

CONFORMED

GRANT No. 29199

JAPANESE GRANT AGREEMENT

(Monterrey Air Quality Management Project)

between

UNITED MEXICAN STATES

and

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

**on its own behalf and as Administrator
of Grant Funds provided by JAPAN**

Dated July 6, 1995

GRANT No. 29199

JAPANESE GRANT AGREEMENT

AGREEMENT, dated July 6, 1995, between the UNITED MEXICAN STATES (the Recipient) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

acting on its own behalf (the Bank) and as Administrator (the Administrator) of grant funds provided by JAPAN (Japan).

WHEREAS (A) pursuant to a letter agreement dated July 30, 1990 between Japan and the Bank and International Development Association (the Association), Japan has requested the Bank and the Association, and the Bank and the Association have agreed, to administer grant funds to be made available by Japan for the financing of certain programs and projects supported by the Bank and the Association, as the case may be, in accordance with the provisions of such letter agreement;

WHEREAS (B) Japan has agreed to make available to the Recipient a grant out of said grant funds (the Grant) to finance the cost of carrying out the technical assistance described in Schedule 1 to this Agreement (the Technical Assistance) on the terms and conditions hereinafter set forth;

WHEREAS (C) the Recipient has requested the Bank to carry out the Technical Assistance;

WHEREAS (D) the Bank has agreed to carry out the Technical Assistance on the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions; Term of Technical Assistance

Section 1.01. The Technical Assistance shall be undertaken by consultants (the Consultants) who shall, as far as practicable, include Consultants with expertise in the following areas:

- (a) monitoring, modelling, analysis and management of air pollution emitted by stationary, mobile and natural sources;
- (b) impact of air pollution on human health;
- (c) economics and financing of air pollution control;
- (d) traffic management and public transport promotion;
- (e) regulatory and institutional frameworks (including training and equipment needs) for air pollution management; and
- (f) public education and information dissemination campaigns.

Section 1.02. As used in this Agreement, the following terms have the following meanings:

- (a) "Consultants" includes individual consultants as well as any consulting firm that provides any of the experts referred to in Section 1.01;

(b) "Project" means the Monterrey Air Quality Management Project, a project intended to improve the air quality in the metropolitan area of the city of Monterrey, Nuevo León, México, through the implementation of a comprehensive air quality management plan that is cost effective and that addresses stationary and mobile air pollution sources, it being foreseen that such project may consist of the following components: (i) an institutional strengthening and public awareness component; (ii) a stationary sources component; and (iii) a vehicles component; and

(c) "yen" and "¥" mean the currency of Japan.

Section 1.03. The Consultants are expected to commence their services in January, 1995 and to provide a total of approximately 41.5 man-months of service between that time and the end of March, 1996.

ARTICLE II

Responsibilities of the Bank and the Administrator

Section 2.01. The Grant to be provided by Japan for the Technical Assistance shall be in an amount of fifty-eight million one hundred thousand yen (¥58,100,000).

Section 2.02. The Administrator shall utilize the Grant to finance the following expenditures in connection with the services of the Consultants:

- (a) remuneration, per diem and other allowances;
- (b) international and local travel expenses; and
- (c) out-of-pocket expenses, including communications and reports, incurred by the Consultants in foreign and local currency in the performance of their services.

Section 2.03. The Bank shall make reasonable efforts to secure the services of the Consultants.

Section 2.04. The recruitment, engagement and supervision of the Consultants shall be the responsibility solely of the Bank (in consultation with the Recipient) and shall be done according to the Bank's applicable procedures.

ARTICLE III

Responsibilities of the Recipient

Section 3.01. The Recipient shall cooperate with the Administrator, the Bank and the Consultants to ensure that the Technical Assistance is carried out promptly and effectively and, for this purpose, shall issue appropriate instructions to its officials, agents and representatives.

