

No. 11431

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**INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT**  
and  
**KENYA**

**Guarantee Agreement—*Nairobi Water Supply Project* (with annexed General Conditions Applicable to Loan and Guarantee Agreements and Loan Agreement between the Bank and the City Council of Nairobi). Signed at Washington on 11 December 1970**

*Authentic text : English.*

*Registered by the International Bank for Reconstruction and Development on 16 December 1971.*

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**BANQUE INTERNATIONALE POUR  
LA RECONSTRUCTION ET LE DÉVELOPPEMENT**  
et  
**KENYA**

**Contrat de garantie — *Projet relatif à l'approvisionnement en eau de Nairobi* (avec, en annexe, les Conditions générales applicables aux contrats d'emprunt et de garantie et le Contrat d'emprunt entre la Banque et le Conseil municipal de Nairobi). Signé à Washington le 11 décembre 1970**

*Texte authentique : anglais.*

*Enregistré par la Banque internationale pour la reconstruction et le développement le 16 décembre 1971.*

## GUARANTEE AGREEMENT<sup>1</sup>

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AGREEMENT, dated December 11, 1970, between REPUBLIC OF KENYA (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by the Loan Agreement of even date herewith<sup>2</sup> between the Bank and The City Council of Nairobi (hereinafter called the Borrower) the Bank has agreed to make to the Borrower a loan in various currencies equivalent to eight million three hundred thousand dollars (\$8,300,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the obligations of the Borrower in respect of such loan as hereinafter provided; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed so to guarantee such obligations of the Borrower;

NOW THEREFORE the parties hereto hereby agree as follows :

### *Article I*

*Section 1.01.* The parties to this Guarantee Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank dated January 31, 1969,<sup>3</sup> with the same force and effect as if they were fully set forth herein (said General Conditions Applicable to Loan and Guarantee Agreements being hereinafter called the General Conditions).

*Section 1.02.* Wherever used in this Guarantee Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in Section 1.02 of the Loan Agreement have the respective meanings therein set forth.

### *Article II*

*Section 2.01.* Without limitation or restriction upon any of its other obligations under this Guarantee Agreement, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and interest and other charges on, the Loan and

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<sup>1</sup> Came into force on 26 March 1971, upon notification by the Bank to the Government of Kenya.

<sup>2</sup> See p. 76 of this volume.

<sup>3</sup> *Ibid.*

the Bonds, the premium, if any, on the prepayment of the Loan or the redemption of the Bonds prior to their maturity and the punctual performance of all the obligations of the Borrower, all as set forth in the Loan Agreement and in the Bonds.

*Section 2.02.* Without limitation or restriction upon the provisions of Section 2.01 of this Guarantee Agreement, the Guarantor specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for the carrying out of the Project, to make arrangements, satisfactory to the Bank, promptly to provide the Borrower or cause the Borrower to be provided with such funds as are needed to meet such expenditures.

### Article III

*Section 3.01.* It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on governmental assets. To that end, the Guarantor undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Guarantor, as security for any external debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to : (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date; or (iii) any charges on the General Fund of the East African Community (the Community) securing a debt of the Community where the amount of debt service on such debt in any financial year together with other debt service on other debt of the Community payable from such General Fund in such financial year do not exceed 2% of the average of the income tax collected by the East African Income Tax Department and of customs duties and excise duties collected by the East African Customs and Excise Department in the three financial years preceding such incurrence. For purposes of this sub-section, “ debt service ” shall include payments of the principal of, and interest and other charges on, debt.

As used in this Section, the term “ assets of the Guarantor ” includes assets of the Guarantor or of any of its political subdivisions, or of any agency of the Guarantor or of any such political subdivision, including the Central Bank of Kenya, or any other institution, performing the functions of a central bank; and the term “ external debt ” means any debt payable in any medium other than currency of the Guarantor, whether such debt is or may become payable abso-

lutely or at the option of the creditor in such other medium, save that in the case of a debt of the Community, the term external debt means any debt payable in any medium other than the currencies of the members of the Community.

