

CONFORMED COPY

GEF TRUST FUND GRANT NUMBER TF052053 NIR

Global Environment Facility Trust Fund Grant Agreement

(Community Action Program Support Project)

between

REPUBLIC OF NIGER

and

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

acting as an Implementing Agency of the Global Environment Facility

Dated March 28, 2003

GEF TRUST FUND GRANT NUMBER TF052053 NIR

GLOBAL ENVIRONMENT FACILITY TRUST FUND GRANT AGREEMENT

AGREEMENT, dated March 28, 2003 between the REPUBLIC OF NIGER (the Recipient) and the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) acting as an implementing agency of the Global Environment Facility (GEF) in respect of grant funds provided to the GEF Trust Fund by certain members of the Bank as participants of the GEF.

WHEREAS (A) the Bank has received from the Recipient a letter dated February 7, 2003, describing a program of objectives and actions designed to support the implementation of the Recipient's decentralization and local development policy (the Program) and declaring the Recipient's commitment to the execution of the Program;

(B) the Bank, pursuant to Resolution No. 91-5 of March 14, 1991 of the Executive Directors of the Bank, established the GEF to assist in the protection of the global environment and promote thereby environmentally sound and sustainable economic development;

(C) following the restructuring of the GEF, such arrangements continued in place on the basis set forth in Resolution No. 94-2 of May 24, 1994, of the Executive Directors of the Bank which, *inter alia*, established the GEF Trust Fund and appointed the Bank as trustee of the GEF Trust Fund (Resolution No. 94-2);

(D) the second replenishment of the GEF Trust Fund was approved on the basis set forth in Resolution No. 98-2 of July 14, 1998, of the Executive Directors of the Bank (Resolution No. 98-2);

(E) the Recipient, having satisfied itself as to the feasibility and priority of the project (the Project) described in Schedule 2 to the development grant agreement (the Development Grant Agreement) of even date herewith between the Recipient and the International Development Association (the Association), has requested assistance from the resources of the GEF Trust Fund for funding the Project, and said request having been approved in accordance with the provisions of the Instrument for the Establishment of the Restructured Global Environment Facility approved under Resolution 94-2, and to be funded from contributions to the GEF Trust Fund under Resolution No. 98-2, which may include funds carried over from the first replenishment of the GEF Trust Fund under Resolution No. 94-2; and

(F) the Recipient has also requested the Association to provide additional financing towards the Project pursuant to the Development Grant Agreement, and the Association has agreed to provide such assistance in an aggregate principal amount

equivalent to twenty-five million four hundred thousand Special Drawing Rights (SDR 25,400,000) (the Development Grant); and

WHEREAS the Bank has agreed, on the basis, *inter alia*, of the foregoing, to extend a grant to the Recipient (the GEF Grant) upon the terms and conditions set forth in this Agreement;

NOW THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01 (a) The following provisions of the General Conditions Applicable to Loan and Guarantee Agreements for Currency Pool Loans of the Bank, dated January 1, 1985, as amended through October 6, 1999, with the modifications set forth in paragraph (b) of this Section (the General Conditions) constitute an integral part of this Agreement:

- (i) Article I;
 - (ii) Sections 2.01 (1), (2), (3), (4), (6), (8), (9), (10), (11), (15), (16), (17), (19) and (20), 2.02 and 2.03;
 - (iii) Section 3.01;
 - (iv) Section 4.01 and the first sentence of Section 4.09;
 - (v) Article V;
 - (vi) Sections 6.01, 6.02 (a), (c), (d), (e), (f), (g), (i), (k) (l) and (p), 6.03, 6.04 and 6.06;
 - (vii) Section 8.01 (b);
 - (viii) Sections 9.01 (a) and (c), 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09;
 - (ix) Sections 10.01, 10.03 and 10.04;
 - (x) Article XI; and
 - (xi) Sections 12.01 (a) and(c), 12.02 (a) and (c), 12.03 and 12.04.
- (b) The General Conditions shall be modified as follows:

- (i) the term “Bank”, wherever used in the General Conditions, other than in Sections 2.01 (8) and 6.02 (f) thereof and the last use of such term in Section 5.01 thereof, means the Bank acting as an implementing agency of the GEF, except that in Section 6.02, the term “Bank” shall also include the Bank acting in its own capacity;
- (ii) the term “Borrower”, wherever used in the General Conditions, means the Recipient;
- (iii) the term “Loan Agreement”, wherever used in the General Conditions, means this Agreement;
- (iv) the term “Loan” and “loan”, wherever used in the General Conditions, means the GEF Grant;
- (v) the term “Loan Account”, wherever used in the General Conditions, means the GEF Grant Account;
- (vi) a new subparagraph is added after subparagraph (p) in Section 6.02 of the General Conditions, as follows: “an extraordinary situation shall have arisen in which any further disbursement under the GEF Grant would exceed the resources available for disbursement from the GEF.”; and
- (vii) Section 12.05 is modified to read as follows:

“This Development Grant Agreement and all obligations of the parties thereunder shall terminate on the date seven years following the Closing Date.”