Section 3.02. The Recipient shall:

(a) make arrangements for all personnel of the Consultants assigned to the Technical Assistance (other than nationals of the Recipient or permanent residents of the Recipient's territories) and all dependents of such personnel promptly to be provided with any necessary entry and exit visas, residence and work permits, exchange documents and travel documents required for their stay in the Recipient's territories during the duration of the Technical Assistance;

(b) facilitate clearance through its customs of any equipment, materials and supplies required for the Technical Assistance and any personal effects of the personnel of the Consultants assigned to the Technical Assistance (other than nationals of the Recipient or permanent residents of the Recipient's territories) and the dependents of such personnel;

(c) permit the Consultants to bring into, and withdraw from, the Recipient's territories reasonable amounts of foreign currency for purposes related to the Technical Assistance;

(d) permit the personnel of the Consultants assigned to the Technical Assistance (other than nationals of the Recipient or permanent residents of the Recipient's territories) and the dependents of such personnel to bring into, and withdraw from, the Recipient's territories reasonable amounts of foreign currency for their personal use; and

(e) exempt the Consultants and the personnel of the Consultants assigned to the Technical Assistance from (or the Recipient shall pay on behalf of the Consultants and such personnel) any taxes, duties, fees, levies and other impositions imposed under the laws and regulations in effect in the Recipient's territories on the Consultants and such personnel in respect of:

- (i) any payments whatsoever made to the Consultants and such personnel (other than nationals of the Recipient or permanent residents of the Recipient's territories) in connection with the carrying out of the Technical Assistance;
- (ii) any equipment, materials and supplies brought into the Recipient's territories by the Consultants for the purpose of carrying out the Technical Assistance and which, after having been brought into such territories, will be subsequently withdrawn therefrom by them;
- (iii) any equipment, material and supplies brought into the Recipient's territories by the Consultants for the purpose of carrying out the Technical Assistance and which will be consumed therein or become the property of the Recipient; and
- (iv) any property brought into the Recipient's territories by the Consultants or such personnel (other than nationals of the Recipient or permanent residents of the Recipient's territories) or the dependents of such personnel for their personal use and which will be consumed therein or subsequently withdrawn therefrom by them upon their respective departure from the Recipient's territories, provided that the Consultants, such personnel and their dependents shall follow the usual customs

procedures of the Recipient in importing property into the Recipient's territories.

Section 3.03. The Recipient shall be responsible for dealing with any claims arising out of, or resulting from, the Technical Assistance that may be brought by third parties against the Administrator or the Bank. The Recipient shall indemnify the Administrator and the Bank against any costs, claims, damages or liabilities arising out of, or resulting from, any acts or omissions in connection with the Technical Assistance, except those resulting from the gross negligence or willful misconduct of the Administrator or the Bank, as the case may be.

Section 3.04. For purposes of carrying out the Technical Assistance, the Recipient shall cause the Subsecretariat of Ecology of the State of Nuevo León to make available to the Consultants, free of charge, the data, services, facilities and equipment set forth in Schedule 2 to this Agreement.

ARTICLE IV

Reports and Other Matters

Section 4.01. The Recipient, the Bank and the Administrator shall, from time to time, at the request of any party, exchange views on the Technical Assistance and consult on any reports prepared by the Consultants and the implementation of any recommendations made in those reports.

Section 4.02. The Bank and the Administrator may use any reports prepared by the Consultants for any purpose that the Bank or the Administrator, as the case may be, may consider appropriate but those reports may not be made public except by agreement between the Recipient, the Bank and the Administrator.

ARTICLE V

Enforceability of Agreement; Failure to Exercise Rights; Arbitration

Section 5.01. The rights and obligations of the Bank, the Administrator and the Recipient under this Agreement shall be valid and enforceable in accordance with their terms notwithstanding the law of any State or political subdivision thereof to the contrary. Neither the Bank nor the Administrator nor the Recipient shall be entitled in any proceeding under this Article to assert any claim that any provision of this Agreement is invalid or unenforceable because of any provision of the Articles of Agreement of the Bank.

Section 5.02. No delay in exercising, or omission to exercise, any right, power or remedy accruing to any party under this Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default. No action of such party in respect of any default, or any acquiescence by it in any default, shall affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

Section 5.03. (a) Any controversy between the parties to this Agreement, and any claim

by any such party against any other such party arising under this Agreement which has not been settled by agreement of the parties shall be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

(b) The parties to such arbitration shall be the Bank and the Administrator on the one side and the Recipient on the other side.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed jointly by the Bank and the Administrator; a second arbitrator shall be appointed by the Recipient; and the third arbitrator (hereinafter sometimes called the Umpire) shall be appointed by agreement of the parties or, if they shall not agree, by the President of the International Court of Justice or, failing appointment by said President, by the Secretary-General of the United Nations. If either side shall fail to appoint an arbitrator, such arbitrator shall be appointed by the Umpire. In case any arbitrator appointed in accordance with this Section shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

(d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the relief sought and the name of the arbitrator appointed by the party instituting such proceeding. Within thirty days after such notice, the other party shall notify the party instituting the proceeding the name of the arbitrator appointed by such other party.