*Section 3.02.* (a) The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the general status of the Loan. On the part of the Guarantor, such information shall include information with respect to financial and economic conditions in the territories of the Guarantor and the international balance of payments position of the Guarantor.

(b) The Guarantor and the Bank shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. The Guarantor shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(c) The Guarantor shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of the Guarantor for purposes related to the Loan.

*Section 3.03.* The principal of, and interest and other charges on, the Loan and the Bonds shall be paid without deduction for, and free from, any taxes, and free from all restrictions, imposed under the laws of the Guarantor or laws in effect in its territories; provided, however, that the provisions of this Section shall not apply to taxation of, or fees upon, payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

*Section 3.04.* This Guarantee Agreement, the Loan Agreement and the Bonds shall be free from any taxes that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof.

*Section 3.05.* Without limitation or restriction upon the provisions of Section 2.01 of this Guarantee Agreement, the Guarantor shall (i) enable the Borrower promptly to adjust, and to maintain at all times, its charges in such a manner as may be required pursuant to the provisions of Sections 5.11 and 5.12 of the Loan Agreement; (ii) not permit any of its political subdivisions or agencies of such political subdivisions, to take any action which would prevent or interfere with the successful operation of the Project or with the performance by the Borrower of any of the covenants and agreements contained in the Loan Agreement; (iii) cause such political subdivisions or agencies to take all reasonable action which shall be necessary in order to enable the Borrower to perform

such covenants and agreements; (iv) cause to be taken all measures required to enable the Borrower to acquire and maintain all such rights, powers, privileges and franchises as are referred to in paragraph (i) of Section 5.06 of the Loan Agreement; and (v) except as the Bank may otherwise agree, (A) not permit any use or abstraction of the Chania River's or its tributaries' waters by others which would result in any significant reduction of such River's water yield to the Borrower, and (B) prohibit the discharge into the Chania River or into its tributaries anywhere above the River intake included in the Project of any sewage, industrial wastes or other pollutants, and to take such other measures as are necessary to prevent any deterioration in the quality of the Chania River's water to be abstracted for the operation of the Project.

#### *Article IV*

*Section 4.01.* The Guarantor shall endorse, in accordance with the provisions of the General Conditions, its guarantee on the Bonds to be executed and delivered by the Borrower. The Minister of the Guarantor for the time being responsible for finance and such person or persons as he shall designate in writing are designated as the authorized representatives of the Guarantor for the purposes of Section 8.10 of the General Conditions.

#### *Article V*

*Section 5.01.* The Minister of the Guarantor for the time being responsible for finance is designated for the purposes of Section 10.03 of the General Conditions.

*Section 5.02.* The following addresses are specified for the purposes of Section 10.01 of the General Conditions :

For Kenya :

The Treasury  
P.O. Box 30007  
Nairobi, Kenya  
Cable address :  
Finance  
Nairobi

For the Bank :

International Bank for Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America  
Cable address :  
Intbafrad  
Washington, D.C.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives hereunto duly authorized, have caused this Guarantee 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.

Republic of Kenya :  
By L. O. KIBINGE  
Authorized Representative

International Bank for Reconstruction and Development :  
By A. BROCHES  
General Counsel

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

GENERAL CONDITIONS, DATED 31 JANUARY 1969

GENERAL CONDITIONS APPLICABLE TO LOAN AND GUARANTEE AGREEMENTS

[Not published herein. See *United Nations, Treaty Series, vol. 691, p. 300.*]

## LOAN AGREEMENT

AGREEMENT, dated December 11, 1970, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and THE CITY COUNCIL OF NAIROBI (hereinafter called the Borrower).

### *Article I*

#### GENERAL CONDITIONS; DEFINITIONS

*Section 1.01.* The parties to this Loan Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank dated January 31, 1969,<sup>1</sup> with the same force and effect as if they were fully set forth herein (said General Conditions Applicable to Loan and Guarantee Agreements of the Bank being hereinafter called the General Conditions).

