

CONFORMED COPY

CREDIT NUMBER 2753 MAI

Development Credit Agreement
(National Water Development Project)

between

REPUBLIC OF MALAWI

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated November 1, 1995

CREDIT NUMBER 2753 MAI

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated November 1, 1995, between REPUBLIC OF MALAWI (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS: (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(B) the Association has received a letter dated May 31, 1995, from the Borrower describing a program of actions, objectives and policies designed to improve water supply services in rural and urban areas and to reform the regulatory framework for the subsector (hereinafter called the Program) and declaring the Borrower's commitment to the execution of the Program;

(C) part of the Project will be carried out by Lilongwe Water Board (LWB), with the Borrower's assistance and, as part of such assistance, the Borrower will make available to LWB a portion of the proceeds of the Credit as provided in this Agreement; and

WHEREAS the Association has agreed, on the basis, inter

alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement and in the LWB Project Agreement of even date herewith between the Association and LWB;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985, with the modifications thereto set forth below (the General Conditions) constitute an integral part of this Agreement.

- (a) The last sentence of Section 3.02 is deleted.
- (b) The second sentence of Section 5.01 is modified to read:

"Except as the Association and the Borrower shall otherwise agree, no withdrawals shall be made: (a) on account of expenditures in the territories of any country which is not a member of the Bank or for goods produced in, or services supplied from, such territories; or (b) for the purpose of any payment to persons or entities or any import of goods, if such payment or import, to the knowledge of the Association is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations."

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

- (a) "MLGRD" means the Borrower's Ministry of Local Government and Rural Development;
- (b) "MIWD" means the Borrower's Ministry of Irrigation and Water Development;
- (c) "WRB" means the Borrower's Water Resources Board, established pursuant to the Water Resources Act, (Cap. 72:03 of the Laws of Malawi);
- (d) "NWB" means Northern Region Water Board;
- (e) "CWB" means Central Region Water Board;
- (f) "SWB" means Southern Region Water Board;
- (g) "LWB" means Lilongwe Water Board established pursuant to the Lilongwe Waterworks Act, (Cap. 72:04 of the Laws of Malawi);
- (h) "BWB" means Blantyre Water Board established pursuant to the Blantyre Waterworks Act, (Cap. 72:02 of the Laws of Malawi);
- (i) "Project Preparation Advance" means the project preparation advance granted by the Association to the Borrower pursuant to an exchange of letters dated September 1, 1992, September 28, 1992, January 5, 1995 and January 30, 1995 between the Borrower and the Association;
- (j) "MIWD Special Account" means the account which the Borrower may open and maintain for MIWD pursuant to Section 2.02 (b) of this Agreement;
- (k) "NWB Special Account" means the account which the

Borrower may open and maintain for NWB pursuant to Section 2.02 (b) of this Agreement;

(l) "CWB Special Account" means the account which the Borrower may open and maintain for CWB pursuant to Section 2.02 (b) of this Agreement;

(m) "SWB Special Account" means the account which the Borrower may open and maintain for SWB pursuant to Section 2.02 (b) of this Agreement;

(n) "LWB Special Account" means the account which the Borrower may open and maintain pursuant to Section 2.02 (b) of this Agreement;

(o) "Special Accounts" mean the accounts referred to in subsections (j), (k), (l), (m) and (n) above and in Section 2.02 (b) of this Agreement, and "Special Account" means each and every such account;

(p) "NWB Financing Agreement" means the agreement to be entered into between the Borrower and NWB pursuant to Section 3.01 (c)(i) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the NWB Financing Agreement;

(q) "CWB Financing Agreement" means the agreement to be entered into between the Borrower and CWB pursuant to Section 3.01 (c)(ii) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the CWB Financing Agreement;

(r) "SWB Financing Agreement" means the agreement to be entered into between the Borrower and SWB pursuant to Section 3.01 (c)(iii) of this Agreement, as the same may be amended from time to time, and includes all schedules to the SWB Financing Agreement;

(s) "LWB Financing Agreement" means the agreement to be entered into between the Borrower and LWB pursuant to Section 3.01 (c)(iv) of this Agreement, as the same may be amended from time to time, and includes all schedules to the LWB Financing Agreement;

(t) "Financing Agreements" mean collectively the NWB Financing Agreement, CWB Financing Agreement and SWB Financing Agreement and "Financing Agreement" means each and every such agreement.

