

No. 11187

INTERNATIONAL DEVELOPMENT ASSOCIATION
and
BOTSWANA

Development Credit Agreement—*Gaborone-Lobatse Water Supply Project* (with annexed General Conditions Applicable to Development Credit Agreements and Project Agreement between the Association and the Water Utilities Corporation). Signed at Washington on 10 February 1971

Authentic text: English.

Registered by the International Development Association on 22 June 1971.

ASSOCIATION INTERNATIONALE
DE DÉVELOPPEMENT
et
BOTSWANA

Contrat de crédit de développement — *Projet relatif à l'approvisionnement en eau de la région de Gaborone-Lobatse* (avec, en annexe, les Conditions générales applicables aux contrats de crédit de développement et le Contrat relatif au Projet entre l'Association et la Water Utilities Corporation). Signé à Washington le 10 février 1971

Texte authentique : anglais.

Enregistré par l'Association internationale de développement le 22 juin 1971.

DEVELOPMENT CREDIT AGREEMENT¹

AGREEMENT, dated February 10, 1971, between REPUBLIC OF BOTSWANA (hereinafter called the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association).

WHEREAS (A) The Borrower has requested the Association to assist in the financing of the Project described in Schedule 2 to this Agreement by extending the Credit as hereinafter provided;

(B) The Project will be carried out by the Water Utilities Corporation with the Borrower's assistance and, as part of such assistance, the Borrower will make available to the Water Utilities Corporation the proceeds of the Credit as hereinafter provided; and

(C) The Association is willing to make the Credit available upon the terms and conditions set forth hereinafter and in a project agreement of even date herewith² between the Association and the Water Utilities Corporation;

NOW THEREFORE the parties hereto hereby agree as follows :

Article I

GENERAL CONDITIONS; DEFINITIONS

Section 1.01. The parties to this Agreement accept all the provisions of the General Conditions Applicable to Development Credit Agreements of the Association, dated January 31, 1969,³ with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications thereof (said General Conditions Applicable to Development Credit Agreements of the Association, as so modified, being hereinafter called the General Conditions) :

(a) Section 5.01 is deleted;

(b) the words " or the Project Agreement " are added after the words " the Development Credit Agreement " in Section 8.02; and

(c) paragraph (h) of Section 6.02 is deleted and paragraph (i) of said Section is relettered as paragraph (h)

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the following additional terms have the following meanings :

¹ Came into force on 26 May 1971, upon notification by the Association to the Government of Botswana.

² See p. 92 of this volume.

³ *Ibid.*

(a) "BMC" means Botswana Meat Commission, a statutory entity established under Botswana Meat Commission Law (No. 22), 1965 of Botswana;

(b) "Gaborone-Lobatse Division" means the operating organization within the Water Corporation providing water supply services to the Gaborone and Lobatse areas;

(c) "Project Agreement" means the agreement between the Association and the Water Corporation of even date herewith, as the same may be amended from time to time, and such term includes all schedules to the Project Agreement;

(d) "Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and the Water Corporation pursuant to Section 3.01 (b) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Loan Agreement; and

(e) "Water Corporation" means the Water Utilities Corporation, a statutory corporation established under the Water Utilities Corporation Act, 1970 as amended in November 1970, of the Borrower.

Article II

THE CREDIT

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions in the Development Credit Agreement set forth or referred to, an amount in various currencies equivalent to three million dollars (\$3,000,000).

Section 2.02. The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement, as such Schedule shall be amended from time to time, for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project and to be financed under the Development Credit Agreement; provided, however, that, except as the Association shall otherwise agree, no withdrawal shall be made on account of expenditures in the territories of any country which is not a member of the Bank (other than Switzerland) or for goods produced in, or services supplied from, such territories.

Section 2.03. The Closing Date shall be December 31, 1973, or such other date as shall be agreed between the Borrower and the Association.

Section 2.04. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one per cent ($\frac{3}{4}$ of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.05. Service charges shall be payable semi-annually on June 1 and December 1 in each year.