*Section 1.02.* Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the term "WS Department" means the Borrower's Water and Sewerage Department as established by a decision taken by the Borrower on January 3, 1970, and approved by the Guarantor's Minister of Local Government

<sup>1</sup> See above.

by letter addressed by the Permanent Secretary of the Guarantor's Ministry of Local Government to the Town Clerk of the Borrower under the date of May 14, 1970.

## Article II

### THE LOAN

*Section 2.01.* The Bank agrees to lend to the Borrower, on the terms and conditions in this Loan Agreement set forth or referred to, an amount in various currencies equivalent to eight million three hundred thousand dollars (\$8,300,000).

*Section 2.02.* (a) The Bank shall open a Loan Account on its books in the name of the Borrower and shall credit to such Account the amount of the Loan.

(b) The amount of the Loan may be withdrawn from the Loan Account as provided in, and subject to the rights of cancellation and suspension set forth in, this Loan Agreement and in accordance with the allocation of the proceeds of the Loan set forth in Schedule 1 to this Agreement, as such allocation shall be modified from time to time pursuant to the provisions of such Schedule or by further agreement between the Borrower and the Bank.

*Section 2.03.* (a) The Borrower shall be entitled to withdraw from the Loan Account in respect of the reasonable cost of goods or services required for the Project and to be financed under this Loan Agreement :

- (i) such amounts as shall have been paid (or, if the Bank shall so agree, as shall be required to meet payments to be made) for goods or services included in Categories II and IV of the allocation of the proceeds of the Loan referred to in Section 2.02 of this Agreement; and
- (ii) such amounts as (A) shall have been paid (or, if the Bank shall so agree, shall be required to meet payments to be made) for, and (B) shall represent the estimated foreign exchange component (as determined by the Bank) of, the goods or services included in Categories I and III of said allocation of the proceeds of the Loan.

(b) The Borrower shall also be entitled to withdraw from the Loan Account such amounts as shall be required to meet payments to be made for interest and other charges on the Loan accrued on or before January 31, 1975, or such other date as may be agreed between the Bank and the Borrower.

*Section 2.04.* It is hereby agreed, pursuant to Section 5.01 of the General Conditions :

- (i) that withdrawals from the Loan Account under Categories I and III of the allocation of the proceeds of the Loan referred to in Section 2.02 of this Agreement may be made on account of payments in the currency of the Guarantor, or for goods produced in, or services supplied from, the territories of the Guarantor; and
- (ii) that withdrawals from the Loan Account under Category IV of the allocation of the proceeds of the Loan referred to in Section 2.02 of this Agreement may be made on account of payments made prior to the date of this Agreement but after December 31, 1969.

*Section 2.05.* The Borrower shall pay to the Bank a commitment charge at the

rate of three-fourths of one per cent ( $\frac{3}{4}$  of 1%) per annum on the principal amount of the Loan not withdrawn from time to time.

*Section 2.06.* The Borrower shall pay interest at the rate of seven and one-quarter per cent ( $7\frac{1}{4}\%$ ) per annum on the principal amount of the Loan withdrawn and outstanding from time to time.

*Section 2.07.* Interest and other charges shall be payable semi-annually on February 1 and August 1 in each year.

*Section 2.08.* The Borrower shall repay the principal of the Loan in accordance with the amortization schedule set forth in Schedule 2 to this Agreement.

### Article III

#### USE OF PROCEEDS OF THE LOAN

*Section 3.01.* The Borrower shall apply the proceeds of the Loan in accordance with the provisions of this Loan Agreement to expenditures on the Project, described in Schedule 3 to this Agreement.

*Section 3.02.* Except as the Bank shall otherwise agree, the goods and services to be financed out of the proceeds of the Loan shall be procured on the basis of international competitive bidding in accordance with the *Guidelines for Procurement under World Bank Loans and IDA Credits*, published by the Bank in August 1969, and in accordance with such other procedures supplementary thereto as are set forth in Schedule 4 to this Agreement or as shall be agreed between the Bank and the Borrower.

*Section 3.03.* Except as the Bank may otherwise agree, the Borrower shall cause all goods and services financed out of the proceeds of the Loan to be used exclusively in carrying out the Project.