(u) "LWB Project Agreement" means the agreement between the Association and LWB, of even date herewith, as the same may be amended from time to time and such term includes all schedules and agreements supplemental to the LWB Project Agreement;

(v) "Water Board" means NWB, CWB, SWB or LWB;

(w) "Implementation Manual" means the comprehensive manual for the implementation of all components of the Project referred to in paragraph 7 of Schedule 4 to this Agreement;

(x) "Performance Agreement" means each of the agreements, satisfactory to the Association, to be entered into by the Borrower with NWB, CWB, SWB and LWB, respectively, referred to in paragraph 6 of Schedule 4 to this Agreement; and

(y) "EIB Loan Agreement" means the agreement to be entered into between the Borrower and the European Investment Bank (EIB) to finance the Third Lilongwe Water Supply Project.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, an amount in various currencies equivalent to fifty million three hundred thousand Special Drawing Rights (SDR 50,300,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit.

(b) The Borrower may, for the purposes of the Project, open and maintain in dollars five special deposit accounts in a commercial bank for use by MIWD, NWB, CWB, SWB and LWB on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Special Accounts shall be made in accordance with the provisions of Schedule 6 to this Agreement.

(c) Promptly after the Effective Date, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and pay to itself the amount required to repay the principal amount of the Project Preparation Advance withdrawn and outstanding as of such date and to pay all unpaid charges thereon. The unwithdrawn balance of the authorized amount of the Project Preparation Advance shall thereupon be canceled.

Section 2.03. The Closing Date shall be June 30, 2003 or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent ($1/2$ of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or canceled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date or at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next payment date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent ($3/4$ of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on April 15 and October 15 in each year.

Section 2.07. (a) Subject to paragraphs (b) and (c) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each April 15 and October 15 commencing October 15, 2005 and ending April 15, 2035. Each installment to and including the installment payable on April 15, 2015 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever: (i) the Borrower's gross national product per capita, as determined by the Association, shall have exceeded \$790 in constant 1985 dollars for five consecutive years, and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the development of the Borrower's economy, modify the terms of repayment of installments under paragraph (a) above by requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid. If so requested by the Borrower, the Association may revise such modification to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(c) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end:

- (i) shall carry out Parts A.1 through A.4, A.6, B, and C of the Project through MIWD, NWB, CWB and SWB with due diligence and efficiency and in conformity with appropriate administrative and financial practices and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project; and
- (ii) without limitation or restriction upon any of its other obligations under this Agreement, the Borrower shall cause LWB to perform in accordance with the provisions of the LWB Project Agreement all the obligations of LWB therein set forth, shall take or cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable LWB to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) Without limitation upon the provisions of paragraph (a) of this Section, and except as the Borrower and the Association shall otherwise agree, the Borrower shall carry out Parts A.1 through A.4, A.6, B and C of the Project in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

(c) The Borrower shall, under financing agreements to be entered into between the Borrower and each Water Board, which shall have been approved by the Association, make available out of the proceeds of the Credit to:

- (i) NWB, an amount equivalent to SDR 4,600,000 partly as a grant and partly as a loan (the NWB Subsidiary Loan);
- (ii) CWB, an amount equivalent to SDR 4,800,000 partly as a grant and partly as a loan (the CWB Subsidiary Loan);
- (iii) SWB, an amount equivalent to SDR 21,900,000 partly as a grant and partly as a loan (the SWB Subsidiary Loan); and
- (iv) LWB, an amount equivalent to SDR 6,200,000 partly as a grant and partly as a loan (the LWB Subsidiary Loan).

(d) The Borrower shall ensure that in addition to the terms and conditions set forth in Section 3.01 (c) of this Agreement: (i) the Financing Agreements shall incorporate the terms and conditions set forth in Schedule 5 to this Agreement, and (ii) the LWB Financing Agreement shall incorporate terms and conditions which shall be consistent with paragraph 1 of Schedule 5 to this Agreement.

(e) The Borrower shall exercise its rights under the Financing Agreements in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit, and, except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the Financing Agreements or any provision thereof.

Section 3.02. 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 3 to this Agreement.

Section 3.03. (a) The Borrower shall, jointly with the Association, NWB, CWB, SWB and LWB carry out not later than October 31, 1997, a comprehensive review of the Project, during which they shall exchange views generally on all matters relating to the progress made in the carrying out of the Project and the performance by the Borrower, NWB, CWB, SWB, and LWB, of their respective obligations under this Agreement; including, but not limited to: (i) a review of the achievements of the Project, having regard to performance indicators agreed upon between the Borrower and the Association, including the Performance Agreement; (ii) the implementation and management aspects of the Project; (iii) performance and use of technical assistance personnel; (iv) the role of national counterpart staff; (v) the status and results of training; (vi) reporting, accounting and audit performance; (vii) disbursement procedures; and (viii) the sustainability of the Project.

