NWSC Project Agreement

(Nairobi Water and Sewerage Institutional Restructuring Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

NAIROBI CITY WATER AND SEWERAGE COMPANY

Dated June 25, 2004
AGREEMENT, dated June 25, 2004, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and NAIROBI CITY WATER AND SEWERAGE COMPANY (NWSC).

WHEREAS (A) by the Development Grant Agreement of even date herewith between Republic of Kenya (the Recipient) and the Association, the Association has agreed to make available to the Recipient an amount in various currencies equivalent to ten million two hundred thousand Special Drawing Rights (SDR 10,200,000), on the terms and conditions set forth in the Development Grant Agreement, but only on conditions that NWSC agree to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by a subsidiary grant agreement to be entered into between the Recipient and NWSC, part of the proceeds of the Grant as provided for under the Development Grant Agreement will be made available to NWSC on the terms and conditions set forth in said Subsidiary Grant Agreement; and

WHEREAS NWSC, in consideration of the Association’s entering into the Development Grant Agreement with the Recipient, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Development Grant Agreement, the Preamble to this Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. (a) NWSC declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Grant Agreement, and, to this end it shall:

(i) carry out Segment C of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and public utility practices, and shall
provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the carrying out of Segment C of the Project.

(ii) act in the capacity of an agent of NWSB and as such shall carry out Segment B of the Project on behalf of and upon the directions of NWSB with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and public utility practices.

(iii) duly and punctually perform in accordance with the provisions of SPA, the Tripartite Agreement and the License all its obligations therein set forth and shall exercise its rights thereunder in such manner as to protect the interests of the Recipient and the Association and accomplish the purposes of the Grant; and

(iv) carry out its obligations under the SPA with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering, and public utility practices.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Association and NWSC shall otherwise agree, NWSC shall carry out Segment C of the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement.

Section 2.02. Except as the Association shall otherwise agree, procurement of the goods, works and consultants’ services required for Segment C of the Project and to be financed out of the proceeds of the Grant shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. Without limitation to its obligations under Section 2.01 of this Agreement, NWSC shall:

(a) open and maintain in Kenya Shillings, until the completion of the Project, a Project Account in a commercial bank acceptable to the Association, under terms and conditions satisfactory to the Association;

(b) promptly thereafter make an Initial Deposit of no less than twenty two million Kenyan Shillings (KES 22,000,000 into the Project Account to finance NWSC’s initial contribution to the expenditures under the Project and NWSC’s operating expenses;
(c) thereafter, deposit into the Project Account such amounts as are estimated to be required at any given time for the ensuing three-month period and as shall be agreed upon between NWSC and the Association to finance NWSC’s contribution to the expenditures under the Project and for its operating expenses, and

(d) ensure that the funds deposited into the Project Account in accordance with paragraphs (b) and (c) of this Section shall be used exclusively to finance the NWSC’s contribution to the expenditures under Segment C of the Project and its operating expenses which are not otherwise financed from the proceeds of the Grant.

Section 2.04. (a) NWSC shall carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement and Segment C of the Project.

(b) For the purposes of Section 9.06 of the General Conditions and without limitation thereto, NWSC shall:

(i) prepare, on the basis of guidelines acceptable to the Association and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Association and NWSC, a plan designed to ensure the continued achievement of the Project objectives; and

(ii) afford the Association a reasonable opportunity to exchange views with NWSC on said plan.

Section 2.05. NWSC shall duly perform all its obligations under the NWSC Subsidiary Grant Agreement. Except as the Association shall otherwise agree, NWSC shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the NWSC Subsidiary Grant Agreement or any provision thereof.

Section 2.06. (a) NWSC shall, at the request of the Association, exchange views with the Association and NWSB with regard to the progress of Parts of the Project under Segment C, the performance of its obligations under this Agreement and under the NWSC Subsidiary Grant Agreement, and other matters relating to the purposes of the Grant.

(b) NWSC shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of Parts of the Project under Segment
C, the accomplishment of the purposes of the Grant, or the performance by NWSC of its obligations under this Agreement and under the NWSC Subsidiary Grant Agreement.

ARTICLE III

Management and Operations of NWSC

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

Section 3.02. NWSC shall at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and public utility practices.

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

ARTICLE IV

Financial Covenants

Section 4.01. (a) NWSC shall establish and maintain a financial management system, including records and accounts, and prepare financial statements, all in accordance with accounting standards acceptable to the Association, consistently applied, adequate to reflect its operations and financial condition and to register separately the operations, resources and expenditures related to Segment C the Project and NWSC’s general operations.

