parties:

(a) the procurement of goods, works and non-consulting services under the Project shall be subject to the provisions of the applicable version of the World Bank’s “Guidelines: Procurement of Goods, Works and Non-Consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers” (“Procurement Guidelines”);
the selection, engagement and services of the consultants under the project shall be subject to the provisions of the applicable version of the World Bank’s “Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers” ("Consultant Guidelines"); and

the World Bank’s interpretation of the Procurement Guidelines and Consultant Guidelines shall be binding and final on all procurement decisions.

Section 3.02. The application of the Procurement Guidelines and the Consultant Guidelines shall be subject to the following modifications with respect to contracts financed by AFD:

(a) application of appropriate remedies by the AFD in cases where the Association determines that the applicable procurement procedures have not been followed, shall be carried out in accordance with the provisions of Section 3.06 of this Co-Financing Agreement;

(b) handling of complaints related to fraud and corruption allegations shall be carried out in accordance with the provisions of Section 4.01 of this Co-Financing Agreement; and

(c) recognition of AFD’s financing eligibility requirements in regard to contract award recommendations made by the Borrower shall be done in accordance with the provisions of Section 3.05 of this Co-Financing Agreement.

Section 3.03. When the use of the Association’s Standard Bidding Documents and Standard Requests for Proposals is required in connection with AFD parallel-financed contracts in accordance with the Procurement Guidelines and the Consultant Guidelines, respectively, the bidding documents and/or requests for proposals prepared by the Borrower for a specific procurement will be modified, when applicable, to reflect AFD’s role as a co-financier, including references to AFD in the procurement notices and all other documentation relating to the contracts financed by AFD.

Section 3.04. The modifications to the national competitive bidding procedures for purposes of National Competitive Bidding, ceilings for short lists comprising entirely national firms, applicability of domestic preference, and prior review thresholds shall be determined by the Association in accordance with the requirements and thresholds that the Association agrees for the Recipient under World Bank-financed projects.

Section 3.05. The Borrower will be required to indicate in bidding documents and/or requests for proposals related to AFD parallel-financed contracts, that AFD’s financing of the awarded contract is subject to the condition that the selected bidder or consultant (as well as any of its subcontractors or suppliers) comply with AFD’s legal obligations related to anti-money laundering and anti-terrorist lists, as set forth in AFD’s Credit Agreement. For this purpose, and as a condition for contract signing, the selected bidder or consultant, as the case may be, shall be requested to submit a representation form provided by AFD and signed by its authorized representative(s) in accordance with the form attached in ANNEX D to this Co-Financing Agreement.

Section 3.06. Upon notification by the Association to AFD of a determination that the applicable procurement procedures have not been followed in relation to a contract financed by AFD, AFD will decide its appropriate remedy in accordance with its own policies and procedures.
ARTICLE 4

Anti-Corruption

Section 4.01. The Co-finaniers will be responsible for addressing any fraud and corruption issues that arise with respect to activities financed by them. In such circumstances, the Co-finaniers agree to keep each other apprised in accordance with their own policies and procedures.

ARTICLE 5

Financial Management and Reporting

Section 5.01. Each Co-finanier shall require the Borrower, in its respective Financing Agreement, to:

(a) include in the audited financial statements for the Project expenditures funded by both Co-financers together with funds of any other financiers; and

(b) ensure that an opinion on the usage of all project funds is presented in the audit report.

Section 5.02. Each Co-finanier shall require the Borrower, in its respective Financing Agreement, to carry out the Project in accordance with the Association’s financial management policies and procedures;

Section 5.03. The Association shall review the periodic interim un-audited financial reports and the annual audited financial statements provided by the Borrower pursuant to each Co-finanier’s Financing agreement, and shall transmit them to AFD with a cover letter including any Association comments on the same. The Association shall follow up on the implementation and pursuance of the audit’s recommendations.

ARTICLE 6

Method of Financing; Disbursement Administration

Section 6.01. It is the intention of each Co-finanier that the proceeds of the Co-finaniers’ Financings will be applied on a parallel co-financing basis to finance separate contracts/expenditures under the Project. The allocation of the specific parts of the Project to be financed by each Co-finanier shall be as set forth in Annex A to this Co-Financing Agreement.

Section 6.02. For the purposes of the Project, disbursements under each Co-finanier’s Financing Agreement shall be made in accordance with the respective Co-finanier’s disbursement guidelines, provided, however that for fee-based services provided by the Association pursuant to Section 6.03 of this Article, the applicable version of the World Bank Disbursement Guidelines for Projects shall be used.