Section 2.06. The Borrower shall repay the principal amount of the Credit withdrawn from the Credit Account in semi-annual installments payable on each June 1 and December 1 commencing June 1, 1981 and ending December 1, 2020, each installment to and including the installment payable on December 1, 1990 to be one-half of one per cent ($\frac{1}{2}$ of 1%) of such principal amount, and each installment thereafter to be one and one-half per cent ($1\frac{1}{2}$ %) of such principal amount.

Section 2.07. The currency of the United Kingdom of Great Britain and Northern Ireland is hereby specified for the purposes of Section 4.02 of the General Conditions.

Article III

EXECUTION OF THE PROJECT

Section 3.01. (a) The Borrower shall cause the Water Corporation to carry out the Project with due diligence and efficiency and in conformity with sound administrative, engineering, financial and public utility practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the purpose.

(b) The Borrower shall relend the proceeds of the Credit to the Water Corporation under a subsidiary loan agreement to be entered into between the Borrower and the Water Corporation under terms and conditions which shall have been approved by the Association.

(c) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit, and except as the Association shall otherwise agree, the Borrower shall not assign, nor amend, abrogate or waive the Subsidiary Loan Agreement or any provision thereof.

(d) The Borrower shall take and shall cause all its agencies to take all action which shall be necessary on their part to enable the Water Corporation to perform all of its obligations under the Project Agreement and the Subsidiary Loan Agreement and shall not take or permit to be taken any action which might interfere with such performance.

(e) Without limiting or restricting the Borrower's obligations under paragraph *(d)* of this Section, the Borrower specifically undertakes to enable the Water Corporation to establish and maintain tariffs at such levels as may be necessary for the Water Corporation to fulfill the requirements of Section 4.03 of the Project Agreement.

Section 3.02. In order to assist the Water Corporation in carrying out the Project, the Borrower shall cause the Water Corporation to employ consultants acceptable to the Association upon terms and conditions satisfactory to the Association.

Section 3.03. The Borrower shall cause the Water Corporation in carrying out the Project to employ contractors acceptable to the Association upon terms and conditions satisfactory to the Association.

Section 3.04. (a) Except as the Association shall otherwise agree, the goods and services required for the Project and to be financed out of the proceeds of the Credit shall be procured pursuant to the provisions set forth or referred to in Section 2.05 (a) of the Project Agreement.

(b) The Borrower shall cause the Water Corporation to insure, or to make adequate provision for the insurance of, the imported goods to be financed out of the proceeds of the Credit against marine, transit and other hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable by the Water Corporation to replace or repair such goods.

(c) Except as the Association shall otherwise agree, the Borrower shall cause all goods and services financed out of the proceeds of the Credit to be used exclusively for the Project.

Section 3.05. (a) The Borrower shall cause to be furnished to the Association, promptly upon their preparation, the plans, specifications, contract documents and construction schedules for the Project, and any material modifications or amplifications thereof, in such detail as the Association shall reasonably request.

(b) The Borrower shall or shall cause the Water Corporation to: (i) maintain records adequate to record the progress of the Project (including the cost thereof) and to identify the goods and services financed out of the proceeds of the Credit, and to disclose the use thereof in the Project; (ii) enable the Association's representatives to inspect the Project, the goods financed out of the proceeds of the Credit and any relevant records and documents; and (iii) furnish to the Association all such information as the Association shall reasonably request concerning the Project, the expenditure of the proceeds of the Credit and the goods and services financed out of such proceeds.

Article IV

OTHER COVENANTS

Section 4.01. (a) The Borrower shall cause the Water Corporation (i) to maintain records adequate to reflect in accordance with consistently maintained sound accounting practices the operation and financial condition of the Water Corporation, and (ii) to establish and maintain separate accounts for the Gaborone-Lobatse Division.

(b) The Borrower shall cause the Water Corporation to: (i) have its accounts and financial statements, including the separate accounts for the

Gaborone-Lobatse Division, (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with sound 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 five 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 the accounts and financial statements of the Water Corporation and the audit thereof as the Association shall from time to time reasonably request.

Section 4.02. The Borrower shall cause the Water Corporation to take out and maintain with responsible insurers, or to make other provision satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with sound practice.