(b) NWSC shall:

(i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each FY audited, in accordance with auditing standards acceptable to the Association, 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 six months after the end of each such year, (A) certified copies of the financial statements referred to in paragraph (a) of this Section, for such year as so audited, and (B)
an opinion on such statements and 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 such records, accounts and financial statements, and the audit thereof, and concerning said auditors, as the Association may from time to time reasonably request.

Section 4.02. (a) Without limitation upon NWSC’s reporting obligations set out in paragraph 1 of Section III and paragraphs 2 and 3 of Section VI of Schedule 2 to this Agreement, NWSC shall prepare and furnish to the Association a financial monitoring report, in form and substance satisfactory to the Association, which:

(i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Grant, and explains variances between the actual and planned uses of such funds;

(ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and

(iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Association not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Association not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

Section 4.03. In order to ensure financial prudence, NWSC shall not incur any debt other than short term borrowing from commercial banks required in the ordinary course of business for working capital (including Letters of Credit in respect of suppliers credits) up to an aggregate amount equivalent to 50% of NWSC’s shares, receivables, cash and marketable securities provided that immediately after incurring such debt the Current Ratio shall be no less than 1.2.
Section 4.04. NWSC shall not pay any cash dividends to its shareholders except out of its net income subject to the condition that if immediately after giving effect to such action, its Current Ratio shall be less than 1.2.

Section 4.05. NWSC shall:

(a) produce for its FY ending on June 30, 2006 and each FY year thereafter, a positive net income excluding depreciation and amortization charges.

(b) before January 1 of each FY, on the basis of its forecast, satisfactory to the Association, review whether it would meet the requirement of paragraph (a) of this Section in respect of each such FY and the following FY and shall furnish to the Association a copy of such review upon its completion. If any review referred to herein shows that it shall not be able to meet the requirements set forth in paragraph (a) of this Section for its FYs covered by the said review, it shall promptly take all necessary measures (including without limitations, adjustments of the structure or levels of its rates) in order to meet said requirements.

(c) For the purposes of this Section, the term "net income" means the total revenue of NWSC in the relevant calculation period after deduction of all expenses, costs and charges, as further reduced by further reserves for payment of all taxes on that income; provided that the net income forecast for any FY has been calculated to include a provision for doubtful debt which is equal to a minimum of the actual billings made in the two quarters preceding the review and which remains unpaid at the end of those two quarters.

ARTICLE V

Effective Date; Termination; Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Development Grant Agreement becomes effective.

Section 5.02. (a) This Agreement and all obligations of the Association and of NWSC thereunder shall terminate on the earlier of the following two dates:

(i) the date on which the Development Grant Agreement shall terminate in accordance with its terms; or

(ii) the date fifteen years after the date of this Agreement.
(b) If the Development Grant Agreement terminates in accordance with its terms before the date specified in paragraph (a) (ii) of this Section, the Association shall promptly notify NWSC of this event.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. 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, telex or facsimile 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. Deliveries made by facsimile transmission shall also be confirmed by mail. The addresses so specified are:

For the Association:

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

Cable address: Telex: Facsimile:
INDEVAS  248423 (MCI) or (202) 477-6391
Washington, D.C. 64145 (MCI)

For Nairobi City Water and Sewerage Company (NWSC):

L.R. No. 209/4255
Kampala Road, Industrial Area
(P.O. Box 30656 GPO 00100)
Nairobi, Kenya

Cable address: Telex: Facsimile:
254 20 214780
Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of NWSC, or by NWSC on behalf of the Recipient under the Development Grant Agreement, may be taken or executed by the Managing Director of NWSC or such other person or persons as NWSC shall designate in writing, and NWSC shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. 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 Nairobi, Kenya as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Makhtar Diop

Authorized Representative

NAIROBI CITY WATER AND SEWERAGE COMPANY

By /s/ Lawrence Musyoka

Authorized Representative
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 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines) and the following provisions of this Section.

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.

2. The following provisions shall apply to goods and works to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B.

   (a) Preference for domestically manufactured goods and domestic contractors

   The provisions of paragraphs 2.54 and 2.55 of the Guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Recipient and works to be carried out by domestic contractors.

