

CONFORMED COPY

CREDIT NUMBER 2333 KE

(Second Mombasa and Coastal Water Supply Engineering  
and Rehabilitation Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

NATIONAL WATER CONSERVATION AND PIPELINE CORPORATION

Dated March 13, 1992

CREDIT NUMBER 2333 KE

PROJECT AGREEMENT

AGREEMENT, dated March 13, 1992, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and NATIONAL WATER CONSERVATION AND PIPELINE CORPORATION (NWPC).

WHEREAS (A) by the Development Credit Agreement of even date herewith between Republic of Kenya (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to thirty one million eight hundred thousand Special Drawing Rights (SDR 31,800,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that NWPC 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 NWPC, the proceeds of the credit provided for under the Development Credit Agreement will be made available to NWPC on the terms and conditions set forth in said Subsidiary Loan

Agreement; and

WHEREAS NWCPC, 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 and in the General Conditions (as so defined) have the respective meanings therein set forth.

#### ARTICLE II

##### Execution of the Project

Section 2.01. NWCPC 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 public utility practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

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. NWCPC shall carry out the obligations set forth in Sections 9.03 through 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.

Section 2.04. NWCPC shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Association shall otherwise agree, NWCPC 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) NWCPC 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) NWCPC 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 NWCPC of its obligations under this Agreement and under the Subsidiary Loan Agreement.

Section 2.06. NWCPC shall establish and maintain until completion of the Project a PIU, headed by a Project Coordinator, who shall report to the Managing Director. The PIU shall have four other key staff. All members of the PIU shall have experience and terms of reference satisfactory to the Association.

#### ARTICLE III

##### Management and Operations of NWCPC

Section 3.01. NWCPC shall carry on 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. NWCPC 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. NWCPC 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.

Section 3.04. (a) In carrying out Part A.1 (iii) of the Project, NWCPC shall, not later than December 31, 1993, carry out, under terms of reference acceptable to the Association a water tariff study, (b) thereafter submit to the Association for review and comment the results of said study, and (c) promptly thereafter implement the recommendations of the study, taking into account the views of the Association.

Section 3.05. NWCPC shall: (a) with effect from the 1991/1992 fiscal year until completion of the Project annually prepare six-year financial projections of its operations; and (b) not later than March 31 of each year submit said financial projections to the Association for review and comments.

Section 3.06. NWCPC shall by March 31, in each year furnish to the Association for its review and comments a detailed training program.

#### ARTICLE IV

##### Financial Covenants

Section 4.01. (a) NWCPC shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) NWCPC shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) including those of the Special Account 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, NWCPC shall produce for each of its fiscal years after its fiscal year ending on June 30, 1992, total revenues equivalent to not less than the sum of its (i) total operating expenses; (ii) 40% of depreciation in FY 1992/1993, 65% of depreciation in FY 1993/1994, and 100% of depreciation in FY 1994/1995 and thereafter; and

(iii) a contribution to reserves by FY 1994/1995 and thereafter.

(b) Before July 1 in each of its fiscal years, NWCPC shall, on the basis of forecasts prepared by NWCPC 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 the results of such review upon its completion.

(c) If any such review shows that NWCPC would not meet the requirements set forth in paragraph (a) for NWCPC's fiscal years covered by such review, NWCPC shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its water tariffs) in order to meet such requirement.

(d) 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 interest and other charges on debt.
- (v) Provision for depreciation shall be on a straight-line basis at a rate of not less than 3% per annum of the average current gross value of NWCPC's fixed assets in operation, or other basis acceptable to the Association.
- (vi) The average current gross value of NWCPC's fixed assets in operation shall be calculated as one half of the sum of the gross value of NWCPC'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.
- (vii) The term "contribution to reserves" means not less than 10% of the projected annual costs of the acquisition of assets for expansion of NWCPC operations.

Section 4.03. NWCPC shall by June 30, 1993, complete the valuation of its assets and liabilities.

#### 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 NWCPC 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 NWCPC 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:

248423 (RCA)  
82987 (FTCC)  
64145 (WUI) or  
197688 (TRT)

For NWCPC:

National Water Conservation and  
Pipeline Corporation  
P.O. Box 30173  
Nairobi, Kenya

Telefax:

545882  
Nairobi

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 NWCPC, or by NWCPC on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by the Managing Director or such other person or persons as the Managing Director shall designate in writing, and NWCPC 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/ Stephen Denning  
Acting Regional Vice President  
Africa

NATIONAL WATER CONSERVATION AND PIPELINE  
CORPORATION

By /s/ Denis D. Afande  
Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I: Procurement of Goods and Works

Part A: International Competitive Bidding

1. Except as provided in Part B hereof, goods and works 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).

2. To the extent practicable, contracts for goods shall be grouped into bid packages.

3. Goods shall be exempted from pre-shipment price inspection by a third-party inspection firm.

Part B: Preference for Domestic Contractors

In the procurement of works in accordance with the procedures described in Part A.1 hereof, NWCPC may grant a margin of preference 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 C: Other Procurement Procedures

1. Workshop equipment, minor machinery, tools and spare parts estimated to cost the equivalent of \$200,000 or less per contract, up to an aggregate amount equivalent to \$500,000, and civil works estimated to cost the equivalent of \$200,000 or less per contract up to an aggregate amount equivalent to \$1,200,000, may be procured under contracts awarded on the basis of competitive bidding, advertised locally, in accordance with procedures satisfactory to the Association.

2. Contracts for equipment, computers and training materials estimated to cost the equivalent of \$20,000 or less per contract, up to an aggregate amount equivalent to \$100,000, may be procured under contracts awarded on the basis of comparison of price quotations obtained from at least three suppliers eligible under the Guidelines, in accordance with procedures acceptable to the Association.

Part D: 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 \$100,000 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 the Special Account, 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 the Special Account 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 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, 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 4 to the Development Credit Agreement.

(c) The provisions of the preceding subparagraph (b) shall not apply to contracts on account of which withdrawals from the Credit Account are to be made on the basis of statements of expenditure.

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

Section II: Employment of Consultants

In order to assist NWCPC in carrying out the Project, NWCPC 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.

