

CONFORMED COPY

LOAN NUMBER 2774 EC

(Second Guayaquil and Guayas Province Water Supply Project)

between

REPUBLIC OF ECUADOR

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

Dated June 17, 1991

LOAN NUMBER 2774 EC

LOAN ASSUMPTION AGREEMENT

AGREEMENT, dated June 17, 1991, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and the REPUBLIC OF ECUADOR (hereinafter called the Republic).

WHEREAS (A) by a loan agreement between the Bank and Empresa Municipal de Agua Potable de Guayaquil (hereinafter called EMAP-G), dated September 26, 1987 (hereinafter called the Loan Agreement), the Bank made a loan (hereinafter called the Loan) to EMAP-G in an amount in various currencies equivalent to thirty one million dollars (\$31,000,000) on the terms and conditions set forth in the Loan Agreement;

(B) by a guarantee agreement between the Republic and the Bank, dated September 26, 1987 (hereinafter called the Guarantee Agreement), the Republic guaranteed all the obligations of EMAP-G contained or referred to in the Loan Agreement on the terms and conditions set forth in the Guarantee Agreement;

(C) by Law No. 38 passed by the National Congress of the Republic, as published in the Registro Oficial on August 3, 1989 (hereinafter called Law No. 38), and as also reflected in Executive Decree No. 1168 issued by the President of the Republic, as published in the Registro Oficial on January 9, 1990 (hereinafter called Executive Decree No. 1168), the new entity Empresa Provincial de Agua Potable del Guayas (hereinafter called EPAP-G) was created and assumed all the functions, assets and liabilities of EMAP-G;

(D) the Republic and EPAP-G have requested the Bank to agree to: (i) the undertaking by the Republic of all of EMAP-G's covenants, agreements and obligations as Borrower (as distinguished from EMAP-G's role as Project executing agency) contained or referred to in the Loan Agreement, and for that purpose, to enter into this Loan Assumption Agreement; and (ii) the undertaking by EPAP-G of all of EMAP-G's covenants, agreements and obligations as Project executing agency contained or referred to in the Loan Agreement, and for that purpose, to enter into the project agreement with EPAP-G of even date herewith (hereinafter called the Project Agreement); and

(E) the Bank has agreed to the request of the Republic and of EPAP-G;

WHEREAS the Bank and the Republic have agreed on the basis, inter alia, of the foregoing, to enter into this Agreement (hereinafter called the Loan Assumption Agreement) on the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. Except as otherwise provided in Section 3.01 of this Loan Assumption Agreement, wherever used in this Loan Assumption Agreement, unless the context requires otherwise, the several terms defined in the General Conditions Applicable to Loan and Guarantee Agreements of the Bank, dated January 1, 1985, in the Loan Agreement and in the Preamble to this Loan Assumption Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

- (a) "EPAP-G Estatutos" means the by-laws of EPAP-G as amended to the date of this Loan Assumption Agreement;
- (b) "Master Plan" means the master plan referred to in Schedule 2, Part C.1 of the Loan Agreement;
- (c) "sucres" means the legal currency of Ecuador; and
- (d) "water utility serving Guayaquil" means EPAP-G.

ARTICLE II

Loan Assumption

Section 2.01. The Republic hereby assumes, and agrees to carry out and fulfill, all of the covenants, agreements and obligations of EMAP-G as Borrower (as distinguished from EMAP-G's role as Project executing agency) contained or referred to in the Loan Agreement, including, without limitation, all liabilities and obligations of EMAP-G relating to payment of principal, interest and other charges on the Loan, and the premium, if any, on the prepayment of the Loan, as well as including the obligation to maintain the Special Account, all as set forth in the Loan Agreement. The Bank hereby recognizes the succession of the Republic to the rights and obligations of EMAP-G as Borrower (as distinguished from EMAP-G's role as Project executing agency) under the Loan Agreement, and, consequently, the Republic is hereby substituted for EMAP-G as a party to and Borrower

under the Loan Agreement.