(e) If within sixty days after the notice instituting the arbitration proceeding, the parties shall not have agreed upon an Umpire, any party may request the appointment of an Umpire as provided in paragraph (c) of this Section.

(f) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(g) The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to the provisions of this Section and except as the parties shall otherwise agree, determine its procedure. All decisions of the Arbitral Tribunal shall be by majority vote.

(h) The Arbitral Tribunal shall afford to all parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such Tribunal. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to this Agreement. Each party shall abide by and comply with any such award rendered by the Arbitral Tribunal in accordance with the provisions of this Section.

(i) The parties shall fix the amount of the remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amount before the Arbitral Tribunal shall convene, the Arbitral Tribunal shall fix such amount as shall be reasonable under the circumstances. The Bank, the Administrator and the Recipient shall each defray its own expenses in the arbitration proceedings. The costs of the Arbitral Tribunal shall be divided between and borne equally by

the Bank and the Administrator on the one side and the Recipient on the other. Any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs shall be determined by the Arbitral Tribunal.

(j) The provisions of arbitration set forth in this Section shall be in lieu of any other procedure for the settlement of controversies between the parties to this Agreement or of any claim by any such party against any other such party arising thereunder.

(k) If, within thirty days after counterparts of the award shall have been delivered to the parties, the award shall not be complied with, any party may: (i) enter judgment upon, or institute a proceeding to enforce, the award in any court of competent jurisdiction against any other party; (ii) enforce such judgment by execution; or (iii) pursue any other appropriate remedy against such other party for the enforcement of the award and the provisions of this Agreement. Notwithstanding the foregoing, this Section shall not authorize any entry of judgment or enforcement of the award against any party that is a member of the Bank except as such procedure may be available otherwise than by reason of the provisions of this Section.

(l) Service of any notice or process in connection with any proceeding under this Section or in connection with any proceeding to enforce any award rendered pursuant to this Section 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 specified in this Agreement or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The parties to this Agreement waive any and all other requirements for the service of any such notice or process.

ARTICLE VI

Effective Date, Suspension and Termination

Section 6.01. This Agreement shall become effective upon its execution by the parties.

Section 6.02. The Recipient may at any time request the Bank and the Administrator in writing to terminate the Technical Assistance. Whether or not the Recipient has made such a request, the Administrator may at any time suspend or, after consultation with the Recipient, terminate the right of the Recipient to receive Grant funds for the Technical Assistance if any of the following circumstances shall have occurred and be continuing:

(a) The Recipient shall have failed to make payment of principal or interest or any other amount due to the Bank or the Association: (i) under any loan or guarantee agreement between the Recipient and the Bank; (ii) under any development credit agreement between the Recipient and the Association; or (iii) in consequence of any guarantee or other financial obligation of any kind extended by the Bank to any third party with the agreement of the Recipient.

(b) The Recipient shall have failed to perform any obligation under this Agreement.

(c) The Bank or the Association shall have suspended in whole or in part the right of

the Recipient to make withdrawals under any loan agreement with the Bank or any development credit agreement with the Association because of a failure by the Recipient to perform any of its obligations under such agreement or any guarantee agreement with the Bank.

(d) Any event shall have arisen that, in the opinion of the Bank or the Administrator, as the case may be, interferes or threatens to interfere with the successful implementation of the Technical Assistance, the accomplishment of its purposes, or the execution of the Technical Assistance in accordance with the terms and conditions of this Agreement.

(e) The Recipient: (i) shall have been suspended from membership in or ceased to be a member of the Bank; or (ii) shall have ceased to be a member of the International Monetary Fund.

(f) A representation made by the Recipient in or pursuant to this Agreement, or any statement furnished in connection therewith, and intended to be relied upon by the Administrator in making the Grant, shall have been incorrect in any material respect.

Section 6.03. If the Technical Assistance is suspended or terminated, the Recipient and the Administrator shall consult with each other concerning any further action that may be necessary or desirable.

Section 6.04. The Administrator is not an agent of or trustee for the Recipient and shall not have any fiduciary relationship with the Recipient. The Recipient shall have no right to any portion of the Grant that is not expended by the Administrator pursuant to this Agreement.