(b) Not later than sixty days prior to the review referred to in (a) above, the Borrower shall furnish to the Association, for its comments, a report, in such detail as the Association shall reasonably request, on the progress and status of the Project, including an evaluation of the progress

achieved in implementing the various components of the Project, including the Performance Agreement, and a draft plan containing proposals for remedying any identified deficiencies.

(c) Following such review, the Borrower shall promptly take any corrective action deemed necessary to remedy any shortcoming noted in the implementation of the Project, or to implement such other measures as may have been agreed upon between the parties in furtherance of the objectives of the Project. To this end, the Borrower shall: (i) prepare an action plan, satisfactory to the Association, based on the recommendations stemming from the aforementioned review, and (ii) adopt and implement such plan for the remainder of the Project period.

Section 3.04. Without limitation upon the provisions of Article IX of the General Conditions, the Borrower shall:

(a) prepare 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 Borrower and the Association, a plan, of such scope and in such detail as the Association shall reasonably request, for the future operation of the Project;

(b) afford the Association a reasonable opportunity to exchange views with the Borrower on said plan; and

(c) thereafter, carry out said plan with due diligence and efficiency and in accordance with appropriate practices, taking into account the Association's comments thereon.

Section 3.05. The Association and the Borrower hereby agree that 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 Part A.5 and C.1 (b)(i) of the Project shall be carried out by LWB pursuant to Section 2.03 of the LWB Project Agreement.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower shall maintain, and cause NWB, CWB, SWB and other departments or agencies of the Borrower responsible for carrying out the Project or any part thereof, to maintain records and accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of Parts A.1 through A.4, A.6, B, and C of the Project.

(b) The Borrower shall:

- (i) have the records and accounts referred to in paragraph (a) of this Section including those for the Special Accounts 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 six months after the end of each such year, a certified copy of 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 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 expenditure, the Borrower shall:

- (i) maintain, or cause to be maintained, in accordance with paragraph (a) of this Section, records and accounts reflecting such expenditures;
- (ii) retain, 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 or payment out of the Special Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (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) The Borrower and the Association shall, from time to time, at the request of either party, exchange views with regard to the Borrower's water pricing policies and its plans in respect of the overall development of the water sector.

(b) The Borrower agrees, as long as it exercises control over the setting of water rates of NWB, CWB, SWB, BWB and LWB, to establish rates for water sold by such water boards which would, consistent with the terms of their respective Performance Agreement:

- (i) allow the Water Boards, under conditions of efficient operation at reasonable levels of capacity utilization, to cover their operating costs including taxes, earn an adequate return on funds invested in them, meet their financial obligations and make a reasonable contribution to future investment for expansion of capacity; and
- (ii) subject to the achievement of the objective stated in (i) above, pass on the benefit of declines in the real costs of production to NWB, CWB, SWB, LWB and BWB through reduction in rates in real terms.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (h) of the General Conditions, the following additional events are specified:

(a) A situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.

(b) LWB shall have failed to perform any of its obligations under the LWB Project Agreement.

(c) As a result of events which have occurred after the date of this Agreement, an extraordinary situation shall have arisen which shall make it improbable that:

- (i) LWB will be able to perform any of its obligations under the LWB Project Agreement; or
- (ii) any other Water Board will be able to perform any of its obligations under a Financing Agreement.

(d) NWB, CWB, SWB or LWB shall have failed to perform any of its obligations under the Performance Agreement or the Financing Agreement.

(e) The Lilongwe Waterworks Act or the law establishing NWB, CWB or SWB shall have been amended, suspended, abrogated, repealed, or waived so as to affect materially and adversely the ability of LWB, NWB, CWB, or SWB to perform any of its obligations under the LWB Project Agreement or the Financing Agreement; and

(f) The Borrower or any authority having jurisdiction shall have taken any action for the dissolution or disestablishment of LWB or for the suspension of its operations.

Section 5.02. Pursuant to Section 7.01 (d) of the General Conditions, the following additional events are specified:

(a) any event specified in paragraphs (b) and (d) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Association to the Borrower; and

(b) any event specified in paragraphs (e) and (f) of Section 5.01 of this Agreement shall occur.

