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LOAN NUMBER 1832 CH

EMOS Project Agreement

(Water Supply Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

EMPRESA METROPOLITANA DE OBRAS SANITARIAS

Dated

August 15, 1980

Public Disclosure Authorized

EMOS PROJECT AGREEMENT

AGREEMENT, dated *August 15*, 1980, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and EMPRESA METROPOLITANA DE OBRAS SANITARIAS (hereinafter called EMOS).

WHEREAS (A) by the Loan Agreement of even date herewith between Republic of Chile (hereinafter called the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to thirty-eight million dollars (\$38,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that EMOS agree to undertake such obligations toward the Bank as are hereinafter set forth;

(B) by a subsidiary loan agreement (hereinafter called the EMOS Subsidiary Loan Agreement) to be entered into between the Borrower and EMOS, a portion of the proceeds of the loan provided for under the Loan Agreement will be made available to EMOS on the terms and conditions therein set forth; and

WHEREAS EMOS, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations hereinafter set forth;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Agreement, unless the context shall otherwise require, the several terms defined in the Loan Agreement, the Preamble to this Agreement and the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of Part E of the Project

Section 2.01. EMOS shall carry out Part E of the Project described in Schedule 2 to the Loan Agreement with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and water supply and sewage practices and shall provide, promptly as needed, the funds, facilities, services and other resources required for the purpose.

Section 2.02. Except as the Bank may otherwise agree, EMOS shall employ engineering consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to (a) the Bank in order to assist EMOS in the preparation of: bidding documents, tender analysis and construction supervision for Parts E (1), (2), (3) and (7) of the Project; (b) the leak detection program under Part E (4) of the Project; and (c) the sewerage master plan under Part E (8) of the Project.

Section 2.03. Except as the Bank may otherwise agree, procurement of the goods and civil works to be financed out of the proceeds of the Loan for Part E of the Project shall be governed by the provisions of the Schedule to this Agreement.

Section 2.04. (a) EMOS undertakes to insure, or make adequate provision for the insurance of, the imported goods to be financed out of the proceeds of the Loan relented to it by the Borrower against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable by EMOS to replace or repair such goods.

(b) Except as the Bank may otherwise agree, EMOS shall cause all goods and services financed out of the proceeds of the Loan relented to it by the Borrower to be used exclusively for the Project.

Section 2.05. (a) EMOS shall furnish to the Bank, promptly upon their preparation, the plans, specifications, reports, contract documents and work and procurement schedules for Part E of the Project, and any material modifications thereof or additions thereto, in such detail as the Bank shall reasonably request.

(b) EMOS shall: (i) maintain records and procedures adequate to record and monitor the progress of Part E of the Project (including its cost and the benefits to be derived from it), to identify the goods and services financed out of the proceeds of the Loan for Part E of the Project, and to disclose their use in Part E of the Project; (ii) enable the Bank's accredited representatives to visit the facilities and construction sites included in Part E of the Project and to examine the goods financed out of the proceeds of the Loan for Part E of the Project and any relevant records and documents; and (iii) furnish to the Bank on a quarterly basis all such information as the Bank shall reasonably request concerning Part E of the Project, its cost and, where appropriate, the benefits to be derived from it, the expenditure of the proceeds of the Loan for Part E of the Project and the goods and services financed out of such proceeds.

(c) Promptly after completion of the Project, but in any event not later than six months after the Closing Date or such later date as may be agreed for this purpose between EMOS and the Bank, EMOS shall prepare and furnish to the Bank a report, of such scope and in such detail as the Bank shall reasonably request, on the execution and initial operation of Part E of the Project, its cost and the benefits derived and to be derived from it, the performance by EMOS and the Bank of their respective obligations under the EMOS Project Agreement and the accomplishment of the purposes of the Loan with respect to Part E of the Project.

(d) EMOS shall enable the Bank's representatives, on the reasonable request of the Bank, to examine all plants, installations, sites, works, buildings, property and equipment of EMOS and any relevant records and documents.

Section 2.06. EMOS shall duly perform all its obligations under the EMOS Subsidiary Loan Agreement. Except as the Bank may otherwise agree, EMOS shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the EMOS Subsidiary Loan Agreement or any provision thereof.

