

CONFORMED COPY

CREDIT NUMBER 2751 AZ

Project Agreement

(Greater Baku Water Supply Rehabilitation Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

APSHERON REGIONAL JOINT-STOCK WATER COMPANY

Dated July 6, 1995

CREDIT NUMBER 2751 AZ

PROJECT AGREEMENT

AGREEMENT, dated July 6, 1995, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and APSHERON REGIONAL JOINT-STOCK WATER COMPANY (ARWC).

WHEREAS (A) by the Development Credit Agreement of even date herewith between Azerbaijan Republic (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to thirty-eight million eight hundred thousand Special Drawing Rights (SDR 38,800,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that ARWC agree to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by a subsidiary loan agreement to be entered into between the Borrower and ARWC, the proceeds of the credit provided for under the Development Credit Agreement will be relented to ARWC on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS ARWC, in consideration of the Association's entering into the Development Credit 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 Development Credit Agreement, the Preamble to this Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. (a) ARWC declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Credit Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, financial and engineering 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 upon the provisions of paragraph (a) of this Section and except as the Association and ARWC shall otherwise agree, ARWC shall carry out the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement.

Section 2.02. 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 this Agreement.

Section 2.03. ARWC shall carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement.

Section 2.04. ARWC shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Association shall otherwise agree, ARWC shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) ARWC shall, at the request of the Association, exchange views with the Association with regard to the progress of the Project, the performance of its obligations under this Agreement and under the Subsidiary Loan Agreement, and other matters relating to the purposes of the Credit.

(b) ARWC shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Credit, or the performance by ARWC of its obligations under this Agreement and under the Subsidiary Loan Agreement.

Section 2.06 Without limitation upon the provisions of Article IX of the General Conditions, ARWC shall:

(a) prepare, on the basis of guidelines satisfactory to the Association, and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between ARWC and the Association, a plan designed to ensure the continued achievement of the Project's objectives;

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

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

ARTICLE III

Financial Covenants

Section 3.01. (a) ARWC shall maintain or cause to be maintained records and accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of the Project of the departments or agencies of ARWC responsible for carrying out the Project or any part thereof.

(b) ARWC shall:

- (i) have the records and accounts referred to in paragraph (a) of this Section for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association.
- (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year, the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and
- (iii) furnish to the Association such other information concerning said records and accounts and the audit thereof as the Association shall from time to time reasonably request.

Section 3.02. (a) Except as the Association shall otherwise agree, ARWC shall generate for each of its fiscal years after its fiscal year ending on December 31, 1995, total revenues equivalent to not less than the sum of its: (i) total operating expenses; (ii) debt service requirements; (iii) non-cash charges including depreciation; and (iv) taxes and payments in lieu of taxes.

(b) Before June 30 in each of its fiscal years, ARWC shall, on the basis of forecasts prepared by ARWC and satisfactory to the Association, review whether it would meet the requirements set forth in paragraph (a) of this Section in respect of such year and the next following fiscal year and shall furnish to the Association the results of such review upon its completion.

(c) If any such review shows that ARWC would not meet the requirements set forth in paragraph (a) of this Section for ARWC's fiscal years covered by such review, ARWC shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its rates) in order to meet such requirements.

(d) For purposes of this Section:

- (i) The term "total revenues" means the sum of total operating revenues and net non-operating income.
- (ii) The term "total operating revenues" means revenues from all sources related to operations.
- (iii) The term "net non-operating income" means the difference between:
 - (A) revenues from all sources other than those related to operations; and
 - (B) total expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (iv) The term "total expenses" means all expenses related to operations, including administration and adequate maintenance.
- (v) the term "non-cash charges" means all non-cash charges including depreciation on a straight-line basis at a rate of not less than 4% per annum of the average current gross value of ARWC's fixed assets in operation, or other basis acceptable to the Association, but excluding interest and other charges on debt.
- (vi) The average current gross value of ARWC's fixed assets in operation shall be calculated as one half of the sum of the gross value of ARWC's fixed assets in operation at the beginning and at the end of the fiscal year, as valued from time to time in accordance with sound and consistently maintained methods of valuation satisfactory to the Association.
- (vii) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.
- (viii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Guarantor, 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, on the basis of a rate of exchange acceptable to the Association.