ARTICLE VI

Effective Date, Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01 (b) of the General Conditions:

(a) the Borrower has adopted legislation establishing NWB, CWB and SWB and providing NWB, CWB, SWB, LWB and BWB such powers and obligations as are consistent with those set out in the Program;

(b) the Chairmen and Chief Executive Officers of NWB, CWB and SWB have been duly appointed;

(c) the Borrower has appointed: (i) a business and financial planning adviser to the Project Unit, and (ii) consultants to carry out business planning studies for NWB, CWB, SWB, LWB and BWB and the business planning process has commenced; and

(d) the Implementation Manual has been adopted.

Section 6.02. The following is specified as an additional matter, within the meaning of Section 12.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association, namely that the LWB Project Agreement and the LWB Financing Agreement have been duly authorized or ratified by LWB, and are legally binding upon LWB

in accordance with their respective terms.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representatives of the Borrower; Addresses

Section 7.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance
P.O. Box 30049
Capital City
Lilongwe, 3

Malawi

Cable address:

FINANCE
Lilongwe

Telex:

44407 MI

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)

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.

REPUBLIC OF MALAWI

By /s/ W. Chokani

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Edward V.K. Jaycox

Regional Vice President

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

Category	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(1) Works:		100% of foreign expenditures and 80% of local expenditures
(a) for the Water Department		
(i) Water resources works	1,000,000	
(ii) Rural water supply	9,000,000	
(b) for:		
(i) NWB	3,200,000	
(ii) CWB	3,300,000	
(iii) SWB	18,400,000	
(iv) LWB	1,200,000	
(2) Goods for:		100% of foreign expenditures and 80%
(a) the Water Department	120,000	of local expenditures
(b) (i) NWB	120,000	
(ii) CWB	120,000	
(iii) SWB	200,000	
(iv) LWB	3,300,000	
(3) Consultants' Services for:		100% of foreign
(a) the Water Department	950,000	expenditures and 80% of local expenditures
(b) (i) NWB	950,000	
(ii) CWB	950,000	
(iii) SWB	1,440,000	
(iv) LWB	1,300,000	
(4) Operating Expenditures for:		60% through December 31, 1996
(a) NWB	130,000	30% in calendar year 1997
(b) CWB	190,000	10% in calendar year 1998
(c) SWB	320,000	
(5) Refunding of	950,000	Amounts due

Project
Preparation
Advance

pursuant to
Section 2.02 (c)
of this Agreement

(6) Unallocated	3,160,000
TOTAL	50,300,000 =====

2. For the purposes of this Schedule:

(a) the term "foreign expenditures" means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower;

(b) the term "local expenditures" means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower; and

(c) the term "operating expenditures" means operating expenditures incurred for rental of office, laboratory and workshop space, and the maintenance of vehicles and office, laboratory and workshop equipment.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:

(a) payments made for expenditures prior to the date of this Agreement;

(b) category (1) (a) (i) unless the Borrower has adopted legislation, satisfactory to the Association, for the reform of its water resources management; and

(c) category (1) (a) (ii) unless (A) consultants, with qualifications and terms and conditions acceptable to the Association and selected in accordance with the provisions of Section II of Schedule 3 to this Agreement, have been appointed by the Borrower to carry out a study on the strengthening, restructuring and funding required for the central services to be provided by the Water Department to fulfill the needs of the restructured water sector; and (B) the Borrower has appointed duly qualified experts, selected in accordance with the provisions of Section II of Schedule 3 to this Agreement, to the Project Unit as manager of the Rural Water Supply Program and as Project accountant;

(d) categories (1) (b) (i), (2) (b) (i), (3) (b) (i) and 4 (a) unless:

(i) the NWB Financing Agreement has been executed;

(ii) the Borrower and NWB have executed the Performance Agreement;

(iii) NWB has appointed a duly qualified Financial Controller; and

(iv) the Borrower has transferred to NWB the physical assets, staff and initial funds required to enable NWB to carry out its functions in the Northern Region.