Section 1.02. (a) Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions, Section 1.02 of the Development Grant Agreement, and the Recitals to this Agreement have the respective meanings therein set forth, and

(b) wherever used in Section 1.02, Article III, Article IV, Schedule 2, Schedule 3, and Schedule 4 of the Development Grant Agreement, as incorporated in this Agreement pursuant to Recital (E), Section 1.02, Article III, and paragraphs 2 (c) and 3 (b) of Schedule 1 to this Agreement:

- (i) the term “Association” shall mean the Bank;
- (ii) the term “Development Grant” shall mean the GEF Grant;
- (iii) the term “Grant Account” shall mean the GEF Grant Account;

- (iv) the term “Special Account” shall mean the GEF Special Account; and
 - (v) the term “90-day Advance Account” shall mean the GEF 90-day Advance Account; and
- (c) the following additional terms have the following meaning:
- (i) “Developing Grant Agreement” means the agreement of even date herewith between the Recipient and the Association for the Project, as such agreement may be amended from time to time; and such term includes the “General Conditions Applicable to Development Credit Agreements” of the Association, dated January 1, 1985, as applied to such agreement, and all schedules and agreements supplemental to the Development Grant Agreement;
 - (ii) “GEF Special Account” means the special deposit account referred to in Section 2.02 (b) (i) of this Agreement; and
 - (iii) “GEF 90-day Advance Account” means any of the advance accounts referred to in Section 2.02 (b) (ii) of this Agreement.

ARTICLE II

The GEF Grant

Section 2.01. The Bank agrees to make available to the Recipient, on the terms and conditions set forth or referred to in this Agreement, an amount in various currencies equivalent to four million United States Dollars (US\$4,000,000).

Section 2.02. (a) The amount of the GEF Grant may be withdrawn from the GEF Grant Account in accordance with the provisions of Schedule 1 to this Agreement for: (i) expenditures made (or, if the Bank shall so agree, to be made) in respect of the reasonable cost of goods and services required for carrying out the Project and to be financed out of the proceeds of the GEF Grant; and (ii) amounts paid (or, if the Bank shall so agree, to be paid) on account of withdrawals made under Matching Grants in respect of the reasonable costs of goods, works and services required for Micro-projects to be carried out under Part C of the Project, and in respect of which the withdrawal from the GEF Grant Account is requested.

(b) The Recipient may, for the purposes of the Project, open and maintain in FCFA: (i) a GEF Special Account in the name of the NCU; and (ii) eight GEF 90-day

Advance Accounts in the name of each RCU, all in commercial banks on terms and conditions satisfactory to the Bank, including appropriate protection against set off, seizure or attachment. Deposits into, and payments out of, the GEF Special Account and each respective GEF 90-day Advance Account shall be made in accordance with the provisions of Schedule 2 this Agreement.

Section 2.03. The Closing Date shall be June 30, 2007, or such later date as the Bank shall establish. The Bank shall promptly notify the Recipient of such later date.

ARTICLE III

Execution of the Project; Financial Covenants

Section 3.01. Articles III and IV of the Development Grant Agreement are hereby incorporated into this Agreement with the same force and effect as if they were fully set forth herein.

ARTICLE IV

Remedies of the Bank

Section 4.01. Pursuant to Section 6.02 (p) of the General Conditions, the following additional events are specified:

- (a) a situation shall have arisen which shall make it improbable that the Program or a significant part thereof will be carried out.
- (b)
 - (i) Subject to subparagraph (ii) of this paragraph, the right of the Recipient to withdraw the proceeds of the Development Grant made to the Recipient for the financing of the Project shall have been suspended, canceled or terminated in whole or in part, pursuant to the terms of the Development Grant Agreement.
 - (ii) Subparagraph (i) of this paragraph shall not apply if the Recipient establishes to the satisfaction of the Association that: (A) such suspension, cancellation, or termination is not caused by the failure of the Recipient to perform any of its obligations under the Development Grant Agreement; and (B) adequate funds for the Project are available to the Recipient from other sources on terms and conditions consistent with the obligations of the Recipient under this Agreement.

