

CONFORMED COPY

CREDIT NUMBER 2060 KE

(Third Nairobi Water Supply Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated August 15, 1989

CREDIT NUMBER 2060 KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated August 15, 1989, between REPUBLIC OF KENYA (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) by agreements dated April 21, 1989, (the AfDB Loan Agreement and the AfDF Loan Agreement), the African Development Bank and African Development Fund, respectively, have agreed to make loans (the AfDB Loan and AfDF Loan) in an amount equivalent to \$35,200,000 to assist in financing part of the Project on the terms and conditions set forth in the AfDB Loan Agreement and AfDF Loan Agreement, respectively;

(C) by agreement dated May 25, 1989, (the EIB Loan Agreement), the European Investment Bank (EIB) has agreed to make

a loan (the EIB Loan) to the Borrower in an aggregate principal amount equivalent to \$18,600,000 to assist in financing part of the Project on the terms and conditions set forth in the EIB Loan Agreement;

(D) by agreement dated March 18, 1989, (the OECF Loan Agreement), the Overseas Economic Cooperation Fund of Japan (OECF) has agreed to make a loan (the OECF Loan) to the Borrower in an aggregate principal amount equivalent to \$40,000,000 to assist in financing part of the Project on the terms and conditions set forth in the OECF Loan Agreement; and

(E) the Project will be carried out by the Nairobi City Commission (NCC) with the Borrower's assistance and, as part of such assistance, the Borrower will make available to NCC 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 Project Agreement of even date herewith between the Association and NCC;

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 last sentence of Section 3.02 deleted (the General Conditions) constitute an integral part of this Agreement.

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) "Project Agreement" means the agreement between the Association and Nairobi City Commission 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 Project Agreement;

(b) "Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and NCC pursuant to Section 3.01 (b) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Loan Agreement;

(c) "NCC" means the Nairobi City Commission appointed by order of the Minister of Local Government and Physical Planning under the Local Government Act, Chapter 265 of the Laws of Kenya, or its successor;

(d) "WSD" means the Water and Sewerage Department of NCC;

(e) "PIU" means the Project Implementation Unit within WSD, charged with the implementation of this Project; and

(f) "FY" means NCC's fiscal year beginning July 1 and ending June 30 of the following year.

#### 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 the Development Credit Agreement, an amount in various currencies

equivalent to forty-nine million one hundred thousand Special Drawing Rights (SDR 49,100,000).

Section 2.02. 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.

Section 2.03. The Closing Date shall be June 30, 1996, 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 a 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 cancelled; 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 as of 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 per cent (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 1 and October 1 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 semi-annual installments payable on each April 1 and October 1 commencing October 1, 1999, and ending April 1, 2024. Each installment to and including the installment payable on April 1, 2009, shall be one and one-fourth percent (1-1/4%) of such principal amount, and each installment thereafter shall be two and one-half percent (2-1/2%) 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, without any limitation or restriction upon any of its other obligations under the Development Credit Agreement shall cause NCC to perform in accordance with the provisions of the Project Agreement all the obligations of NCC therein set forth, shall take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable NCC to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) The Borrower shall on-lend the proceeds of the Credit to NCC under a subsidiary loan agreement to be entered into between the Borrower and NCC, under terms and conditions which shall have been approved by the Association, which shall provide, inter alia, that the proceeds of the Credit shall be on-lent at an interest rate of at least 7.65% per annum, for a term of 21 years including a grace period not exceeding six years.

(c) The Borrower shall exercise its rights under the Subsidiary Loan Agreement 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 Subsidiary Loan Agreement 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 1 to the Project Agreement.

Section 3.03. The Borrower and the Association hereby agree that 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) shall be carried out by NCC pursuant to Section 2.03 of the Project Agreement.

### ARTICLE IV

#### Financial Covenants

Section 4.01. The Borrower shall by June 30, 1991, reimburse NCC, for the costs of land acquisition and compensation payments associated with the implementation of the Project.

Section 4.02. The Borrower shall take all necessary steps to enable NCC to meet the rate of return provided for in Section 4.02 of the Project Agreement.

Section 4.03. The Borrower shall agree with the Association and NCC on a plan of action, for resolving the qualification

regarding non-payment of foreign and local loans on NCC's 1984 and subsequent audit reports.

#### 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) NCC shall have failed to perform any of its obligations under the Project Agreement.

(b) 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 NCC will be able to perform its obligations under the Project Agreement.

(c) The Government Act, Chapter 265 of the Laws of Kenya shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of NCC to perform any of its obligations under the Project Agreement.

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

(e) (i) Subject to subparagraph (ii) of this paragraph:

(A) The right of the Borrower to withdraw the proceeds of any loan made to the Borrower for the financing of the Project shall have been suspended, cancelled or terminated in whole or in part, pursuant to the terms of the agreement providing therefor, or

(B) any such loan shall have become due and payable prior to the agreed maturity thereof.

(ii) Subparagraph (i) of this paragraph shall not apply if the Borrower establishes to the satisfaction of the Association that: (A) such suspension, cancellation, termination or maturing is not caused by the failure of the Borrower to perform any of its obligations under such agreement; and (B) adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.

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

(a) the event specified in paragraph (a) 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;

(b) the events specified in paragraphs (c) and (d) of Section 5.01 of this Agreement shall occur; and

(c) the events specified in paragraph (e)(i)(B) of Section 5.01 of this Agreement shall occur, subject to the proviso of paragraph (e)(ii) of that Section.

