

Public Disclosure Authorized

CONFIRMED COPY

LOAN NUMBER 1541 PO

Project Agreement

(Lisbon Region Water Supply Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

EMPRESA PUBLICA DAS AGUAS
DE LISBOA

Dated June 6, 1978

Public Disclosure Authorized

PROJECT AGREEMENT

AGREEMENT, dated June 6, 1978, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and EMPRESA PUBLICA DAS AGUAS DE LISBOA (hereinafter called EPAL).

WHEREAS (A) by the Loan Agreement of even date herewith between Republic of Portugal (hereinafter called the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to forty million dollars (\$40,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that EPAL agree to undertake such obligations toward the Bank as hereinafter set forth;

(B) by a subsidiary loan agreement between the Borrower and EPAL, most of the proceeds of the loan provided for under the Loan Agreement will be made available to EPAL on the terms and conditions therein set forth; and

WHEREAS EPAL, 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 in the Loan Agreement) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. EPAL shall carry out Parts A and B 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 public utility practices and in accordance with the applicable provisions of Schedule 2 to the Loan Agreement.

Section 2.02. Except as the Bank shall otherwise agree, procurement of goods required for Part A or Part B of the Project and civil works required for Part A of the Project, to be financed out of the proceeds of the Loan, shall be governed by the provisions of the Schedule to this Agreement.

Section 2.03. (a) EPAL 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 EPAL to replace or repair such goods.

(b) Except as the Bank may otherwise agree, EPAL 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 2.04. (a) EPAL shall furnish to the Bank, promptly upon their preparation, the plans, specifications, reports, contracts documents and construction and procurement schedules for Parts A and B of the Project, and any material modifications thereof or additions thereto, in such detail as the Bank shall reasonably request.

(b) EPAL: (i) shall maintain records and procedures adequate to record and monitor the progress of Parts A and B of the Project (including its cost and, where appropriate, the benefits to be derived from it) and to identify the goods and services financed out of the proceeds of the Loan relented to it by the Borrower, and to disclose their use in Part A or Part B of the Project; (ii) shall, without limitation upon the provisions of paragraph (c) of this Section, enable the Bank's representatives to visit the facilities and construction sites included in Part A or Part B of the Project and to examine the goods financed out of such proceeds and any relevant records and documents; and (iii) shall furnish to the Bank at regular intervals all such information as the Bank shall reasonably request concerning Part A or Part B of the Project, its cost and, where appropriate, the benefits to be derived from it, the expenditure of the proceeds of the Loan so relented to it and the goods and services financed out of such proceeds.

(c) EPAL shall enable the Bank's representatives to examine all plants, installations, sites, works, buildings, property and equipment of EPAL and any relevant records and documents.

(d) 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 EPAL and the Bank, EPAL 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 the Project, its cost and the benefits derived and to be derived from it, the performance by EPAL and the Bank of their respective obligations under the Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.05. EPAL shall duly perform all its obligations under the Subsidiary Loan Agreement and the Other Financing Agreement(s). Except as the Bank shall otherwise agree, EPAL shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Loan Agreement or the Other Financing Agreement(s) or any provision thereof.

Section 2.06. (a) EPAL shall, at the request of the Bank, exchange views with the Bank with regard to the progress of Parts A and B of the Project, the performance of its obligations under this Agreement and under the Subsidiary Loan Agreement and the Other Financing Agreement(s) and other matters relating to the purposes of the Loan.

(b) EPAL shall promptly inform the Bank of any condition which interferes or threatens to interfere with, the progress of Part A or Part B of the Project, the accomplishment of the purposes of the Loan, or the performance by EPAL of its obligations under this Agreement, under the Subsidiary Loan Agreement and under the Other Financing Agreement(s).