(e) categories (1) (b) (ii), (2) (b) (ii), (3) (b) (ii) and 4 (b) unless:

(i) the CWB Financing Agreement has been executed;

(ii) the Borrower and CWB have executed the Performance Agreement;

- (iii) CWB has appointed a duly qualified Financial Controller; and
 - (iv) the Borrower has transferred to CWB the physical assets, staff and initial funds required to enable CWB to carry out its functions in the Central Region.
- (f) categories (1) (b) (iii), (2) (b) (iii), (3) (b) (iii) and (4) (c) unless:
- (i) the SWB Financing Agreement has been executed;
 - (ii) the Borrower and SWB have executed the Performance Agreement;
 - (iii) SWB has appointed a duly qualified Financial Controller; and
 - (iv) the Borrower has transferred to SWB the physical assets, staff and initial funds required to enable SWB to carry out its functions in the Southern Region.
- (g) categories (1) (b) (iv), (2) (b) (iv) and (3) (b) (iv) unless the Borrower has furnished evidence that EIB has declared the EIB Loan Agreement effective.

4. The Association may require withdrawals from the Credit Account to be made on the basis of statements of expenditure for expenditures under contracts not exceeding \$200,000 equivalent for works and \$100,000 equivalent for goods and consultants' services, under such terms and conditions as the Association shall specify by notice to the Borrower.

SCHEDULE 2

Description of the Project

The objectives of the Project are to reform and upgrade the management of water resources and the provision of water-related services in order to:

- (a) ensure convenient access to safe water for domestic use, for a progressively larger fraction of the Borrower's population;
- (b) provide water infrastructure capable of underpinning economic development; and
- (c) assure the protection and management of water resources and of aquatic and riparian environments.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

Part A: Institutional Restructuring and Capacity Building

1. Water Resources Board

Reconstitution and institutional strengthening of WRB through: (a) the carrying out of studies and the provision of technical assistance; and (b) the acquisition of materials and equipment.

2. Water Department Central Services

Restructuring and decentralization of the functions of MIWD's Water Department and streamlining the Borrower's oversight duties over LWB, BWB, NWB, CWB and SWB through: (a) the carrying out of studies and the provision of technical assistance; (b) the carrying out of a training and development

program for staff of the Water Boards; and (c) the acquisition of materials, plant and equipment.

3. Rural Water Supply Program

Implementation of a community-based water supply program in rural areas through: (a) the provision of technical assistance; and (b) the construction of water supply facilities, including the rehabilitation and construction of boreholes and gravity-fed schemes.

4. Regional Water Boards

Institutional strengthening of NWB, CWB and SWB through: (a) the provision of technical assistance; and (b) the carrying out of studies to determine business plans and human resource requirements.

5. Lilongwe Water Board

Institutional strengthening of LWB through: (a) the carrying out of technical assistance in institutional reform and restructuring, business planning and implementation support; and (b) the carrying out of a training and a development program for staff of LWB.

6. Water-Borne Sanitation Services

Strengthening MIWDps capability to monitor and supervise water-borne sanitation services through: (a) the carrying out of studies and the provision of technical assistance; (b) the carrying out of a training program for the staff of MIWD; and (c) the acquisition of materials, plant, equipment and the installation of business and technical information systems.

Part B: Studies

The carrying out of the following studies for the:

1. investigation of alternate sources of water to enhance reliability of supply for some of the urban schemes;
2. hydrogeological and hydrological assessment and mapping to provide an information base;
3. hydrologic and water quality of Lake Malawi, including installation of appropriate equipment and systems for the automatic collection, transmission and recording of data on water currents, surface waves, windspeed and direction, air pressure, relative humidity, algal concentrations and other water quality parameters for use in navigation, environmental monitoring, fisheries development and maritime research;
4. control of the level of Lake Malawi, including regulation of the water levels of the lake in order to: (i) minimize the likelihood of extremely low levels and no-flow conditions in the Shire River; (ii) to sustain socioeconomic growth through the development and maintenance of hydropower generation; and (iii) enhance safe navigation on Lake Malawi and water supplies for use in municipal, industrial, irrigation and recreational development;
5. forecasting of floods in the Lower Shire Valley to improve the forecasting and issuing of warnings of impending floods in good time to allow timely evacuation and safeguard against loss of life and reduce damage to property; and
6. determination, on a preliminary basis, of the feasibility of stabilizing the course of the Songwe River to reduce flooding, developing agriculture and fisheries and generating hydropower.

Part C: Water Supply Investment Program

1. Physical Works

(a) The rehabilitation of existing water schemes to their design capacity and performance, including: (i) about eight urban water schemes; (ii) five gravity-fed, piped rural schemes; and (iii) about 5,500 boreholes.

