

CONFORMED COPY

LOAN NUMBER 3507 TUN

(Municipal Sector Investment Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

MUNICIPAL DEVELOPMENT AGENCY

Dated October 7, 1992

LOAN NUMBER 3507 TUN

PROJECT AGREEMENT

AGREEMENT, dated October 7, 1992, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and MUNICIPAL DEVELOPMENT AGENCY (MDA).

WHEREAS (A) by the Loan Agreement of even date herewith between 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 seventy-five million dollars (\$75,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that MDA agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by subsidiary financing agreements to be entered into between the Borrower and MDA, part of the proceeds of the loan provided for under the Loan Agreement will be made available to MDA on the terms and conditions set forth in said Subsidiary Financing Agreements; and

WHEREAS MDA, 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 and the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of Parts B and C of the Project;
Management and Operations of MDA

Section 2.01. MDA 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 B and C of the Project and conduct its operations and affairs in accordance with sound financial standards and practices, with qualified management and personnel, and in accordance with the Charter and the Operational Guidelines, and shall provide, promptly as needed, the funds, facilities, services, staff and other resources required for the purpose.

Section 2.02. (a) MDA shall adopt and thereafter maintain a statement of lending policy and procedures, acceptable to the Bank, which is designed to facilitate the efficient conduct of MDA's operations and affairs, including the carrying out of its activities under the Project.

(b) MDA shall carry out a program acceptable to the Bank for the appointment to MDA of a management team and other staff, all with qualifications and experience satisfactory to the Bank.

Section 2.03. Without limitation upon the provisions of Section 2.01 of this Agreement and except as the Bank and MDA shall otherwise agree, MDA shall carry out Parts B and C of the Project in accordance with the Implementation Program set forth in the Schedule to this Agreement.

ARTICLE III

Financial Covenants

Section 3.01. (a) MDA shall maintain procedures and records adequate to monitor and record the progress of Parts B and C of the Project and of each Development Project (including its cost and the benefits to be derived from it) and to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition of MDA.

(b) MDA shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each of its fiscal years 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 twelve months after the end of its fiscal year ending December 31, 1991, and thereafter, not later than six months after the end of each of its fiscal years: (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 re-

quested; 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 3.02. Except as the Bank shall otherwise agree, MDA shall open and thereafter maintain, in accordance with the provisions of Section 3.01 of this Agreement, a separate account on its books to which it shall credit each payment of interest and repayment of principal under any Sub-loan. All amounts so credited shall be utilized by MDA, to the extent they are not yet required to meet MDA's payment or repayment obligations to the Borrower under the Subsidiary Loan Agreement, exclusively to finance specific projects for the further development of the Borrower's municipalities.

Section 3.03. MDA shall take such steps satisfactory to the Bank as shall be necessary to protect itself against risk of loss resulting from changes in the rates of exchange between the various currencies (including the currency of the Borrower) used in its operations.

Section 3.04. (a) Except as the Bank shall otherwise agree, MDA shall earn an annual return on its lending operations of not less than 1.0% during each of its fiscal years ending December 31, 1993, December 31, 1994, December 31, 1995, December 31, 1996, December 31, 1997 and December 31, 1998 and 1.5% during each of its fiscal years thereafter.

(b) Before June 30 in each of its fiscal years, MDA shall, on the basis of forecasts prepared by MDA and satisfactory to the Bank, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year and shall furnish to the Bank the results of such review upon its completion.

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

(d) For the purposes of this Section:

- (i) The annual return on MDA's lending shall be calculated by dividing MDA's net operating income for the fiscal year in question by one half of the sum of the current net value of MDA's assets at the beginning and at the end of that fiscal year.
- (ii) The term "net operating income" means total operating revenues less total operating expenses.
- (iii) The term "total operating revenues" means revenues from all sources related to operations.
- (iv) The term "total operating expenses" means all expenses related to operations, including interest and other charges on debt, administration, adequate maintenance, taxes and payments in lieu of taxes, and provision for depreciation on a basis acceptable to the Bank.
- (v) The term "current net value of MDA's assets" means the gross value of MDA's assets less the amount of accumulated reserves allocated for loan losses, as valued from time to time in

accordance with sound and consistently maintained methods of valuation satisfactory to the Bank.