Part C: Other Procurement Procedures

1. National Competitive Bidding

   (a) Vehicles may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines. Other Goods estimated to cost less than $150,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

   (b) Works estimated to cost less than $500,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.
2. National or International Shopping

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

3. Procurement from UN Agencies

Goods estimated to cost less than $50,000 equivalent per contract may be procured from the Inter-Agency Procurement Services Organization (IAPSO) in accordance with the provisions of paragraph 3.9 of the Guidelines.

4. Procurement of Small Works

Works estimated to cost less than $50,000 equivalent per contract may be procured under lump-sum, fixed-price contracts awarded on the basis of quotations obtained from three (3) qualified domestic contractors in response to a written invitation. The invitation shall include a detailed description of the works, including basic specifications, the required completion date, a basic form of agreement acceptable to the Association, and relevant drawings, where applicable. The award shall be made to the contractor who offers the lowest price quotation for the required work, and who has the experience and resources to complete the contract successfully.

5. Direct Contracting

Goods and works under Part B.3 of the Project, may with the Association’s prior agreement, be procured in accordance with the provisions of paragraph 3.7 of the Guidelines.

6. Operating Costs

Operating costs which would be financed by the Project would be procured using the NWSB’s and NWSC’s administrative procedures which were reviewed and found acceptable by the Association.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Association 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 Association, and with the
provisions of said paragraph 1.

2. Prior Review

With respect to (a) the first two contracts for works estimated to cost less than
$200,000 equivalent each, and each contract estimated to cost $200,000 equivalent or
more; (b) the first two contracts for goods estimated to cost less than $150,000 equivalent
each, and each contract estimated to cost $150,000 equivalent or more; and (c) all goods
and works to be procured under the Direct Contracting procedure as set forth in Part C.5
of this Section, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the
Guidelines shall apply.

3. Post Review

With respect to each contract not to governed by paragraph 2 of this Part, the
procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

Part A: General

Consultants’ services shall be procured in accordance with the provisions of
Sections I and IV of the “Guidelines: Selection and Employment of Consultants by
World Bank Borrowers” published by the Bank in January 1997 and revised in
September 1997, January 1999 and May 2002 (the Consultant Guidelines), paragraph 1
of Appendix 1 thereto, Appendix 2 thereto and the following provisions of this Section.

Part B: Quality-and Cost-Based Selection

1. Except as otherwise provided in Part C of this Section, consultants’ services shall
be procured under contracts awarded in accordance with the provisions of Section II of
the Consultant Guidelines, and the provisions of paragraphs 3.13 through 3.18 thereof
applicable to quality- and cost-based selection of consultants.

2. The following provision shall apply to consultants’ services to be procured under
contracts awarded in accordance with the provisions of the preceding paragraph: the short
list of consultants, estimated to cost less than $100,000 equivalent per contract, may
comprise entirely national consultants in accordance with the provisions of paragraph 2.7
and footnote 8 of the Consultant Guidelines.
Part C: Other Procedures for the Selection of Consultants

1. **Least-cost Selection**

   Services for routine nature contracts estimated to cost less than $100,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

2. **Selection Based on Consultants’ Qualifications**

   Services of consultants’ firms estimated to cost less than $100,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.7 of the Consultant Guidelines.

3. **Single Source Selection**

   Services which are estimated to cost less than $100,000 equivalent per contract, may, with the Association's prior agreement, be procured in accordance with the provisions of paragraphs 3.8 through 3.11 of the Consultant Guidelines.

4. **Individual Consultants**

   Services of individual consultants for tasks that meet the requirements set forth in paragraph 5.1 of the Consultant Guidelines shall be procured under contracts awarded in accordance with the provisions of paragraphs 5.1 through 5.3 of the Consultants Guidelines.

Part D: Review by the Association of the Selection of Consultants

1. **Selection Planning**

   A plan for the selection of consultants, which shall include contract cost estimates, contract packaging, and applicable selection criteria and procedures, shall be furnished to the Association for its review and approval prior to the issuance to consultants of any requests for proposals. Selection of all consultants’ services shall be undertaken in accordance with such selection plan as shall have been approved by the Association.

2. **Prior Review**

   (a) With respect to each contract for the employment of consulting firms estimated to cost the equivalent of $100,000 or more, the procedures set forth in paragraphs 2, 3 and 5 of Appendix 1 to the Consultant Guidelines shall apply.
(b) With respect to each contract for the employment of individual consultants estimated to cost the equivalent of $50,000 or more, the report on the comparison of the qualifications and experience of candidates, terms of reference and terms of employment of the consultants shall be furnished to the Association for its prior review and approval. The contract shall be awarded only after the said approval shall have been given. The provisions of paragraph 3 of Appendix 1 to the Consultant Guidelines shall also apply to such contracts.