(b) Extension works to increase the capacities of: (i) LWBps urban scheme; and (ii) about twenty-nine other existing urban water schemes, including augmentation of treatment facilities and distribution systems.

(c) Construction of new water schemes including: (i) 7 urban water supply schemes; (ii) six gravity-piped rural water schemes; (iii) about 750 boreholes, (iv) 2 sewerage systems, (v) about nine sites for controlled disposal of septage and sludge; and (vi) a 47-meter-high rock-fill dam with a conventional sealing core zone and impounding reservoir with a gross capacity of about 3.4 million cubic meters near Zomba on the Lower Mulunguzi River, including the refurbishment and expansion of treatment and distribution facilities for the town of Zomba and the surrounding area.

(d) The carrying out of water resources works through soil conservation measures in selected unprotected catchments used as sources of raw potable water.

(e) Construction of: (i) about 10 catchment protection works, and (ii) river training works along the Songwe River.

2. Facilities and Equipment

(a) the construction of workshops and laboratories;

(b) acquisition of office, telecommunication, meter-testing, meter-repair, leakage detection and water quality testing equipment, computers, water meters and vehicles; and

(c) installation of a geographic information system for water resources management and planning.

* * *

The Project is expected to be completed by December 31, 2002.

SCHEDULE 3

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 1 of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 (the Guidelines) and the following provisions of this Section, as applicable.

Part B: International Competitive Bidding

1. Except as otherwise provided in Part C of this Section, goods and works shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix I thereto.

2. The following provisions shall apply to goods and works to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B.

(a) Grouping of contracts

To the extent practicable, civil works contracts for new boreholes estimated to cost \$500,000 equivalent or more each and rehabilitation and extension of urban water schemes shall be grouped into bid packages estimated to cost \$500,000 equivalent or more each.

(b) Preference for domestically manufactured goods and domestic contractors

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 and works to be carried out by domestic contractors.

Part C: Other Procurement Procedures

1. National Competitive Bidding

(a) Civil works contracts estimated to cost \$500,000 equivalent or less per contract and \$7,800,000 equivalent or less in the aggregate for:

(i) extension and rehabilitation of existing urban schemes and construction of new urban schemes in part C.1 of the Project;

(ii) construction of new gravity-fed rural water schemes in Part C.1 of the Project;

(iii) catchment protection works in Part C.1 of the Project; and

(iv) construction of boreholes in isolated groups

may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

(b) Laboratory and office buildings refurnishment and equipment estimated to cost \$100,000 equivalent or less per contract and \$400,000 equivalent or less in the aggregate, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

2. National Shopping

Goods and equipment, including vehicles, laboratory equipment, computers, spare parts and maintenance tools, estimated to cost \$30,000 equivalent or less per contract and \$200,000 equivalent in the aggregate, may be procured on the basis of national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to prequalify for bidding or to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph I of Appendix I to the Guidelines. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

With respect to each contract for: (i) civil works estimated to cost \$200,000 equivalent or more; and (ii) goods

estimated to cost \$100,000 equivalent or more, the procedures set forth in paragraphs 2 and 3 of Appendix I 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 I to the Guidelines shall apply.

Section II. Employment of Consultants

1. Consultants' services shall be procured under contracts awarded in accordance with the provisions 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 (the Consultant Guidelines). For complex, time-based assignments, such contracts shall be based on the standard form of contract for consultants' services issued by the Bank, with such modifications as shall have been agreed by the Association. Where no relevant standard contract documents have been issued by the Bank, the Borrower shall use other standard forms agreed with the Association.

2. Notwithstanding the provisions of paragraph 1 of this Section, the provisions of the Consultant Guidelines requiring prior Association review or approval of budgets, short lists, selection procedures, letters of invitation, proposals, evaluation reports and contracts shall not apply to: (a) contracts for the employment of consulting firms estimated to cost less than \$100,000 equivalent each or (b) contracts for the employment of individual consultants estimated to cost less than \$50,000 equivalent each. However, said exceptions to prior Association review shall not apply to: (a) the terms of reference for such contracts, (b) single-source selection of consulting firms, (c) assignments of a critical nature, as reasonably determined by the Association, (d) amendments to contracts for the employment of consulting firms raising the contract value to \$100,000 equivalent or above, or (e) amendments to contracts for the employment of individual consultants raising the contract value to \$50,000 equivalent or above.

