

CONFORMED COPY

CREDIT NUMBER 1973 KE

Joint Project Agreement

(Geothermal Development and Energy Preinvestment Project)

among

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

THE KENYA POWER COMPANY LIMITED

and

THE KENYA POWER AND LIGHTING COMPANY LIMITED

Dated February 13, 1989

CREDIT NUMBER 1973 KE

JOINT PROJECT AGREEMENT

AGREEMENT, dated February 13, 1989, among INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and THE KENYA POWER COMPANY LIMITED (KPC), and THE KENYA POWER AND LIGHTING COMPANY LIMITED (KPLC);

WHEREAS (A) by the Development Credit Agreement of even date herewith between Republic of Kenya (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to thirty-one million six hundred thousand Special Drawing Rights (SDR 31,600,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that KPC and KPLC agree to undertake such obligations toward the Association as are set forth in this Agreement;

(B) KPC and KPLC have agreed to undertake Part A of the Project, as set forth in Schedule 2 to the Development Credit Agreement;

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

WHEREAS KPC and KPLC, 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. KPC and KPLC declare their 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 Part A of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and geothermal industry practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

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

Section 2.03. KPC and KPLC shall carry out the obligations set forth in Sections 9.03 through 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 Joint Project Agreement and Part A of the Project.

Section 2.04. KPC shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Association shall otherwise agree, KPC 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) KPC and KPLC shall, at the request of the Association, exchange views with the Association with regard to the progress of Part A of the Project, the performance of their obligations under this Agreement and under the Subsidiary Loan Agreement, and other matters relating to the purposes of the Credit.

(b) KPC and KPLC 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 KPC or KPLC of their respective obligations under this Agreement and under the Subsidiary Loan Agreement.

Section 2.06. KPLC shall establish and maintain until completion of Part A of the Project the position of Coordinator for Geothermal Development, with suitable qualifications and experience and with line authority for all KPLC's geothermal activities.

Section 2.07. KPLC shall implement its managerial staffing and development plan for its geothermal section satisfactory to the Association.

Section 2.08. KPC and KPLC shall: (a) semi-annually review with the Association the geothermal drilling program, results and performance; (b) within one month of such review, prepare action plans based thereon; and (c) inform the Association about the drilling program for each well based on such review.

ARTICLE III

Management and Operations of KPC

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

Section 3.02. KPC 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 and public utility practices.

Section 3.03. KPC shall take out and maintain with responsible insurers, or make other provision satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

Section 3.04. Except as the Association shall otherwise agree, KPC shall: (i) not amend its Memorandum and Articles of Association in any material respect; and (ii) at all times maintain its corporate existence and right to conduct its operations and shall take all steps necessary to acquire concessions and franchises which are necessary or desirable in the conduct of such operations.

ARTICLE IV

Management and Operations of KPLC

Section 4.01. KPLC shall carry on its operations and conduct its affairs in accordance with sound administrative, financial, engineering and public utility practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 4.02, KPLC 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 and public utility practices,

Section 4.03. KPLC shall take out and maintain with

responsible insurers, or make other provision satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

Section 4.04. Except as the Association shall otherwise agree, KPLC shall: (i) not amend its Memorandum and Articles of Association in any material respect; and (ii) at all times maintain its corporate existence and right to conduct its operations and shall take all steps necessary to acquire concessions and franchises which are necessary or desirable in the conduct of such operations.

ARTICLE V

Other Covenants

Section 5.01. KPC and KPLC declare that the provisions of the Management Agreement shall apply to the execution of Part A of the Project and, to that end, KPLC shall take all such action as may be required to comply with the obligations of KPC under this Agreement.

Section 5.02. Except as the Association shall otherwise agree, KPC and KPLC shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Management Agreement or any provision thereof, and shall maintain the Management Agreement in force at least until the completion of the Project.

ARTICLE VI

Financial Covenants

Section 6.01. (a) KPC and KPLC shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) KPC and KPLC 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 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 eight 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 Association shall have reasonably requested; and
- (iii) furnish to the Association such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Association shall from time to time reasonably request.

