

CONFORMED COPY

LOAN NUMBER 3782 TUN

Project Agreement

(Water Supply and Sewerage Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

OFFICE NATIONAL DE L'ASSAINISSEMENT

Dated September 21, 1994

LOAN NUMBER 3782 TUN

PROJECT AGREEMENT

AGREEMENT, dated September 21, 1994, between the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and the OFFICE NATIONAL DE L'ASSAINISSEMENT (ONAS).

WHEREAS (A) by the Loan Agreement of even date herewith between the Republic of Tunisia (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to twenty-nine million dollars (\$29,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that ONAS agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by a subsidiary loan agreement to be entered into between the Borrower and ONAS, a portion of the proceeds of the loan provided for under the Loan Agreement will be relented to ONAS on the terms and conditions set forth in the Subsidiary Loan Agreement to assist ONAS to carry out Parts C, D.4 and D.5 (iii), (iv) and (v) of the Project; and

WHEREAS ONAS, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

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

ARTICLE II

Execution of the Project

Section 2.01. (a) ONAS declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall carry out Parts C, D.4 and D.5 (iii), (iv) and (v) of the Project with due diligence and efficiency and in conformity with appropriate administrative, economic, engineering, environmental, financial, public utility and technical practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for Parts C, D.4 and D.5 (iii), (iv) and (v) of the Project.

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

Section 2.02. Except as the Bank shall otherwise agree, procurement of the goods, works and consultants' services required for Parts C, D.4 and D.5 (iii), (iv) and (v) of the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. ONAS shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement and Parts C, D.4 and D.5 (iii), (iv) and (v) of the Project.

Section 2.04. ONAS shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Bank shall otherwise agree, ONAS shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) ONAS shall, at the request of the Bank, exchange views with the Bank with regard to progress of Parts C, D.4 and D.5 (iii), (iv) and (v) of the Project, the performance of its obligations under this Agreement and under the Subsidiary Loan Agreement, and other matters relating to the purposes of the Loan.

(b) ONAS shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of Parts C, D.4 and D.5 (iii), (iv) and (v) of the Project, the accomplishment of the purposes of Loan, or the performance by ONAS of its obligations under this Agreement and under the Subsidiary Loan Agreement.

ARTICLE III

Management and Operations of ONAS

Section 3.01. ONAS 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. ONAS 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. ONAS shall take out and maintain with responsible insurers, or make other provision satisfactory to the Bank for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

ARTICLE IV

Financial Covenants

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

(b) ONAS shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each Fiscal Year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than nine (9) months after the end of each such year: (A) certified copies of its financial statements for such year as so audited; and (B) the report of such audit by said auditors of such scope and in such detail as the Bank shall have reasonably requested; and
- (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

Section 4.02. The provisions of Sections 4.03 and 4.04 of the Project Agreement between the Bank and ONAS dated June 16, 1983 (Loan No. 2255 TUN - Third Urban Sewerage Project) are hereby amended to read as set forth in Sections 4.03 and 4.04, respectively, of this Agreement.

Section 4.03. (a) Except as the Bank shall otherwise agree, ONAS shall not incur any debt unless a reasonable forecast of the revenues and expenditures of ONAS shows that the estimated net revenues of ONAS for each Fiscal Year during the term of the debt to be incurred shall be at least 1.3 times the estimated debt service requirements of ONAS in such year on all debt of ONAS including the debt to be incurred.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of ONAS maturing by its terms more than one year after the date on which it is originally incurred.
- (ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.
- (iii) The term "net revenues" means the difference between:
 - (A) the sum of revenues from all sources related to operations and net non-operating income; and
 - (B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.
- (iv) The term "net non-operating income" means the difference between:
 - (A) revenues from all sources other than those related to operations; and
 - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (v) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.
- (vi) The term "reasonable forecast" means a forecast prepared by ONAS

not earlier than twelve months prior to the incurrence of the debt in question, which both the Bank and ONAS accept as reasonable and as to which the Bank has notified ONAS of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of ONAS.