SCHEDULE 4

Implementation Program

1. MIWD shall be responsible for the coordination of the Program and shall appoint, and retain until at least thirty months after the Effective Date, a Program Leader, whose qualifications and terms of reference shall be satisfactory to the Association. The Program Leader shall report to the Controller of Water Services within MIWD and shall be assisted by a Project Unit (PU) to be established within the Water Department of MIWD, with membership and terms of reference satisfactory to the Association, including an advisor on business and financial planning, a manager of the Rural Water Supply Program and a Project accountant.

2. The Program Leader shall also be responsible for supervising:

(a) the implementation of institutional restructuring and capacity building activities in Parts A.1 and A.2 of the Project;

(b) the implementation of Parts B.2, B.3, B.4, B.5 and B.6 of the Project;
and

(c) the coordination of implementation of Parts A.4, C.1 and C.2 of the

Project.

3. NWB, CWB and SWB shall be responsible for:

(a) carrying out capacity building activities in Part A.4 of the Project for their respective entities;

(b) carrying out, in their respective region, urban physical works in Part C.1 of the Project;

(c) the acquisition of facilities and equipment for their respective entities in Part C.2 of the Project; and

(d) carrying out studies in Part B.1 of the Project, for their respective region.

4. The Water Department shall be responsible for:

(a) carrying out Parts A.2, A.3 and a portion of Part A.4 of the Project;

(b) carrying out rural physical works under Part C.1 of the Project; and

(c) the acquisition of facilities and equipment for its own use under Part C.2 of the Project.

5. In supervising the implementation of the urban reform program in Parts A.2 and C.1 of the Project, the Program Leader shall be assisted by duly qualified consultants and counterpart staff in adequate numbers to be seconded from time to time for this purpose, by MIWD.

6. The Borrower shall enter into agreements with the Water Boards specifying, inter alia:

(i) the physical and financial performance targets to be achieved by each Water Board;

(ii) the pricing and cost recovery policies to be adopted and implemented by each Water Board;

(iii) each Water Board's share of the District Water Supply Fund;

(iv) the working capital requirements of each Water Board; and

(v) the terms and conditions under which each Water Board can obtain donor funds through the Borrower's Treasury.

7. The Borrower shall ensure that Project implementation is carried out in accordance with a comprehensive Project implementation manual, satisfactory to the Association, which shall be consistent with the Program and the Performance Agreement, and shall include, for all Project components: (a) the specific tasks to be carried out including, terms of reference, items to be procured and training needs, (b) procurement, consultancy and training procedures to be followed, (c) a breakdown of cost estimates, (d) implementation timetables, and (e) formats for annual work plans and programs, and periodic reports.

8. Based on periodic progress reports on the implementation of the various components of the Project which shall be prepared and furnished to the Program Leader by the respective Project implementing entities, the Program Leader shall furnish to the Association, in such form as shall be satisfactory to the Association, consolidated quarterly and annual Project progress reports not later than fifteen days after the end of

each reporting period.

9. In the carrying out of Parts A.4 and A.6 of the Project the Borrower shall appoint duly qualified consultants to carry out business planning studies for each Water Board which shall form the basis for the Performance Agreement.

10. In the carrying out of Part A.2 of the Project, the Borrower shall appoint consultants to carry out a study on the scope, level and timing of the strengthening required by the Water Department to enable it to provide services to the restructured water sector and to determine sources of funds.

11. In the carrying out of Part A.3 of the Project, the Borrower shall take such measures as shall be necessary to develop, in close consultation with representatives of rural communities, rules and procedures, satisfactory to the Association, which ensure that rural communities will exercise control over the choice and development of smallscale community water supply facilities using community driven processes.

12. The Borrower shall take all measures necessary to ensure that all prospective investments to be made in Part C of the Project are carried out in conformity with criteria and procedures, satisfactory to the Association for assessing the environmental impacts of such investments and for mitigating possible adverse impacts.

13. In the carrying out of Part C of the Project the Borrower shall adopt and implement policies, satisfactory to the Association, for the protection of catchment areas, including investments in rehabilitation and revegetation of degraded areas. Such policies shall be planned, developed and implemented in close consultation with stakeholders, including the affected farmers.

14. The consultants and experts referred to in paragraphs 1, 5, 9 and 10 of this Schedule shall be selected in accordance with the provisions of Section II of Schedule 3 to this Agreement.

