Project Agreement

(Second NWFP Community Infrastructure Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

NORTH WEST FRONTIER PROVINCE

Dated August 11, 2004
PROJECT AGREEMENT

AGREEMENT, dated August 11, 2004, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and NORTH WEST FRONTIER PROVINCE acting by its Governor (NWFP).

WHEREAS by the Development Credit Agreement of even date herewith between the Islamic Republic of Pakistan (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to twenty-five million three hundred thousand Special Drawing Rights (SDR 25,300,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that NWFP agree to undertake such obligations toward the Association as are set forth in this Agreement; and

WHEREAS NWFP, 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) NWFP 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 through LGE&RDD, TMAs and CCBs with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and community development 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 NWFP shall otherwise agree, NWFP shall carry out the Project in accordance with 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 consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. (a) NWFP 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, NWFP 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 NWFP, a plan for the future operation of the Project; and

(ii) afford the Association a reasonable opportunity to exchange views with NWFP on said plan.

Section 2.04. (a) NWFP shall, at the request of the Association, exchange views with the Association with regard to the progress of the Project and the performance of its obligations under this Agreement, and other matters relating to the purposes of the Credit.

(b) NWFP 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 NWFP of its obligations under this Agreement.

ARTICLE III

Financial Covenants

Section 3.01. (a) NWFP shall maintain or cause to be maintained 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) NWFP shall:

(i) have the financial statements referred to in paragraph (a) of this Section 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 months after the end of each such year (or 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 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 3.02. (a) Without limitation upon NWFP’s reporting obligations set out in paragraph 10 of Schedule 2 to this Agreement, NWFP 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 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 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.

ARTICLE IV

Effective Date; Termination; Cancellation and Suspension

Section 4.01. This Agreement shall come into force and effect on the date upon which the Development Credit Agreement becomes effective.

Section 4.02. (a) This Agreement and all obligations of the Association and of NWFP 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 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 NWFP of this event.

Section 4.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions applicable to the Development Credit Agreement.

ARTICLE V

Miscellaneous Provisions

Section 5.01. 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  
248423 (MCI) or (202) 477-6391  
Washington, D.C.  
64145 (MCI)  

For NWFP:

Planning & Development Department  
Government of North West Frontier Province  
Peshawar, Pakistan  

Cable address:  Facsimile:  
DEVELOPMENT  
92-91-9210354  
Peshawar, Pakistan  

Section 5.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of NWFP may be taken or executed by the Additional Chief Secretary (Development), Government of NWFP, or such other person or persons he/she shall designate in writing, and he/she shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.03. 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 Islamabad, Pakistan, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

/s/ Abid Hasan
Acting Country Director,
Pakistan

NORTH WEST FRONTIER PROVINCE

By

/s/ Wakeel Khan Afridi
Authorized Representative
SCHEDULE 1

Procurement and Consultants’ Services

Section I  Procurement of Goods and Works

Part A: General

Goods and works shall be procured in accordance with 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 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: Other Procurement Procedures

1. National Competitive Bidding

(a) Goods estimated to cost more than $25,000 equivalent but less than $200,000 equivalent per contract; and (ii) works estimated to cost $30,000 equivalent or more per contract, may all be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

(b) The following provisions shall apply to goods and works to be procured under contracts awarded in accordance with the provisions of subparagraph (a) of this paragraph 1:
(i) **Grouping of Contracts**

To the extent practicable, contracts shall be grouped in bid packages to attract national bidders.

(ii) **Improvement of Bidding Procedures**

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

(aa) invitations to bid shall be advertised in at least one national newspaper with a wide circulation, at least 30 days prior to the deadline for the submission of bids;

(bb) bid documents shall be made available, by mail or in person, to all who are willing to pay the required fee;

(cc) foreign bidders shall not be precluded from bidding and no preference of any kind shall be given to national bidders in the bidding process;

(dd) bidding shall not be restricted to pre-registered firms;

(ee) qualification criteria shall be stated in the bidding documents;

(ff) bids shall be opened in public, immediately after the deadline for submission of bids;

(gg) bids shall not be rejected merely on the basis of a comparison with an official estimate without the prior concurrence of the Association;

(hh) before rejecting all bids and soliciting new bids, the Association’s prior concurrence shall be obtained;

(ii) bids shall be solicited and contracts shall be awarded on the basis of unit prices and not on the basis of a composite schedule of rates (CSR);

(jj) contracts shall not be awarded on the basis of nationally negotiated rates;
contracts shall be awarded to the lowest evaluated and qualified bidders; and

post-bidding negotiations shall not be allowed with the lowest evaluated or any other bidders.