- (vii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

Section 4.04. (a) Except as the Bank shall otherwise agree, ONAS shall generate, for each of its Fiscal Years after its Fiscal Year ending on December 31, 1993 funds from internal sources equivalent to not less than 13% of the annual average of ONAS's capital expenditures incurred, or expected to be incurred, for that year and the two (2) next following Fiscal Years.

(b) Before November 30 in each of its Fiscal Years, ONAS shall, on the basis of forecasts prepared by ONAS and satisfactory to the Bank, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the two (2) next following Fiscal Years and shall furnish to the Bank a copy of such review upon its completion.

(c) If any such review shows that ONAS would not meet the requirements set forth in paragraph (a) for ONAS's Fiscal Years covered by such review, ONAS shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its rates) in order to meet such requirements.

(d) For the purposes of this Section:

- (i) The term "funds from internal sources" means the difference between:
 - (A) the sum of revenues from all sources related to operations, consumer deposits and consumer contributions in aid of construction, net non-operating income and any reduction in working capital other than cash; and
 - (B) the sum of all expenses related to operations, including administration, adequate maintenance and taxes and payments in lieu of taxes (excluding provision for depreciation and other non-cash operating charges), debt service requirements, all cash dividends and other cash distributions of surplus, increase in working capital other than cash and other cash outflows other than capital expenditures.
- (ii) The term "net non-operating income" means the difference between:
 - (A) revenues from all sources other than those related to operations; and
 - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (iii) The term "working capital other than cash" means the difference between current assets excluding cash and current liabilities at the end of each Fiscal Year.
- (iv) The term "current assets excluding cash" means all assets other than cash which could in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable securities, inventories and pre-paid expenses properly chargeable to operating expenses within the next Fiscal Year.
- (v) The term "current liabilities" means all liabilities which will

become due and payable or could under circumstances then existing be called for payment within twelve months, including accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes, and dividends.

- (vi) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.
- (vii) The term "capital expenditures" means all expenditures on account of fixed assets, including interest charged to construction, related to operations.
- (viii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

Section 4.05. ONAS agrees, within the limits of its prerogatives to set levels of its sewer tariffs, to take all necessary measures to achieve full recovery of its operation and maintenance costs and make a reasonable contribution to its investment costs, including, without limitation, increases for each of its Fiscal Years after its Fiscal Year ending on December 31, 1993, to the overall level of existing sewer tariffs, of fifteen percent (15%), or such other percentage necessary to achieve such requirement.

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 Loan Agreement becomes effective.

Section 5.02. This Agreement and all obligations of the Bank and of ONAS thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify ONAS thereof.

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, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Bank:

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

Cable address:

INTBAFRAD
Washington, D.C.

Telex:

248423 (RCA)
82987 (FTCC)
64145 (WUI) or
197688 (TRT)

For ONAS:

Office National de l'Assainissement
32, Rue Hedi Nouira
1001 Tunis
Republic of Tunisia

Cable address:

ONAS Tunis

Telex:

15080 TN

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 ONAS, may be taken or executed by its President Director General or such other person or persons as the President Director General shall designate in writing, and ONAS shall furnish to the Bank 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 the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Caio Koch-Weser

Regional Vice President
Middle East and North Africa

OFFICE NATIONAL DE L'ASSAINISSEMENT

By /s/ Oussama Romdhani

Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I. Procurement of Goods and Works

Part A: International Competitive Bidding

Except as provided in Part C hereof, goods shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1992 (the Guidelines).

(a) For fixed-price contracts, the invitation to bid referred to in paragraph 2.13 of the Guidelines shall provide that, when contract award is delayed beyond the original bid validity period, the successful bidder's bid price will be increased for each week of delay by two predisclosed correction factors acceptable to the Bank, one to be applied to all foreign currency components and the other to the local currency component of the bid price. Such an increase shall not be taken into account in the bid evaluation.

(b) In the procurement of goods in accordance with this Part A, ONAS shall use the relevant standard bidding documents issued by the Bank, with such

modifications thereto as the Bank shall have agreed to be necessary for the purposes of the Project. Where no relevant standard bidding documents have been issued by the Bank, ONAS shall use bidding documents based on other internationally recognized standard forms agreed with the Bank.