Section 4.03. (a) The Borrower shall cause BMC (i) to complete, within twelve months after the date of this Agreement, a study on the proper and efficient methods and procedures for the treatment of the abattoir effluent, and (ii) to complete and operate, within thirty months after the date of this Agreement, adequate facilities for the treatment of the abattoir effluent so as to keep any surface or ground water pollution within limits acceptable to the Association.

(b) In the event the treated water is used for aquifer recharge, the Borrower shall take all necessary measures to control such recharge so as to avoid excessive concentration of dissolved solids.

Section 4.04. The Borrower undertakes to transfer the total sum of its rights to the system for the supply of water in the Gaborone-Lobatse Division to the Water Corporation, effective January 1, 1971, on conditions which are acceptable to the Association. This shall be taken to include ownership of all moveable corporeal assets and all permanent assets forming part of the system but not the ownership of the land on which the Gaborone, Notwane and Nuane Dams are situated. Such assets shall be transferred at a valuation of Rands 2,550,000 in the currency of the Borrower. Except as the Association shall otherwise agree, the Water Corporation shall make ten consecutive equal semi-annual payments to the Borrower of Rands 89,250 in the currency of the Borrower commencing on July 1, 1971, and thereafter shall make fifty consecutive equal semi-annual payments to the Borrower of Rands 108,716 in the currency of the Borrower. The Water Corporation shall have the right to administer the whole system without further charges by the Borrower. The monies directed to be transferred in terms of Section 3 of the Gaborone Water and Electricity Project Fund (Dissolution) Act, 1970, and claims vested in terms of the Water Utilities Corporation (Vesting of Claims) Notice, 1970, shall be

regarded as unredeemable capital of the government invested in the corporation which shall bear no interest prior to January 1, 1978, and thereafter shall bear interest at a rate not exceeding seven per cent (7%) per annum, to be specified annually by the Borrower with the concurrence of the Association.

Section 4.05. The Borrower shall take all necessary action to abolish, by April 30, 1971, the allowance for free water supply to its civil servants.

Article V

CONSULTATION, INFORMATION AND INSPECTION

Section 5.01. The Borrower and the Association shall cooperate fully to assure that the purposes of the Credit will be accomplished. To that end, the Borrower and the Association shall from time to time, at the request of either party :

- (a) exchange views through their representatives with regard to the performance of their respective obligations under the Development Credit Agreement, the performance by the Water Corporation of its obligations under the Project Agreement, the administration, operations and financial condition of the Water Corporation and, in respect of the Project, of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof, and other matters relating to the purposes of the Credit; and
- (b) furnish to the other all such information as it shall reasonably request with regard to the general status of the Credit. On the part of the Borrower, such information shall include information with respect to financial and economic conditions in the territories of the Borrower, including its balance of payments, and the external debt of the Borrower, of any of its political subdivisions and of any agency of the Borrower or of any such political subdivision.

Section 5.02. (a) The Borrower shall furnish or cause to be furnished to the Association all such information as the Association shall reasonably request concerning the operations and financial condition of the Water Corporation and, in respect of the Project, of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof.

(b) The Borrower shall promptly inform the Association of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Credit, the maintenance of the service thereof, or the performance by the Borrower of its other obligations under the Development Credit Agreement or the performance by the Water Corporation of its obligations under the Project Agreement and the Subsidiary Loan Agreement.

Section 5.03. The Borrower shall afford all reasonable opportunity for accredited representatives of the Association to inspect all plants, sites, works,

property and equipment of the Water Corporation and to visit any part of the territories of the Borrower for purposes related to the Credit.

Article VI

TAXES AND RESTRICTIONS

Section 6.01. The principal of, and service charges on, the Credit shall be paid without deduction for, and free from, any taxes imposed under the laws of the Borrower or laws in effect in its territories.

Section 6.02. The Development Credit Agreement and the Project Agreement shall be free from any taxes on or in connection with the execution, delivery or registration thereof, imposed under the laws of the Borrower or laws in effect in its territories.

Section 6.03. The payment of the principal of, and service charges on, the Credit shall be free from all restrictions, regulations, controls and moratoria of any nature imposed under the laws of the Borrower or laws in effect in its territories.