ARTICLE III

Management and Operations of EPAL

Section 3.01. EPAL shall take out and maintain with responsible insurers, or make other provisions satisfactory to the Bank for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

Section 3.02. EPAL shall at all times manage its affairs, improve its financial position, maintain adequate levels of working capital, plan its future expansion and carry on its operations in accordance with appropriate financial, administrative, engineering and public utility practices under the supervision of qualified and experienced management assisted by competent staff. Not less than once each year, by a date to be determined in consultation between the Borrower and the Bank and notified to EPAL, EPAL shall establish staffing, training, system operation and financial targets for performance acceptable to the Bank for the next ensuing year and shall report to the Borrower and the Bank quarterly during such year on its performance against such targets and on such other matters as the Bank shall reasonably request.

Section 3.03. EPAL shall by December 31, 1978 establish and staff in consultation with the Bank a suitable planning department that shall be charged, to the extent EPAL is permitted by law, with the exclusive responsibility for all water supply planning in EPAL's service area. By June 30, 1979, EPAL shall establish to the satisfaction of the Bank that its planning department has developed an adequate capability to examine, and to propose improvements in, EPAL's organizational arrangements and productivity.

Section 3.04. EPAL shall fill its staff positions of financial director and commercial director with, and thereafter maintain in such positions, qualified and experienced persons.

Section 3.05. EPAL shall maintain its existence and right to carry on its operations, and shall take all steps necessary to acquire, maintain and renew all interests in land and other properties and all rights, powers, privileges and franchises which are necessary or useful in the carrying out of Parts A and B of the Project or in the conduct of its business.

Section 3.06. (a) EPAL shall at all times operate and maintain its plants, facilities, equipment and other property, and promptly as required make all necessary repairs and renewals thereof, in accordance with appropriate engineering and public utility practices.

(b) Except as the Bank shall otherwise agree, EPAL shall not sell, lease, transfer or otherwise dispose of any of its property or assets which shall be required for the efficient operation of its business and undertaking.

ARTICLE IV

Financial Covenants

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

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

Section 4.03. By September 30, 1978, EPAL shall have taken adequate steps to strengthen its system of internal financial control following the recommendations relating thereto made by the auditors of its accounts for fiscal year 1977.

Section 4.04. (a) EPAL shall take all steps necessary on its part (including without limitation adjustment of the levels and structure of its tariffs) to ensure that for each of its fiscal years its gross revenues shall be at least sufficient to cover:

- (i) all EPAL's expenses of operation, administration (including adequate maintenance and taxes, if any, but excluding provision for depreciation) and debt service; and
- (ii) not later than its fiscal year 1983, in addition, a reasonable contribution towards the cost of EPAL's capital investments as determined from time to time in consultation with the Bank.

(b) EPAL hereby confirms that it is its duly established policy that (i) charges to consumers able to afford it shall be not less than the incremental costs of service, (ii) EPAL's

earnings shall be sufficient to provide a reasonable return on the capital investment (in real terms) devoted to providing its services and (iii) EPAL's net internally generated funds after provision for debt service shall cover a reasonable proportion of its capital investment requirements. EPAL shall, within a reasonable time after completion of the studies included in Part B (2) of the Project, but in any event not later than December 31, 1980, take effective actions, including but not limited to the restructuring and increasing of its tariffs for water and, if under its control, sewerage services, to achieve the objectives of these policies and to ensure compliance with paragraph (a) of this Section.

Section 4.05. Except as the Bank may otherwise agree, EPAL shall not incur any debt unless EPAL's net revenues for the fiscal year next preceding such incurrence or for a later twelve-month period ended prior to such incurrence, whichever amount is greater, shall be at least 1.5 times the maximum debt service for any succeeding fiscal year on all debt, including the debt to be incurred.

For the purposes of this Section and Section 4.04:

(a) The term "debt" shall mean all indebtedness of EPAL, and all guarantees issued by EPAL in respect of indebtedness, maturing by its terms more than one year after the date on which it is originally incurred.

(b) Debt shall be deemed to be incurred on the date of execution and delivery of a contract, loan agreement, guarantee agreement or other instrument providing for such debt.

