

CONFORMED COPY

LOAN NUMBER 4507-CO

Project Agreement

(Cartagena Water Supply, Sewerage and Environmental Management Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

and

AGUAS DE CARTAGENA S.A., E.S.P.

Dated December 10, 1999

LOAN NUMBER 4507-CO

PROJECT AGREEMENT

AGREEMENT, dated December 10, 1999, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and AGUAS DE CARTAGENA S.A., E.S.P. (ACUACAR).

WHEREAS (A) by the Loan Agreement of even date herewith between the Bank and Distrito Turístico y Cultural de Cartagena de Indias (the Borrower), the Bank has agreed to make a loan to the Borrower in the amount of eighty-five million Dollars (\$85,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that ACUACAR agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by a subsidiary agreement to be entered into between the Borrower and ACUACAR, the proceeds of the loan provided for under the Loan Agreement will be made available to ACUACAR on the terms and conditions set forth in said agreement; and

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

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Loan Agreement and the General Conditions (as so defined) have the respective meanings therein set forth, when used in this Agreement.

ARTICLE II

Execution of the Project

Section 2.01. (a) ACUACAR declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering, public utility and environmental practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation to the provisions of paragraph (a) above, ACUACAR shall pay, out of its own funds, for the services required for the design and supervision of the activities under Parts A and B of the Project, and for the overall management of the Project, such services and management activities estimated to cost the equivalent of \$4,600,000 in the aggregate.

Section 2.02. Except as the Bank shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. (a) ACUACAR shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project.

(b) For the purposes of Section 9.08 of the General Conditions and without limitation thereto, ACUACAR shall:

- (i) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Bank and ACUACAR, a plan for the future operation of the Project; and
- (ii) afford the Bank a reasonable opportunity to exchange views with ACUACAR on said plan.

Section 2.04. ACUACAR shall exercise its rights, and comply with its obligations under the Subsidiary Agreement in such a manner as to protect the interests of ACUACAR and the Bank and to accomplish the purposes of the Project, and, except as the Bank shall otherwise agree, ACUACAR shall not assign, amend, abrogate, waive or fail to enforce the Subsidiary Agreement, or any provision thereof.

Section 2.05. (a) ACUACAR shall, at the request of the Bank, exchange views with the Bank, the Borrower and the Guarantor, through its National Planning Department, with regard to progress of the Project, the performance of its obligations under this Agreement, and other matters relating to the purposes of the Project.

(b) ACUACAR shall promptly inform the Bank, the Borrower and the Guarantor, through its National Planning Department, of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of Project, or the performance by ACUACAR of its obligations under this Agreement.

Section 2.06. ACUACAR shall maintain, until at least the completion of the Project, a unit with staff, responsibilities and functions satisfactory to the Bank to be in charge, within ACUACAR, of the management, coordination and implementation of the Project.

Section 2.07. ACUACAR shall carry out, as set forth in the Environmental Management Plan prepared by ACUACAR in April 1999, the measures required to mitigate the adverse environmental impacts of the works under Part A of the Project.

Section 2.08. ACUACAR shall: (a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, based on the indicators and corresponding targets set forth in the letter from the Borrower and ACUACAR to the Bank, dated June 2, 1999, the carrying out of the Project, the achievement of the objectives thereof, and the financial and operational performance of ACUACAR;

(b) prepare, under terms of reference satisfactory to the Bank, and furnish to the Bank, in the 35th month after the date of this Agreement, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of the

Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Bank, the Guarantor, through its National Planning Department, and the Borrower, in the 36th month after the date of this Agreement, or such later date as the Bank shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Bank's views on the matter.

ARTICLE III

Management and Operations of ACUACAR

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

Section 3.02. ACUACAR shall at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial, public utility and environmental practices.

Section 3.03. ACUACAR shall take out and maintain with responsible insurers insurance against such risks and in such amounts as shall be consistent with appropriate practice.

ARTICLE IV

Financial and Other Covenants

Section 4.01. (a) ACUACAR shall maintain a financial management system, including records and accounts, and prepare financial statements, all in accordance with accounting standards acceptable to the Bank, consistently applied, adequate to reflect its operations and financial condition and to register separately the operations, resources and expenditures related to the Project.

(b) ACUACAR shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with auditing standards acceptable to the Bank, 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 five months after the end of each such year: (A) certified copies of the financial statements referred to in paragraph (a) of this Section, for such year as so audited; and (B) an opinion on such statements and 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 such records, accounts and financial statements, and the audit thereof, and concerning said auditors, as the Bank may from time to time reasonably request.