Article VII

REMEDIES OF THE ASSOCIATION

Section 7.01. If any event specified in Section 7.01 of the General Conditions or in Section 7.03 of this Agreement shall occur and shall continue for the period, if any, therein set forth, then at any subsequent time during the continuance thereof, the Association, at its option, may by notice to the Borrower declare the principal of the Credit then outstanding to be due and payable immediately together with the service charges thereon and upon any such declaration such principal and service charges shall become due and payable immediately, anything to the contrary in the Development Credit Agreement notwithstanding.

Section 7.02. For the purposes of Section 6.02 of the General Conditions, the following additional events are specified :

- (a) A default shall occur in the performance of any obligation on the part of the Water Corporation under the Project Agreement.
- (b) A default shall occur in the performance of any obligation under the Subsidiary Loan Agreement by the parties thereto.
- (c) The Water Corporation shall have become unable to pay its debts as they mature or any action or proceeding shall have been taken by the Water Corporation or by others whereby any of the property of the Water Corporation shall or may be distributed among its creditors.

- (d) The Borrower or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of the Water Corporation or for the suspension of its operations.
- (e) The Water Utilities Corporation Act, 1970 of the Borrower, as amended in November 1970, shall have been amended, suspended or abrogated in such a way as to materially and adversely affect the ability of the Water Corporation to carry out the covenants, agreements and obligations set forth in the Project Agreement or in the Subsidiary Loan Agreement.
- (f) An extraordinary situation shall have arisen which shall make it improbable that the Water Corporation will be able to perform its obligations under the Project Agreement or under the Subsidiary Loan Agreement.

Section 7.03. For the purposes of Section 7.01 of the General Conditions, the following events are specified :

- (a) Any event specified in Section 7.02 (a), (b) or (e) of this Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Association to the Borrower and the Water Corporation.
- (b) Any event specified in Section 7.02 (c) or (d) of this Agreement shall occur.

Article VIII

EFFECTIVE DATE; TERMINATION

Section 8.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 10.01 (b) of the General Conditions :

- (a) The execution and delivery of the Project Agreement on behalf of the Water Corporation have been duly authorized or ratified by all necessary corporate and governmental action.
- (b) The execution and delivery of the Subsidiary Loan Agreement on behalf of the Borrower and the Water Corporation, respectively, have been duly authorized or ratified by all necessary corporate and governmental action.
- (c) The Water Corporation shall have made arrangements satisfactory to the Association with the Department of Water Affairs of the Borrower under which the Department of Water Affairs shall provide managerial and technical staff to assist the Water Corporation in carrying out the Project and in managing the business and conducting the operations of the Water Corporation.
- (d) The Water Corporation shall have made arrangements satisfactory to the Association for :

- (i) the management of the accounting affairs of the Water Corporation; and
- (ii) the water meter-reading and billing.

Section 8.02. The following are specified as additional matters, within the meaning of Section 10.02 (b) of the General Conditions, to be included in the opinions or opinions to be furnished to the Association :

- (a) That the Project Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Water Corporation, and constitutes a valid and binding obligation of the Water Corporation in accordance with its terms.
- (b) That the Subsidiary Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and the Water Corporation, respectively, and constitutes a valid and binding obligation of the Borrower and the Water Corporation in accordance with its terms.

Section 8.03. The date May 14, 1971 is hereby specified for the purposes of Section 10.04 of the General Conditions.

Section 8.04. The obligations of the Borrower under Sections 3.01 (c), 3.05 (b), 4.01 (a), 4.01 (b) and 5.02 (a) of this Agreement and the provisions of Section 7.02 of this Agreement shall cease and determine on the date on which the Development Credit Agreement shall terminate or on a date thirty years after the date of this Agreement, whichever shall be the earlier.

Article IX

REPRESENTATIVE OF THE BORROWER; ADDRESSES

Section 9.01. The Minister for the time being responsible for Finance and Development Planning of the Borrower is designated as representative of the Borrower for the purposes of Section 9.03 of the General Conditions.

Section 9.02. The following addresses are specified for the purposes of Section 9.01 of the General Conditions :

For the Borrower :

Ministry of Finance and Development Planning

Private Bag No. 8

Gaborone, Botswana

Cable address :

Finance

Gaborone

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.