### Article IV

#### BONDS

*Section 4.01.* If and as the Bank shall from time to time request, the Borrower shall execute and deliver Bonds representing the principal amount of the Loan as provided in Article VIII of the General Conditions.

*Section 4.02.* The Town Clerk of the Borrower and such other person or persons as he shall appoint in writing are designated as authorized representatives of the Borrower for the purposes of Section 8.10 of the General Conditions.

### Article V

#### PARTICULAR COVENANTS

*Section 5.01.* (a) The Borrower shall carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial, engineering and



public utility practices, and shall make available, promptly as needed, all funds, facilities, services and other resources required for the purpose.

(b) In carrying out the Project, the Borrower shall employ competent and experienced consultants and contractors acceptable to, and upon terms and conditions satisfactory to, the Bank.

(c) The Borrower shall promptly furnish or cause to be furnished to the Bank the reports, plans, specifications, contract documents, and procurement and work schedules for the Project and any material modifications subsequently made therein, in such detail as the Bank shall reasonably request.

*Section 5.02.* (a) The Borrower shall : (i) maintain or cause to be maintained records adequate to identify the goods and services financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition of the Borrower; and (ii) enable the Bank's representatives to inspect the Project, such goods, all other plants, sites, works, properties and equipment of the Borrower and any relevant records and documents.

(b) Without restriction or limitation upon the provisions of paragraph (a) (i) of Section 5.02 of this Agreement, the Borrower shall (i) maintain separate accounts (A) for its WS Department, (B) for the Borrower's other activities, and (C) within its WS Department, for such Department's (1) water supply services and (2) sewerage services, and (ii) have its annual financial statements prepared on the basis of such separate accounts.

(c) The Borrower shall (i) have its accounts and annual financial statements referred to under paragraph (b) above audited in accordance with sound auditing principles consistently applied and by independent auditors acceptable to the Bank, (ii) furnish to the Bank as soon as available but not later than six months after the close of the Borrower's fiscal year, except as the Bank shall otherwise agree, (A) certified copies of such financial statements for such year as so audited and (B) the report of such audit by such auditors, of such scope and in such detail as the Bank shall have reasonably requested.

*Section 5.03.* (a) The Bank and the Borrower shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end the Bank and the Borrower shall from time to time, at the request of either party, exchange views through their representatives with regard to the performance by the Borrower of its obligations under the Loan Agreement, the administration, operations and financial condition of the Borrower and any other matters relating to the purposes of the Loan and the maintenance of the service thereof.

(b) The Borrower shall furnish to the Bank all such information as the Bank shall reasonably request concerning the expenditure of the proceeds of the Loan, the Project, the goods and services financed out of the proceeds of the Loan, the administration, operations and financial plans and condition of the Borrower.

(c) The Borrower shall promptly inform the Bank of any condition which

interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan, the maintenance of the service thereof or the performance by the Borrower of its obligations under the Loan Agreement.

*Section 5.04.* The Borrower shall at all times manage its affairs, maintain its financial position and carry on its operations in accordance with sound business and municipal practices.

*Section 5.05.* (a) The Borrower (i) shall cause its WS Department at all times to plan and manage its operations and affairs, plan its future expansion and carry on its operations, all in accordance with sound business, financial, engineering and public utility practices, and (ii) shall not materially change the organizational and administrative structure of such Department without prior approval of the Bank.

(b) The Borrower shall employ, and thereafter continue to employ, (i) a competent manager of its WS Department with experience and qualifications satisfactory to the Bank, and (ii) competent and qualified staff for such Department in adequate numbers.

*Section 5.06.* The Borrower shall :

- (i) promptly take all steps necessary to acquire, maintain and renew all rights to lands and other properties, and all rights, powers, privileges and franchises which are necessary or useful in the carrying out of the Project or in the conduct of its water supply and sewerage services, including the right to abstract 10 million imperial gallons of water per day from the Chania River;
- (ii) at all times operate and maintain, renew and repair its water supply and sewerage plants, machinery, equipment and property, and promptly make all necessary repairs and renewals thereof, in accordance with sound engineering and public utility practices;
- (iii) without the prior approval of the Bank, not sell, lease, transfer or otherwise dispose of any of its water supply and sewerage property or assets which shall be required for the efficient operation of its water supply and sewerage services;
- (iv) establish, not later than December 31, 1972, a separate stores operation for the materials, spare parts and equipment required for the operation of its water supply and sewerage services; and
- (v) review with the Bank annually, or at such other intervals as the Bank shall reasonably request, the program of investments for future expansion or improvement of its water supply and sewerage facilities, and the proposed means of financing such program.