Section 2.02. All actions taken, rights acquired or obligations incurred under the Loan Agreement by EMAP-G as Borrower (as distinguished from EMAP-G's role as Project executing agency) shall be valid and binding on the Republic as though the Republic had been EMAP-G and the coming into effect of this Loan Assumption Agreement shall not affect the consequences of any action taken or omitted to be taken by the Bank or EMAP-G as Borrower (as distinguished from EMAP-G's role as Project executing agency) under the Loan Agreement.

ARTICLE III

Amendments to the Loan Agreement

Section 3.01. The Loan Agreement is hereby amended as follows:

1. The first paragraph of the Preamble to the Loan Agreement is amended by substituting the words "(the Borrower or EMAP-G)" in place of the words "(the Borrower)".
2. Paragraphs (c), (d) and (e) of Section 1.02 of the Loan Agreement are deleted.
3. Paragraph (f) of Section 1.02 of the Loan Agreement is redesignated as paragraph (c) and amended by inserting the word "and" at the end thereof.
4. Paragraphs (g), (i) and (j) of Section 1.02 of the Loan Agreement are deleted.
5. Paragraph (h) of Section 1.02 of the Loan Agreement is redesignated as paragraph (d) and amended by substituting a period in place of the semi-colon at the end thereof and by substituting the words "water utility serving Guayaquil" in place of the word "Borrower".
6. Articles III and IV of the Loan Agreement are deleted.
7. Article V of the Loan Agreement is redesignated as Article III.
8. Section 5.01 of the Loan Agreement is redesignated as Section 3.01; its paragraph (a) is amended to read as follows in its entirety: "The Borrower shall maintain separate records and accounts adequate to reflect, in accordance with consistently maintained sound accounting practices, its resources and expenditures in respect of the Project."; its paragraph (b) (i) is amended to read as follows in its entirety: "have its 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 Bank."; its paragraph (b) (ii) is amended to read as follows in its entirety: "furnish to the Bank 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 Bank shall have reasonably requested; and"; and its paragraph (b) (iii) is amended to read as follows in its entirety: "furnish to the Bank such other information concerning said records and accounts, as well as the audit thereof, as the Bank shall from time to time reasonably request."
9. Sections 5.02 and 5.03 of the Loan Agreement are deleted.
10. Articles VI, VII and VIII of the Loan Agreement are deleted.
11. Schedule 1 of the Loan Agreement is amended as follows: (i) the amount of the Loan allocated to Category (2) (b) in the table in paragraph 1 is amended to read "8,700,000" instead of "6,500,000"; (ii) the amount of the Loan allocated to Category (5) in the table in paragraph 1 is amended to read "1,100,000" instead of "3,300,000-"; and (iii) paragraph 3 is amended by deleting the words ": (i)",

by deleting the semi-colon and all text immediately after the words "July 1, 1986" and by inserting a period immediately after the words "July 1, 1986".

12. The first paragraph of the Preamble to Schedule 2 of the Loan Agreement is amended by deleting the words "the Borrower", by substituting the word "the" in place of the word "its" and by inserting the words "of the water utility serving Guayaquil" immediately after the word "management".

13. The second paragraph of the Preamble to Schedule 2 of the Loan Agreement is amended by substituting the words "may be agreed" in place of the words "the Bank and the Borrower may agree".

14. Part A.1 of Schedule 2 of the Loan Agreement is amended by deleting the word "Borrower's".

15. Part A.2 of Schedule 2 of the Loan Agreement is amended by inserting the word "Guayaquil" immediately after the words "in the" and by deleting the words "of the Borrower".

16. Part B.1 of Schedule 2 of the Loan Agreement is amended by substituting the words "staff of the water utility serving Guayaquil" in place of the words "Borrower's staff".

17. Part B.2 of Schedule 2 of the Loan Agreement is amended by substituting the words "water utility serving Guayaquil" in place of the word "Borrower".