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

Republic of Botswana :
 By Chief LINCHWE II
 Authorized Representative

International Development Association :
 By J. BURKE KNAPP
 Vice President

SCHEDULE I

WITHDRAWAL OF THE PROCEEDS OF THE CREDIT

1. The table below sets forth the categories of items to be financed out of the proceeds of the Credit, the allocation of amounts of the Credit to each category and the percentage of eligible expenditures so to be financed in each category :

<i>Category</i>	<i>Amount of the Credit Allocated (Expressed in Dollar Equivalent)</i>	<i>% of Expenditures to be Financed</i>
I. Pipeline, equipment, materials, supplies and vehicles	1,830,000	100% of foreign expenditures
II. Civil works	390 000	90% of total expenditures
III. Consultants' services	280,000	100% of total expenditures
IV. Unallocated	500,000	
TOTAL	3,000,000	

2. For the purposes of this Schedule :

(a) the term "foreign expenditures" means expenditures for goods produced in, or services supplied from, the territories, and in the currency, of any member of the Bank (other than the Borrower) or of Switzerland;

(b) the term "local expenditures" means expenditures in the currency of the Borrower, or for goods produced in, or services supplied from, the territories of the Borrower; provided, however, that if the currency of the Borrower is also that of

another member of the Bank in the territories of which goods are produced or from the territories of which services are supplied, expenditures in such currency for such goods or services shall be deemed to be “ foreign expenditures ”; and

(c) the term “ total expenditures ” means the aggregate of foreign and local expenditures.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of :

- (a) expenditures prior to the date of this Agreement, except that withdrawals may be made in respect of Category III on account of expenditures incurred after August 1, 1970 in an aggregate amount not exceeding \$100,000 equivalent; and
- (b) payments for taxes imposed under the laws of the Borrower or laws in effect in its territories on goods or services, or on the importation, manufacture, procurement or supply thereof. To the extent that the amount represented by the percentage set forth in the third column of the table in paragraph 1 above would exceed the amount payable net of all such taxes, such percentage shall be reduced to ensure that no proceeds of the Credit will be withdrawn on account of payments for such taxes.

4. Notwithstanding the allocation of an amount of the Credit set forth in the second column of the table in paragraph 1 above :

- (a) if the estimate of the expenditures under any Category shall decrease, the amount of the Credit then allocated to such Category and no longer required therefor will be reallocated by the Association by increasing correspondingly the unallocated amount of the Credit;
- (b) if the estimate of the expenditures under any Category shall increase, the percentage set forth in the third column of the table in paragraph 1 above in respect of such expenditures shall be applied to the amount of such increase, and a corresponding amount will be allocated by the Association, at the request of the Borrower, to such Category from the unallocated amount of the Credit, subject, however, to the requirements for contingencies, as determined by the Association, in respect of any other expenditures.

5. Notwithstanding the percentages set forth in the third column of the table in paragraph 1 above, if the estimate of total expenditures under Category II shall increase and no proceeds of the Credit are available for reallocation to such Category, the Association may, by notice to the Borrower, adjust the percentage then applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made.

SCHEDULE 2

DESCRIPTION OF THE PROJECT

The Project consists of the improvement and expansion of the water supply facilities of, and managerial assistance to, the Water Corporation in the Gaborone and Lobatse areas, including :

- A. the construction of a pipeline between Gaborone Dam and Nuane waterworks (about 32 miles), together with related pumping stations and ancillary works;
- B. the construction in Gaborone of a 2 IMgd treatment plant, a 3 IMg reservoir, raw and clean water pumping stations and mains, distribution extensions, pipe work and associated equipment;
- C. the construction of a 1.25 IMg storage reservoir in Lobatse, together with transmission mains, distribution extensions and ancillary equipment; and
- D. The provision of technical assistance, housing, vehicles, workshop, laboratory, main laying and miscellaneous equipment.

The Project is expected to be completed by December 31, 1972.