Section 6.03. With respect to AFD parallel-financed contracts:

(a) the Borrower shall be required (in each Co-finanier’s respective Financing Agreement) to submit an original of the Withdrawal Application (WA) and copies of supporting documents to AFD, and an original of the WA and supporting documents to the Association;

(b) the Association shall review each WA submitted by the Borrower in accordance with its applicable policies and procedures to verify that the amount requested by the Borrower applies to contracts to be financed from the AFD Credit, in accordance with the procurement plan for the Project and the disbursement schedules in the respective
Financing Agreements, and advise AFD (through the Drawdown Order as per the form attached in Annex B to this Co-Financing Agreement) to make the payments to the Borrower requested in such WAs, subject to approval by AFD;

(c) Upon receipt of the Drawdown Order and supporting documents, AFD shall determine the amount of funds to be disbursed by it to the Borrower in accordance with the provisions of its Credit Agreement, and promptly notify the Association of its actions;

(d) if AFD does not approve the payment requested in the WA, it shall promptly inform the Association and the Borrower in writing of its decision and the basis for such decision; and

(e) the Co-financiers shall inform each other in writing of the person or persons authorized to deliver notices under this Section.

ARTICLE 7

Environmental and Social Safeguards

Section 7.01. During Project preparation and implementation, the Association shall conduct due diligence, review documents and appraise and supervise Project activities in accordance with the Association’s safeguard policies. AFD shall conduct due diligence, review documents and appraise and supervise other activities that are not required by the Association’s safeguard policies but may be required by AFD.

Section 7.02. For the purposes of the AFD-financed parts of the Project, the Co-financiers agree that a single process for social and environmental assessment and planning, safeguard documentation, consultation, and disclosure requirements shall be conducted to satisfy both the Association’s safeguard policies and the safeguard requirements of the AFD.

ARTICLE 8

Provision of Services and Fees

Section 8.01. The Association accepts to provide the services described in Articles 2, 3, 4, 5, 6, and 7 of this Co-financing Agreement, in accordance with its relevant policies and procedures and as specifically set forth in this Co-Financing Agreement. When requested, and subject to its policy on access to information, the Association will make available to AFD all documents, contracts, statements and reports received by the Association from the Borrower in accordance with the Financing Agreements, and within the scope of the Association’s services set forth herein.

Section 8.02. For the services to be provided to AFD pursuant to this Co-Financing Agreement, the Association shall charge AFD a fee that represents the full cost of providing the services related to the AFD co-financing equivalent based on the relevant country costs and risks associated with the Project. The costing is based on a cost recovery framework for recovering all direct costs, and with a mark-up rate to recover sustaining and indirect costs. The calculation of the cost recovery fee in relation to the Project is included in Annex C to this Co-Financing Agreement. In accordance with the said calculation, AFD shall pay to the Association a fee of One Million Nine Hundred and Sixty Four Thousand Five Hundred and Sixteen US Dollars (USD 1,964,516) for the services to be performed by the Association pursuant to this Co-Financing Agreement. Such fee shall be paid in four instalments of Four Hundred Ninety One Thousand One Hundred and twenty Nine US dollars (USD 491,129), to be paid by June 1 in each year.
Section 8.03. All payments to the Association shall be made when due in full, in United States Dollars, in immediately available funds, without any deductions whatsoever for taxes, duties, charges or other withholdings, into such bank account as the Association may designate.

Section 8.04. Notwithstanding termination or expiration of this Co-Financing Agreement, the provisions of this Co-Financing Agreement relating to the obligation of AFD to pay to the Association remuneration for its services performed prior to the date of termination or expiration of this Co-Financing Agreement, shall continue in full force and effect.

ARTICLE 9

Disclaimers, Liabilities and Indemnification

Section 9.01. The Association makes no express or implied representation or warranty as to the accuracy, completeness or sufficiency of any reports, documents, analyses, memoranda or prospectuses, including any projections or estimates contained therein, prepared by the Borrower.

Section 9.02. Without limitation to the immunities and privileges of the Association under its Articles of Agreement and other applicable rules of international law, the Association shall not be liable to AFD or any other third party for any loss, cost, damage or liability that AFD may incur as a result of this Co-Financing Agreement, unless those resulting from the gross negligence or willful misconduct of the Association or its staff and consultants. Notwithstanding anything herein, the Association’s liability, if any, to AFD hereunder shall not extend to any indirect damage, loss of profit or loss of opportunity, nor shall exceed the amount of the professional fees received by the Association for its account under this Agreement.