SCHEDULE 5

Terms of Financing Agreements Required Pursuant to Section 3.01 (d)

The terms and conditions of the NWB Financing Agreement, CWB Financing Agreement and SWB Financing Agreement shall include the following:

1. The obligation of the Borrower to make available to NWB, CWB and SWB, respectively the NWB Subsidiary Loan, CWB Subsidiary Loan and SWB Subsidiary Loan under terms and conditions which shall have been approved by the Association including the repayment of the NWB Subsidiary Loan, CWB Subsidiary Loan and SWB Subsidiary Loan in twenty-five years, including five years of grace, the payment of interest at the rate of 2% per annum above the prevailing rate of inflation as measured by the Borrower's National Composite Retail Price Index, revised on a semiannual basis, and with the exchange risk to be borne by the Borrower.

2. The obligation of NWB, CWB and SWB to:

(a) carry out the Project in accordance with the Implementation Manual referred to in Paragraph 7 of Schedule 4 to this Agreement, with due diligence and efficiency and in accordance with appropriate administrative, financial, engineering and public utility practices acceptable to the Borrower and the Association;

(b) comply with the record keeping, auditing and

reporting requirements set out in Article IV of this Agreement;

(c) at all times, operate and maintain its plants, machinery, equipment and other property, and from time to time, promptly as needed, to make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and public utility practices;

(d) comply with the procedures for procurement of goods, works and consultants' services set out in Section 3.02 of this Agreement;

(e) carry on its operations and conduct its affairs in accordance with sound administrative, financial, engineering and public utility practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers;

(f) keep its positions of General Manager and Financial Controller filled, at all times, by persons having experience and qualifications acceptable to the Association;

(g) promptly inform the Borrower and 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 of the Water Board of its obligations under the Financing Agreement;

(h) furnish to the Borrower and to the Association, through the Program Leader, periodic quarterly and annual progress reports, and a financial report, of such scope and in such detail as the Borrower and the Association shall reasonably request;

(i) at the request of the Association, exchange views with the Association with regard to the progress of the Project, the Water Board's performance of its obligations under the Financing Agreement;

(j) take out and maintain with responsible insurers, or to make other provision satisfactory to the Association for insurance against such risks and in such amounts as shall be consistent with appropriate practice;

(k) carry out the obligations set forth in Sections 9.03, 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 components of the Project to be carried out by the Water Board;

(l) establish Water rates in accordance with Section 4.02 (b) of this Agreement;

(m) in accordance with Section 3.03 of this Agreement, participate in the review of the Project and thereafter, prepare, adopt and implement the action plan referred to in said Section; and

(n) in accordance with Section 3.04 of this Agreement, prepare and furnish to the Association, for its comments, the action plan referred to therein, and thereafter, implement said action plan taking into account the Association's comments thereon.

2. A provision stipulating that in case of conflict between the Financing Agreement and this Agreement, the latter shall apply.

SCHEDULE 6

Special Accounts

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means: (i) Categories (1) (a), (2) (a), and (3) (a) set forth in the table in paragraph 1 of Schedule 1 to this Agreement with respect to "MIWD Special Account"; (ii) Categories (1) (b) (i), (2) (b) (i), (3) (b) (i) and (4) (a) with respect to "NWB Special Account"; (iii) Categories (1) (b) (ii), (2) (b) (ii), (3) (b) (ii) and (4) (b) with respect to "CWB Special, Account"; (iv) Categories (1) (b) (iii), (2) (b) (iii), (3) (b) (iii) and (4) (c) with respect to "SWB Special Account"; and (v) Categories (1) (b) (iv), (2) (b) (iv) and (3) (b) (iv) with respect to "LWB Special Account".

(b) the term "eligible expenditures" means expenditures in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit allocated from time to time to the eligible Categories in accordance with the provisions of Schedule I to this Agreement; and

(c) the term "Authorized Allocation" means an amount of \$500,000 to be withdrawn from the Credit Account and deposited in each Special Account pursuant to paragraph 3 (a) of this Schedule, provided, however, that unless the Association shall otherwise agree, the Authorized Allocation shall be limited to an amount equivalent to \$250,000 until the aggregate amount of withdrawals from the Credit Account plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall be equal to or exceed the equivalent of \$29,000,000.

2. Payments out of the Special Accounts shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Association has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for a deposit or deposits which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit in the Special Account such amount or amounts as the Borrower shall have requested.

(b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposits into the Special Account at such intervals as the Association shall specify.

(ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures.

All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of a Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

(b) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of the records and accounts for the Special Account;

(c) if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Credit allocated to the eligible Categories, less the amount of any outstanding special commitment entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of the Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into the Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Association made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