INTERNATIONAL DEVELOPMENT ASSOCIATION

GENERAL CONDITIONS, DATED 31 JANUARY 1969

GENERAL CONDITIONS APPLICABLE TO DEVELOPMENT CREDIT AGREEMENTS

[*Not published herein. See United Nations, Treaty Series, vol. 703, p. 244.*]

PROJECT AGREEMENT

AGREEMENT, dated February 10, 1971, between INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association) and WATER UTILITIES CORPORATION (hereinafter called the Water Corporation).

WHEREAS by a development credit agreement of even date herewith¹ between the Republic of Botswana (hereinafter called the Borrower) and the Association (hereinafter called the Development Credit Agreement), the Association has agreed to make available to the Borrower an amount in various currencies equivalent to three million dollars (\$3,000,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that the Water Corporation agree to undertake such obligations toward the Association as hereinafter set forth;

WHEREAS by a subsidiary loan agreement of even date herewith between the Borrower and the Water Corporation, the proceeds of the credit provided for under the Development Credit Agreement will be made available to the Water Corporation on the terms and conditions therein set forth; and

WHEREAS the Water Corporation, in consideration of the Association's entering into the Development Credit Agreement with the Borrower, has agreed to undertake the obligations hereinafter set forth;

NOW THEREFORE the parties hereto hereby agree as follows :

¹ See p. 70 of this volume.

Article I

DEFINITIONS

Section 1.01. Wherever used in this Agreement, unless the context shall otherwise require, the several terms defined in the Development Credit Agreement and in the General Conditions¹ (as so defined) have the respective meanings therein set forth.

Article II

EXECUTION OF THE PROJECT

Section 2.01. The Water Corporation shall carry out the Project described in Schedule 2 to the Development Credit Agreement with due diligence and efficiency and in conformity with sound administrative, engineering, financial and public utility practices.

Section 2.02. In order to assist the Water Corporation in carrying out the Project, the Water Corporation shall employ engineering and accounting consultants acceptable to the Association upon terms and conditions satisfactory to the Association.

Section 2.03. In carrying out the Project, the Water Corporation shall employ contractors acceptable to the Association upon terms and conditions satisfactory to the Association.

Section 2.04. As soon as the Water Corporation shall have appointed sufficient number of qualified and experienced managerial and technical staff, which shall be not later than December 31, 1973, the Water Corporation shall terminate the arrangements with the Department of Water Affairs referred to in Section 8.01 (c) of the Development Credit Agreement.

Section 2.05. (a) Except as the Association shall otherwise agree, the goods and services (other than services of consultants) to be financed out of the proceeds of the Credit relent to the Water Corporation by the Borrower shall be procured on the basis of international competition under procedures consistent with the *Guidelines for Procurement under World Bank Loans and IDA Credits*, published by the Bank in August 1969, and in accordance with, and subject to, the provisions set forth in Schedule 1 to this Agreement.

(b) The Water Corporation undertakes to insure, or make adequate provision for the insurance of, the imported goods to be financed out of the proceeds of the Credit relent to it by the Borrower against marine, transit and other hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable by the Water Corporation to replace or repair such goods.

(c) Except as the Association may otherwise agree, the Water Corporation shall cause all goods and services financed out of the proceeds of the Credit relent to it by the Borrower to be used exclusively for the Project.

¹ See p. 92 of this volume.

Section 2.06. (a) The Water Corporation shall furnish to the Association promptly upon their preparation, the plans, specifications, contract documents and construction schedules for the Project, and any material modifications or amplifications thereof, in such detail as the Association shall reasonably request.

(b) The Water Corporation : (i) shall maintain records adequate to record the progress of the Project (including the cost thereof) and to identify the goods and services financed out of the proceeds of the Credit relented to it by the Borrower, and to disclose the use thereof in the Project; (ii) shall enable the Association's representatives to inspect the Project, the goods financed out of such proceeds and any relevant records and documents; and (iii) shall furnish to the Association all such information as the Association shall reasonably request concerning the Project, the expenditure of the proceeds of the Credit to relented to it and the goods and services financed out of such proceeds.

Section 2.07. The Water Corporation shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Association shall otherwise agree, the Water Corporation 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.