Section 6.02. (a) Except as the Association shall otherwise agree, KPLC shall take all necessary steps within its power, as shall be required to ensure that the

Power Companies shall produce, for the fiscal years ending on June 30, 1989, June 30, 1991, and June 30, 1994, and thereafter, funds from internal sources equivalent to not less than 25%, 27% and 30% respectively, of the annual average of the Power Companies' capital expenditures incurred, or expected to be incurred, for that year and the next following fiscal year.

(b) Before November 30 in each of its fiscal years, KPLC shall, on the basis of forecasts prepared by KPLC and satisfactory to the Association, review whether the Power Companies would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year and shall furnish to the Association a copy of such review upon its completion.

(c) If any such review shows that the Power Companies would not meet the requirements set forth in paragraph (a) for the fiscal years covered by such review, KPLC 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 the purposes of this Section:

- (i) The term "funds from internal sources" means the difference between:
 - (A) the sum of revenues from all sources related to operations, consumer deposits and consumer contributions in aid of construction, not non-operating income and any reduction in working capital other than cash; and
 - (B) the sum of all expenses related to operations, including administration, adequate maintenance and taxes and payments in lieu of taxes (excluding provision for depreciation and other non-cash operating charges), debt service requirements, all cash dividends and other cash distributions of surplus, increase in working capital other than cash and other cash outflows other than capital expenditures.
- (ii) 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.
- (iii) The term "working capital other than cash" means the difference between current assets excluding cash and current liabilities at the end of each fiscal year.
- (iv) The term "current assets excluding cash" means all assets other than cash which could in the ordinary course of business be converted into cash within twelve

months, including accounts receivable, marketable securities, inventories and prepaid expenses properly chargeable to operating expenses within the next fiscal year.

- (v) The term "current liabilities" means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve months, including accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes, and dividends.
- (vi) 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.
- (vii) The term "capital expenditures" means all expenditures incurred on account of fixed assets, including interest charged to construction, related to operations.
- (viii) 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 Borrower and the Association.

Section 6.03. (a) Except as the Association shall otherwise agree, KPLC shall take all necessary steps within its power as shall be required to ensure that the Power Companies shall not incur any debt, unless their net revenues for the fiscal year immediately preceding the date of such incurrence or for a later twelve-month period ended prior to the date of such incurrence, whichever is the greater, shall be at least 1.5 times the estimated maximum debt service requirements of the Power Companies for any succeeding fiscal year on all debt of the Power Companies, including the debt to be incurred.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of the Power Companies 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 a 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 KPLC's rates 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 nonoperating 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) 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 Borrower and the Association.

Section 6.04. (a) Except as the Association shall otherwise agree, KPLC shall take all necessary steps within its power, as shall be required to ensure that the Power Companies shall maintain a ratio of current assets to current liabilities of not less than 1.1.

(b) Before November 30 in each of its fiscal years, KPLC shall, on the basis of forecasts prepared by KPLC and satisfactory to the Association, review whether the Power Companies would meet the requirements set forth in paragraph (a) 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 the Power Companies would not meet the requirements set forth in paragraph (a) for the fiscal years covered by such review, KPLC 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 the purposes of this Section:

- (i) The term "current assets" means cash, all assets which could in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable securities, inventories and pre-paid expenses properly chargeable to operating expenses within the next fiscal year.
- (ii) The term "current liabilities" means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve months, including accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes, and dividends.
- (iii) 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.
- (iv) 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 Borrower and the Association.

Section 6.05. (a) Except as the Association shall otherwise agree, KPLC shall take all necessary steps within its power to ensure that the Power Companies shall maintain a ratio of debt to debt and equity of not greater than 75% in fiscal year 1990 and 70% in fiscal year 1991 and thereafter.

