

CONFORMED COPY

CREDIT NUMBER 2033 MOZ

Project Agreement
(Urban Household Energy Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

ELECTRICIDADE DE MOCAMBIQUE

Dated September 28, 1989

CREDIT NUMBER 2033 MOZ

PROJECT AGREEMENT

AGREEMENT, dated September 28, 1989, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and ELECTRICIDADE DE MOCAMBIQUE (EDM).

WHEREAS (A) by the Development Credit Agreement of even date herewith between People's Republic of Mozambique (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to three million three hundred and fifty thousand Special Drawing Rights (3,350,000 SDR), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that EDM 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 EDM, part of the proceeds of the Credit provided for under the Development Credit Agreement will be made available to EDM on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS EDM, 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. EDM 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 Part A of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and public utility practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for Part A of the Project.

Section 2.02. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for Part A of the Project, and to be financed out of the proceeds of the Credit, shall be governed by the provisions of the Schedule to this Agreement.

Section 2.03. EDM 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 and Part A of the Project.

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

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

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

Section 2.06. EDM shall, not later than September 30, 1993, conduct jointly with the Association, a review of EDM's financial position and an assessment of its most immediate financial and technical needs to achieve financial viability.

Section 2.07. In order to facilitate the carrying out of Part A of the Project, EDM shall assign qualified local counterpart staff to work closely with the consultants employed under the Project and to receive training from them.

Section 2.08. EDM shall take all the necessary measures to maintain accurate and complete records related to the implementation of Part A of the Project.

Section 2.09. EDM shall:

(a) not later than March 31, 1990, sign a contract satisfactory to the Association to employ consultants' services to carry out a study including EDM's tariff levels and structure, billing system and tariff adjustment mechanism;

(b) not later than June 30, 1992: (i) review with the Borrower and the Association the recommendations of said study; and (ii) agree with the Association on an action plan to implement said recommendations; and

(c) promptly thereafter, carry out said action plan according to a timetable agreed with the Association.

ARTICLE III

Management and Operations of EDM

Section 3:01. EDM shall carry out its operations and conduct its affairs in accordance with sound administrative, financial and public utility practices, under

the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. EDM 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 public utility practices.

Section 3.03. EDM shall take out and maintain with responsible insurers, or make other provisions 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) EDM shall maintain records and accounts adequate to reflect, in accordance with sound accounting practices, its operations and financial condition.

(b) EDM shall, starting in fiscal year 1992:

(i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) and Special Account A for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;

(ii) furnish to the Association as soon as available, but in any case not later than nine months after the end of each such year: (A) certified copies of its financial statements for such year as so audited; and (B) the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

(iii) furnish to the Association such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Association shall from time to time reasonably request.

Section 4.02. (a) Except as the Association shall otherwise agree, EDM shall produce:

(i) for its fiscal year 1989, funds from internal sources equivalent to not less than twenty percent (20%) of EDM's capital expenditures incurred for that year; and

(ii) for the fiscal years 1990 and thereafter, funds from internal sources equivalent to not less than thirty percent (30%) of the annual average of EDM's capital expenditures incurred, or expected to be incurred, for that year and the next two following fiscal years.

(b) Before September 30 in each of its fiscal years, EDM shall, on the basis of forecasts prepared by EDM and satisfactory to the Association, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year, and shall furnish to the Association a copy of such review upon its completion.

(c) If any such review shows that EDM would not meet the requirements set forth in paragraph (a) for EDM's fiscal years covered by such review, EDM shall promptly take all necessary measures (including, but not limited to, adjustments of the structure or levels of its rates) in order to meet such requirements.

(d) For the purposes of this Section:

(i) The term "funds from internal sources" means the difference between:

(A) the sum of revenues from all sources related to operations, consumer deposits and consumer contributions in aid of construction, net income and any reduction in working capital other than cash; and nonoperating capital other than cash;

(B) the sum of all expenses related to operations, including administration, adequate maintenance and taxes and payments in lieu of taxes (excluding depreciation and other non-cash service requirements, all distributions of than cash provision for operating charges), debt cash dividends and other cash surplus, increase in working capital other and cash outflows other than capital expenditures.

(ii) 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.

(iii) 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.

(iv) 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 pre-paid expenses properly chargeable to operating expenses within the next fiscal year.

(v) 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 service requirements, taxes and payments in lieu of taxes, and dividends.

(vi) 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.

(vii) The term "capital expenditures" means all expenditures incurred on account of fixed assets, including interest charged to construction, related to operations.