Section 2.07. (a) EMOS shall, at the request of the Bank, exchange views with the Bank with regard to the progress of Part E of the Project, the performance of its obligations under this Agreement and under the EMOS Subsidiary Loan Agreement and other matters relating to the purposes of the Loan.

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

Section 2.08. EMOS shall take or cause to be taken all such action as shall be necessary to acquire as and when needed all such land and rights in respect of land as shall be required for carrying out Part E of the Project.

ARTICLE III

Management and Operations of EMOS

Section 3.01. EMOS shall at all times manage its affairs, maintain its financial position, plan its future expansion and conduct its business and undertaking, all in accordance with sound business, financial and public utility practices, and under the supervision of experienced and competent management assisted by adequate and competent staff.

Section 3.02. EMOS shall:

(a) at all times take all necessary steps to maintain its existence and its right to carry on operations, and to acquire and retain all rights, powers, privileges and franchises which are necessary or useful for the purpose of complying with its obligations under this Agreement or for the efficient conduct of its business and undertaking;

(b) at all times operate and maintain the plants, machinery, equipment and other property owned or operated by it and promptly make all necessary repairs and renewals thereof, all in accordance with sound engineering and public utility practices; and

(c) not sell, lease, transfer or otherwise dispose of any of the property or assets owned or operated by it which are necessary or useful for the efficient conduct of its business and undertaking.

Section 3.03. (a) EMOS shall take out and maintain with responsible insurers, or make other provisions for, insurance

against such risks and in such amounts as shall be consistent with practices appropriate for water supply and sewerage operations in the territories of the Borrower.

(b) In addition to its obligations under paragraph (a) of this Section, EMOS shall: (i) pursuant to terms of reference satisfactory to the Bank and the Borrower, carry out a study on matters related to its insurance program; and (ii) by December 31, 1981 or such later date as may be acceptable to the Bank, deliver such study to the Bank for its comments.

Section 3.04. By June 30, 1981 or such later date as may be acceptable to the Bank, EMOS shall deliver to the Bank for its comments the studies presently being undertaken by EMOS with respect to its tariffs, its accounting system, its management of inventory and its income taxes.

ARTICLE IV

Financial Covenants

Section 4.01. EMOS shall maintain records adequate to reflect in accordance with consistently maintained appropriate accounting practices its operations and financial condition.

Section 4.02. EMOS shall: (i) have its accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year, beginning with its fiscal year commencing January 1, 1980, audited, in accordance with generally accepted auditing principles consistently applied, by independent auditors acceptable to the Bank; (ii) furnish to the Bank as soon as available, but in any case not later than June 30, 1981 for its fiscal year ending December 31, 1980, and not later than four months after the end of each such year thereafter, (A) certified copies of its financial statements for such year as so audited and (B) the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and (iii) furnish to the Bank such other information concerning the accounts and financial statements of EMOS and the audit thereof as the Bank shall from time to time reasonably request.

Section 4.03. EMOS shall take all measures necessary in order to ensure that by December 31, 1980 its accounts receivable, net of a reasonable provision for bad debts, do not exceed three

months of billings and that by December 31, 1981 and thereafter its accounts receivable do not exceed two months of billings.

Section 4.04. Except as the Bank may otherwise agree, EMOS shall take all such action (including action with respect to the filing of appropriate applications with respect to the setting or adjustment of its rates for its water supply and sewerage services) as shall be necessary or advisable to cause its rates for such services to be set and maintained at such levels as will produce revenues which shall be sufficient, after covering its operating costs, taxes and depreciation charges, to enable it to earn an annual return at a rate of not less than 3.0 per cent for the year 1981, not less than 4.0 per cent for the years 1982, 1983 and 1984, not less than 4.5 per cent for the year 1985, and not less than 5.0% for each year thereafter.