Section 9.03. AFD shall indemnify and hold the Association and its staff and consultants harmless from any losses, costs, damages or liability to which the Association or its staff and consultants may be subject, including without limitation as a result of any claim, suit or action brought against any of them by any third party (whether or not affiliated with AFD) on whatever grounds, in connection with the performance under this Agreement by the Association hereunder or the reliance by any person on anything done or not done by the Association, and reimburse the Association for any expenses, including any legal expenses, reasonably incurred by the Association in connection therewith, except those resulting from the gross negligence or willful misconduct of the Association or its personnel. Notwithstanding anything herein, AFD’s obligation to indemnify and reimburse the Association under this Section shall not exceed the amount of five hundred thousand United States Dollars (US$ 500,000).

ARTICLE 10

Entry into Force and Effect; Termination; Dispute Resolution

Section 10.01. Upon signature of this Co-Financing Agreement by both parties, it shall enter into force and effect on the later of (a) the date on which the IDA Financing Agreement becomes effective in accordance with its terms, or (b) the AFD Credit Agreement becomes effective in accordance with its terms.

Section 10.02. Subject to Section 9.03 below, this Co-Financing Agreement shall remain in full force and effect until 90 days after the date on which both Co-financers’ respective Financing Agreements with the Borrower shall have closed with no further disbursements.

Section 10.03. This Co-Financing Agreement may be modified from time to time by further agreement in writing between the Co-financers. This Co-Financing Agreement may be terminated at any time upon 90 days advance notice given in writing by either party to the other party. Before giving
such notice, the Co-financiers will agree on the most practical and effective means of limiting the impact of such termination on the implementation of the Project.

Section 10.04. The Co-financiers will try to resolve any dispute arising from this Co-Financing Agreement, through constructive engagement and negotiation between the parties.

ARTICLE 11

Miscellaneous

Section 11.01. This Co-Financing Agreement may be made publicly available subject to each Co-financier’s policies and procedures on access to information. The Co-financiers shall each respectively obtain the other’s prior written consent before publicly disclosing information that the other has explicitly provided in confidence by marking the document containing such information as proprietary and/or confidential and/or as being provided in confidence.

Section 11.02. Communications, including notices for the purposes of this Co-Financing Agreement shall be addressed to the following:

For the Association:

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

Cable: INDEVAS
Telex: 248423 (MCI)
Facsimile: 1-202-477-6391

Washington, D.C.

Attention: Sector Manager (Urban and Water), Africa Region

For AFD:

Agence Française de Développement
5, rue Roland Barthes
75598 Paris Cedex 12, France

Facsimile:
33-1-53-44-47-39

Attention : Sector Manager (Water and Sanitation), Operations
IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement in duplicate in the English language.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: 

Name: Marie Francoise Marie-Nelly
Title: Country Director
Date: March 20, 2013

AGENCE FRANÇAISE DE DÉVELOPPEMENT

By: 

Name: DOGNIN Nhutat
Title: Country Director
Date: 10/03/2013
ANNEX A: Description of the Project with Allocation of IDA and AFD parallel-financed Sub-components

The objectives of the Project are to: (i) improve the reliability of water supply produced in the participating states; (ii) increase access to piped water networks in Lagos State and in seven cities in Cross River State; and (iii) improve the commercial viability of urban water utilities in the participating states.

The Project consists of the following parts:

Part 1. Rehabilitation and Network Expansion

1.1. Rehabilitation and expansion of the water supply system in Lagos State, including:

(a) Rehabilitation of the water intake facilities and treatment plants at Adiyan, Iju and Isashi (to be financed by IDA).

(b) Rehabilitation and expansion of the water distribution network in Surulere and Victoria Island (to be financed by AFD).

(c) Rehabilitation and expansion of ground water treatment plants, the water distribution system's primary transmission main, and selected water transmission and distribution systems in Ikeja and Lagos Island (to be financed by IDA).

(d) Strengthening of water distribution systems by establishment of a centralized operational system for monitoring and controlling water flows, water pressure and water allocation (to be financed by IDA).

(e) Carrying out of feasibility studies and detailed engineering designs to update network analyses for individual service areas (to be financed by IDA).

(f) Carrying out of water quality analysis, quality control, maintenance and other operational duties, including the provision of communication and information technology and other equipment for commercial operations (to be financed by IDA).

1.2. Rehabilitation and expansion of the water system in Cross River State, including:

(a) Rehabilitation and expansion of the water supply network in Calabar, Ikom, Ogoja, Obudu and Itigidi, including improvements of the water intake facilities, water treatment plants, water storage, pumping, and transmission and distribution systems (to be financed by IDA).

