

CONFORMED COPY

GRANT NUMBER TF 029547

Japanese Grant Agreement

(Northeast Water Resources Management Project - Pernambuco)

between

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

**as Administrator of Grant Funds
provided by JAPAN**

and

STATE OF PERNAMBUCO

Dated December 23, 1996

GRANT NUMBER TF 029547

JAPANESE GRANT AGREEMENT

AGREEMENT, dated December 23, 1996, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank), acting as Administrator (the Administrator) of grant funds provided by JAPAN (Japan), and STATE OF PERNAMBUCO (the Recipient).

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 2 to this Agreement (the Technical Assistance) on the terms and conditions hereinafter set forth;

WHEREAS (C) the Government of the Federative Republic of Brazil (Brazil), has approved the preparation of the project for which the Technical Assistance will be provided;

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 of the Bank, dated January 1, 1985, 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), (18) 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), (i) and (k), 6.03, 6.04 and 6.06;
 - (vii) Sections 9.01 (a), 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09;
 - (viii) Section 10.03; and
 - (ix) Article XI.
- (b) The General Conditions shall be modified as follows:
- (i) the term "Bank", wherever used in the General Conditions, other than in

Section 2.01 (8), and the last use of such term in Section 5.01 thereof, means the International Bank for Reconstruction and Development acting as Administrator of the Grant pursuant to the letter agreement between Japan and the Bank and the Association referred to in Recital (A) of this Agreement, except that, in Section 6.02, the term "Bank" shall also include the International Bank for Reconstruction and Development 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", wherever used in the General Conditions, means the Grant;
- (v) the term "Loan Account", wherever used in the General Conditions, means the Grant Account, an account opened by the Administrator on its books in the name of the Recipient to which the amount of the Grant is credited;
- (vi) the term "Project", wherever used in the General Conditions, means the technical assistance described in Schedule 2 to this Agreement; and
- (vii) Section 4.01 shall be modified to read:

"Withdrawals from the Grant Account shall be made in yen; provided, however, that if the expenditures to be financed out of the Grant have been paid or are payable in another currency, the Administrator shall, at the request of the Recipient, purchase such currency with the proceeds of such withdrawal."

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in the Recitals to this Agreement have the respective meanings therein set forth, and the following terms have the following meanings:

- (a) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement; and
- (b) "yen" and "¥" mean the currency of Japan.

ARTICLE II

The Grant

Section 2.01. The Administrator agrees to make available to the Recipient, on the terms and conditions set forth or referred to in this Agreement, the Grant in an amount of sixteen

million yen (¥16,000,000).

Section 2.02. (a) The amount of the Grant may be withdrawn from the Grant Account in accordance with the provisions of Schedule 1 to this Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and the Administrator, for expenditures made (or, if the Administrator shall so agree, to be made) in respect of the reasonable cost of goods and services required for the carrying out of the Technical Assistance and to be financed out of the Grant.

(b) The Recipient may, for the purposes of the Technical Assistance, open and maintain in Dollars a special deposit account in a commercial bank on terms and conditions satisfactory to the Administrator, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 4 to this Agreement.

Section 2.03. The Closing Date shall be December 31, 1997, or such later date as the Administrator shall establish. The Administrator shall promptly notify the Recipient of such later date.

ARTICLE III

Execution of the Technical Assistance

Section 3.01. The Recipient shall carry out the Technical Assistance with due diligence and efficiency and in conformity with appropriate administrative and financial practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Technical Assistance.

Section 3.02. Except as the Administrator shall otherwise agree, procurement of the consultants' services required for the Technical Assistance and to be financed out of the Grant shall be governed by the provisions of Schedule 3 to this Agreement.

Section 3.03. (a) The Recipient shall maintain records and separate accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of the Technical Assistance of the departments or agencies of the Recipient responsible for the carrying out of the Technical Assistance or any part thereof.