ARTICLE VII

Representation

Section 7.01. All communications with respect to this Agreement shall be addressed as follows:

For the Recipient:

Director General de Crédito Público
Dirección General de Crédito Público
Secretaría de Hacienda y Crédito Público
Insurgentes Sur 826, piso 9
Colonia del Valle
03100 México, D.F.
México

Telex:

1777313-SHOCME

For the Administrator and the Bank:

Director, Country Department II
Latin America and the Caribbean Regional Office
International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

Telex:

INTBAFRAD
Washington, D.C.

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

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

UNITED MEXICAN STATES

By /s/ Martín Werner

Authorized Representative

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT
on its own behalf and as Administrator
of the Grant

By /s/ Edilberto Segura

Acting Regional Vice President
Latin America and the Caribbean

SCHEDULE 1

Description of Technical Assistance

The Technical Assistance will support the preparation of the proposed Project and shall consist of the following:

1. Assessment of Sources of Air Pollution and Enhancement of Monitoring Capacity

(a) Carrying out of a study to determine (or provide reliable estimates of) the amount and share of air pollution generated by mobile, stationary and natural sources in the Monterrey Metropolitan Area (MMA) in Mexico. The study shall include a determination of the amount and share of pollution broken down by vehicle type and by industrial sector, as well as a sample trajectory analysis for particulate matter (PM-10) and the preparation of terms of reference (TORs) and design of a computerized data collection system to maintain a complete inventory (regularly updated over time) of air pollution amounts and sources in the MMA.

(b) Provision of technical assistance to enhance the existing MMA emissions monitoring network so as to include monitoring of lead and speciated hydrocarbon emissions.

2. Exposure and Health Impacts Assessment

(a) Carrying out of a study to estimate the levels of human exposure to air pollution in the MMA.

(b) Carrying out of a health study to generate base-line data to determine the current status in the MMA of diseases related to air pollution, as well as preparation of TORs (including the definition of performance indicators and establishment of how such indicators shall be monitored over time) to assess the future impact of air pollution and air pollution remediation measures on human health in the MMA.

3. Market-based Incentives and Financing Options for Air Pollution Control

(a) Carrying out of a study to define a workable system of market-based incentives for MMA air pollution control, as well as to evaluate the potential benefits and savings generated by this approach in comparison to approaches that include traditional command-and-control measures.

(b) Carrying out of a study to examine options for financing MMA air pollution control measures (with a focus on potential options such as fees, fines, charges, taxes, trust funds and public budget financing).

4. Transport Management

Carrying out of a study to evaluate the impact of current MMA transport and traffic management plans and, if necessary, propose changes to such plans to achieve better air pollution control results.

5. Air Quality Management Model

Development of an air quality management model for the MMA by means of preparation of a short-term model, assessment of needs and preparation of TORs for the design of comprehensive models and assessment of training and equipment needs for such modelling.

6. Air Quality Management Strategy

Development of an MMA air pollution improvement strategy by means of the carrying out of a study to examine the cost-effectiveness of alternative MMA air pollution control measures, preparation of a short-term air quality management plan for the MMA and preparation of TORs for the development and implementation of medium- and long-term air quality management plans for the MMA.

7. Regulatory and Institutional Strengthening

(a) Review of existing air pollution norms, standards, regulations and laws at the federal and MMA state and municipal levels and, if necessary, recommendation of changes to such texts.

(b) Diagnostic analysis of current practices and institutional arrangements in the MMA to manage air pollution control activities and preparation of recommendations on institutional coordination options to improve MMA air pollution management.

(c) Assessment of environmental management training needs and enforcement equipment needs for MMA municipal and state public agency personnel.

(d) Design of a plan to establish and maintain an inter-agency data base at the local MMA level for the administration of MMA air pollution control programs.

8. Public Awareness and Education with Respect to Air Pollution

(a) Establishment of a public education campaign in the MMA on air pollution so as to engage public support for air quality control programs.

(b) Design of an information dissemination program for MMA plant managers and industrial personnel on environmental regulations, air pollution minimization and control options and clean technologies so as to promote environmentally sound practices in MMA industries.

SCHEDULE 2

**Description of Services, Facilities, Equipment and
Counterpart Personnel to be Made Available by the Recipient**

Office space, materials, equipment, relevant data and use of telephones (all in Monterrey) for the Consultants for the duration of the Technical Assistance.