Part B: Preference for Domestic Manufacturers

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

Part C: Other Procurement Procedures

Local Competitive Bidding

Contracts for: (i) goods estimated to cost the equivalent of \$350,000 or less per contract, up to an aggregate amount not to exceed the equivalent of \$2,000,000; and (ii) civil works under Part C of the Project, may be procured under contracts awarded on the basis of competitive bidding, advertised locally, in accordance with procedures satisfactory to the Bank.

Part D: Review by the Bank of Procurement Decisions

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

(a) With respect to each: (i) contract for goods estimated to cost the equivalent of \$350,000 or more; and (ii) contract for civil works estimated to cost the equivalent of \$1,000,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Bank pursuant to said paragraph 2 (d) shall be furnished to the Bank prior to the making of the first payment out of the Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, said procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Bank pursuant to said paragraph 3 shall be furnished to the Bank as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 5 to the Loan Agreement.

(c) The provisions of the preceding subparagraph (b) shall not apply to contracts on account of which withdrawals are to be made on the basis of statements of expenditure.

2. The figure of 20% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II. Employment of Consultants

1. In order to assist ONAS in carrying out Parts D.4 and D.5 (iii), (iv) and (v) of the Project, ONAS shall employ consultants: (i) whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Bank; and (ii) who shall be selected in accordance with principles and procedures satisfactory to the Bank on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981 (the Consultant Guidelines). For complex, time-based assignments, ONAS shall employ such consultants under contracts using the standard form of contract for consultants' services issued by the Bank, with such modifications as shall have been agreed by the Bank. Where no relevant standard contract documents have been issued by the Bank, ONAS shall use other standard forms agreed with the Bank.

2. Notwithstanding the provisions of paragraph 1 of this Section, the provisions of the Consultant Guidelines requiring prior Bank review or approval of budgets, short lists, selection procedures, letters of invitation, proposals, evaluation reports and contracts, shall not apply to (a) contracts for the employment of consulting firms estimated to cost less than \$100,000 equivalent each or (b) contracts for the employment of individuals estimated to cost less than \$50,000 each. However, said exceptions to prior Bank review shall not apply to: (a) the terms of reference for such contracts; (b) single-source selection of consulting firms; (c) assignments of a

critical nature, as reasonably determined by the Bank; (d) amendments to contracts for consulting firms raising the contract value to \$100,000 equivalent or above; or (e) amendments to contracts for the employment of individual consultants raising the contract value to \$50,000 equivalent or above.

SCHEDULE 2

Implementation Program

The provisions of this Schedule shall apply for the purposes of Section 2.01 (b) of this Agreement.

A. Performance Monitoring

ONAS shall:

(a) Monitor and evaluate, in accordance with performance indicators, the carrying out of the Project and the achievement of ONAS' Financial, Investment and Operational Targets;

(b) Prepare and furnish to the Borrower and the Bank: (i) not later than the 30th day after the end of each semester in each Fiscal Year; and (ii) not later than June 30 in each Fiscal Year, a report, of such scope and in such detail as the ONAS and the Bank shall establish, on the progress achieved by ONAS in carrying out the Project and the conclusions and recommendations resulting from the monitoring and evaluation activities performed pursuant to paragraph (a) above, together with any revisions proposed to be introduced into ONAS' Financial, Investment and Operational Targets; and

(c) Exchange views with the Borrower and the Bank on said reports, and, thereafter, undertake the remedial measures which the Borrower, the Bank and ONAS shall have agreed are necessary to ensure the proper execution of the Project and the efficient management of ONAS.

B. Mid-term Review

(a) ONAS shall prepare and furnish to the Borrower and the Bank, not later than December 31, 1998, a report, of such scope and in such detail as ONAS and the Bank shall establish, on, inter alia, ONAS' progress in carrying out measures on tariff policies as set forth in Section 4.05 of this Agreement.

(b) ONAS shall afford the Borrower and the Bank a reasonable opportunity to exchange views on said report, and, thereafter, shall take all action which the Borrower, the Bank and ONAS shall have agreed is required on ONAS' part for the successful implementation of the Project.