18. Part B.3 of Schedule 2 of the Loan Agreement is amended by substituting the words "meter repair workshop of the water utility serving Guayaquil" in place of the words "Borrower's meter repair workshop".

19. Part C of Schedule 2 of the Loan Agreement is amended by substituting the words "to prepare an updated master plan for the water utility serving Guayaquil, such master plan to include activities foreseen for the period up to the year 2010" in place of the words "to update the second stage of the Borrower's Master Plan until the year 2010".

20. Section I, Part C.2 of Schedule 4 of the Loan Agreement is amended by substituting the amount "\$50,000" in place of the amount "\$10,000". Section I, Part C.1 of Schedule 4 of the Loan Agreement is amended by substituting the amount "\$1,500,000" in place of the amount "\$1,000,000".

21. Section I, Part E of Schedule 4 of the Loan Agreement is deleted.

22. Section II of Schedule 4 of the Loan Agreement is amended by substituting the words "In order to assist the water utility serving Guayaquil in carrying out the Project, such water utility shall employ consultants (which term may also include consulting firms)" in place of the words "In order to assist the Borrower in carrying out the Project, the Borrower shall employ consultants" and by inserting the words "(the Consultants Guidelines)" immediately after the words "August 1981".

23. A new Section III is added to Schedule 4 of the Loan Agreement and reads as follows in its entirety:

"Section III. Special Provisions

A. In addition and without limitation to any other provisions set forth in this Schedule or the Guidelines, the following principles of procurement shall expressly govern all procurement of goods and works referred to in Part A of Section I of this Schedule:

1. Bids for contract awards must be submitted in one single envelope, and the name of each bidder and the total amount of each bid, as well as any alternative proposals, if they have been

requested or permitted, shall be read aloud when opened.

2. Foreign bidders must not be required to have a local representative for purposes of submitting bids, but may be required to have such a representative upon entering into contracts which they have been awarded.

3. Foreign bidders must be permitted to have their financial solvency certified by a foreign bank acceptable to the water utility serving Guayaquil without recertification by any Ecuadorian bank or other Ecuadorian person or entity.

4. Bid and performance bonds and guarantees issued by foreign sureties approved by the water utility serving Guayaquil must be admissible without recertification or other participation by any Ecuadorian bank or other Ecuadorian person or entity.

5. Letters of credit issued to any supplier of goods or provider of services must not be required to be counter-guaranteed by such supplier or provider in whole or in part. This shall not prevent purchasers from obtaining other performance warranties from suppliers.

B. In addition and without limitation to any other provisions set forth in this Schedule or the Guidelines, the following principles of procurement shall expressly govern all procurement of goods and services referred to in Part C.1 of Section I of this Schedule:

1. Foreign contractors and suppliers shall be allowed to bid on all contracts.

2. The date for the opening of bids shall be set on a date which shall be at least thirty days from the date of the last advertisement of the invitation to bid.

3. The invitation to bid shall be advertised for at least three days in a newspaper of wide circulation in Ecuador.

4. Contracts must be awarded to the lowest evaluated bidder in accordance with criteria set forth in the bidding documents.

C. In addition to and without limitation to any other provisions set forth in this Schedule or the Consultants Guidelines, the following principles of procurement shall expressly govern all procurement of consultants' services referred to in Section II of this Schedule:

1. Foreign consultants must not be required to be locally registered as a condition of participation in the selection process, but may be required to be so registered, at the time of contracting, if the water utility serving Guayaquil and the Bank so agree.

2. Foreign consultants must not be required, either directly or indirectly, to give any participation in or share of any consulting contracts to any local firm or person, except in connection with a joint venture arrangement where: (i) a sufficient number of capable domestic firms or individual consultants exist to allow a foreign consultant reasonable freedom of choice; (ii) the contribution of either party to the joint venture arrangement will not be constrained by any prescribed manner or extent of participation; and (iii) the foreign consultant is not required to associate itself with any specific named domestic firms or individual consultants.