Section 3.05. (a) Except as the Bank shall otherwise agree, MDA shall produce, for each of its following fiscal years funds from internal sources equivalent to not less than the following percentage of the total principal amount of all loans made by MDA during such fiscal year:

- (i) for its fiscal year ending December 31, 1993: 20%;
- (ii) for its fiscal year ending December 31, 1994: 30%;
- (iii) for each of its fiscal years ending December 31, 1995, December 31, 1996, December 31, 1997 and December 31, 1998: 35%; and
- (iv) for each of its fiscal years thereafter: 40%.

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

(c) If any such review shows that MDA would not meet the requirements set forth in paragraph (a) for MDA's fiscal years covered by such review, MDA shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its interest rates and other financial charges) 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, income on short-term investments, repayments of loans made by MDA, 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 prepaid 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, 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) 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 3.06. (a) Except as the Bank shall otherwise agree, MDA shall not incur any debt unless a reasonable forecast of the revenues and expenditures of MDA shows that the estimated net revenues of MDA for each fiscal year during the term of the debt to be incurred shall be at least 1.5 times the estimated debt service requirements of MDA in such year on all debt of MDA including the debt to be incurred.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of MDA.
- (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 MDA not earlier than twelve months prior to the incurrence of the debt in question, which both the Bank and MDA accept as reasonable and as to which the Bank has notified MDA 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 MDA.
- (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 3.07. (a) Without limitation upon the provisions of Sections 3.03, 3.04 and 3.05 of this Agreement, and except as the Bank shall otherwise agree, MDA shall: (i) charge interest (A) on infrastructure loans made by it during each of its fiscal years ending December 31, 1992, December 31, 1993, December 31, 1994, December 31, 1995 and December 31, 1996, at a rate equal at least to 6.5% per annum and (B) on other loans made by it during the period referred to in sub-paragraph (a) (i) (A) hereof, at a rate equal to at least 4% per annum; and (ii) charge interest (A) on infrastructure loans made by it during each of its fiscal years after its fiscal year ending December 31, 1996, at a rate equal at least 8.5% per annum and (B) on other loans made by it during the period referred in sub-paragraph (a) (ii) (A) hereof, at a rate equal at least to 6% per annum.

(b) For the purposes of this Section, the term "infrastructure loans" means all loans other than loans for sanitation equipment and vehicles financed out of resources of MDA obtained from suppliers' credits.

ARTICLE IV

Effective Date; Termination; Cancellation and Suspension

Section 4.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 4.02. This Agreement and all obligations of the Bank and of MDA thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify MDA thereof.

Section 4.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE V

Miscellaneous Provisions

Section 5.01. 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 MDA:

c/o Ministry of Interior
Avenue Habib Bourguiba
1000 Tunis
Tunisia

Telex:

14522 TRANS.TN

Section 5.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of MDA, or by MDA on behalf of the Borrower under the Loan Agreement, may be taken or executed by its Director General or such other person or persons as its Director General shall designate in writing, and MDA shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.03. 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 K. Koch-Weser
Regional Vice President
Middle East and North Africa Region

MUNICIPAL DEVELOPMENT AGENCY

By /s/ Ismail Khelil
Authorized Representative

SCHEDULE
Implementation Program
for Parts B and C of the Project

The provisions of this Schedule shall apply for the purposes of Section 2.03 of this Agreement.