Section 4.02. ACUACAR shall prepare, in accordance with guidelines acceptable to the Bank, and furnish to the Bank, the Borrower and the Guarantor, through its National Planning Department, not later than 45 days after the end of each calendar quarter, a Project management report for such period, which:

(a) (i) sets forth actual sources and applications of funds for the Project, both cumulatively and for the period covered by said report, and projected sources and applications of funds for the Project for the six-month period following the period covered by said report; and (ii) shows separately expenditures financed out of the proceeds of the Loan during the period covered by said report and expenditures proposed to be financed out of the proceeds of the Loan during the six-month period following the period covered by said report;

(b) (i) describes physical progress in Project implementation, both cumulatively and for the period covered by said report; (ii) explains variances between the actual and previously forecast implementation targets; and (iii) includes a comparison between the levels for the indicators referred to in Section 2.07 (a) of this Agreement, during the period covered by said report, and the corresponding targets referred to in such Section 2.07 (a); and

(c) sets forth the status of procurement under the Project and expenditures under contracts financed out of the proceeds of the Loan, as at the end of the period covered by said report.

Section 4.03. ACUACAR shall, at least during the execution of the Project, exchange views with the Bank on any proposal to change the level or structure of ACUACAR's tariffs for the provision of water and sewerage services, before putting into effect any such tariff change.

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 ACUACAR thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify ACUACAR thereof.

Section 5.03. 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, NW
Washington, DC 20433
United States of America

Cable address:

INTBAFRAD
Washington, D.C.

Telex:

248423 (MCI) or
64145 (MCI)

For ACUACAR:

Aguas de Cartagena S.A., E.S.P.
Av. del Arsenal 24-02, Getsemani
Cartagena de Indias, Bolívar
Colombia

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

Section 6.03. This Agreement may be executed in several counterparts, each of

which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Andrés Solimano

Acting Regional Vice President
Latin America and the Caribbean

AGUAS DE CARTAGENA S.A., E.S.P.

By /s/ Luis García Berenger

Authorized Representative

SCHEDULE 1

Procurement

Section I. Procurement of Goods and Works

Part A: General

Goods and works shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines) and the following provisions of this Section, as applicable.

Part B: International Competitive Bidding

1. Except as 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 1 thereto.

2. The following provisions shall apply to the procurement undertaken in accordance with paragraph 1 above:

(a) Prequalification

Bidders for the works of construction of the submarine outfall under Part E of the Project shall be prequalified in accordance with the provisions of paragraphs 2.9 and 2.10 of the Guidelines.

(b) Preference for domestically manufactured goods

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 Guarantor.

(c) Notification and Advertising

The invitation to bid for each contract for goods or works estimated to cost \$10,000,000 equivalent or more shall be advertised in accordance with the procedures applicable to large contracts under paragraph 2.8 of the Guidelines.

(d) Grouping of contracts

To the extent practicable, contracts for goods and works shall be grouped in bid packages estimated to cost, respectively, \$250,000 and \$5,000,000 equivalent or more each.

Part C: Other Procurement Procedures

1. National Competitive Bidding

Goods (other than computers and vehicles) and works estimated to cost less than \$250,000 and \$5,000,000 equivalent, respectively, per contract, and in an aggregate amount not exceeding the equivalent of \$20,000,000 in the case of works, shall be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines. Bidding documents, acceptable to the Bank and in a standardized form for the Project, shall be used in the procurement under this Part C.1. Without limitation to any other provision of this Schedule or the Guidelines, the following shall apply to the procurement of goods and/or works to be undertaken pursuant to this Part C.1:

(a) All bidders, irrespective of whether they are foreigners or Colombians, will be treated equally and, particularly, no preference will be granted to any bidder or group of bidders for bid evaluation purposes. Bidders shall be allowed to submit their bids by hand or through the post office or private mailing services. There shall not be any requirement for any bidder to show evidence of the bidder's registration in any public registry, chamber of commerce or similar, whether in Colombia or elsewhere, or to appoint a representative domiciled in Colombia, unless and until such bidder is awarded the corresponding contract.

(b) Bids shall be opened in a public meeting to which bidders and their representatives shall be allowed to attend if they so wish. Date, time and place for the opening meeting shall be set forth in the bidding documents. Bid opening shall coincide with, or take place promptly, after the final date and time of the period for bid submission stipulated in the bidding documents.

(c) Each bid shall be evaluated and the corresponding contract awarded to the responsive bidder who meets appropriate technical and financial standards of capability and whose bid has been determined to be the lowest evaluated bid. Such determination shall be made exclusively on the basis of the specifications, conditions and evaluation criteria stipulated in the bidding documents. If any factor additional to the amount or amounts of each bid is to be considered in bid evaluation, such factor or factors and the quantified manner on which they will be applied for purposes of determining the lowest evaluated bid shall be precisely stipulated in the bidding documents. For purposes of bid evaluation and comparison, the only bid amount or amounts to be used as a factor shall be the bid amount or amounts as quoted in the corresponding bid, including correction of arithmetic errors.