3. Foreign consulting firms shall not be required, as a condition to provide services in Ecuador under contracts to be financed out of the proceeds of the Loan, to be registered in Ecuador with a minimum capital different from that required for Ecuadorian firms.

4. Foreign consultants, either individuals or firms, providing services under contracts financed out of the proceeds of the Loan, shall not be required to pay fees to the Ecuadorian Consultants' Association that are different from those required for Ecuadorian

consultants."

24. A new Section IV is added to Schedule 4 of the Loan Agreement and reads as follows in its entirety:

"Section IV. Internal Approvals

In the procurement of goods, works and services to be financed out of the proceeds of the Loan, standard bidding documents satisfactory to the Bank shall be utilized. The approval by the Contralor General del Estado (National Controller General) and the Procurador General del Estado (National Attorney General) referred to in Article 18 of Law No. 95, of August 2, 1990 (Ley de Contratación Pública) shall be limited to such standard bidding documents."

ARTICLE IV

Assumption of Contractual Arrangements

Section 4.01. The Republic shall enter into supplemental contractual assumption arrangements, satisfactory to the Bank, with CDC, whereby the Republic shall be allowed to obtain the proceeds of the CDC Loan for onlending to EPAP-G.

ARTICLE V

Other Covenants and Terms

Section 5.01. (a) The Republic declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, without any limitation or restriction upon any of its other obligations under this Loan Assumption Agreement, shall cause EPAP-G to perform in accordance with the provisions of the Project Agreement all the obligations of EPAP-G therein set forth, shall take or cause to be taken all action, including the provision of funds (such as, inter alia, the proceeds of the CDC Loan), facilities, services and other resources, necessary or appropriate to enable EPAP-G to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) The Republic shall onlend the proceeds of the Loan to EPAP-G under a subsidiary arrangement to be entered into between the Republic and EPAP-G, under terms and conditions which shall have been approved by the Bank and which shall, inter alia, include the following: (i) EPAP-G shall carry out the Project in accordance with the terms of the Project Agreement; (ii) EPAP-G shall furnish to the Bank such documentation as required in order for the Republic to receive Loan disbursements from the Bank; and (iii) the Republic shall disburse Loan proceeds to EPAP-G when required by EPAP-G for the Project and in a manner consistent with the provisions of this Loan Assumption Agreement. Said subsidiary arrangement shall also specify that: (i) the funds onlent to EPAP-G under the subsidiary arrangement shall be denominated in sucres in an amount equivalent, at the time of disbursement from the Republic to EPAP-G either directly or through the Special Account, to the dollar value of such disbursement; (ii) EPAP-G shall repay to the Republic all amounts of principal withdrawn and outstanding under the subsidiary arrangement under an amortization schedule identical to that contained in Schedule 3 to the Loan Agreement, in sucres equivalent to the dollar value of each repayment, required by said Schedule 3, at the time of such repayment, except that the first payment shall be due on May 15, 1995 and the last payment on November 15, 2007; (iii) EPAP-G shall pay interest to the Republic, in sucres equivalent to the dollar value, at the time of such payment, of each interest payment owed by the Republic to the Bank, on the principal amounts withdrawn by EPAP-G under the subsidiary arrangement and outstanding from time to time, at a rate equivalent to the rate applicable to the Loan pursuant to Section 2.05 of the Loan Agreement; (iv) EPAP-G shall pay to the Republic a commitment charge, in sucres equivalent to the dollar value, at the time of such payment, of each commitment charge

payment owed by the Republic to the Bank, on the principal amount under the subsidiary arrangement, equivalent to that charged by the Bank pursuant to Section 2.04 of the Loan Agreement; and (v) EPAP-G shall make the payments of interest and other charges under the subsidiary arrangement no later than the dates set forth in Section 2.06 of the Loan Agreement.