(c) NWSC will prepare and submit to the Bank for its approval an annual Training and Capacity Building program prepared under Part A.2(f) of the Project, as part of the project annual work plan. The Training and Capacity Building program will, inter alia, identify (i) the training envisaged; (ii) the personnel to be trained; (iii) the selection methods of institutions or individuals conducting such training; (iv) the institutions which conduct training, if already selected; (v) the duration of the proposed training; and (vi) the cost estimate of the training.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Consultant Guidelines shall apply.
SCHEDULE 2

Implementation Program

Section I  Implémentation Arrangements:

1. NWSC shall carry out Segment C of the Project in accordance with the PIM. Except as the Association may otherwise agree, the Recipient or NWSC shall not amend, abrogate or waive any provision of said PIM.

2. For the purposes of carrying out Segment B of the Project, NWSC shall act in the capacity of an agent of NWSB and as such shall carry out said Parts of the Project on behalf of and upon the directions of NWSB. NWSC shall also be NWSB’s Water Service Provider under the Project. To these effects, NWSB and NWSC shall enter into SPA on terms and conditions satisfactory to the Association.

3. NWSC as the Water Service Provider under the SPA shall enter into Customer Contract with each customer on terms and conditions satisfactory to the Association.

Section II  Transitional Arrangements for NWSC

1. NWSC shall conclude a transfer agreement with NCC for the transfer of water and sewerage operational assets of NCC to NWSC, on terms and conditions satisfactory to the Association. Except as the Association shall otherwise agree, NWSC shall not amend, abrogate or waive any provision of the said transfer agreement which, in the opinion of the Association, may materially and adversely affect the implementation of the Project or the achievement of the objectives thereof.

2. Subject to developments in the implementation of the Water Act or associated regulations, NWSC shall conclude a Tripartite Agreement with NCC and NWSB, on terms and conditions acceptable to the Association, which ensures that (i) NCC shall lease the fixed WSS assets to NWSC and permit NWSC to assign entirely its right and obligations over the assets to NWSB in order for NWSB to assume full control of the said assets to fulfill its statutory obligations under the Water Act through its License with WSRB; (ii) NWSB allows the NWSC the right to use the fixed WSS to fulfill its contractual obligation under the SPA through the Deed of Handover executed between NWSB and NWSC; and (iii) NCC and NWSC will allow NWSB unrestricted access to existing and future customer accounts for the exercise of its statutory responsibility. The terms and conditions of the Tripartite Agreement shall supersede all other side agreements made between the parties and including the Agency Agreement concluded between NCC and NWSC which is annexed to the Tripartite Agreement. In particular, the only flow of funds from NWSC to both NWSB and NCC for the compensation or otherwise for the use of the fixed assets shall be based on the lease fees as may be revised...
from time to time and its distribution to NWSB and NCC as set out in the Tripartite Agreement. Except as the Association shall otherwise agree, NWSC shall not amend, abrogate or waive any provisions of the said Tripartite Agreement which, in the opinion of the Association, may materially and adversely affect the implementation of the Project or the achievement of the objectives thereof.

Section III. Subsidiary Grant Agreement and SPA Audit; Assets Reevaluation

1. NWSC shall carry out at the end of its each FY: (a) financial and technical audit of the of NWSC Subsidiary Grant Agreement and SPA; and (b) audit of performance of the parties under the NWSC Subsidiary Grant Agreement and SPA including progress towards achieving performance targets. Except as the Association may otherwise agree, NWSC shall no later than six months after the closing of its each FY submit for review by the Association and make public the results of said audits.

2. NWSC shall permit and collaborate with NWSB to enable the latter to reevaluate NWSC’s assets in accordance with sound accounting practices, except as the Association may otherwise agree, by June 30, 2006.

Section IV Annual Budget and Business Plan

1. NWSC shall prepare detailed annual budgets for its Part of the Project, including revenues, expenses and cash flows. The budget document shall include supporting schedules assigning budgets to departments and include pro-forma financial statements for the coming year. The budget document shall be submitted to the Association for its review no later than March 15 of the preceding FY of NWSC.

