

CONFORMED COPY

LOAN NUMBER 3963 LT

Project Agreement

(Siauliai Environment Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

SIAULIAI WATER

and

MUNICIPALITY OF SIAULIAI

Dated May 8, 1996

LOAN NUMBER 3963 LT

PROJECT AGREEMENT

AGREEMENT, dated May 8, 1996, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) on the one hand, and SIAULIAI WATER (SW) and the MUNICIPALITY OF SIAULIAI (MS) on the other hand.

WHEREAS (A) by the Loan Agreement of even date herewith between Republic of Lithuania (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount equal to six million two hundred thousand dollars (\$6,200,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that SW and MS agree to undertake such obligations toward the Bank as are set forth in this Agreement;

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

WHEREAS SW and MS, in consideration of the Bank's entering into the Loan Agreement with the Borrower, have agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Loan Agreement and the General Conditions (as so defined) have the respective meanings therein set forth and the term "SW Action Plan" means the plan, agreed with the Bank, dated October 20, 1995, which sets objectives and implementation actions for all aspects of SW's activity and organization, including operational, organizational and financial targets.

ARTICLE II

Execution of the Project Obligations of MS

Section 2.01. MS 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 the Project Agreement, shall cause SW to perform in accordance with the provisions of the Project Agreement all the obligations of SW herein set forth, shall take or cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable SW to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

Section 2.02. Without limitation upon the generality of the obligations of MS set forth in Section 2.01 of this Agreement, MS shall:

(a) except as the Bank shall otherwise agree, maintain the responsibility for setting of water and wastewater tariffs with its Executive Committee which includes the Mayor, the Vice Mayor and the six Chairmen of the Standing Committees of the Siauliai City Council;

(b) (i) by October 30, 1996, cause SW to carry out a water and wastewater tariff study in accordance with terms of reference acceptable to the Bank with the assistance of consultants satisfactory to the Bank; (ii) within 30 days of completion of the said study, cause SW to furnish to the Bank a copy of its findings and recommendations; and (iii) by June 30, 1997, implement and cause SW to implement the recommendations of such study, taking into account the comments and suggestions received from the Bank;

(c) except as the Bank shall otherwise agree, by March 15, 1996, increase the level of water and wastewater tariffs by at least 15% in real terms, in accordance with methodology acceptable to the Bank; and

(d) thereafter and until the recommendations of the tariff study referred to in paragraph (b) above are implemented, maintain, through periodic adjustments, an average level of water and wastewater tariffs at the level required for SW to comply with its obligations under Section 4.02 of this Agreement.

Section 2.03. (a) MS shall, at the request of the Bank, exchange views with the Bank with regard to progress of the Project, the performance of its obligations under this Agreement and other matters relating to the purposes of the Loan.

(b) MS shall promptly inform the Bank of any conditions which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Loan, or the performance of its obligations under this Agreement.

Section 2.04. MS shall exempt SW from payment of income tax payable to MS on SW's net profits for each fiscal year commencing with fiscal year 1995 until and including fiscal year 2001.

Section 2.05. Except as the Bank shall otherwise agree, MS shall not take any action to cause SW to declare any dividend or make any other distribution with respect to its share capital prior to December 31, 2001.

ARTICLE III

Execution of the Project
Obligations of SW

Section 3.01. SW declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall carry out Part A of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and environmental practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for Part A of the Project.

Section 3.02. Except as the Bank 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 Loan shall be governed by the provisions of Schedule 1 to this Agreement.

Section 3.03. (a) SW shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement and Part A of the Project.

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

- (i) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Bank, a plan for the future operation of Part A of the Project; and
- (ii) afford the Bank a reasonable opportunity to exchange views with the Borrower and SW on said plan.

Section 3.04. SW shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Bank shall otherwise agree, SW 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 3.05. (a) SW shall, at the request of the Bank, exchange views with the Bank with regard to the progress of Part A 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 Loan.

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

Section 3.06. During execution of the Project, SW shall maintain the PIU with functions and responsibilities satisfactory to the Bank and with staff, in adequate numbers, with qualifications and terms of reference satisfactory to the Bank.

ARTICLE IV

Financial Covenants

Section 4.01. (a) SW shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) SW shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and funds flow 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 six 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 said records, accounts and financial statements as well as the audit thereof as the Bank shall from time to time reasonably request.

Section 4.02. (a) Except as the Bank shall otherwise agree, SW shall maintain, for each of its fiscal years after its fiscal year ending on December 31, 1995, a ratio of total operating expenses to total operating revenues not higher than 85%.

(b) Before May 1 in each of its fiscal years, SW shall, on the basis of forecasts prepared by SW and satisfactory to the Bank, review whether it 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 Bank the results of such review upon its completion.