(d) The provisions of paragraph 2.46 of the Guidelines shall fully apply and, more specifically, bids shall not be disclosed to persons other than the persons officially charged with the task of comparing and/or evaluating the bids while they are performing their official duties, without the corresponding bidder's written authorization. Moreover, bidders shall not be required to provide such authorization as a condition to be entitled to bid. This confidentiality requirement shall apply until the award of contract is notified to the successful bidder. Thereafter, confidentiality of the bids shall be limited to those bid portions for which confidentiality has been specifically requested by the bidder in question.

2. Limited International Bidding

Computers and vehicles estimated to cost less than \$250,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraph 3.2 of the Guidelines.

3. Shopping

Goods estimated to cost less than \$50,000 equivalent per contract, up to an aggregate amount equivalent to \$1,000,000, may be procured under contracts awarded on the basis of national or international shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

4. Direct Contracting

Remote control equipment of a proprietary nature may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraph 3.7 of the Guidelines.

5. Procurement of Small Works

Works estimated to cost the equivalent of \$400,000 or less per contract, up to

an aggregate amount equivalent to \$2,000,000, may be procured under lump-sum, fixed-price contracts awarded on the basis of quotations obtained from three qualified domestic contractors in response to a written invitation. The invitation shall include a detailed description of the works, including basic specifications, the required completion date, a basic form of agreement acceptable to the Bank, and relevant drawings, where applicable. The award shall be made to the contractor who offers the lowest price quotation for the required work, and who has the experience and resources to complete the contract successfully.

Part D: Review by the Bank of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to prequalify or to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Bank for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 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 Bank, and with the provisions of said paragraph 1.

2. Prior Review

(a) With respect to: (i) the contracts for goods and works to be awarded pursuant to the provisions of Parts B and C.2 of this Section I; and (ii) the first three contracts for works to be awarded pursuant to the provisions of Part C.1 of this Section I, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

(b) With respect to each contract to be procured in accordance with the procedures referred to in C.4 of this Section I, the following procedures shall apply: (i) prior to the execution of any contract, ACUACAR shall provide to the Bank a copy of the specifications of the goods to be acquired and the draft contract; and (ii) the procedures set forth in paragraphs 2 (f), 2 (g) and 3 of Appendix 1 to the Guidelines shall apply.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part D, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

Part A: General

Consultants' services shall be procured in accordance with the provisions of the Introduction and Section IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Bank in January 1997 and revised in September 1997 and January 1999 (the Consultant Guidelines) and the following provisions of Section II of this Schedule.

Part B: Quality- and Cost-based Selection

Except as otherwise provided in Part C of this Section, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Guidelines, paragraph 3 of Appendix 1 thereto, Appendix 2 thereto, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality- and cost-based selection of consultants.

Part C: Other Procedures for the Selection of Consultants

1. Quality-based Selection

Consultants' services for detailed design of the main wastewater conveyance system, the wastewater treatment plant and the submarine outfall, referred to in Parts C, D and E of the Project, respectively, shall be procured under a contract awarded in accordance with the provisions of paragraphs 3.1 through 3.4 of the Consultant Guidelines.

2. Selection Under a Fixed Budget

Consultants' services estimated to cost less than \$200,000 equivalent may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1

and 3.5 of the Consultant Guidelines.

3. Selection Based on Consultants' Qualifications

Consultants' services estimated to cost less than \$50,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.7 of the Consultant Guidelines.

4. Individual Consultants

Consultants' services for tasks that meet the requirements set forth in paragraph 5.1 of the Consultant Guidelines shall be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.1 through 5.3 of the Consultant Guidelines.

Part D: Review by the Bank of the Selection of Consultants

1. Selection Planning

Prior to the issuance to consultants of any requests for proposals, the proposed plan for the selection of consultants under the Project shall be furnished to the Bank for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Consultant Guidelines. Selection of all consultants' services shall be undertaken in accordance with such selection plan as shall have been approved by the Bank, and with the provisions of said paragraph 1.

2. Prior Review

(a) With respect to each contract for the employment of consulting firms estimated to cost the equivalent of \$50,000 or more, the procedures set forth in paragraphs 1, 2 (other than the third subparagraph of paragraph 2 (a)) and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to each contract for the employment of individual consultants estimated to cost the equivalent of \$50,000 or more, the qualifications, experience, terms of reference and terms of employment of the consultants shall be furnished to the Bank for its prior review and approval. The contract shall be awarded only after the said approval shall have been given.

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 1 to the Consultant Guidelines shall apply, provided, however, that the terms of reference for the respective assignments shall be subject to the Bank's prior review and approval.