General

1. MDA shall: (a) duly perform all its obligations under the Subsidiary Financing Agreements, and, except as the Bank shall otherwise agree, not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Financing Agreements or any provision thereof;

(b) at the request of the Bank, exchange views with the Bank with regard to the progress of Parts B and C of the Project, the performance of its obligations under this Agreement and under the Subsidiary Financing Agreements, and other matters relating to the purposes of the Loan; and

(c) promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of Parts B and C of the Project, the accomplishment of the purposes of the Loan, or the performance by MDA of its obligations under this Agreement and under the Subsidiary Financing Agreements.

2. MDA shall carry out the obligations set forth in Sections 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 and maintenance, respectively) in respect of the Project Agreement and Parts B and C of the Project.

Part B of the Project

3. Except as the Bank shall otherwise agree, procurement of the goods and consultants' services required for Part B of the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 4 to the Loan Agreement.

4. Under Part B of the Project, MDA shall develop and introduce, not later than June 30, 1993, an accounting system acceptable to the Bank.

5. MDA shall: (a) prepare and furnish to the Bank, not later than December 31 of each calendar year, for its review and comments the proposed program of training to be carried out under Part B of the Project during the next following calendar year; and (b) thereafter, carry out such program of training as shall have been agreed with the Bank.

Part C of the Project

6. MDA undertakes that, unless the Bank shall otherwise agree, Sub-loans and Grants shall be made to Beneficiaries on the terms and conditions set forth or referred to in the Annex to this Schedule.

7. MDA shall exercise its rights in relation to each Development Project in such manner as to protect the interests of the Bank and of MDA, comply with its obligations under this Agreement and the Subsidiary Financing Agreements and achieve the purposes of the Project, and, except as the Bank shall otherwise agree, not assign, amend, abrogate or waive any such agreement.

8. MDA shall: (a) coordinate and monitor the overall execution of Parts B and C of the Project, appraise Development Projects financed through Sub-loans or Grants made by it and supervise the carrying out thereof in accordance with the Operational Guidelines and other policies and procedures satisfactory to the Bank; and (b) take all measures necessary to ensure that, except as the Bank may otherwise agree, the aggregate amount of all Grants made for a single Development Project under Part C (1) (a) of the Project shall not

exceed an amount equivalent to the aggregate amount of the principal of all Sub-loans made for such Development Project.

ANNEX TO SCHEDULE

Terms and Conditions of Sub-loans and Grants

The principal terms and conditions set forth or referred to in this Annex shall apply for the purposes of paragraph 6 of the Schedule to this Agreement.

A. Terms.

1. The principal amount of each Sub-loan and the amount of each Grant shall be: (a) denominated in Dinars; and (b) the equivalent in Dinars (determined as of the date or respective dates of withdrawal from the Loan Account or payment out of the Special Account) of the value of the currency or currencies so withdrawn or paid out on account of the cost of goods and services financed out of the proceeds of the Loan for the Development Project for which such Sub-loan or Grant, as the case may be, is made.

2. Each Sub-loan shall be charged interest, on the total principal amount thereof withdrawn and outstanding from time to time, at a rate determined in accordance with the provisions of Section 3.07 of this Agreement.

3. Each Sub-loan shall be made for a period not exceeding 15 years, inclusive of a grace period not exceeding 2 years.

4. Each Sub-loan and each Grant shall be made on further terms, whereby MDA shall obtain, by written contract with the Beneficiary or other appropriate legal means, rights adequate to protect the interests of the Bank and MDA, including, as applicable:

(a) that MDA shall have the right to suspend or terminate the right of the Beneficiary to the use of the proceeds of the Sub-loan or Grant, as the case may be, upon failure by such Beneficiary to perform its obligations under its contract providing for the Sub-loan or Grant;

(b) that each Beneficiary shall undertake to:

- (i) carry out and operate the Development Project with due diligence and efficiency and in accordance with sound technical, financial and managerial standards and practices and appropriate health, safety and environmental standards satisfactory to the Bank, maintain adequate records, and provide, promptly as needed the funds, facilities and other resources required for the purpose;
- (ii) procure the goods, works and consultants' services required for the Development Project and to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to the Loan Agreement and use such goods, works and services exclusively in the carrying out of the Development Project;
- (iii) enable the Bank and MDA to inspect such goods and the sites, works, plants and construction included in the Development Project, the operation thereof, and any relevant records and documents;
- (iv) take out and maintain with responsible insurers such insurance, against such risks and in such amounts, as shall be consistent with sound business practice, including, without limita-

tion, such insurance to cover hazards incident to the acquisition, transportation and delivery of goods financed out of the proceeds of the Loan to the place of use or installation, any indemnity thereunder to be made payable in a currency freely usable by the Beneficiary to replace or repair such goods; and

- (v) prepare and furnish to MDA, for forwarding to the Bank if so requested by the Bank, all such other information as the Bank or MDA shall reasonably request relating to the foregoing and to the administration, operations and financial condition of the Beneficiary and to the benefits to be derived from the Development Project; and

(c) that each Beneficiary of a Sub-loan shall maintain at all times the debt service coverage ratio referred to in Part B.1 (c) of this Annex.

B. Conditions.

1. Each Sub-loan and each Grant shall be made only to a Beneficiary which shall have established to the satisfaction of MDA on the basis of guidelines satisfactory to the Bank, that: (a) in respect of a Beneficiary other than a regional or municipal administration of the Borrower, it is creditworthy, and has a sound financial structure; (b) it has the organization, management, staff and other resources required for the efficient carrying out and operation of the Development Project; (c) it is in a position to maintain a debt service coverage ratio equal at least to 1.3:1; and (d) its projected financial resources shall be sufficient to enable it to meet the estimated expenditures required for the carrying out of the Development Project.

2. Each Sub-loan and each Grant shall be made only for a Development Project which: (a) is determined to be technically feasible and financially viable and designed in accordance with appropriate health, safety and environmental standards; (b) in the case of a Development Project estimated to cost the equivalent of \$1,000,000 or more, is calculated to have a financial rate of return and an economic rate of return of at least 12% each; and (c) estimated to generate revenues adequate to cover the operating and maintenance costs thereof as they are incurred and recover in progressive steps over a suitable period of time a reasonable portion of the capital costs thereof; all as shall be determined and calculated by MDA on the basis of guidelines satisfactory to the Bank.

3. Expenditures for goods, works and services required for a Development Project shall be eligible for financing out of the proceeds of the Loan only:

(a) if such expenditures shall have been made not earlier than ninety days prior to the date on which the Bank or MDA, as the case may be, shall have received the information required under subparagraph (b) or (c) hereof;

(b) if (i) (A) the Sub-loan for such Development Project shall have been one of the first two Sub-loans to be made under any of Parts C (1) (a), C (1) (b) or C (2) of the Project, or (B) the principal amount of the Sub-loan made for such Development Project, when added to the amount of any Grant made therefor shall be equal to an amount equivalent to \$500,000 or more, and (ii) such Sub-loan and any Grant to be made for the Development Project shall have been approved by the Bank on the basis of information furnished to the Bank, comprising an application, in form satisfactory to the Bank, together with a description of the Beneficiary and an appraisal of the Development Project, including a description of the expenditures proposed to be financed out of the proceeds of the Loan, the proposed terms and conditions of the Sub-loan and any such Grant, including the schedule of amortization of the Sub-loan, and such

other information as the Bank shall reasonably request; and

(c) if the Sub-loan for such Development Project shall have been a Sub-loan other than a Sub-loan referred to in sub-paragraph (b) hereof, and such Sub-loan and any Grant to be made for the Development Project shall have been approved by MDA on the basis of a request and information furnished to MDA, comprising a summary description of the Beneficiary and the Development Project, including a description of the expenditures proposed to be financed out of the proceeds of the Loan and terms and conditions of the Sub-loan and any such Grant, including the schedule of amortization of the Sub-loan.