2. To facilitate planning and budgeting, NWSC shall prepare each year a rolling three-year business plan. The plan shall be submitted for approval to the Board of Directors of NWSC and forwarded to the Association no late than March 31 of the preceding FY of NWSC.

Section V Internal Auditors

1. NWSC shall establish an Internal Audit Unit that shall report directly to the Board of Directors of NWSC through the Board Audit Committee of NWSC. The said Internal Audit Unit, inter alia, shall ensure that all controls function appropriately. The terms of reference of the Internal Audit Unit shall be furnished to the Association for review and approval and they shall not be amended without prior approval of the Association.
Section VI Training

1. NWSC shall carry out a training program under the Project comprising consulting services participation in seminars, workshops, study tours, courses or attachment and fellowships. Annual training program and budget shall be submitted by NWSC for the Association’s approval no later than June 30 every year.

Section VII Monitoring and Reporting Arrangements

1. NWSC shall maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the indicators set forth in the PIM and summarized in Schedule 3 to this Agreement, the carrying out of the Parts of the Project under Segment C and the achievement of the Project objectives.

2. Progress Reports and Reviews

   (a) NWSC shall prepare, under terms of reference satisfactory to the Association, and submit, no later than 30 days after the end of each quarter, to its Board and to the Association a report on the progress of the Project, in particular: (i) implementation schedules updated by component; (ii) commitment and disbursement by components; (iii) findings, recommendations, agreements reached, main issues and decisions sought. Said quarterly report shall also specify any problems encountered in the carrying out of the Project and include updated performance indicators on NWSC’s operations.

   (b) NWSC shall review progress reports, jointly with the Recipient and NWSC, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said reports and the views of the Association on the reports.

   (c) NWSC shall report to NWSB on an annual basis on key indicators, including: (i) water produced at the treatment plants, available at the Nairobi reservoirs, sold, and unaccounted for; (ii) water pressure and quality; (iii) waste water collected and treated; (iv) meters installed, meters read and billing established on actual reading; (v) bills collected, accounts receivable by category of customers; and (vi) illegal connections regularized; (vi) implementation of delegated activities.

   (d) No later than three months after the closing of its each FY, NWSC shall submit to the Association for its review an annual progress report, in form and substance satisfactory to the Association, which shall set out in such detail as the Association shall reasonably request the progress in the Project implementation and the evaluation of various performance indicators of the water and sewerage services.
3. **Mid-term Review**

   (a) NWSC shall carry out, jointly with the MOF, MWRMD, WSRB, NWSB and the Association, no later than December 31, 2005, a comprehensive mid-term review of the implementation of operations under the Project aimed at: (i) documenting progress toward Project objectives and sustainability of Project activities, (ii) reviewing the performance of NWSB and NWSC under the Project; (iii) identifying and removing obstacles to Project implementation; and (iv) adjusting, in agreement with the Association, targets and corresponding programs to reflect progress achieved in the implementation of the Project as of the date of the review.

   (b) In conjunction with the MOF, MWRMD and NWSB, NWSC shall, not later than one month prior to the review referred to in the preceding subparagraph, furnish to the Association a mid-term report, in such detail as the Association shall reasonably request, on the implementation of the Project; and

   (c) Promptly following the mid-term review, NWSC shall take any corrective action as shall be recommended by the Association to achieve the objectives of the Project.
SCHEDULE 3

Performance Indicators

For the purpose of this Agreement, the performance indicators to be used for the Project implementation are as follows:

1. **Outcome Indicators**

   Overall improvement in service delivery

   Volume of water sold (billed) reaching 91 million cubic meters per year.

2. **Results Indicators**

   (a) **Protection of Revenue and Autonomy of Service Delivery Institutions**

      (i) NWSB achieves a ratio of operating expenses divided by operating revenue of 0.9 or less; and

      (ii) NWSC achieves a ratio of operating expenses divided by operating revenue of 0.9 or less.

   (b) **Improvement in Operational Efficiency**

      (i) Billing efficiency to reach 100% of customers;

      (ii) For all customers, billing for each month’s consumption should be sent out at latest by the 15th of the subsequent month;

      (iii) Collection efficiency for bills sent out to reach 70%; and

      (iv) Unaccounted-for-Water percentage to be reduced to 39%.

   (c) **Public Dissemination of Implementation Progress**

      Public dissemination of the results of annual technical and financial audits of the SPA, with at least one workshop held each year to discuss the results of these audits. These workshops shall have broad stakeholder representation.