Article III

MANAGEMENT AND OPERATIONS OF THE WATER CORPORATION

Section 3.01. (a) The Water Corporation shall operate its business and conduct its affairs in accordance with sound administrative, financial and public utility practices under the supervision of qualified and experienced management and shall operate, maintain, renew and repair its plants, equipment and property, including the Project, in accordance with sound engineering and public utility practices.

(b) The Water Corporation shall consult the Association about any proposed appointment to the position of the chief executive officer of the Water Corporation sufficiently in advance of any such appointment for the Association to have adequate opportunity to comment on the qualifications and experience of the person, or persons, the Water Corporation is considering for the position and shall make any such appointment only after consideration of the views expressed by the Association.

(c) The Water Corporation shall consult the Association about any proposed material change in the structure of its organization and operations sufficiently in advance of any such change for the Association to have adequate opportunity to comment thereon and shall make any such change only after consideration of the views expressed by the Association.

(d) The Water Corporation shall take all action reasonably required to maintain and renew all rights, powers, privileges and franchises, and to acquire all property, necessary or useful in the conduct of its business.

Section 3.02. The Water Corporation shall take out and maintain with responsible insurers, or make other provisions satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with sound practice.

Section 3.03. The Water Corporation shall not, without the consent of the Association, sell, lease, transfer, or otherwise dispose of any of its properties or assets which shall be required for the efficient carrying on of the operations of the Water Corporation.

Article IV

FINANCIAL COVENANTS

Section 4.01. The Water Corporation shall (i) maintain records adequate to reflect in accordance with consistently maintained sound accounting practices its operations and financial condition, and (ii) establish and maintain separate accounts for the Gaborone-Lobatse Division.

Section 4.02. The Water Corporation shall : (i) have its accounts and financial statements, including the separate accounts for the Gaborone-Lobatse Division, (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with sound 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 five 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 the accounts and financial statements of the Water Corporation and the audit thereof as the Association shall from time to time reasonably request.

Section 4.03. (a) Except as the Association shall otherwise agree, the Water Corporation shall take all necessary steps to establish and maintain water tariffs and other charges for the water supply services provided by the Gaborone-Lobatse Division sufficient to (i) satisfy all provisions of Section 19 of the Water Utilities Corporation Act, 1970, applied to the Gaborone-Lobatse Division as a separate accounting entity, and (ii) earn an annual rate of return on the value of the net fixed assets in operation of the Gaborone-Lobatse Division of not less than 4½% for the financial years 1972 through 1975, 7% for the financial years 1976 and 1977 and 8% thereafter.

(b) For the purposes of this Section :

- (i) The annual rate of return shall be calculated by relating the operating income of the Gaborone-Lobatse Division for the year in question to the average of the value of the net fixed assets in operation of the Gaborone-Lobatse Division at the beginning and at the end of each financial year.
- (ii) The term “ value of the net fixed assets in operation ” shall mean the gross value of such assets, less the amount of accumulated depreciation, all determined in accordance with sound and consistently maintained methods of valuation, revaluation and depreciation, acceptable to the Association.

- (iii) The term “ operating income ” shall mean the difference between :
- (A) gross operating revenue accruing from the water supply services provided by the Gaborone-Lobatse Division, and
 - (B) the operating and administration expenses of the Gaborone-Lobatse Division, including taxes (if any), adequate maintenance and depreciation based on the straight-line method at an average rate of not less than 3.3%, but excluding interest and other charges on debt.
- (iv) Each financial year shall be identified by the calendar year in which the financial year ends.

Section 4.04. Except as the Association shall otherwise agree, the Water Corporation shall not amend its contract with BMC dated December 18, 1970, providing for the payments by BMC of the fixed annual charges for the Gaborone-Nuane pipeline and of other charges for industrial and domestic water uses.

Section 4.05. Except as the Association shall otherwise agree :

- (a) The Water Corporation shall not incur total debt in any financial year in an amount exceeding \$75,000 equivalent and shall not undertake any expansion program or acquire any capital assets involving an amount exceeding \$100,000 equivalent.
- (b) For the purposes of this Section, the term “ debt ” means all debt except debt maturing by its terms on demand or not more than one year after its incurrence.