Section 3.03. (a) Except as the Association shall otherwise agree, ARWC shall not incur any debt, in addition to the EBRD Loan, unless a reasonable forecast of the revenues and expenditures of ARWC shows that the estimated net revenues of ARWC for each fiscal year during the term of the debt to be incurred shall be at least 1.2 times the estimated debt service requirements of ARWC in such year on all debt of ARWC, including the debt to be incurred.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of ARWC maturing by its terms more than one year after the date on which it is originally incurred.
- (ii) Debt shall be deemed to be incurred: (A) under loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.
- (iii) The term "net revenues" means the difference between:
 - (A) the sum of revenues from all sources related to operations, adjusted to take account of ARWC prices in effect at the time of the incurrence of debt even though they were not in effect during the twelve-month period to which such revenues relate, and net non-operating income; and
 - (B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest, and other charges on debt.
- (iv) The term "net non-operating income" means the difference between:
 - (A) revenues from all sources other than those related to operations; and
 - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (v) The term "debt service requirements" means the aggregate of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.
- (vi) The term "reasonable forecast" means a forecast prepared by ARWC not earlier than twelve months prior to the incurrence of the debt in question, which both the Association and ARWC accept as reasonable and as to which the Association has notified ARWC of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of ARWC.
- (vii) 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, on the basis of a rate of exchange acceptable to the Association.

ARTICLE IV

Effective Date; Termination;
Cancellation and Suspension

Section 4.01. This Agreement shall come into force and effect on the date upon which the Development Credit Agreement becomes effective.

Section 4.02. (a) This Agreement and all obligations of the Association and of ARWC thereunder shall terminate on the earlier of the following two dates:

- (i) the date on which the Development Credit Agreement shall terminate in accordance with its terms; or
- (ii) the date twenty years after the date of this Agreement.

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a) (ii) of this Section, the Association shall promptly notify ARWC of this event.

Section 4.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE V

Miscellaneous Provisions

Section 5.01. 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 Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INDEVAS
Washington, D.C.

Telex:

248423 (RCA)
82987 (FTCC)
64145 (WUI) or
197688 (TRT)

For ARWC:

Apsheron Regional Joint-Stock Water Company
10 Murtuz Mukhtarov Street
Baku 370001
Azerbaijan Republic

Section 5.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of ARWC, or by ARWC on behalf of the ARWC under the Development Credit Agreement, may be taken or executed by the Executive Director or such other person or persons as the Executive Director shall designate in writing, and ARWC shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.03. 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 DEVELOPMENT ASSOCIATION

By /s/ Yukon Huang

Acting Regional Vice President
Europe and Central Asia

APSHERON REGIONAL JOINT-STOCK WATER COMPANY

By /s/ Fikret Yusifov

Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I: Procurement of Goods and Works

Part A: General

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

Part B: International Competitive Bidding

1. Except as 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 goods and works to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B.

(a) Turnkey contract

The rehabilitation of water treatment plants under Part C of the Project shall be carried out under a turnkey contract comprising the design and rehabilitation of the facilities and provision and installation of equipment therefor.

(b) Prequalification

Bidders for the turnkey contract shall be prequalified in accordance with the provisions of paragraphs 2.9 and 2.10 of the Guidelines.

(c) Two-stage bidding procedure

The bidding procedure for the turnkey contract shall be carried out in two stages in accordance with the provisions of paragraph 2.6 of the Guidelines.

(d) 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 Borrower.

