

CONFORMED COPY

LOAN NUMBER 2985 UNI

Project Agreement

(Lagos State Water Supply Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT

and

LAGOS STATE WATER CORPORATION

Dated March 31, 1989

LOAN NUMBER 2985 UNI

PROJECT AGREEMENT

AGREEMENT, dated March 31, 1989, between  
INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT  
(the Bank) and LAGOS STATE WATER CORPORATION (LSWC).

WHEREAS (A) by the Loan Agreement of even date  
herewith between the Federal Republic of Nigeria (the  
Borrower) and the Bank, the Bank has agreed to make  
available to the Borrower an amount in various currencies  
equivalent to one hundred seventy-three million two  
hundred thousand dollars (\$173,200,000), on the terms and  
conditions set forth in the Loan Agreement, but only on  
condition that LSWC agrees to undertake such obligations  
toward the Bank as are set forth in this Agreement;

(B) by a first subsidiary loan agreement to be  
entered into between the Borrower and Lagos State of  
Nigeria (Lagos State), the proceeds of the loan provided  
for under the Loan Agreement will be made available to  
Lagos State under the First Subsidiary Loan Agreement and  
Lagos State will in turn make such proceeds available to  
LSWC on the terms and conditions set forth in a second

subsidiary loan agreement to be entered into between Lagos State and LSWC; and

WHEREAS LSWC, in consideration of the Bank's entering into the Loan 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. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and the General Conditions (as so defined) have the respective meanings therein set forth.

#### ARTICLE II

##### Execution of the Project

Section 2.01. (a) LSWC declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan 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, including tariff adjustments and increases, required for the Project.

(b) LSWC shall within its Engineering Directorate continue to maintain in a form and with functions and staffing satisfactory to the Bank a project unit which shall be responsible for coordinating and monitoring project activities within the Engineering Directorate using procedures, monitoring and other indicators satisfactory to the Bank.

(c) LSWC shall as part of its training program and in agreement with the Bank from time to time assign a sufficient number of appropriately qualified staff to work with consultants and contractors employed on the Project.

(d) LSWC shall, until the completion of the Project, before November 30 each year, discuss with Lagos State and the Bank its future organization, staffing and training plans and shall have due regard to the comments of Lagos State and the Bank on such organization, staffing and training plans.

Section 2.02. Except as the Bank 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 Loan shall be governed by the provisions of the Schedule to this Agreement.

Section 2.03. LSWC shall establish and thereafter maintain a counterpart fund account at a commercial bank into which contributions to be paid by Lagos State pursuant to Section 2.06 (b) of the Lagos State Agreement shall be deposited. The said account shall be used exclusively to finance expenditures under the Project.

Section 2.04. LSWC shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 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 2.05. LSWC shall duly perform all its obligations under the Second Subsidiary Loan Agreement. Except as the Bank shall otherwise agree, LSWC shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Second Subsidiary Loan Agreement or any provision thereof.

Section 2.06. (a) LSWC shall, at the request of the Borrower or the Bank, exchange views with the Borrower and the Bank with regard to the progress of the Project, the performance of its obligations under this Agreement and under the Second Subsidiary Loan Agreement, and other matters relating to the purposes of the Loan.

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

### ARTICLE III

#### Management and Operations of LSWC

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

Section 3.02. LSWC shall 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. LSWC shall take out and maintain with responsible insurers, or make other provision satisfactory to the Bank for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

Section 3.04. LSWC shall in its annual budget provide for not less than two percent of the provisions made in the budget for personnel expenditures to be allocated to recurrent costs of LSWC's manpower training and development.

Section 3.05. LSWC shall: (i) prepare and furnish to the Bank no later than April 15, 1987 a plan satisfactory to the Bank for developing LSWC's commercial operations; and (ii) promptly thereafter carry out said plan in accordance with a timetable satisfactory to the Bank.

Section 3.06. LSWC shall: (i) prepare and furnish to the Bank no later than February 28, 1987 a scheme satisfactory to the Bank for the delegation of responsibilities within LSWC; and (ii) thereafter carry out the said plan in accordance with a timetable satisfactory to Lagos State and the Bank.

### ARTICLE IV

## Financial Covenants

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

(b) LSWC shall:

- (i) have its accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than six 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 Bank shall have reasonably requested; and
- (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

Section 4.02. (a) For all expenditures with respect to which withdrawals from the Loan Account were made on the basis of statements of expenditure or from the Special Account, LSWC shall:

- (i) maintain or cause to be maintained in accordance with sound accounting practices, records and accounts reflecting such expenditures;
- (ii) ensure that all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures are retained until at least one year after the Bank has received the audit report for the fiscal year in which the last withdrawal from the Loan Account was made; and
- (iii) enable the Bank's representatives to examine such records.

(b) LSWC shall:

- (i) have the records and accounts referred to in paragraph (a) (i) of this Section and those for the Special Account for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year the report of such audit by said auditors, of

such scope and in such detail as the Bank shall have reasonably requested, including a separate opinion by said auditors as to whether the statements of expenditure and requests for replenishment of the Special Account submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals; and

- (iii) furnish to the Bank such other information concerning the said records and accounts and the audit thereof as the Bank shall from time to time reasonably request.