Article V

CONSULTATION, INFORMATION AND INSPECTION

Section 5.01. The Association and the Water Corporation shall cooperate fully to assure that the purposes of the Credit will be accomplished. To that end, the Association and the Water Corporation shall from time to time, at the request of either party, exchange views through their representatives with regard to the performance of their respective obligations under this Agreement, the administration, operations and financial condition of the Water Corporation and other matters relating to the purpose of the Credit.

Section 5.02. The Association and the Water Corporation shall promptly inform each other of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Credit, the performance by either of them of its obligations under this Agreement or the performance by the Borrower and the Water Corporation of their respective obligations under the Subsidiary Loan Agreement.

Section 5.03. The Water Corporation shall enable the Bank's representatives to inspect all plants, sites, works, properties and equipment of the Water Corporation and any relevant records and documents.

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 Development Credit Agreement becomes effective.

Section 6.02. (a) This Agreement and all obligations of the Association and of the Water Corporation 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) a date thirty 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 the Water Corporation of this event and, upon the giving of such notice, this Agreement and all obligations of the parties thereunder shall forthwith terminate.

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

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 Association :

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

Cable address :

Indevas
Washington, D.C.

For the Water Corporation :

The Water Utilities Corporation
Private Bag No. 29
Gaborone, Botswana

Cable address :

Water
Gaborone

Section 7.02. Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Agreement on behalf of the Water Corporation may be taken or executed by the Secretary or such other person or persons as the Water Corporation shall designate in writing.

Section 7.03. The Water Corporation shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of the person or persons who will, on behalf of the Water Corporation, take any action or execute any documents required or permitted to be taken or executed by the Water Corporation pursuant to any of the provisions of this Agreement.

Section 7.04. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

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

International Development Association :

By J. BURKE KNAPP
Vice President

Water Utilities Corporation :

By Chief LINCHWE II
Authorized Representative

SCHEDULE I

PROCUREMENT

1. With respect to any contract for civil works or equipment estimated to cost \$25,000 equivalent or more :

(a) If bidders are required to pre-qualify, the Water Corporation shall, before qualification is invited, inform the Association in detail of the procedure to be followed and shall introduce such modifications in said procedure as the Association shall reasonably request. The list of pre-qualified bidders, together with a statement of their qualifications and of the reasons for the exclusion of any applicant for pre-qualification, shall be furnished by the Water Corporation to the Association for its comments before the applicants are notified and the Water Corporation shall make such additions or deletions from the said list as the Association shall reasonably request.

(b) Before bids are invited, the Water Corporation shall furnish to the Association, for its comments, the text of the invitations to bid and the specifications and other bidding documents, together with a description of the advertising procedure to be followed for the bidding, and shall make such modifications in the said documents or procedure as the Association shall reasonably request. Any further modification or addition to the bidding documents shall require the Association's concurrence before it is issued to the prospective bidders.

(c) After bids have been received and evaluated, the Water Corporation shall, before a final decision on the awards is made, inform the Association of the name of the bidder to whom it intends to award the contract and shall furnish to the Association, in sufficient time for its review, a detailed report by the Water Corporation's

consultants on the evaluation and comparison of the bids received, together with the recommendations for award of said consultants, and the reasons for the intended award. The Association shall promptly inform the Water Corporation whether it has any objection to the intended award and shall state the reasons for any objection it may have.

(d) If the contract shall be awarded over the Association's objection or if its terms and conditions shall, without the Association's concurrence, materially differ from those on which bids were asked, no expenditures thereunder shall be financed out of the proceeds of the Credit.

(e) Copy of the contract shall be furnished to the Association promptly after its execution.

2. With respect to any other contract for civil works or equipment, the Water Corporation shall, promptly after the contract is awarded, furnish to the Association a copy of the contract as well as a copy of the record of public opening of the bids, the bid evaluation report and recommendations for award of the Water Corporation's consultants and a statement of the reasons for any departure from such recommendation. The Association shall promptly inform the Water Corporation if it finds that the award of the contract is not consistent with the *Guidelines for Procurement under World Bank Loans and IDA Credits* and, in such event, no expenditures under such contract shall be financed out of the proceeds of the Credit.