(c) The Republic shall exercise its rights under the subsidiary arrangement referred to in paragraph (b) of this Section in such manner as to protect the interests of the Republic and the Bank and to accomplish the purposes of the Loan, and, except as the Bank shall otherwise agree, the Republic shall not assign, amend, abrogate or waive the subsidiary arrangement referred to in paragraph (b) of this Section or any provision thereof.

Section 5.02. 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 4 to the Loan Agreement.

Section 5.03. The Bank and the Republic hereby agree that 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) shall be carried out by EPAP-G pursuant to Section 2.05 of the Project Agreement.

Section 5.04. The Bank and the Republic agree that, at the moment this Loan Assumption Agreement becomes effective pursuant to Article VII hereof, the Guarantee Agreement shall forthwith terminate.

Section 5.05. Whenever a statement in this Loan Assumption Agreement is identified as being made for purposes of or pursuant to a Section of the General Conditions, such statement shall be treated as if it also appeared in the Loan Agreement.

Section 5.06. EPAP-G is designated as representative of the Republic for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 (a) and (b) of the Loan Agreement and Article V of the General Conditions.

ARTICLE VI

Remedies of the Bank

Section 6.01. For the purposes of Section 6.02 of the General Conditions, the following additional events are specified pursuant to paragraph (k) thereof:

(a) EPAP-G shall have failed to perform any of its obligations under the Project Agreement;

(b) a change shall have been made in the EPAP-G Estatutos which, in the opinion of the Bank, shall materially and adversely affect the carrying out of the Project or EPAP-G's financial condition;

(c) the Republic or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of EPAP-G or for the suspension of its operations;

(d) as a result of events which have occurred after the date of this Loan Assumption Agreement, an extraordinary situation shall have arisen which shall make it improbable that EPAP-G will be able to perform its obligations under the Project Agreement;

(e) Law No. 38 or Executive Decree No. 1168 shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of EPAP-G to perform any of its obligations under the Project Agreement;

- (f) (i) subject to subparagraph (ii) of this paragraph:
 - (A) the right of the Republic to withdraw the proceeds of the CDC Loan or any other loan or grant made to the Republic for the financing of the Project shall have been suspended, cancelled or terminated in whole or in part, pursuant to the terms of the agreement providing therefor; or
 - (B) the CDC Loan or any other such loan shall have become due and payable prior to the agreed maturity thereof;
- (ii) subparagraph (i) of this paragraph shall not apply if the Republic establishes to the satisfaction of the Bank that:
 - (A) such suspension, cancellation, termination or prematuring is not caused by the failure of the Republic to perform any of its obligations under such agreement; and
 - (B) adequate funds for the Project are available to the Republic from other sources on terms and conditions consistent with the obligations of the Republic under this Loan Assumption Agreement;

(g) a change shall have been made in the Master Plan (either prior to, as a result of or after its updating referred to in Schedule 2, Part C.1 of the Loan Agreement) which, in the opinion of the Bank, shall adversely affect the carrying out of the Project;

(h) the Republic shall have failed to perform any of its obligations under this Loan Assumption Agreement; and

(i) a representation made by the Republic in or pursuant to this Loan Assumption Agreement, or any statement furnished in connection therewith, and intended to be relied upon by the Bank in entering into this Loan Assumption Agreement, shall have been incorrect in any material respect.

Section 6.02. For the purposes of Section 7.01 of the General Conditions, the following additional events are specified pursuant to paragraph (h) thereof:

(a) the events specified in paragraphs (a) or (h) of Section 6.01 of this Loan Assumption Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Bank to the Republic;

(b) any of the events specified in paragraphs (b), (c), (e), (g) or (i) of Section 6.01 of this Loan Assumption Agreement shall occur; and

(c) the event specified in paragraph (f) (i) (B) of Section 6.01 of this Loan Assumption Agreement shall occur, subject to the proviso of subparagraph (ii) of that paragraph.