ARTICLE V

Effectiveness; Termination

Section 5.01. The following event is specified as an additional condition to the effectiveness of this Agreement within the meaning of Section 12.01 (b) of the General Conditions, namely that all conditions precedent to the effectiveness of the Development Grant Agreement have been fulfilled, subject only to the effectiveness of this GEF Grant Agreement.

Section 5.02. The date one hundred and eighty (180) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VI

Representative of the Recipient; Addresses

Section 6.01. The Minister of the Recipient at the time responsible for finance is designated as representative of the Recipient for the purposes of Section 11.03 of the General Conditions.

Section 6.02 The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Recipient:

Ministry of Finance and Economy
BP 389
Niamey
Republic of Niger

Facsimile:

(227) 73 59 34

For the Bank:

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

Cable address:
INDEVAS
Washington, D.C.

Telex:
248423 (MCI) or
64145 (MCI)

Facsimile:
(202) 477 6391

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.

REPUBLIC OF NIGER

By /s/ Joseph Diatta

Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

as an implementing agency of the Global Environment Facility

By /s/ Callisto E. Madavo

Authorized Representative

SCHEDULE 1

Withdrawal of the Proceeds of the GEF Grant

1. The table below sets forth the Categories of items to be financed out of the proceeds of the GEF Grant, the allocation of the amounts of the GEF Grant to each Category and the percentage of expenditures for items so to be financed in each Category:

<u>Category</u>	Amount of the GEF Grant Allocated (Expressed in U.S. dollars)	% of Expenditures to be Financed
(1) Civil Works	0	80%
(2) Goods	0	100% of foreign expenditures and 80% of local expenditures
(3) Consultants' services, including audit fees	300,000	85% of foreign expenditures and 80% of local expenditures
(4) Training	1,300,000	100%
(5) Matching Grants under Part C of the Project	2,100,000	100% of amounts disbursed
(6) Operating Costs	300,000	90%
TOTAL	_____	
	4,000,000	
	=====	

2. For the purposes of this Schedule:

(a) the term “foreign expenditures” means expenditures in the currency of any country other than that of the Recipient for goods or services supplied from the territory of any country other than that of the Recipient;

(b) the term “local expenditures” means expenditures in the currency of the Recipient or for goods or services supplied from the territory of the Recipient; provided, however, that, if the currency of the Recipient is also that of another country from the territory of which goods or services are supplied, expenditures in such currency for such goods or services shall be deemed to be “foreign expenditures”; and

(c) the term “Operating Costs” means the incremental expenses incurred by the NCU and the RCUs on account of office supplies and maintenance, administrative support, communication, insurance and utility services, travel and associated subsistence allowances, vehicle operation and maintenance costs, rental expenses, banking charges, and salaries for contractual and temporary staff except the staff referred to in Section II (2) (c) and Section II (3) (c) of Schedule 4 to the Development Grant Agreement, but excluding salaries of officials of the Recipient’s civil service.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for:

(a) expenditures prior to the date of this Agreement; and

(b) expenditures under Category (5) of the table set forth under paragraph 1 of this Schedule 1, for any Matching Grant, unless such Matching Grant has been made in accordance with the provisions set forth in Section III of Schedule 4 to the Development Grant Agreement and with the PIM and the EMP, and a Matching Grant Agreement, on the terms and conditions specified in Section III of Schedule 4 to the Development Grant Agreement and in the PIM and the EMP, satisfactory to the Association, has been duly executed by and is binding on the parties thereto, and has become effective.

4. The Bank may require withdrawals from the GEF Grant Account to be made on the basis of statements of expenditure for expenditures for: (i) works, goods and services of consulting firms under contracts costing less than \$100,000 equivalent each; (ii) services of individual consultants under contracts costing less than \$50,000 equivalent each; and (iii) Matching Grants, training, and operating costs, all under such terms and conditions as the Bank shall specify by notice to the Recipient.

5. If the Bank shall have determined at any time that any payment made from the GEF Grant Account was used for any expenditure not consistent with the provisions of this Agreement, the Recipient shall, promptly upon notice from the Bank, refund to the Bank for deposit into the GEF Grant Account, an amount equal to the amount so used or the portion thereof as specified by the Bank.