*Section 5.07.* (a) The Borrower shall take out and maintain with responsible insurers, or make other provision satisfactory to the Bank for, insurance of its water supply and sewerage assets against such risks and in such amounts as shall be consistent with sound public utility practices.

(b) Without limiting the generality of the foregoing, the Borrower undertakes to insure, or to cause to be insured, the imported goods financed out of the proceeds of the Loan against marine, transit and other hazards incident to acquisition, transporta-

tion 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 Borrower to replace or repair such goods.

*Section 5.08.* The Borrower undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Borrower as security for any debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to : (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property, or (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after the date on which it is originally incurred.

*Section 5.09.* The Borrower shall pay all taxes, if any, imposed under the laws of the Guarantor or laws in effect in the territories of the Guarantor on or in connection with the execution, issue, delivery or registration of the Loan Agreement, the Guarantee Agreement,<sup>1</sup> or the Bonds, or the payment of principal, interest or other charges thereunder; provided, however, that the provisions of this Section shall not apply to taxation of payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

*Section 5.10.* The Borrower shall pay or cause to be paid all taxes, if any, imposed under the laws of the country or countries in whose currency the Loan and the Bonds are payable or laws in effect in the territories of such country or countries on or in connection with the execution, issue, delivery or registration of the Loan Agreement, the Guarantee Agreement or the Bonds.

*Section 5.11.* (a) The Borrower shall take all measures (including but not limited to adjustments of its charges for water services) as shall be required to provide the Borrower with net operating income to yield, for the fiscal year commencing January 1, 1972, and subsequent fiscal years, a return on the value of its gross fixed water supply assets in operation of not less than 7½% per annum, except as the Bank may otherwise agree.

(b) For the purposes of this Section :

- (i) the annual return specified above will be calculated by using as the denominator the value of the Borrower's gross fixed water supply assets in service at the beginning of the year for which the return is being determined, and as the numerator, the Borrower's net operating income from its water supply services for such year;
- (ii) the " value of gross fixed water supply assets " shall be determined pursuant to the provisions of Schedule 5 to this Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and the Bank;
- (iii) the term " gross revenues " means all revenues from the sale of water plus other recurring fees and charges associated with the sale of water;

<sup>1</sup> See p. 68 of this volume.

- (iv) the term “ net operating income ” means the difference between (1) gross revenues and (2) operating expenses; and
- (v) the term “ operating expenses ” means all costs incurred by the Borrower in operating its water supply services, including maintenance expenses and a reasonable portion, as agreed with the Bank, of overhead costs, but excluding depreciation, interest, amortization and other charges on debt.

*Section 5.12.* (a) Except as the Bank shall otherwise agree, the Borrower shall take all measures (including but not limited to adjustments of its charges for sewerage and waste disposal services) as shall be required to provide the Borrower with revenues sufficient (i) to cover operating expenses for its sewerage and waste disposal services, and (ii) to meet periodic repayments and interest and other charges on long-term indebtedness incurred for its sewerage and waste disposal services.

(b) For the purposes of this Section :

- (i) the term “ revenues ” means all revenues from sewerage services plus other recurring fees and charges associated with sewerage services; and
- (ii) the term “ operating expenses ” means the costs incurred by the Borrower in operating its sewerage services, including maintenance expenses and a reasonable portion, as agreed with the Bank, of overhead costs, but excluding depreciation, interest, amortization and other charges on long-term indebtedness.