2. National Shopping

Goods estimated to cost $25,000 equivalent or less 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. Community Participation

Works estimated to cost less than $30,000 equivalent per contract shall be procured under contracts awarded directly to the CCBs concerned.

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 of each implementing agency 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. Such plan shall be updated every 6 months during the execution of the Project, and each such updating shall be furnished to the Association for its review and approval. Procurement of all goods and works shall be undertaken in accordance with such procurement plan (as updated from time to time) as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

With respect to: (a) each contract for goods awarded in accordance with the provisions of the Guidelines referred to in Part B.1 of this Section I; (b) each contract for works estimated to cost $200,000 equivalent or more and awarded in accordance with the provisions of Part C.1 of this Section I; and (c) the first contract for goods and the first contract for works, irrespective of value, awarded by each implementing agency in accordance with the provisions of Part C.1 of this Section I, 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 the provisions of Sections I and IV of the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” published by the Bank in January 1997 and revised in September 1997, January 1999 and May 2002 (the Consultant Guidelines), paragraph 1 of Appendix 1 thereto, Appendix 2 thereto and the following provisions of Section II of this Schedule.

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, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality- and cost-based selection of consultants.

2. The following provision 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 estimated to cost less than $500,000 equivalent per contract, may comprise entirely national consultants in accordance with the provisions of paragraph 2.7 and footnote 8 of the Consultant Guidelines.

Part C: Other Procedures for the Selection of Consultants

1. 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 and 3.7 of the Consultant Guidelines.

2. 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

A plan for the selection of consultants, which shall include contract cost estimates, contract packaging, and applicable selection criteria and procedures, shall be furnished to the Association for its review and approval prior to the issuance to consultants of any requests for proposals. Such plan shall be updated every 3 months during the execution of the Project, and each such updating shall be furnished to the Association for its review and approval. Selection of all consultants’ services shall be undertaken in accordance with such selection plan (as updated from time to time) as shall have been approved by the Association.

2. Prior Review

(a) With respect to: (i) the first contract for the employment of consulting firms awarded by each implementing agency, irrespective of value; and (ii) each subsequent such contract estimated to cost the equivalent of $100,000 or more, the procedures set forth in paragraphs 1, 2 (other than the third subparagraph of paragraph 2(a)) and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to: (i) the first contract for the employment of individual consultants awarded by each implementing agency, irrespective of value; and (ii) each subsequent such contract 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. NWFP shall implement the Project in accordance with the OM, the EMF and the FMM, and except as the Association shall otherwise agree, shall not amend or waive any provision thereof if, in the opinion of the Association, such amendment or waiver may materially and adversely affect the implementation of the Project.

2. (a) NWFP shall, throughout the Project implementation period, maintain a Project Coordination and Support Unit (PCSU) within LGE&RDD, headed by a Director General. The PCSU shall be assisted by Regional Coordination and Support Teams (RCSTs).

(b) The PCSU shall be responsible for routine coordination and monitoring of Project activities, including oversight and on-ground inspections of CI and CD schemes, promotion of cooperation amongst line departments, district and municipal government agencies and community representative organizations, and monitoring of implementation performance.

3. (a) NWFP shall, not later than September 30, 2004, constitute and thereafter, throughout the Project implementation period, maintain a Project Review Board, chaired by the Additional Chief Secretary (Development), and including as its members, among others, the Secretaries of Finance, Planning & Development, LGE&RDD, and Works & Services, and the Director General heading the PCSU.

(b) The PRB shall be responsible for top-level Project oversight and coordination and periodic review of the Project policy framework (which shall include removal of policy and procedural obstacles and bottlenecks), and, in partnership with NWFP’s Provincial Finance Commission, for fiscal allocations and transfers to local government levels for Project purposes.

4. NWFP shall take, and shall cause PTMAs to take, measures, satisfactory to the Association, to keep Project staff turnover to a minimum.