(b) The Recipient shall:

- (i) have the records and accounts referred to in paragraph (a) of this Section, including those for the Special Account, for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Administrator;
- (ii) furnish to the Administrator as soon as available, but in any case not later than six months after the end of each such year, the report of such audit by said auditors, of such scope and in such detail as the Administrator shall have reasonably requested; and

- (iii) furnish to the Administrator such other information concerning said records and accounts and the audit thereof as the Administrator shall from time to time reasonably request.
- (c) For all expenditures with respect to which withdrawals from the Grant Account were made on the basis of statements of expenditure, the Recipient shall:
- (i) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and accounts reflecting such expenditures;
 - (ii) retain, until at least one year after the Administrator has received the audit report for the fiscal year in which the last withdrawal from the Grant Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
 - (iii) enable the Administrator's representatives to examine such records; and
 - (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

ARTICLE IV

Remedies of the Administrator

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

- (a) Brazil or any other authority shall have taken any action, which, in the opinion of the Administrator, may adversely affect, prevent, or interfere with, the carrying out of the Technical Assistance or the performance by the Recipient of any of its obligations under this Agreement.
- (b) Brazil shall have failed to afford a reasonable opportunity for representatives of the Administrator to visit any part of its territory for purposes related to the Technical Assistance.
- (c) Brazil: (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.
- (d) Any taxes shall have been levied, in the territory of Brazil, on or in connection with the execution, delivery or registration of this Agreement.

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

(f) The Bank or the Association shall have suspended in whole or in part the right of Brazil to make withdrawals under any loan agreement with the Bank or any development credit agreement with the Association because of a failure by Brazil to perform any of its obligations under such agreement or any guarantee agreement with the Bank.

ARTICLE V

Arbitration

Section 5.01. Any dispute arising out of or relating to this Agreement which is not settled by agreement of the parties shall be finally settled by arbitration in accordance with the UNCITRAL Arbitration Rules (excluding Article 26 thereof) in force on the date of this Agreement. The place of arbitration shall be Washington, D.C., United States of America.

ARTICLE VI

Effectiveness; Termination

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

Section 6.02. This Agreement shall continue in effect until the Grant has been fully disbursed and the parties to this Agreement have fulfilled all their obligations thereunder.

ARTICLE VII

Representation

Section 7.01. The Governor of the State of Pernambuco is designated as representative of the Recipient for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Recipient:

Governo do Estado do Pernambuco
Secretaria de Planejamento
Rua da Moeda No. 46, Bairro do Recife
50.030-040 - Recife, Pernambuco

Brazil

With copy to:

Ministério do Planejamento e Orçamento
Secretaria de Assuntos Internacionais
Esplanada dos Ministérios, Bloco "K"- 5º andar
70.040.906, Brasília, D.F.
Brazil

Telex:

611146

For the Administrator:

Director
Country Department I
Latin America and the Caribbean
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 (MCI) or
64145 (MCI)

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.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
as Administrator of the Grant

By /s/ Gobind T. Nankani

Acting Regional Vice President
Latin America and the Caribbean

STATE OF PERNAMBUCO

By /s/ Miguel Arraes

Authorized Representative

SCHEDULE 1

Withdrawal of the Grant

1. The table below sets forth the Category of items to be financed out of the Grant, the allocation of the amount of the Grant to such Category and the percentage of expenditures for items so to be financed in such Category:

<u>Category</u>	<u>Grant Allocated (Expressed in yen)</u>	<u>Amount of the Expenditures to be Financed</u>
1. Goods	1,600,000	100%
2. Consultants' services	14,400,000	100%
TOTAL:	16,000,000	

2. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding the equivalent of ¥1,600,000, may be made on account of payments made for expenditures before that date but after January 1, 1996 or a date twelve months before the date of this Agreement, whichever is later.

3. The Administrator may require withdrawals from the Grant Account to be made on the basis of statements of expenditures for expenditures under contracts for goods, for consulting firms costing less than the equivalent of \$100,000 and for individual consultants costing less than the equivalent of \$50,000, under such terms and conditions as the Administrator shall specify by notice to the Recipient.

SCHEDULE 2

Description of the Technical Assistance

Provision of technical assistance in the preparation of components for the development of an integrated water resources management for the State of Pernambuco, consisting of studies and other activities required for:

(a) inventory and analysis of existing data, studies and information available concerning the legal, regulatory, institutional and technical framework for the management of water resources within the territory of the Recipient;

(b) development of a strategy for the implementation of a sound legal, regulatory and institutional strategy for the management of water resources which emphasizes the integrated operation of basins, the participation of the users in the management process and the decentralization of management and decision-making to the lowest practical level;

(c) design and development of a hydro-meteorological monitoring system to provide adequate data for real-time decisions in the management of water resources within the basins; and

(d) design of projects for the implementation and testing of water resource management strategies and preparation of these projects for financing.