(c) If any such review shows that SW would not meet the requirements set forth in paragraph (a) for SW's fiscal years covered by such review, SW shall promptly take all necessary measures (including, without limitation, cost reductions and actions specified in Section 4.04 (b) relating to the structure and adjustment of tariffs) in order to meet such requirements.

(d) For the purposes of this Section:

- (i) The term "total operating expenses" means all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, and provision for depreciation on a straight-line basis at a rate of not less than 5% per annum of the average current gross value of SW's fixed assets in operation, or other basis acceptable to the Bank, but excluding interest and other charges on debt.
- (ii) The term "total operating revenues" means revenues from all sources related to operations.
- (iii) The average current gross value of SW's fixed assets in operation shall be calculated as one half of the sum of the gross value of SW and MS'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 Bank.

Section 4.03. (a) Except as the Bank shall otherwise agree, SW shall not incur any debt, unless the net revenues of SW 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 SW for any succeeding fiscal year on all debt of SW, including the debt to be incurred.

(b) For the purposes of this Section:

(i) The term "debt" means any indebtedness of SW 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 SW'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 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 amount 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 Bank.

Section 4.04. (a) (i) By October 30, 1996, carry out a water and wastewater tariff study in accordance with terms of reference acceptable to the Bank with the assistance of consultants satisfactory to the Bank, (ii) within 30 days of completion of the said study, furnish to the Bank a copy of its findings and recommendations and (iii) by June 30, 1997, take all action required to implement the recommendations of such study taking into account the comments and suggestions received from the Bank;

(b) SW shall (i) by March 15, 1996, take all action required on its part to increase its tariffs in accordance with Section 2.02 (c) of this Agreement and (ii) thereafter, and until the recommendations of the study referred to in paragraph (a) above are implemented, take all action required on its part to ensure that its tariffs shall be

periodically adjusted so as to be maintained at the level required for SW to achieve the financial covenant set forth in Section 4.02 of this Agreement.

Section 4.05. Except as the Bank shall otherwise agree, SW shall not declare any dividend or make any other distribution with respect to its share capital, prior to December 31, 2001.

ARTICLE V

Management and Operations of SW

Section 5.01. (a) SW shall carry on its operations and conduct its affairs in accordance with sound administrative, financial, utility and environmental practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

(b) SW shall not implement any substantial management, structural or operational changes without prior approval of the Bank.

(c) SW shall duly implement the SW Action Plan in accordance with the timetable included in the said plan.

Section 5.02. SW 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 water and wastewater management practices.

Section 5.03. SW shall take out and maintain with responsible insurers, or make other provision satisfactory to the Bank, for insurance against such risks and in such amounts as shall be consistent with appropriate practice.

ARTICLE VI

Effective Date; Termination; Cancellation and Suspension

Section 6.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 6.02. This Agreement and all obligations of the Bank and of SW and MS thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify SW and MS thereof.

Section 6.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VII

Miscellaneous Provisions

Section 7.01. 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:

Telex:

INTBAFRAD
Washington, D.C.
64145 (WUI) or
197688 (TRT)

248423 (RCA)
82987 (FTCC)

For SW:

Vytauto 103
5400 Siauliai
Republic of Lithuania

For MS:

Vasario 16-os 62
Siauliai 5400
Republic of Lithuania

Section 7.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of SW and MS, respectively, or by SW and MS on behalf of the Borrower under the Loan Agreement, may be taken or executed by on behalf of SW by the General Director or such other person or persons as the General Director shall designate in writing, and on behalf of MS by the Mayor or such other person or persons as the Mayor shall designate in writing, and SW and MS shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 7.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

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

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Basil Kavalsky
Acting Regional Vice President
Europe and Central Asia

SIAULIAI WATER

By /s/ Alfonsas Eidintas
Authorized Representative

MUNICIPALITY OF SIAULIAI

By /s/ Alfonsas Eidintas
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 otherwise 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.

Part C: Other Procurement Procedures

1. International Shopping

Goods estimated to cost \$260,000 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. National Shopping

Goods estimated to cost \$50,000 equivalent or less per contract and \$85,000 equivalent or less in the aggregate, may be procured under contracts awarded on the basis of national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

3. National Competitive Bidding

Works estimated to cost \$120,000 equivalent or less in the aggregate, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

4. Direct Contracting

Goods which must be purchased from the original supplier to be compatible with existing equipment and costing \$100,000 equivalent or less in the aggregate, may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraph 3.7 of the Guidelines.

Part D: Review by the Bank of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to prequalify for bidding or to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Bank for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Bank, and with the provisions of said paragraph 1.

2. Prior Review

With respect to each contract, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

Consultants' services shall be procured under contracts awarded in accordance with the provisions of the "Guidelines for the Use of Consultants by 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 as shall have been agreed by the Bank. Where no relevant standard contract documents have been issued by the Bank, other standard forms acceptable to the Bank shall be used.