## *Article VI*

### REMEDIES OF THE BANK

*Section 6.01.* If any event specified in Section 7.01 of the General Conditions or in Section 6.02 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 Bank, at its option, may by notice to the Borrower and the Guarantor declare the principal of the Loan and of all the Bonds then outstanding to be due and payable immediately together with the interest and other charges thereon and upon any such declaration such principal, interest and charges shall become due and payable immediately, anything to the contrary in this Loan Agreement or in the Bonds notwithstanding.

*Section 6.02.* For the purposes of Section 7.01 of the General Conditions, the following additional event is specified :

Any legislation or regulation of the Guarantor governing the establishment, organization, powers and operations of the Borrower shall be amended, suspended or abrogated without the agreement of the Bank and such event shall (i) materially and adversely affect the operations of the WS Department, the financial condition of the Borrower, or the performance by the Borrower of its obligations under the Loan Agreement, and (ii) continue for a period of sixty days after notice thereof shall have been given by the Bank to the Borrower and the Guarantor.

*Article VII*

## EFFECTIVE DATE; TERMINATION

*Section 7.01.* The following event is specified as an additional condition to the effectiveness of this Loan Agreement with the meaning of Section 11.01 (c) of the General Conditions :

All necessary acts, consents and approvals to be performed or given by the Borrower or any of its agencies, or by the Guarantor, the Guarantor's political subdivisions or agencies, or by any agency of any political subdivision, or otherwise to be performed or given, in order to authorize the carrying out of the Project and to enable the Borrower and the Guarantor to perform all of the covenants, obligations and agreements in the Loan Agreement and the Guarantee Agreement contained, together with all necessary powers and rights in connection therewith, shall have been performed, given or duly authorized.

*Section 7.02.* The following is specified as an additional matter, within the meaning of Section 11.02 (c) of the General Conditions, to be included in the opinion or opinions to be furnished to the Bank :

That all acts, consents and approvals referred to in Section 7.01 of this Agreement together with all necessary powers and rights in connection therewith have been duly and validly performed, given or authorized.

*Section 7.03.* The date of March 31, 1971 is hereby specified for the purposes of Section 11.04 of the General Conditions.

*Article VIII*

## MISCELLANEOUS

*Section 8.01.* The Closing Date shall be March 31, 1975 or such other date as shall be agreed between the Bank and the Borrower.

*Section 8.02.* The following addresses are specified for the purposes of Section 10.01 of the General Conditions :

For the Bank :

International Bank for Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America  
Cable address :  
Intbafrad  
Washington, D.C.

For the Borrower :

Town Clerk  
City Council of Nairobi  
P. O. Box 30075  
Nairobi, Kenya  
Cable address :  
Municipality  
Nairobi

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be executed 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.

International Bank for Reconstruction and Development :

By A. BROCHES  
General Counsel

The City Council of Nairobi :

By M. W. KENYATTA  
Mayor

J. P. MBOGUA  
Town Clerk

### SCHEDULE 1

#### ALLOCATION OF PROCEEDS OF LOAN

<i>Category</i>	<i>Amount Expressed in Dollar Equivalent</i>
I. Civil works . . . . .	500,000
II. Imported equipment, materials and supplies including installation . . . . .	4,400,000
III. Equipment, materials and supplies procured in the territories of the Guarantor . . . . .	200,000
IV. Consulting services . . . . .	700,000
V. Interest and other charges on the Loan accrued on or before January 31, 1975 . . . . .	1,300,000
VI. Unallocated . . . . .	1,200,000
TOTAL	<u>8,300,000</u>

#### REALLOCATION UPON CHANGE IN COST ESTIMATES

1. If the estimate of the cost of the items included in any of the Categories I to V shall decrease, the amount of the Loan then allocated to, and no longer required for, such Category will be reallocated by the Bank to Category VI.

2. If the estimate of the cost of the items included in any of the Categories I to V shall increase, an amount equal to the portion, if any, of such increase to be financed out of the proceeds of the Loan will be allocated by the Bank, at the request of the Borrower, to such Category from Category VI, subject, however, to the requirements for contingencies, as determined by the Bank, in respect of the cost of the items in the other Categories.