SCHEDULE 3

Procurement and Consultants' Services

Section I. Procurement of Goods

Goods shall be procured: (a) in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and Credits" published by the Bank in January 1995 and revised in January 1996 (the Guidelines); and (b) under contracts awarded on the basis of national shopping procedures in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines. The procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply to all contracts.

Section II. Employment of Consultants

1. Consultants' services shall be procured in accordance with the provisions of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981. For complex, time-based assignments, the Recipient shall employ such consultants under contracts using the standard form of contract for consultants' services issued by the Bank for the use of its borrowers with such modifications as shall have been agreed by the Administrator. Where no relevant standard contract documents have been issued by the Bank, the Recipient shall use other standard forms agreed with the Administrator.

2. Notwithstanding the provisions of paragraph 1 of this Section, the provisions of the Consultant Guidelines requiring prior review or approval of budgets, short lists, selection procedures, letters of invitation, proposals, evaluation reports and contracts by the Administrator, shall not apply to (a) contracts for the employment of consulting firms estimated to cost less than \$100,000 equivalent each or (b) contracts for the employment of individual consultants estimated to cost less than \$50,000 equivalent each. However, said exceptions to prior review by the Administrator shall not apply to (a) the terms of reference for such contracts, (b) single-source selection of consulting firms, (c) assignments of a critical nature, as reasonably determined by the Administrator, (d) amendments to contracts for the employment of consulting firms raising the contract value to \$100,000 equivalent or above, or (e) amendments to contracts for the

employment of individual consultants raising the contract value to \$50,000 equivalent or above.

SCHEDULE 4

Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Category" means Categories (1) and (2) 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 Technical Assistance and to be financed out of the amount of the Grant allocated from time to time to the eligible Category in accordance with the provisions of Schedule 1 to this Agreement; and

(c) the term "Authorized Allocation" means the amount of \$200,000 to be withdrawn from the Grant Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule.

2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Administrator has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Recipient shall furnish to the Administrator a request or requests for a deposit or deposits which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Administrator shall, on behalf of the Recipient, withdraw from the Grant Account and deposit in the Special Account such amount or amounts as the Recipient shall have requested.

(b) (i) For replenishment of the Special Account, the Recipient shall furnish to the Administrator requests for deposits into the Special Account at such intervals as the Administrator shall specify.

(ii) Prior to or at the time of each such request, the Recipient shall furnish to the Administrator 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 Administrator shall, on behalf of the Recipient, withdraw from the Grant Account and deposit into the 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 Special Account for eligible expenditures. All such deposits shall be withdrawn by the Administrator from the Grant Account under the respective eligible Category, 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 Special Account, the Recipient shall, at such time as the Administrator shall reasonably request, furnish to the Administrator 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 Administrator shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Administrator shall have determined that all further withdrawals should be made by the Recipient directly from the 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 Administrator, within the period of time specified in Section 3.03 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Administrator pursuant to said Section in respect of the audit of the records and accounts for the Special Account;

(c) if, at any time, the Administrator 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 Grant Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Grant allocated to the eligible Category, less the amount of any outstanding special commitment entered into by the Administrator pursuant to Section 5.02 of the General Conditions with respect to the Technical Assistance, shall equal the equivalent of twice the amount of the Authorized Allocation.

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

6. (a) If the Administrator shall have determined at any time that any payment out of the Special Account: (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 Administrator, the Recipient shall, promptly upon notice from the Administrator: (A) provide such additional evidence as the Administrator may request; or (B) deposit into the Special Account (or, if the Administrator shall so request, refund to the Administrator) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Administrator shall otherwise agree, no further deposit by the Administrator into the 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 Administrator shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Recipient shall, promptly upon notice from the Administrator, refund to the

Administrator such outstanding amount.

(c) The Recipient may, upon notice to the Administrator, refund to the Administrator all or any portion of the funds on deposit in the Special Account.

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