(b) Rehabilitation and expansion of the water supply network in Obubra and Okpoma, including improvements of the water intake facilities, water treatment plants, water storage, pumping, and transmission and distribution systems (to be financed by AFD).

(c) Carrying out of water quality analysis, quality control, maintenance and other operational duties, including the provision of communication and information technology and other equipment for commercial operations (to be financed by IDA).

1.3. Carrying out of an assessment of the safety of Obudu dam in Cross River State, and carrying out of civil works for rehabilitation of the said dam (to be financed by IDA).
Part 2. Public Private Partnership Development (to be financed by IDA).

2.1. Design and tender of, and payment of fees under, private sector operator contracts for the operation of water treatment plants in the Participating States.

2.2. Setting up and operation of a “help desk” for the distribution service area operators in the Participating States.

2.3. Carrying out of a program of specific activities to build the capacity of the public private partnerships unit of FMWR, and provision of transactional advisory services for developing public private partnership projects in the water sector.

Part 3. Project Management and Service Sustainability (to be financed by IDA).

3.1. Carrying out of the day to day administration, financial management and procurement of Project activities at the federal level, and overall coordination, monitoring and evaluation and audit of the Project.

3.2. Carrying out of the day to day administration, financial management, procurement and monitoring and evaluation of Project activities at the State level.

3.3. Carrying out of a program of specific activities to build the capacity of water utilities in the Participating States and other selected states of the Recipient to perform their functions effectively.

3.4. Operation of the water treatment plants in the Participating States, including pumping or storage of treated water, through the provision of electricity, chemicals, consumable spares and fuel to be used for such purposes.

3.5. Development and implementation of public communication programs in the Participating States to raise customer awareness of, and feedback on, the provision of water and sanitation services.

4. Policy Reform and Institutional Development

4.1. Development of a national training framework for water supply and sanitation, and carrying out of training and workshops in the Participating States based on such framework (to be financed by IDA).

4.2. Development of national millennium development goal tracking capacity for water supply and sanitation (to be financed by IDA).

4.3. Provision of technical assistance to the FMWR and FPIU in selected water sector technical, commercial and management areas (to be financed by IDA).

4.4. Establishment and institutional capacity building of water services regulatory agencies in the Participating States (to be financed by IDA).

4.5. Strengthening of the operations of the Lagos Water Corporation through an update of its asset register, carrying out of a water tariff study, enumeration of customers in the Lagos metropolitan area, carrying out of an organizational and management study of its business processes, and an upgrade of information technology equipment and software (to be financed by AFD).
ANNEX B: Form of Drawdown Order

We hereby acknowledge receipt of the following Application for Withdrawal:

Date:
Serial No:
Amount:

In accordance with the Co-financing Agreement dated [date] between the Agence Française de Développement (AFD) and the International Development Association (the Association), we have examined the said Request for Application for Withdrawal and find it in order and eligible for financing under the Credit Agreement dated [date] between AFD and the Federal Republic of Nigeria (the “Borrower”).

On the basis of the foregoing we hereby notify you as follows:

Amount of disbursement to be made by the AFD:

Currency: ___________  Amount: ___________

NOTE:

1. The non-eligible items included in the said application and the reasons for non-eligibility are as follows:

   (non-eligible items)         (reason)
   (a)
   (b)
   (c)

2. Special instructions:
### ANNEX C: Calculation of Cost Recovery Fees

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<td>376,200</td>
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| Sub-total Before Mark-up   |     |     |       |     |     |    |        | 1,309,677|
| Mark-up for indirect and sustaining costs | 50.00% |     |       |     |     |    |        |         |
| Grand Total                |     |     |       |     |     |    |        | 1,964,516|

| AFD component cost         |     |     |       |     |     |    |        | 77,730,000|
| Cout des Fees :            |     |     |       |     |     |    |        | 2.53%   |
ANNEX D: Representation Form

I [Name], in my quality of [function/ position held] in [name of the company] and dully authorized representative for the signature of the contract [name of the contract] to be signed with [name of the Client] hereby represent and warrant that my company, and any of its known co-contractors, subcontractors and suppliers in the framework of the contract execution are not on any of the financial sanction lists (including in particular the fight against the financing of terrorism) of:

- the European Union,
- France.

In addition, until the contract’s expiration, my company and its authorized representative are formally committed to immediately inform the Client in event of any change with regard to the above situation.