SCHEDULE 2  
AMORTIZATION SCHEDULE

<i>Date Payment Due</i>	<i>Payment of Principal (expressed in dollars)*</i>	<i>Date Payment Due</i>	<i>Payment of Principal (expressed in dollars)*</i>
August 1, 1975 . . . . .	150,000	August 1, 1983 . . . . .	265,000
February 1, 1976 . . . . .	155,000	February 1, 1984 . . . . .	275,000
August 1, 1976 . . . . .	160,000	August 1, 1984 . . . . .	285,000
February 1, 1977 . . . . .	165,000	February 1, 1985 . . . . .	295,000
August 1, 1977 . . . . .	170,000	August 1, 1985 . . . . .	305,000
February 1, 1978 . . . . .	180,000	February 1, 1986 . . . . .	315,000
August 1, 1978 . . . . .	185,000	August 1, 1986 . . . . .	325,000
February 1, 1979 . . . . .	190,000	February 1, 1987 . . . . .	340,000
August 1, 1979 . . . . .	200,000	August 1, 1987 . . . . .	350,000
February 1, 1980 . . . . .	205,000	February 1, 1988 . . . . .	365,000
August 1, 1980 . . . . .	215,000	August 1, 1988 . . . . .	375,000
February 1, 1981 . . . . .	220,000	February 1, 1989 . . . . .	390,000
August 1, 1981 . . . . .	230,000	August 1, 1989 . . . . .	405,000
February 1, 1982 . . . . .	235,000	February 1, 1990 . . . . .	420,000
August 1, 1982 . . . . .	245,000	August 1, 1990 . . . . .	430,000
February 1, 1983 . . . . .	255,000		

\* To the extent that any portion of the Loan is repayable in a currency other than dollars (see General Conditions, Section 4.02), the figures in this column represent dollar equivalents determined as for purposes of withdrawal.

PREMIUMS ON PREPAYMENT AND REDEMPTION

The following percentages are specified as the premiums payable on repayment in advance of maturity of any portion of the principal amount of the Loan pursuant to Section 3.05 (b) of the General Conditions or on the redemption of any Bond prior to its maturity pursuant to Section 8.15 of the General Conditions :

<i>Time of Prepayment or Redemption</i>	<i>Premium</i>
Not more than three years before maturity . . . . .	1½%
More than three years but not more than six years before maturity . . . . .	2 %
More than six years but not more than eleven years before maturity . . . . .	3½%
More than eleven years but not more than sixteen years before maturity . . . . .	5½%
More than sixteen years but not more than eighteen years before maturity . . . . .	6½%
More than eighteen years before maturity . . . . .	7½%

SCHEDULE 3

DESCRIPTION OF THE PROJECT

The Project consists of expansion and improvements of the water supply and distribution system of Nairobi. The Project includes :

(a) The construction of a river intake, raw water pumping station, and ancillary works to enable pumping up to 10 million imperial gallons per day from the Chania River;

(b) The provision and installation of raw water pumps, power facilities and pumping main, construction of treatment works and ancillary buildings at Ngethu and the provision and installation of treatment plant equipment and instrumentation to provide a plant capacity adequate for average flows of at least 8 million imperial gallons per day;

(c) The provision and installation of a transmission main from the treatment works to a terminal reservoir in Nairobi and the construction of the terminal reservoir; and

(d) The provision and installation of new distribution mains and the purchase of water meters.

The Project is expected to be completed by July 1, 1974.

#### SCHEDULE 4

##### SUPPLEMENTARY PROCUREMENT PROCEDURES

1. With respect to contracts (i) for civil works estimated to cost in excess of US\$100,000 equivalent and (ii) for equipment, materials and supplies estimated to cost in excess of US\$50,000 equivalent, the following procedures shall apply :

(a) If prequalification of bidders is used, notices of prequalification and a description of the advertising and prequalification procedures to be followed will be submitted to the Bank for review and approval prior to the issuance of notices of prequalification.

(b) Invitations to bid, specifications, conditions of contract, all other bidding documents and the method and places of advertising will be submitted to the Bank for its review and approval prior to the issuance of invitations to bid.

