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TF021148

METAP Grant Agreement

(Environmental Impact Assessment Units - Second Phase)

between

DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT
on its own behalf and as Administrator
of Grant Funds provided by

COMMISSION OF THE EUROPEAN COMMUNITIES
under the
MEDITERRANEAN ENVIRONMENTAL TECHNICAL ASSISTANCE PROGRAM

Dated March 24, 1994

TF021148

METAP GRANT AGREEMENT

AGREEMENT, dated March 24, 1994, between DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA (the Recipient) and the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) acting on its own behalf (the Bank) and as Administrator (the Administrator) of grant funds provided by the COMMISSION OF THE EUROPEAN COMMUNITIES (CEC) under the MEDITERRANEAN ENVIRONMENTAL TECHNICAL ASSISTANCE PROGRAM (METAP).

WHEREAS (A) the Bank and the European Investment Bank (EIB) have jointly prepared an environmental program for the Mediterranean, designed to address the environmental policy, institutional and investment-related needs of the Mediterranean countries;

WHEREAS (B) the Bank and EIB, pursuant to the aforementioned program, have established METAP to strengthen national environmental efforts and promote regional cooperation;

WHEREAS (C) pursuant to Memorandum of Understanding dated March 15, 1991 between CEC, EIB and the Bank, CEC has requested the Bank, and the Bank has agreed, to administer grant funds to be made available by CEC to finance technical assistance programs under METAP;

WHEREAS (D) the Recipient has requested and CEC has agreed to make available to the Recipient a grant (the Grant) out of said grant funds to finance the cost of carrying out the technical assistance described in Schedule 1 to this Agreement (the Technical Assistance);

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

WHEREAS (F) 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 areas of institutional development and environmental engineering.

Section 1.02. As used in this Agreement, the term "ECU" means the European Currency Unit, the term "Consultants" includes individual consultants as well as any consulting firm that provides any of the experts referred to in Section 1.01, and the term "Association" means the International Development Association.

Section 1.03. The Consultants are expected to commence their services on April 1, 1994, and to provide a total of thirteen (13) man-months of service between that time and April 30, 1995.

ARTICLE II

Responsibilities of the Bank and the Administrator

Section 2.01. The Grant to be provided by CEC for the Technical Assistance shall be in an amount of one hundred fifty thousand ECU (ECU 150,000).

Section 2.02. The Administrator shall utilize the Grant to finance on a grant basis 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 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 make available to the Consultants, free of charge, the data, services, facilities and equipment set forth in Schedule 2 to this Agreement.

Section 3.05. The Recipient shall make available to the Consultants, free of charge, such counterpart personnel to be selected by the Recipient, with the advice of the Bank and the Consultants, as are set forth in Schedule 2 to this Agreement. If any member of the counterpart personnel fails to perform adequately any work assigned to him by the Consultants that is consistent with the position occupied by such member, the Consultants may request the replacement of such member, and the Recipient shall not unreasonably refuse to act upon such request.

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 either 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 to 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, or (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. The officials responsible for the implementation of this Agreement shall be:

For the Recipient:

Minister of Economy
Ministry of Economy
Zighout Youssef Palace
Algiers
Democratic and Popular Republic
of Algeria

Telex:

67073

For the Administrator:

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:

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.

DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA

By /s/ Nourredine Zerhouni

Authorized Representative

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

By /s/ Daniel Ritchie

Authorized Representative

SCHEDULE 1

Description of Technical Assistance

The objective of the Technical Assistance is to assist the Recipient in (i) the preparation of operational directives and work plans for the environmental inspection offices of the Wilayas of Annaba and Skikda (the "Regional Offices"); (ii) the development of a suitable methodology for carrying out environmental impact assessments; and (iii) the identification in the private sector of training needs in the field of environmental impact assessment.

The Technical Assistance consists of the following activities, subject to such modifications thereof as the Recipient and the Administrator may agree upon from time to time to achieve such objectives:

Part A: Institutional Strengthening

Carrying out an institutional program to strengthen the Regional Offices, such program to consist of (i) the definition of the functions of the Regional Offices; (ii) the preparation of an organizational chart therefor; (iii) the assessment of their staff requirements and equipment needs; and (iv) the development of annual plans, budgets, and operational and environmental procedures and directives.

Part B: Training Programs

Designing and carrying out training programs for the staff of the Directorate of Environment of the Recipient and of the Regional Offices, as well as for local private sector consulting firms and technical staff of local industrial enterprises, on the implementation and supervision of environmental impact assessments, and the monitoring and enforcement of recommendations thereof.

SCHEDULE 2

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

For purposes of carrying out the Technical Assistance, the Recipient shall make available to the Consultants, free of charge, the following:

(a) any and all technical studies previously prepared by, or on behalf of, the Recipient related, directly or indirectly, to the Technical Assistance;

(b) any and all reports and statistical data compiled by the Recipient's national agencies related, directly or indirectly, to the Technical Assistance;

(c) official governmental documentation, including the Recipient's national and local laws and regulations relating to environmental and ecological protection;

(d) data on the organizational and financial structure of all of the Recipient's national and local agencies involved in the management or administration of natural resources and pollution control; and

(e) counterpart personnel with qualifications and experience satisfactory to the Bank and the Consultants.