(b) For purposes of this Section:

- (i) The term "debt" means any indebtedness of Power Companies 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 a 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 "equity" means the sum of the total unimpaired paid-up capital, retained earnings and reserves of Power Companies not allocated to cover specific liabilities.
- (iv) 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 Borrower and the Association.

Section 6.06. KPLC shall, annually, furnish to the Association a report on the annual return earned by the Power Companies' on their average revalued fixed assets in operation; such report to be based on sound and consistently maintained revaluation methods satisfactory to the Association.

Section 6.07. Section 3.01 of the Project Agreement, dated June 28, 1984 between KPLC and the International Bank for Reconstruction and Development (Loan Number 2359 KE) is hereby amended to read as Section 6.02 hereof.

ARTICLE VII

Effective Date; Termination; Cancellation and Suspension

Section 7.01. This Agreement shall come into force and effect on the date upon which the Development Credit Agreement becomes effective.

Section 7.02. (a) This Agreement and all obligations of the Association and of KPC and KPLC 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 20 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 KPC and KPLC of this event.

Section 7.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VIII

Miscellaneous Provisions

Section 8.01. 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:

Telex:

INDEVAS
Washington, D.C.

440098 (ITT)
248423 (RCA)

or

64145 (WUI)

For KPC:

The Kenya Power Company Limited
P.O. Box 30099
Nairobi, Kenya

Cable address:

Telex:

ELECTRIC
Nairobi

22253 ELECTRIC
Nairobi

For KPLC:

The Kenya Power and Lighting
Company Limited
P.O. Box 30099
Nairobi, Kenya

Cable address:

Telex:

ELECTRIC
Nairobi

22253 ELECTRIC
Nairobi

Section 8.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of KPC or KPLC may be taken or executed by the Chief Executive of KPC or the Chief Executive of KPLC, respectively, or such other person or persons as such Chief Executive shall designate in writing, and KPC or KPLC shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 8.03. 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/ Edward V. K. Jaycox
Regional Vice President
Africa

THE KENYA POWER COMPANY LIMITED

By /s/ D. D. Afande
Authorized Representative

THE KENYA POWER AND LIGHTING
COMPANY LIMITED

By /s/ D. D. Afande
Authorized Representative

SCHEDULE

Procurement and Consultants' Services

Section I: Procurement of Goods and Works

Part A: International Competitive Bidding

Goods and works shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Association in May 1985 (the Guidelines).

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A hereof, goods manufactured in Kenya may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Preference for Domestic Contractors

In the procurement of works in accordance with the procedures described in Part A hereof, Kenya may grant a margin of preference to domestic contractors in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraph 5 of Appendix 2 thereto.

Part D: Other Procurement Procedures

1. Civil works contracts for housing, workshops and drilling may be awarded on the basis of competitive bidding, advertised locally, in accordance with procedures satisfactory to the Association.
2. Scientific equipment, workshop tools and equipment and drill equipment may be procured under contracts awarded through limited international bidding procedures on the basis of evaluation and comparison of bids invited from a list of at least three qualified suppliers eligible under the Guidelines and in accordance with the procedures set forth in Sections I and II of the Guidelines (excluding paragraphs 2.8, 2.9, 2.55 and 2.56 thereof).
3. Scientific equipment, up to an aggregate amount equivalent to \$350,000, may be procured under contracts awarded on the basis of comparison of price quotations solicited from a list of at least three suppliers in accordance with procedures acceptable to the Association.

Part E: Review by the Association of Procurement Decisions

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

(a) With respect to each contract estimated to cost the equivalent of \$1,000,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply.

(c) The provisions of the preceding subparagraphs (a) and (b) shall not apply to contracts on account of which the Association has authorized withdrawals from the Credit Account on the basis of statements of expenditure. Such contracts shall be retained in accordance with Section 4.01 (a) (ii) of the Development Credit Agreement.

2. The figure of 15% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II: Employment of Consultants

In order to assist KPC and KPLC in carrying out Part A of the Project, KPC and KPLC shall employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Association. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Association on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the World Bank in August 1981.

