

No. 14454

**UNITED NATIONS (UNITED NATIONS CAPITAL
DEVELOPMENT FUND)
and
NIGER**

**Grant Agreement (with annexes). Signed at Niamey on 4
and 10 December 1975**

Authentic text: French.

Registered ex officio on 10 December 1975.

**ORGANISATION DES NATIONS UNIES
(FONDS D'ÉQUIPEMENT DES NATIONS UNIES)
et
NIGER**

**Accord de don (avec annexes). Signé à Niamey les 4 et 10 dé-
cembre 1975**

Texte authentique : français.

Enregistré d'office le 10 décembre 1975.

[TRANSLATION — TRADUCTION]

GRANT AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF THE NIGER (hereinafter called “the Government”)
AND THE UNITED NATIONS CAPITAL DEVELOPMENT FUND
(hereinafter called “UNCDF”)

Project number: NER 74/C32

Project title: Spare parts for pumping equipment and for vehicles of the
Office d'études des eaux du sous-sol (OFEDES) (Office of Ground-
water Studies)

Approved:

[DJERMAKOYE ADAMOU]
For the Government

Date: 4 December 1975

[ALEXANDER ROTIVAL]
For UNCDF

Date: 10 December 1975

Article I. THE GRANT

Section 1.01. UNCDF agrees to make a grant (hereinafter called “the Grant”) available to the Government, on the terms and conditions set forth or referred to in this Agreement, in the amount of two hundred thirty-five thousand United States dollars (\$US235,000), as a financial contribution to the project (hereinafter called “the Project”) described in annex I to this Agreement.

Section 1.02. (a) UNCDF shall open a grant account (hereinafter called “the Grant Account”) on its books in the name of the Government and shall credit thereto the amount of the Grant.

(b) The table below sets forth the categories of items of expenditure for the Project to be financed out of the funds obtained from the Grant and fixes the amounts allocated to each category.

<i>Category</i>	<i>Amount of the Grant allocated (in US dollars)</i>
1. Spare parts for pumping equipment and for vehicles	\$ 235,000

(c) The disbursements from the Grant Account and the administration of the Project shall be made or conducted in accordance with the conditions and procedures and by the organizations set forth or referred to in an Administration Agreement, marked annex II, which is attached to this Agreement. The pre-conditions to any disbursement from the Grant Account are set forth in annex II, it being agreed

¹ Came into force on 10 December 1975, the date on which the last signature had been affixed, in accordance with section 6.01.

that UNCDF may, by notice to the Government, declare this Agreement to be null and void if the said pre-conditions are not satisfied on or before 31 December 1975.

(d) Notwithstanding the provisions of paragraph (c) of this section, no disbursement shall be made in respect of:

- (i) any expenditures incurred prior to the date of this Agreement;
- (ii) payments for taxes and other charges, imposed under the laws of the State or laws in effect in its territories, on goods or services or on the importation, manufacture, purchase or supply thereof.

Section 1.03. If UNCDF has reasonably determined that the portion of the Grant allocated to any category will be insufficient to finance the expenditures in that category, it may, by notice to the Government, reallocate to that category any amounts which have been allocated to another category but, in its opinion, are not needed to meet other expenditures.

Section 1.04. If UNCDF has reasonably determined that the purchase of any goods and services in any category is inconsistent with the procedures set forth or referred to in this Agreement, no expenditures incurred to pay for such goods or services shall be financed through the Grant, and UNCDF may, without prejudice to any other right, power or remedy available to it under the Grant Agreement, cancel by notice to the Government such a portion of the Grant as in the reasonable opinion of UNCDF represents the amount of the expenditures which might otherwise have been financed out of the funds obtained from the Grant.

Section 1.05. UNCDF may, by notice to the Government, terminate the right of the Government to withdraw from the Grant Account any amount not disbursed by 31 March 1976, or by any other date which may be agreed upon by the Government and UNCDF.

Section 1.06. Before UNCDF may invoke the provisions of sections 1.03, 1.04 and 1.05 above, UNCDF and the Government must consult together in a spirit of co-operation and mutual understanding with a view to resolving any problems.

Article II. GENERAL PROVISIONS CONCERNING THE EXECUTION OF THE PROJECT

Section 2.01. The Government shall execute the Project or, if another entity is designated for that purpose either in this Agreement or in the annex hereto, have the project executed by the said entity with due diligence and efficiency and in conformity with appropriate administrative, technical and financial practices shall provide, as needed, all funds, facilities, services and other resources required for the execution of the Project.

