

CONFORMED COPY

CREDIT NUMBER 2060 KE

(Third Nairobi Water Supply Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

NAIROBI CITY COMMISSION

Dated August 15, 1989

CREDIT NUMBER 2060 KE

PROJECT AGREEMENT

AGREEMENT, dated August 15, 1989, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and NAIROBI CITY COMMISSION (NCC).

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 forty-nine million one hundred thousand Special Drawing Rights (SDR 49,100,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that NCC 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 NCC, the proceeds of the credit provided for under the Development Credit Agreement shall be made available to NCC on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS NCC, 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) NCC 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 and engineering 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 NCC shall otherwise agree, NCC 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. NCC 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. NCC shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Association shall otherwise agree, NCC 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) NCC 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) NCC 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 NCC of its obligations under this Agreement and under the Subsidiary Loan Agreement.

Section 2.06. NCC shall by January 1, 1990, commence the implementation of an Environmental Action Program satisfactory to the Association.

ARTICLE III

Management and Operations of NCC

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

Section 3.02. NCC 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 and financial practices.

Section 3.03. NCC 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.

ARTICLE IV

Financial Covenants

Section 4.01. (a) NCC shall maintain records and accounts adequate to reflect in accordance with sound accounting practices, its operations and financial condition, including separate records, accounts and financial statements for its water and sewerage activities prepared in a commercial accounting format as well as separate Project Accounts.

(b) NCC shall:

- (i) have said records, 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 Association;
- (ii) furnish to the Association as soon as possible but in any case not later than nine months after the end of each such year, copies of its financial statements for such year as so audited and the interim report of such audit;
- (iii) furnish to the Association as soon as available but in any case not later than twelve 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
- (iv) 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.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditures, NCC 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 Association has received the audit report for the fiscal year in which the last withdrawal from the Credit Account was made;

- (iii) enable the Association's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure 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.

Section 4.02. (a) Except as the Association may otherwise agree, for each of its fiscal years, NCC shall, with respect to its water supply and sewerage services, take all necessary measures, (including, without limitation, adjustments of the structure or levels, of its rates for water supply services and sewerage services as the case may be) as shall be required to generate for WSD in relation to its water supply services and sewerage services, revenues sufficient to produce an annual rate of return of not less than 7.0%, from FY 1988/1989 through FY 1991/1992, and 7.5% thereafter.

(b) For the purposes of this Section:

- (i) the annual rate of return shall be calculated by dividing the NCC's net consolidated operating income from water supply and sewerage services for the year in question by the average current gross value of the NCC's fixed water supply and sewerage assets, in operation at the beginning and end of the fiscal year for which the return is being determined.
- (ii) The term "net consolidated operating income" means total operating revenues less total operating expenses, from water supply and sewerage services.
- (iii) The term "total operating revenues" means revenues from all sources related to water supply and sewerage services operations.
- (iv) The term "total operating expenses" means all expenses related to water supply and sewerage services operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, interest and other charges on debt.
- (v) The average current gross value of NCC's fixed water supply and sewerage assets in operation shall be calculated as one-half of the sum of the gross value of NCC's fixed water supply and sewerage 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.

Section 4.03. (a) Except as the Association may otherwise agree, NCC shall not incur any debt on account of its water supply and sewerage services, unless the net consolidated revenues of NCC with respect to water supply and sewerage services for the fiscal year immediately preceding the date of such incurrence or for a later twelve-month period ending 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 NCC for any succeeding fiscal year on all debt of NCC for water supply and sewerage services including the debt to be incurred.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of NCC 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 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.
- (iii) The term "net consolidated revenues" means the difference between:
 - (A) the sum of revenues from all sources related to water supply and sewerage services operations adjusted to take account of NCC's water and sewerage 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 water supply and sewerage services 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) water supply and sewerage services 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. NCC shall employ consultants to carry out a valuation of WSD's gross and net fixed assets by not later than the end of FY 1989/1990, and annually thereafter revalue WSD's fixed assets, using methods acceptable to the Association.

Section 4.05. NCC shall, until completion of the Project, furnish to the Association for its review and comments, any proposal by WSD to undertake any additional investment projects, other than its on-going and planned capital works, estimated to cost in excess of two million dollars.

Section 4.06. NCC shall take such action as shall be necessary, to reduce its water and sewerage accounts in arrears from 243 days as of the end of FY 1986/1987, to 210 days by the end of FY 1990/1991, to 180 days by the end of FY 1991/1992, to

150 days by the end of FY 1992/1993, to 120 days by the end of FY 1993/1994, and to 90 days by the end of FY 1994/1995.

Section 4.07. NCC shall: (a) ensure that funds deposited in the Water Fund shall be utilized solely for recurrent and capital expenditures associated with water and sewerage activities; and

(b) continue to repay its outstanding obligations to the Water Fund with a view to repaying half the outstanding amount due by June 30, 1992, and the remainder by June 30, 1995.

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 NCC 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 21 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 NCC 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 NCC:

Nairobi City Commission
City Hall
P.O. Box 30075
Nairobi, Kenya

Cable address:

Telex:

MUNICIPALITY
Nairobi

22042 City Hall

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 NCC, may be taken or executed by the Secretary/Town Clerk or such other person or persons as the Secretary/Town Clerk shall designate in writing, and NCC 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/ Michael Gillette
Acting Regional Vice President
Africa

NAIROBI CITY COMMISSION

By /s/ Richard Okwaro
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 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 the works included in Parts A and B of the Project shall be prequalified as described in paragraph 2.10 of the Guidelines.

Part B: Preference for Domestic Contractors

In the procurement of works in accordance with the procedures described in Part A.1 hereof, Kenya 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. Contracts for vehicles and equipment estimated to cost less

than the equivalent of \$200,000 each may be awarded on the basis of competitive bidding, advertised locally, in accordance with procedures satisfactory to the Association.

2. Contracts for goods estimated to cost less than the equivalent of \$20,000 each 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 Association.

Part D: Review by the Association 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 1 to the Guidelines shall apply.

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

(a) With respect to each contract estimated to cost the equivalent of \$200,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply.

(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.

(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 retained in accordance with Section 4.01 (a) (ii) of the Development Credit 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 NCC in carrying out the Project, NCC shall employ specialists and 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.

SCHEDULE 2

Implementation Program

1. WSD shall be responsible for the implementation of the Project. Within WSD, PIU shall be maintained until completion of the Project, to supervise the day-to-day implementation of Project activities.

2. WSD shall annually, commencing in FY 1989/1990 prepare and furnish to the Association for its review and comments, a report containing ten-year financial projections, which shall, inter alia, contain an analysis of the impact of the revised tariffs on water sales by category of customer.

3. NCC shall undertake such actions as shall be necessary to improve the timeliness of payment and reporting of WSD's expenditures and shall employ, if necessary, consultants to assist WSD in establishing a proper management information system. NCC shall provide training to support further development of its computer service. All the above activities shall be undertaken in order to move WSD towards a system of "self accounting".

4. NCC shall implement the staff training program satisfactory to the Association.