Section 6.03. Notwithstanding any cancellation or suspension of the right of the Republic to make withdrawals from the Loan Account, all the provisions of this Loan Assumption Agreement shall continue in full force and effect.

Section 6.04. Article X of the General Conditions, in addition to applying to the Loan Agreement, shall also apply to this Loan Assumption Agreement as if this Loan Assumption Agreement were the Loan Agreement.

Effective Date

Section 7.01. (a) This Loan Assumption Agreement and the amendments to the Loan Agreement herein contained shall become effective on the date upon which the Bank dispatches to the Republic and EPAP-G notice of its acceptance of evidence that: (i) the execution and delivery of the Loan Assumption Agreement and the Project Agreement on behalf of the parties thereto have been duly authorized or ratified by all the necessary governmental and corporate action; (ii) the supplemental contractual assumption arrangements referred to in Section 4.01 of this Loan Assumption Agreement, as well as the subsidiary arrangement referred to in Section 5.01 (b) of this Loan Assumption Agreement, have been duly executed and delivered on behalf of the parties thereto; and (iii) the execution and delivery of the supplemental contractual assumption arrangements referred to in Section 4.01 of this Loan Assumption Agreement, as well as the subsidiary arrangement referred to in Section 5.01 (b) of this Loan Assumption Agreement, have been duly authorized or ratified by all necessary governmental and corporate action and all other conditions precedent to the effectiveness of such supplemental contractual assumption arrangements pursuant to the provisions of such supplemental contractual assumption arrangements have been met, except for the effectiveness of this Loan Assumption Agreement and the Project Agreement.

(b) As part of such evidence, there shall be furnished to the Bank an opinion or opinions satisfactory to the Bank of counsel acceptable to the Bank showing: (i) on behalf of the Republic that the Loan Assumption Agreement has been duly authorized or ratified, and executed and delivered on behalf of the Republic and is legally binding upon the Republic in accordance with its terms, which opinion shall include explicit confirmation that the Republic has assumed liability for the Loan and control over the Special Account which had previously been assumed by EPAP-G pursuant to Law No. 38; (ii) on behalf of the parties to the subsidiary arrangement referred to in Section 5.01 (b) of this Loan Assumption Agreement, that such subsidiary arrangement has been duly authorized or ratified, and executed and delivered on behalf of the parties thereto and is legally binding upon them in accordance with its terms; and (iii) on behalf of EPAP-G, that the Project Agreement has been duly authorized or ratified by and executed and delivered on behalf of EPAP-G and is legally binding upon EPAP-G in accordance with its terms.

(c) Additional requirements for effectiveness of this Loan Assumption Agreement and the amendments to the Loan Agreement herein contained shall be: (i) receipt by the Bank of a letter, satisfactory to the Bank, executed by the Ministro de Finanzas of the Republic on behalf of the Republic, confirming the Republic's obligations as guarantor of the Bank's loan to EMAP-G for the first Guayaquil and Guayas Province Water Supply Project (Loan 1030-EC); and (ii) receipt by the Bank of a letter from CDC stating that the supplemental contractual assumption arrangements referred to in Section 4.01 of this Loan Assumption Agreement have been declared effective by CDC.

ARTICLE VIII

Addresses; Representation

Section 8.01. The following addresses are specified for the purposes of Section 11.01 of the General Conditions.

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.

1976898 (TRT),
248423 (RCA),
64145 (WUI) or
82987 (FTCC)

For the Republic:

Ministerio de Finanzas
Quito, Ecuador

Cable address:

Telex:

MINFINANZAS

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Section 8.02. Except as provided in Section 5.06 of this Loan Assumption Agreement, the Ministro de Finanzas of the Republic is designated as representative of the Republic for the purposes of Section 11.03 of the General Conditions.

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

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Shahid Husain

Regional Vice President
Latin America and the Caribbean

REPUBLIC OF ECUADOR

By /s/ Pablo Better

Authorized Representative