(viii) 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 4.03. (a) Except as the Association shall otherwise agree, EDM shall not incur any debt, unless the net revenues of EDM for the fiscal year immediately preceding the date of such incurrence or for a later twelve-month period ended prior to the date of such incurrence, whichever is the greater, shall be at least 1.5 times the estimated maximum debt service requirements of EDM for any succeeding fiscal year on all debt of EDM, including the debt to be incurred.

(b) For the purposes of this Section:

(i) The term "debt" means any indebtedness of EDM maturing by its terms more than one year after the date on which it is originally incurred.

(ii) Debt shall be deemed to be incurred: (A) By EDM or by the Borrower and subsequently transferred to EDM; (B) 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 (C) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.

(iii) The term "net revenues" means the difference between:

(A) the sum of revenues from all sources related to operations adjusted to take account of EDM's rates in effect at the time of the incurrence of debt, even though they were not in effect during the twelve-month period to which such revenues relate, and net nonoperating income; and

(B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.

(iv) 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.

(v) 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.

(vi) 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. EDM shall take all the necessary measures to implement the action plan for recovering its arrears of accounts receivable in accordance with the timetable agreed between the Borrower and the Association.

Section 4.05. EDM shall, promptly after the Effective Date, submit to the Borrower a satisfactory plan to resolve EDM's financial situation.

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 EDM thereunder shall terminate on the earlier of the following two dates:

(i) the date on which the Development Credit Agreement shall

terminate in accordance with its terms; or

(ii) the date twenty (20) years after the date of this Agreement.

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a) (ii) of this Section, the Association shall promptly notify EDM 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, telegram, cable, telex or radiogram 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. 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:

INDEVAS
Washington, D.C.

Telex:

440098 (ITT),
248423 (RCA) or
64145 (WUI)

For EDM:

Electricidade de Mocambique
Avenida Agostinho Neto 70
P.O. Box 2447
Maputo
People's Republic of Mozambique

Cable address:

ELECTRICIDADE

Telex:

6407 DNEMP MO Maputo

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 EDM may be taken or executed by the General Manager or such other person or persons as EDM shall designate in writing, and EDM 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/ Sven Sandstrom

Acting Regional Vice President
Africa

ELETRICIDADE DE MOCAMBIQUE

By /s/ Abdul Magid Osman

Authorized Representative

SCHEDULE

Procurement and Consultants' Services

Section I: Procurement of Goods and Works

Part A: International Competitive Bidding

Goods and works under Part A.1 of the Project shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1985 (the Guidelines).

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A hereof, goods manufactured in Mozambique may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Preference for Domestic Contractors

In the procurement of works in accordance with the procedures described in Part A hereof, EDM may grant a margin of preferences to domestic contractors in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraph 5 of Appendix 2 thereto.

Part D: Other Procurement Procedures

1. Local competitive bidding

(a) Goods under Part A of the Project estimated to cost less than the equivalent of \$100,000 per contract, up to an aggregate amount not to exceed the equivalent of \$200,000; and (b) works under Part A of the Project estimated to cost less than the equivalent of \$250,000 per contract, up to an aggregate amount not to exceed the equivalent of \$1,000,000, may be procured under contracts awarded on the basis of competitive bidding, advertised locally, in accordance with procedures satisfactory to the Association.

2. International shopping

Items or groups of items estimated to cost less than the equivalent of \$250,000 per contract, up to an aggregate amount not to exceed the equivalent of \$450,000, may be procured under contracts awarded on the basis of comparison of price quotations solicited from a list of at least three suppliers from at least two different countries eligible under the Guidelines, in accordance with procedures acceptable to the Association.

3. Direct contracting:

Goods and works under Part A of the Project estimated to cost UP to an aggregate

amount of \$50,000 may be awarded on the basis of direct contracting in accordance with procedures acceptable to the Association.

Part E: Review by the Association of Procurement Decisions

1. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to each contract estimated to cost the equivalent of \$250,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of Special Account A, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Association pursuant to said paragraph 2(d) shall be furnished to the Association prior to the making of the first payment out of Special Account A in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix I to the Guidelines shall apply. Where payments for such contract are to be made out of Special Account A, such procedures shall be modified to ensure that the two conformed copies of the contract, together with the other information required to be furnished to the Association pursuant to said paragraph 3, shall be furnished to the Association as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 3 to the Development Credit Agreement.

(c) The provisions of the preceding subparagraphs (a) and (b) shall not apply to contracts on account of which the Association has authorized withdrawals from the Credit Account on the basis of statements of expenditure. Such contracts shall be obtained in accordance with Section 4.01 (c) (ii) of the Development Credit Agreement.

2. The figure of fifteen percent (15%) is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II: Employment of Consultants

In order to assist EDM in carrying out Part A of the Project, EDM shall employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Association. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Association on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981.