#### 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 Subsidiary Loan Agreement has been executed on behalf of the Borrower and NCC; and

(b) all conditions precedent to the effectiveness of the OECF Loan, the EIB Loan, the AfDB Loan and AfDF Loan, other than the effectiveness of this Agreement have been fulfilled.

Section 6.02. The following are specified as additional matters, 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:

(a) that the Project Agreement has been duly authorized or ratified by NCC, and is legally binding upon NCC in accordance with its terms; and

(b) that the Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and NCC and is legally binding upon the Borrower and NCC in accordance with its 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

Representative of the Borrower; Addresses

Section 7.01. The Minister of the Borrower at the time responsible for Finance 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 30007  
Nairobi  
Kenya

Cable address:

FINANCE  
Nairobi

Telex:

22921 MINFINKE  
Nairobi

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)

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 KENYA

By /s/ Richard Okwaro  
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Michael Gillette  
Acting Regional Vice President  
Africa

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) Civil Works:		
(a) Extension of Water Treatment Plant under Part A.2 (i) of the Project and Construction of Treated Water Reser- voirs under Part A.2 (iii) of the Project	7,130,000	100% of foreign expenditures and 30% of local expenditures
(b) Rehabilitation and Extension of Dandora Sewerage Treatment Plant under Part B.1 of the Project	7,600,000	100% of foreign expenditures and 30% of local expenditures
Category	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(2) Supply and Con- struction of:		
(a) Distribution system exten- sion under Part A.2 (iii) of the Project	8,720,000	100% of foreign expenditures and 30% of local expenditures
(b) In-filling	230,000	100% of foreign

	mains, public waterpoints and Improvement to sanitation facilities under Part C.2 of the Project		expenditures and 70% of local expenditures
(3)	Supply and Installation of:		
(a)	Electrical and mechanical equipment for Gigiri Pumping Station under Part A.2 (iii) of the Project and for extension of the Water Treatment Plant under Part A.2 (i) of the Project	7,580,000	100% of foreign expenditures and 30% of local expenditures
(b)	Instrumentation, Control and Automation under Part A.2 (iv) of the Project	1,440,000	100%
		Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(c)	Electrical and Mechanical Equipment for extension of Dandora Seweje Treatment Plant under Part B.1 of the Project	2,580,000	100% of foreign expenditures and 30% of local expenditures
(4)	Supply of:		
(a)	Vehicles, Water Meters and other Equipment under Parts C.1 and E.4 of the Project	380,000	100% of foreign expenditures and 70% of local expenditures
(b)	Training Equipment and Materials and Office Technology Equipment under Part E.2 (ii) and (iv) of the Project	230,000	100% of foreign expenditures and 90% of local expenditures
(5)	Consultants' and advisory services under Parts D and E	7,960,000	100% of foreign and 60% of local expen-



Category	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(6) Training under Part E.2 (iii) of the Project	380,000	100%
(7) Management Staff Support (salaries and benefits) under Part E.1 of the Project	230,000	100%
(8) Unallocated	4,640,000	
<b>TOTAL</b>	<b>49,100,000</b>	

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; and

(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.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding the equivalent of SDR 3,000,000, may be made in respect of Categories (1) and (5) on account of payments made for expenditures before that date but after April 1, 1989.

## SCHEDULE 2

### Description of the Project

The objectives the Project are to: (i) augment and secure the water supply to Nairobi up to the year 2005; (ii) improve the basic needs provision and health conditions of the urban poor; (iii) maintain sanitation standards in Nairobi and decrease pollution in the recipient rivers; and (iv) provide further institutional strengthening of NCC/WSD.

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: Water Supply

##### 1. Source Works

- (i) Construction of a new dam on the Thika River at Ndakaini.
- (ii) Construction of access roads, raw water intakes, transmission tunnels and main.

##### 2. Water Treatment, Delivery and Distribution System

- (i) Extension of the water treatment plant at Ngethu to increase its total capacity to about 460,000 cubic meters per day.
- (ii) Construction of treated water transmission main from Ngethu to the Kiambu and Gigiri terminal reservoirs.
- (iii) Extensions to the distribution system, including additional reservoirs and the construction of the Gigiri pumping station.
- (iv) Instrumentation, control and automation.
- (v) Construction of staff housing and offices.

Part B: Sewage Treatment Plant Extension

1. Rehabilitation and extension of the Dandora Sewage Treatment Plant to a total capacity of about 90,000 cubic meters per day dry weather flow.
2. Construction of staff housing, offices and amenity buildings.

Part C: Improvement of Water Supply and Waste Disposal Facilities in Low Income Residential Areas

1. Provision of vehicles, water meters and miscellaneous equipment.
2. Construction of infilling mains, public water points, water selling kiosks and the improvements to sanitation facilities.

Part D: Engineering and Construction Supervision

1. Provision of consultancy services for detailed engineering designs of the civil works for the water treatment plant, and the Gigiri Pumping Station, construction supervision for water and sewerage works and for the Dam and Tunnel Safety Panel.
2. Provision of consultancy services for updating and preparation of a Sewage and Sanitation Master Plan.

Part E: Technical Assistance and Training for NCC/WSD

1. Provision of management staff support to NCC/WSD.
2. Implementation of a training program for NCC/WSD, through the provision of: (i) training consultancy services; (ii) training materials and equipment; (iii) technical, financial and managerial courses in Kenya and abroad; and (iv) office technology equipment.
3. Implementation of an appropriate "self accounting" system including asset valuation for WSD through the provision of technical assistance, equipment and materials.
4. Implementation of an environmental action program through the provision of technical assistance and equipment.

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The Project is expected to be completed by June 30, 1995.