Section 2.02. (a) Contracts for goods and services required for the execution of the Project and to be financed out of the funds obtained from the Grant shall be awarded according to the procedures set out in the model Administration Agreement, marked annex II, attached to this Agreement.

(b) UNCDF may, in agreement with the Government, take steps to ensure that the Government receives such assistance in the purchase of goods and services required for the execution of the Project, as is consistent with UNCDF policy.

Section 2.03. Unless the Government and UNCDF decide otherwise, the Government shall ensure that all goods and services financed out of the funds obtained from the Grant are allocated solely to the execution of the Project.

Section 2.04. The Government undertakes to insure, or to make adequate provision for the insurance of, imported goods financed through the Grant, against

all risks arising from the purchase of such goods and their transport and delivery to the place of use or installation. Any compensation due under such insurance shall be payable in a currency which the Government can use freely to replace or repair such goods.

Section 2.05. The Government shall:

- (a) keep the records needed to follow the progress of the Project (including the cost of execution) and to identify the goods and services financed through the Grant and justify their use for the Project;
- (b) have such records audited every year and transmit them to UNCDF, together with the report of the audit, not later than six months after the end of the Government's financial year;
- (c) give UNCDF representatives every opportunity to visit the facilities and construction sites included in the Project or necessary for its execution and to inspect the goods financed out of the funds obtained from the Grant and any relevant records and documents; and
- (d) provide UNCDF with all such information as the latter may reasonably request concerning the Project, expenditures made through the Grant and goods and services financed out of the funds obtained from it.

Section 2.06. Unless the Government and UNCDF decide otherwise, the Government shall not create or permit to be created, any charge, mortgage, pledge, surety or priority right of any kind on goods financed through the Grant, except in the case of surety for the vendor granted at the time of purchase of such goods as a guarantee of payment.

Article III. CO-OPERATION AND INFORMATION

Section 3.01. CO-OPERATION AND INFORMATION. (a) The Government and UNCDF shall co-operate fully to ensure that the purposes of the Grant are achieved. To that end, the Government and UNCDF shall, at the request of either of them:

- (i) exchange views through their representatives on the progress of the Project, the benefits deriving therefrom, the performance of their respective obligations under this Agreement and other matters relating to the purposes of the Grant; and
- (ii) provide each other with all such information as either Party may reasonably request on the progress of the Project, the benefits deriving therefrom and the general status of the Grant.

(b) The Government and UNCDF shall inform each other as soon as possible of any circumstance which interferes or threatens to interfere with the progress of the Project, the achievement of the purposes of the Grant or the performance by either Party of its obligations under this Agreement.

(c) After completion of the Project, the Government shall make available to UNCDF all such information as the latter may reasonably request on the benefits deriving from the Project, including information which UNCDF may need in order to evaluate the Project or its assistance to the Government.

Article IV. SUSPENSION OR TERMINATION OF ASSISTANCE

Section 4.01. UNCDF may, by notice in writing to the Government, suspend its assistance under this Agreement if, in its judgement, any circumstance arises which interferes or threatens to interfere with the successful completion of the Project or the achievement of its purposes. UNCDF may, by the same notice in writing or by a subsequent notice, indicate the conditions under which it would be prepared to re-

sume its assistance under this Agreement. The suspension of assistance shall continue until those conditions are accepted by the Government and UNCDF gives notice in writing to the Government that it is prepared to resume its assistance under this Agreement.

Section 4.02. If any of the situations referred to in section 4.01 arises and continues for a period of 30 days after UNCDF has given notice thereof to the Government, UNCDF may, at any time thereafter while the situation continues, terminate its assistance under this Agreement by notice in writing to the Government and demand that the Government should reimburse to it the portion of the Grant disbursed from the Grant Account. The Government shall reimburse that amount to UNCDF as soon as possible after receipt of the demand.

Section 4.03. The provisions of this article shall be without prejudice to any other rights or remedies available to UNCDF in the circumstances under the laws in force in the territory of the Government, under international conventions to which the Government is a signatory or, failing that, under general principles of law.

Section 4.04. No delay or omission on the part of UNCDF in exercising any right or remedy under this Agreement shall be construed as a waiver thereof.

Section 4.05. Before UNCDF may invoke the provisions of sections 4.01 and 4.02 above, UNCDF and the Government must consult together in a spirit of cooperation and mutual understanding with a view to resolving any problems.