For purposes of this Section:

(a) "rate of return" means the operating income of EMOS generated during one year divided by the average of the net fixed assets at the end of such year and of such assets at the end of the previous year;

(b) "operating income" means the operating revenues of EMOS less: (i) the operating costs of EMOS; (ii) all income and value added taxes levied on EMOS; and (iii) provision for depreciation at an annual rate of not less than 2.5% of the revalued gross fixed assets of EMOS in service;

(c) "operating revenues" means all the revenues of EMOS related to its provision of water supply and sewerage services, including connection fees and the Borrower's value added tax;

(d) "operating costs" means all the administrative, commercial and operating expenses of EMOS related to its provision of water supply and sewerage services, including any taxes paid by EMOS but excluding interest and other charges on debt;

(e) "gross fixed assets" means the gross value of the fixed assets of EMOS in operation at the end of any year, excluding the value of assets donated by developers or consumers; it being agreed that the value of each asset and its depreciation shall be revalued annually in a proportion at least equal to the corresponding variation of the Borrower's Consumer Price Index (Indice de Precios al Consumidor) published by the Borrower's Instituto Nacional de Estadística; and

(f) "net fixed assets" means the "gross fixed assets" less their accumulated, revalued depreciation.

ARTICLE V

Effective Date; Termination; Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

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

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Bank:

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

Cable address:

Telex:

INTBAFRAD
Washington, D.C.

440098 (ITT)
248423 (RCA) or
64145 (WUI)

For EMOS:

Empresa Metropolitana de
Obras Sanitarias
Bulnes 129
Santiago
Chile

Cable address:

Telex:

EMOS
Bulnes 129
Santiago

40777 EMOS

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 EMOS may be taken or executed by the General Manager of EMOS or such other person or persons as such General Manager shall designate in writing, and EMOS shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in their respective names in the

District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

151 Eugenio F. Lari

By

Acting Regional Vice President
Latin America and the Caribbean

EMPRESA METROPOLITANA DE OBRAS SANITARIAS

151 Jose Miguel Barros

By

Authorized Representative

SCHEDULE

Procurement

A. International Competitive Bidding

1. Except as provided in Part C hereof, goods and civil works shall be procured under contracts awarded in accordance with procedures consistent with those set forth in the "Guidelines for Procurement under World Bank Loans and IDA Credits" published by the Bank in March 1977 (hereinafter called the Guidelines), on the basis of international competitive bidding as described in Part A of the Guidelines.
2. For goods and works to be procured on the basis of international competitive bidding, and in addition to the requirements of paragraph 1.2 of the Guidelines, EMOS shall prepare and forward to the Bank as soon as possible, and in any event not later than 60 days prior to the date of availability to the public of the first tender or prequalification documents relating thereto, as the case may be, a general procurement notice, in such form and detail and containing such information as the Bank shall reasonably request; the Bank will arrange for the publication of such notice in order to provide timely notification to prospective bidders of the opportunity to bid for the goods and works in question. EMOS shall provide the necessary information to update such notice annually so long as any goods or works remain to be procured on the basis of international competitive bidding.
3. To the extent practicable, identical or similar items shall be grouped for purposes of bidding so as to permit bulk procurement.
4. For the purpose of evaluation and comparison of bids for the supply of goods to be procured on the basis of international competitive bidding: (i) bidders shall be required to state in their bid the c.i.f. (port of entry) price for imported goods, or the ex-factory price or off-the-shelf price of other goods offered in such bid; and (ii) customs duties and other import taxes levied in connection with the importation, or the sales and similar taxes levied in connection with the sale or delivery, pursuant to the bid, of the goods shall not be taken into account in the evaluation of the bids.

B. Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A of this Schedule, goods manufactured in the territory of the Borrower may be granted a margin of preference in accordance with, and subject to, the following provisions:

1. All bidding documents for the procurement of goods shall clearly indicate any preference which will be granted, the information required to establish the eligibility of a bid for such preference and the following methods and stages that will be followed in the evaluation and comparison of bids.

2. After evaluation, responsive bids will be classified in one of the following three groups:

(1) Group A: bids offering goods manufactured in the territory of the Borrower if the bidder shall have established to the satisfaction of EMOS and the Bank that the manufacturing cost of such goods includes a value added in the territory of the Borrower equal to at least 20% of the ex-factory bid price of such goods.

(2) Group B: all other domestic bids.

(3) Group C: bids offering any other goods.

3. In order to determine the lowest evaluated bid of each group, all evaluated bids in each group shall first be compared among themselves, without taking into account customs duties and other import taxes levied in connection with the importation, and sales and similar taxes levied in connection with the sale or delivery, pursuant to the bids, of the goods. Such lowest evaluated bids shall then be compared with each other, and if, as a result of this comparison, a bid from group A or group B is the lowest, it shall be selected for the award.