Section 4.03. (a) Except as the Bank shall otherwise agree, LSWC shall, as from fiscal year 1989, produce for each of its fiscal years specified below total revenues equivalent to not less than the percentages of cash operating expenses specified below for such fiscal years:

- (i) fiscal year 1989: 50%;
- (ii) fiscal year 1990: 75%; and
- (iii) fiscal year 1991: 100%.

(b) Except as the Bank shall otherwise agree, LSWC shall, as from fiscal year 1992, produce for each of its fiscal years specified below total revenues equivalent to not less than the percentages specified below for such years of the sum of its: (i) cash operating expenses; and (ii) the amount of annual debt service requirements or the provision for depreciation, whichever is the higher:

- (i) fiscal year 1992: 60%;
- (ii) fiscal year 1993: 75%;
- (iii) fiscal year 1994: 90%; and
- (iv) fiscal year 1995: 100%.

(c) Before November 30 prior to each of the fiscal years, LSWC shall, on the basis of forecasts prepared by LSWC and satisfactory to the Bank, review whether it would meet the requirements set forth in paragraphs (a) and (b) of this Section in respect of such year and the next following fiscal year and shall furnish to the Bank the results of such review upon its completion.

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

(e) 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 "cash operating expenses" means all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes.
- (v) The term "depreciation" means the annual provision for depreciation on a straight-line basis at a rate of not less than 3% per annum of the average current gross value of LSWC's fixed assets in operation, or other basis acceptable to the Bank, but excluding interest and other charges on debt.
- (vi) The average current gross value of LSWC's fixed assets in operation shall be calculated as one half of the sum of the gross value of LSWC'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 Bank.
- (vii) The term "debt service requirements" means the aggregate amount of annual loan repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.
- (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 Bank.

Section 4.04. Until the completion of the Project, LSWC shall furnish to the Bank, for comments, its capital investment plans before such plans are finalized.

Section 4.05. (a) Except as the Bank shall otherwise agree, LSWC shall not incur any debt, unless the net revenues of LSWC 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 LSWC for any succeeding fiscal year on all debt of LSWC, including the debt to be incurred.

- (b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of LSWC 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) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.
- (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 LSWC's tariffs 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 non-operating 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 Bank.

#### 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 Loan Agreement becomes effective.

Section 5.02. This Agreement and all obligations of the Bank and of LSWC thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify LSWC and Lagos State thereof.

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 Bank:

International Bank for  
Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:

Telex:

INTBAFRAD	440098 (ITT)
Washington, D.C.	248423 (RCA) or
	64145 (WUI)

For LSWC:

The General Manager  
Lagos State Water Corporation  
P. O. Box 555,  
Lagos,  
Nigeria

Cable address:

Telex:

LASWATER	27386 LASWAC NG
Ijora, Lagos	

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 LSWC, may be taken or executed by the General Manager or such other person or persons as LSWC shall designate in writing, and LSWC shall furnish to the Bank 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 BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By /s/ Edward V.K. Jaycox  
Regional Vice President  
Africa

LAGOS STATE WATER CORPORATION

By /s/ Hamzat Ahmadu  
Authorized Representative

SCHEDULE

Procurement and Consultants' Services

Section I: Procurement of Goods and Works

Part A: International Competitive Bidding

1. Except as provided in Part C 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. Bidders for works shall be prequalified as described in paragraph 2.10 of the Guidelines.

3. To the extent practicable, contracts for works shall be grouped in bid packages estimated to cost an amount equivalent to \$3,000,000 or more and contracts for goods shall to the extent practicable be grouped into bid packages estimated to cost an amount equivalent to \$500,000 or more.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A.1 hereof, goods manufactured in Nigeria 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: Other Procurement Procedures

1. Except as provided in paragraph 2 below, civil works estimated to cost an amount equivalent to \$3,000,000 or less and goods estimated to cost an amount equivalent to \$500,000 or less, may be procured under contracts awarded on the basis of competitive bidding, advertised locally, in accordance with procedures satisfactory to the Bank.

2. Goods estimated to cost an amount equivalent to less than \$100,000 per contract, up to an aggregate amount not

to exceed an amount equivalent to \$2,000,000 may be procured under contracts awarded on the basis of comparison of price quotations solicited from a list of at least three suppliers eligible under the Guidelines, in accordance with procedures acceptable to the Bank.

Part D: Review by the Bank of Procurement Decisions

1. Review of prequalification:

With respect to the prequalification of bidders as provided in Part A.2 hereof, the procedures set forth in paragraph 1 of Appendix I to the Guidelines shall apply.

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

(a) With respect to each contract for civil works estimated to cost an amount equivalent to \$500,000 or more and each contract for goods estimated to cost an amount equivalent to \$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 Bank, pursuant to said paragraph 2 (d), shall be furnished to the Bank 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 subparagraph, 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 Bank, pursuant to said paragraph 3, shall be furnished to the Bank as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 4 to the Loan Agreement.

(c) The provisions of the preceding subparagraphs (a) and (b) shall not apply to contracts on account of which the Bank has authorized withdrawals from the Loan Account on the basis of statements of expenditure. Such contracts shall be retained in accordance with Section 4.02 (a) (ii) of this Agreement.

3. 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 LSWC in carrying out the Project, LSWC shall employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Bank. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Bank 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. For the purposes of this Section, the term "consultants" shall include specialists, experts or advisers provided under a twinning arrangement with a utility for purposes of carrying out the Project.