(c) After bids have been received and analyzed, the analysis of the bids, and the proposals for awards, together with the reasons for such proposals, will be submitted to the Bank for its review and approval prior to the Borrower's making any award of contract or issuing any letter of intent.

(d) If the final contract is to differ substantially from the terms and conditions contained in the respective documents approved by the Bank under paragraphs (b) and (c) above, the text of the proposed changes will be submitted to the Bank for its review and approval prior to the execution of such contract or issuance of any letter of intent.

(e) As soon as a letter of intent has been issued, a copy thereof will be sent to the Bank.

2. With respect to any contract for procurement of goods or services not included under paragraph 1 above, copies of the invitation to bid, the bid analysis and evaluation, and any other information the Bank may reasonably request, will be sent to the Bank promptly after the execution of the respective contract.

3. With respect to all contracts for equipment, materials or supplies, for the purpose of evaluating bids, bid prices shall be determined in accordance with the following rules :



(a) The term Local Bid means a bid submitted by a manufacturer, established in the territories of the Guarantor, for equipment, materials or supplies manufactured or processed to a substantial extent (as reasonably determined by the Bank) in the territories of the Guarantor; any other bid shall be deemed to be a Foreign Bid.

(b) The bid price under a Local Bid shall be the ex-factory price of the equipment, materials or supplies plus inland freight (including insurance) to the construction site.

(c) The bid price under a Foreign Bid shall be the sum of :

- (i) an amount representing the c.i.f. landed price of the equipment, materials or supplies (net of any taxes on their importation); plus
- (ii) inland freight (including insurance) to the construction site; plus
- (iii) any such taxes as generally apply to equipment, materials or supplies if imported into the territories of the Guarantor by non-exempt importers, or 15% of the amount specified in (i) above, whichever is less.

4. Promptly after execution of any contract for the procurement of goods or services and prior to the submission to the Bank of the first application for withdrawal of funds from the Loan Account in respect of such contract, a copy of such contract shall be sent to the Bank.

## SCHEDULE 5

### DETERMINATION OF "VALUE OF GROSS FIXED WATER SUPPLY ASSETS"

The "value of gross fixed water supply assets" referred to in Section 5.11 (b) (ii) of this Agreement (hereinafter called "the asset value") shall be determined as follows :

1. The Borrower's asset value in service on December 31, 1969, shall be deemed to be £.K. 15,000,000.

2. The asset value for any given year shall be (a) the asset value referred to in paragraph 1 above, multiplied by the factor of (i) a cost index for the City of Nairobi (such index to be determined pursuant to the provisions of paragraph 3 of this Schedule) for January of the year for which the determination is being made, (ii) divided by such index for January 1970, plus (b) the original cost of all such fixed assets added from time to time after December 1, 1969, multiplied by the factor of (i) such index for January of the year for which the determination is being made, (ii) divided by such index for January of the year following the date such assets were put in service.

3. The cost index for the City of Nairobi referred to in paragraph 2 of this Schedule shall be determined by adding together the following indices for the City of Nairobi :

(a) Wage earners' index of consumer prices, as published in the *Kenya Statistical Digest*;

- (b) Middle income index of consumer prices, as published in the *Kenya Statistical Digest*; and
- (c) Cost of living index (excluding rent), as published in the *Kenya Gazette*.

4. In determining the asset value pursuant to the provisions of paragraph 2 of this Schedule, and before making the multiplications provided for in such paragraph, the value of any asset taken out of service (hereinafter called "deleted assets") shall be determined and subsequently deducted as follows :

- (a) (i) In case of deleted assets which had been added after December 31, 1969, the value to be deducted shall be the original cost of such asset.
  - (ii) Such value shall be deducted from the total amount of the original cost of all assets added in the same year as the deleted assets.
- (b) (i) In case of deleted assets which had been in service on December 31, 1969, the value to be deducted shall be determined by using the following formula :  
value = initial cost of asset  $\times (1.05)^n$   
 $n$  = age of asset in years, but not to exceed 30
  - (ii) Such value shall be deducted from the Borrower's asset value as referred to in paragraph 1 of this Schedule.