Part C: Other Procurement Procedures

1. International Shopping

Goods estimated to cost \$100,000 equivalent or less per contract and \$590,000 equivalent or less in the aggregate, may be procured under contracts awarded on the basis of international shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

2. Procurement for Small Works

Works (including repairs to existing facilities and installation of equipment), estimated to cost \$100,000 equivalent or less per contract, and not to exceed \$4,500,000 in the aggregate, shall be procured under lump sum, fixed price contracts awarded on the basis of quotations obtained from three pre-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 Association, 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 successfully complete the contract. The contractors shall be prequalified in accordance with the provisions of paragraphs 2.9 and 2.10 of the Guidelines.

3. National Shopping

Goods which are locally available, off-the shelf items of small value and standard specifications, estimated to cost \$50,000 equivalent or less per contract and \$700,000 equivalent or less in the aggregate, may be procured under contracts awarded on the basis of at least three price quotations obtained from qualified suppliers or contractors, in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations for bidding, a proposed procurement plan for the Project shall be furnished to the Association 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 Association, and with the provisions of said paragraph 1.

2. Prior Review

With respect to: (a) all contracts for goods and works procured under Section I.B of this Schedule; (b) all prequalification procedures; and (c) the first two contracts for works procured under Section I.C.2 of this Schedule, the procedures set forth in paragraphs 2 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, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

1. Consultants' services shall be procured under contracts awarded in accordance with the provisions of the "Guidelines for the Use of Consultants by the World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981 (the Consultant Guidelines). For complex, time-based assignments, such contracts shall be based on the standard form of contract for consultants' services issued by the Bank, with such modifications thereto as shall have been agreed by the Association. Where no relevant standard contract documents have been issued by the Bank, other standard forms acceptable to the Association shall be used.

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

SCHEDULE 2

Implementation Program

The provisions of this Schedule shall apply for the purposes of Section 2.01 (b)

of this Agreement.

1. ARWC through its CDU shall be responsible for the overall coordination and management of the Project and for the procurement of works, goods and services thereunder. CDU shall be maintained and shall operate with staff and resources necessary for the implementation of its functions and acceptable to the Association.

2. ARWC shall:

(a) not later than December 31, 1995, through CDU, prepare a Corporate Development Plan;

(b) not later than March 31, 1996, submit such a plan to the Association for its review and no objection; and

(c) not later than December 31, 1996, implement all such measures required to ensure the achievement of the objectives of the said plan, taking into consideration the Association's views on the matter.

3. ARWC shall:

(a) not later than September 30, 1995, appoint, with qualifications and functions and under terms of reference acceptable to the Association: (i) a public information officer, to develop a public relations strategy; and (ii) a human resources and training coordinator, to nationalize personnel services and develop training programs; and

(b) not later than December 31, 1995, establish a leakage inspection repair team with qualifications and functions acceptable to the Association.

4. ARWC shall prepare and furnish to the Association semi-annual reports on the progress in the implementation of the Project.

5. ARWC shall:

(a) not later than June 30, 1996, complete a water tariff study, under terms of reference acceptable to the Association, to examine ARWC's water charges policy, tariff structure and rate levels by consumer category;

(b) promptly after completion of the study, furnish to the Association a copy of the findings and recommendations of the study;

(c) afford the Association a reasonable opportunity to comment on the findings and recommendations of the study; and

(d) take into account the findings and recommendations of the study in preparing tariff structure and policies.

6. Not later than November 30 of each year, ARWC shall prepare and submit to the Association for review and comment its proposed budget and tariffs for the following year with supporting financial projections.

7. ARWC shall:

(a) not later than December 31, 1995, prepare an action plan, acceptable to the Association, for the effective recovery of outstanding water bills and thereafter implement all such measures as are required to ensure the achievement of the objectives of the said plan, taking into account the Association's views on the matter;

(b) not later than December 31, 1997, complete an asset valuation study under terms of reference acceptable to the Association; and

(c) establish a program to monitor and implement effective measures to improve efficiency in energy utilization and conservation.