(c) The term "net revenues" shall mean gross revenues from all sources, adjusted to take account of EPAL's tariffs in effect at the time of the incurrence of debt even though such tariffs were not in effect during the fiscal year or twelve-month period to which such revenues related, less all operating and administrative expenses (including adequate maintenance and taxes, if any) but before provision covering depreciation and interest and other charges on debt.

(d) The term "debt service" shall mean the aggregate amount of amortization (including sinking fund payments, if any), interest and other charges on debt.

(e) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt or, in the absence of such rate of exchange, on the basis of a rate of exchange acceptable to the Bank.

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 EPAL thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms.

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

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:

INTBAFRAD
Washington, D.C.

Telex:

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

For EPAL:

Empresa Publica das Aguas de Lisboa
Avenida da Liberdade 22
Lisbon 2, Portugal

Cable address:

Empresa Publica das Aguas de Lisboa
Avenida da Liberdade 22
Lisbon 2, Portugal

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 EPAL may be taken or executed by the President of the Lisbon Water Supervisory Commission or such other person or persons as the President shall designate in writing, and EPAL 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

By /s/ Martijn Paijmans
Acting Regional Vice President
Europe, Middle East and North Africa

EMPRESA PUBLICA DAS AGUAS DE LISBOA

By /s/ Joao Hall Themido
Authorized Representative

SCHEDULE

Procurement

A. International Competitive Bidding

1. Except as provided in Part B of this Schedule, contracts for the purchase of goods or for civil works shall be procured 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 under the Project, the Borrower 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; and 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. The Borrower 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.

B. Other Procurement Procedures

1. (a) Contracts for civil works estimated to cost the equivalent of \$500,000 or less, and (b) contracts for equipment and materials estimated to cost the equivalent of \$100,000 or less, but limited to \$500,000 in the aggregate; may be awarded on the basis of local competitive bidding procedures acceptable to the Bank, which shall permit the participation of foreign firms on an equal basis with Portuguese firms.

2. Minor works such as replacement of secondary networks, estimated to cost no more than \$50,000 in any particular case, may be carried out by EPAL, under arrangements acceptable to the Bank, provided that the cost of works to be so carried out shall not exceed in the aggregate the equivalent of \$1,000,000.

C. Evaluation and Comparison of Bids for Goods; Preference for Domestic Manufacturers

1. For the purpose of evaluation and comparison of bids for the supply of goods: (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 for domestically manufactured goods; (ii) customs duties and other import taxes on imported goods, and sales and similar taxes on domestically supplied goods, shall be excluded; and (iii) the cost to EPAL of inland freight and other expenditures incidental to the delivery of goods to the place of their use or installation shall be included.

2. Goods manufactured in Portugal may be granted a margin of preference in accordance with, and subject to, the following provisions:

(a) 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.

(b) After evaluation, responsive bids will be classified in one of the following three groups:

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

(2) Group B: all other bids offering goods manufactured in Portugal.

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

(c) All evaluated bids in each group shall be first compared among themselves, excluding any customs duties and other import taxes on goods to be imported and any sales or similar taxes on goods to be supplied domestically, to determine the lowest evaluated bid of each group. 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.

(d) If, as a result of the comparison under paragraph (c) 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 c.i.f. 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 (c) is the lowest evaluated bid shall be selected.

D. Review of Procurement Decisions by the Bank

1. With respect to all contracts for civil works, equipment and materials estimated to cost the equivalent of \$250,000 or more:

(a) Before bids are invited, EPAL 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, EPAL 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, by EPAL's consultants referred to in Section II (1) of Schedule 2 to the Loan Agreement, on the evaluation and comparison of the bids received, together with the recommendations for award of the said consultants 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 EPAL 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 or prequalification invited.

(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 to be financed out of the proceeds of the Loan and not governed by the preceding paragraph, EPAL 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 EPAL and state the reasons for such determination.