5. (a) NWFP shall ensure that, for purposes of financing CI and CD schemes, priority will be given to communities which: (i) are located on an eligible site within the jurisdiction of an eligible TMA; and (ii) have formed or are willing to form an eligible CCB.
(b) For the purposes of this provision:

(i) the term “eligible site” means a site where:

(A) the need for community services/infrastructure has been clearly established;

(B) there are no proposed/ongoing/recently completed CI or CD schemes;

(C) the minimum population size is 100 households or above if a hilly area, and 200 households or above if a plain;

(D) the communities are able and willing to contribute 20% of the capital cost of secondary works under CI schemes and 3% of such cost for purposes of O&M of such works;

(E) gender, political, socio-geographical and racial differences may not be considered in the contribution to and site selection of schemes;

(F) the socio-economic, technical and environmental viability of the site has been examined and established;

(G) small CI schemes with low cost and high impact are given preference;

(H) the communities have demonstrated their commitment through their capacity for social organization, ownership and cost-sharing;

(I) the CI/CD scheme to be carried out will benefit the largest number of the population in the community;

(J) the communities lack basic infrastructure; and

(K) the communities are willing to form CCBs to represent all segments;
(ii) the term “eligible TMA” means a TMA which is:

(A) willing to carry out CI and CD schemes based on the community infrastructure project approach, methodology, design and other terms and conditions stipulated under the Project;

(B) willing to contribute at least 10% of the capital cost of secondary works under, and technical support required for, a CI scheme, and training and other assistance required for a CD scheme;

(C) willing to assist with the formation of a CCB where none exists;

(D) suitably equipped, staffed and trained and possesses the logistics to carry out CI and CD schemes;

(E) willing to enter into a participation agreement in writing;

(F) willing to avail of the capacity-building opportunities and other performance based incentive schemes available under the Project; and

(G) capable of taking decisions, meeting deadlines and coordinating activities at various levels; and

(iii) the term “eligible CCB” means a CCB which:

(A) has been duly registered under the Ordinance;

(B) is representative of all segments of the community, including a fair section of households, including women and other vulnerable groups;

(C) is functioning with the full participation of its council and general body, with the minutes of council meetings and financial and other records being available to the community at large;
(D) has prepared a CAP satisfactory to the PTMA concerned, and on which the CI scheme it is sponsoring is based;

(E) has undertaken to carry out such CI scheme in accordance with the policies, principles and procedures set forth in the OM, in the EMF and in the relevant CAP;

(F) has undertaken to contribute any and all land required for such CI scheme, which shall have been acquired by or otherwise made available to it on a voluntary basis, and 20% of the capital cost of secondary works under, and 100% of the O&M cost of, such CI scheme to be financed from an O&M fund established for the purpose on suitable terms and conditions;

(G) has demonstrated that the local infrastructure to be developed under such CI scheme will be supported by such primary infrastructure as will be needed to ensure effective and efficient operation of the scheme; and

(H) is willing to enter into a memorandum of agreement with the PTMA concerned, substantially conforming to the standard form appended to the OM, so as to assume full responsibility for its part of the preparation, design and implementation of such CI scheme while it is being carried out, and for its O&M after it has been completed.

6. NWFP shall ensure that the first three memoranda of agreement proposed to be entered into with the concerned PCCBs pursuant to the provisions of paragraph 5 (b)(iii) (H) of this Schedule will be furnished to the Association for its prior review and concurrence.

7. NWFP shall make the funds under the Project available to the PTMAs/PCCBs concerned on a non-reimbursable basis in accordance with funds flow arrangements acceptable to the Association.
8. NWFP shall ensure that:

   (a) representatives of the concerned PCCB will be invited to participate in, and representatives of the concerned RCST will be invited to monitor, each concerned PTMA’s procedures for inviting and evaluating bids and awarding contracts for the procurement of goods and works required for any CI scheme;

   (b) procurement documentation and record keeping systems satisfactory to LGE&RDD will be developed and adopted by each PTMA as a condition of its participation in the Project;

   (c) an individual consultant will be appointed in accordance with the provisions of Section II of Schedule I to this Agreement not later than September 30, 2004, to provide procurement assistance to LGE&RDD at least during the first year of Project implementation; and

   (d) key procurement staff of LGE&RDD will be identified, trained in the procurement procedures mandated for the Project and designated as the focal points for procurement for the duration of Project implementation, all in a manner satisfactory to the Association and not later than December 31, 2004.

9. NWFP shall ensure that the financial management staff of LGE&RDD will be trained in the financial information system mandated for the Project, in a manner satisfactory to the Association and not later than December 31, 2004.

10. NWFP 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 September 30, 2006, 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 March 31, 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.