SCHEDULE 2

GEF Special Account

1. For the purposes of this Schedule:
 - (a) the term “eligible Categories means Categories (1) through (6) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;
 - (b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the GEF Grant allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and
 - (c) the term “Authorized Allocation” means an amount of FCFA 300,000,000 to be withdrawn from the GEF Grant Account and deposited into the GEF Special Account pursuant to paragraph 3 (a) of this Schedule, provided, however, that unless the Bank shall otherwise agree, the Authorized Allocation shall be limited to an amount of FCFA 150,000,000 until the aggregate amount of withdrawals from the GEF Grant Account plus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions shall be equal to or exceed the equivalent of one million and five hundred thousand United States Dollars (US\$1,500,000).
2. Payments out of the GEF Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.
3. After the Bank has received evidence satisfactory to it that the GEF Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the GEF Special Account shall be made as follows:
 - (a) For withdrawals of the Authorized Allocation, the Recipient shall furnish to the Bank a request or requests for deposit into the GEF Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Bank shall, on behalf of the Recipient, withdraw from the GEF Grant Account and deposit into the GEF Special Account such amount or amounts as the Recipient shall have requested.
 - (b) (i) For replenishment of the GEF Special Account, the Recipient shall furnish to the Bank requests for deposits into the GEF Special Account at such intervals as the Bank shall specify.

- (ii) Prior to or at the time of each such request, the Recipient shall furnish to the Bank the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Bank shall, on behalf of the Recipient, withdraw from the GEF Grant Account and deposit into the GEF Special Account such amount as the Recipient shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the GEF Special Account for eligible expenditures. All such deposits shall be withdrawn by the Bank from the GEF Grant Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Recipient out of the GEF Special Account and the GEF 90-day Advance Accounts, the Recipient shall, at such time as the Bank shall reasonably request, furnish to the Bank such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Bank shall not be required to make further deposits into the GEF Special Account:

- (a) if, at any time, the Bank shall have determined that all further withdrawals should be made by the Recipient directly from the GEF Grant Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

- (b) if the Recipient shall have failed to furnish to the Bank, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Bank pursuant to said Section in respect of the audit of the records and accounts for the GEF Special Account or any of the GEF 90-day Advance Accounts;

- (c) if, at any time, the Bank shall have notified the Recipient of its intention to suspend in whole or in part the right of the Recipient to make withdrawals from the GEF Grant Account pursuant to the provisions of Section 6.02 of the General Conditions;

or

- (d) once the total unwithdrawn amount of the GEF Grant allocated to the eligible Categories minus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the GEF Grant Account of the remaining unwithdrawn amount of the GEF Grant allocated to the eligible Categories shall follow such procedures as the Bank shall specify by notice to the Recipient. Such further withdrawals shall be made only after and to the extent that the Bank shall have been satisfied that all such amounts remaining on deposit in the GEF Special Account and any of the GEF 90-day Advance Accounts as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Bank shall have determined at any time that any payment out of the GEF Special Account or any of the GEF 90-day Advance Accounts: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Bank, the Recipient shall, promptly upon notice from the Bank: (A) provide such additional evidence as the Bank may request; or (B) deposit into the GEF Special Account (or, if the Bank shall so request, refund to the Bank) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Bank shall otherwise agree, no further deposit by the Bank into the GEF Special Account shall be made until the Recipient has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Bank shall have determined at any time that any amount outstanding in the GEF Special Account or any of the GEF 90-day Advance Accounts will not be required to cover further payments for eligible expenditures, the Recipient shall, promptly upon notice from the Bank, refund to the Bank such outstanding amount.

(c) The Recipient may, upon notice to the Bank, refund to the Bank all or any portion of the funds on deposit in the GEF Special Account and in any of the GEF 90-day Advance Accounts.

(d) Refunds to the Bank made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the GEF Grant Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

7. GEF 90-day Advance Accounts:

(a) The Recipient shall withdraw from the GEF Special Account and deposit into each GEF 90-day Advance Account sufficient funds to facilitate the implementation of the Project, provided that the Recipient shall at no time cause the amount held in any GEF 90-day Advance Account to exceed the FCFA 3,000,000 each.

(b) Payments out of the GEF 90-day Advance Accounts shall only be made for eligible expenditures in respect of Categories (1) through (6) set forth in the table in Schedule 1 to this Agreement.

(c) Any withdrawal from any GEF 90-day Advance Account shall be justified by the same documentation and other evidence regarding eligible expenditures provided for under paragraph 3 of this Schedule.

(d) If the Bank or the Recipient shall have determined at any time that any amount outstanding in any GEF 90-day Advance Account will not be required to cover further payments for eligible expenditures, the relevant RCU shall, promptly upon notice from the Bank or the Recipient, refund to the GEF Special Account such outstanding amount.