4. If, as a result of the comparison under paragraph 3 above, the lowest bid is a bid from group C, all group C bids shall be further compared with the lowest evaluated bid from group A after adding to the evaluated bid price of the imported goods offered in each group C bid, for the purpose of this further comparison only, an amount equal to: (i) the amount of customs duties and other import taxes which a non-exempt importer would

have to pay for the importation of the goods offered in such group C bid; or (ii) 15% of the c.i.f. bid price of such goods if said customs duties and taxes exceed 15% of such price. If the group A bid in such further comparison is the lowest, it shall be selected for the award; if not, the bid from group C which as a result of the comparison under paragraph 3 is the lowest evaluated bid shall be selected.

C. Other Procurement Procedures

1. Contracts for civil works estimated to cost less than \$1,000,000 but more than \$50,000 may be procured on the basis of competitive bidding advertised locally in accordance with procedures acceptable to the Bank; provided, however, that the price of the contracts so procured shall not, in the aggregate, exceed \$4,000,000.

2. Contracts for the purchase of equipment and materials estimated to cost less than \$200,000 but more than \$50,000 may be procured on the basis of competitive bidding advertised locally in accordance with procedures acceptable to the Bank; provided, however, that the price of the contracts so procured shall not, in the aggregate, exceed \$4,000,000.

3. Contracts for civil works or for the purchase of equipment and materials estimated to cost less than \$50,000 may be procured on the basis of price quotations from not less than three independent contractors or suppliers in accordance with procedures acceptable to the Bank; provided, however, that the price of the contracts so procured shall not, in the aggregate, exceed \$1,000,000.

D. Review of Procurement Decisions by the Bank

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

With respect to all contracts governed by the provisions of Part A of this Schedule:

(a) Before bids are invited, EMOS shall furnish to the Bank, for its comments, the text of the invitations to bid and the specifications and other bidding documents, together with a description of the advertising procedures to be followed for the bidding, and shall make such modifications in the said documents

or procedures as the Bank shall reasonably request. Any further modification to the bidding documents shall require the Bank's concurrence before it is issued to the prospective bidders.

(b) After bids have been received and evaluated, EMOS shall, before a final decision on the award is made, inform the Bank of the name of the bidder to which it intends to award the contract and shall furnish to the Bank, in sufficient time for its review, a detailed report on the evaluation and comparison of the bids received, and such other information as the Bank shall reasonably request. The Bank shall, if it determines that the intended award would be inconsistent with the Guidelines or this Schedule, promptly inform EMOS and state the reasons for such determination.

(c) The terms and conditions of the contract shall not, without the Bank's concurrence, materially differ from those on which bids were asked.

(d) Two conformed copies of the contract shall be furnished to the Bank promptly after its execution and prior to the submission to the Bank of the first application for withdrawal of funds from the Loan Account in respect of such contract.

2. With respect to each contract not governed by the preceding paragraph, EMOS shall furnish to the Bank, promptly after its execution and prior to the submission to the Bank of the first application for withdrawal of funds from the Loan Account in respect of such contract, two conformed copies of such contract, together with the analysis of the respective bids, recommendations for award and such other information as the Bank shall reasonably request. The Bank shall, if it determines that the award of the contract was not consistent with the Guidelines or this Schedule, promptly inform EMOS and state the reasons for such determination.

3. For all contracts financed out of the proceeds of the Loan costing the equivalent of \$200,000 or more, EMOS shall advise the Bank of any material modification or waiver of the terms and conditions thereof or the issuing of any one or more change orders pursuant thereto which would increase the cost of the contract by more than five per cent in the case of contracts for the supply of goods, and by more than ten per cent in the case of contracts for civil works as well as the reasons therefor. If it determines that any such action is or would be inconsistent with the provisions of this Agreement, the Bank shall promptly inform EMOS and state the reasons for its determination.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CERTIFICATE

I hereby certify that the foregoing is a true copy of the original in the archives of the International Bank for Reconstruction and Development.

In witness whereof I have signed this Certificate and affixed the Seal of the Bank thereunto this 15th day of Aug., 198 0.


FOR SECRETARY