Article V. INTERPRETATION AND SETTLEMENT OF DISPUTES

Section 5.01. The provisions of this Agreement shall be interpreted in accordance with the relevant resolutions and decisions of the appropriate organs of the United Nations, and any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in accordance with those resolutions and decisions, each Party giving full and sympathetic consideration to any proposal put forward by the other Party under this section.

Section 5.02. Any dispute between the Government and UNCDF which arises out of or relates to the provisions of this Agreement, and which is not settled by negotiation or another agreed method of settlement, shall be submitted to arbitration at the request of either Party. Each Party shall appoint an arbitrator, and the two arbitrators thus designated shall appoint a third arbitrator, who shall be the Chairman of the arbitral tribunal. If, within 30 days of the request for arbitration, either Party has failed to appoint an arbitrator or if, within 15 days of the appointment of the two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint the necessary arbitrator. The arbitration procedure shall be established by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the grounds on which it is based and shall be accepted as binding by the Parties to the dispute.

Article VI. DATE OF ENTRY INTO FORCE; TERMINATION

Section 6.01. This Agreement shall enter into force on the date on which the last Party signs it.

Section 6.02. The obligations entered into by the Parties under this Agreement shall terminate exactly three years after the date set forth in section 1.05 of this Agreement, or three years after any other date agreed upon by the Government and UNCDF in accordance with the provisions of that section.

Article VII. REPRESENTATIVES OF THE PARTIES; ADDRESSES

Section 7.01. The Minister for Foreign Affairs and Co-operation is hereby designated as the representative of the Government responsible for taking on behalf of the Government any action required or permitted under this Agreement.

Section 7.02. UNCDF may, by notice to the Government, designate one or more persons as UNCDF representative responsible for receiving any documentation to be furnished to UNCDF, or for deciding on any action which UNCDF is required or permitted to take in accordance with the terms of the Agreement.

Section 7.03. The following addresses should be used for transmitting any notice or request required or permitted under this Agreement.

For the Government:

The Minister for Foreign Affairs and Co-operation
Niamey, Niger

For UNCDF:

United Nations Capital Development Fund
c/o Resident Representative of the United Nations Development Programme
Niamey, Niger

IN WITNESS WHEREOF the Parties to this Agreement, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names and on the respective dates indicated above.

A N N E X I

PROJECT DESCRIPTION

The Office d'études des eaux du sous-sol (OFEDES) (Office of Ground-water Studies) sinks and operates deep and shallow wells. At the present time it is responsible for maintaining some 4,200 wells (of which 259 are in need of repair and 55 large pumping stations for supplying water to livestock. It has warehouses at Niamey and in the Dosso, Mainé, Maradi, Tahoua and Zinder regions. There are plans to expand the Niamey warehouse and to build new warehouses in the Agadez and Filingué regions. Although OFEDES exceeded by 18 per cent its 1974 budget for spare parts for pumping equipment and vehicles, which amounted to \$99,000, its warehouses were almost empty at the beginning of this year. The sinking of 900 new wells in 1975 and 1976, using foreign assistance, will create further difficulties in obtaining supplies of spare parts to make the necessary repairs on existing wells. Such repairs are essential if harvests, livestock and even, on occasion, human lives are not to be lost.

UNCDF funds for this Project will be used to finance the required increase in the Office's stock of spare parts.

A N N E X II

ADMINISTRATION AGREEMENT

The purpose of this Administration Agreement is to set forth the procedure for executing the Grant Agreement of between the Government and UNCDF by specifying the respective responsibilities of the Office d'études des eaux du sous-sol (OFEDES) (Office of Ground-water Studies), the UNDP Resident Representative (hereinafter called "the Representative") and the Administrator of UNDP Project NER/74/013 (hereinafter called "the Administrator").

A. Responsibilities of the Representative

1. The Representative shall make available to OFEDES a first instalment of funds from the Grant amounting to \$94,000. Certificates relating to any disbursement from that amount shall be submitted, duly certified by the Administrator, to the Representative.

2. Once the Administrator of UNDP Project NER/74/013 has arrived on the spot, the Representative shall make the balance of the Grant (\$141,000) available to OFEDES. Certificates relating to any disbursement from that amount shall be submitted, duly certified by the Administrator of UNDP Project NER/74/013, to the Representative.

B. Responsibilities of OFEDES

1. OFEDES shall be responsible for purchasing and maintaining the stocks of spare parts for pumping equipment and for vehicles set up by the Administrator of UNDP Project NER/74/013.

2. A certificate of conformity, a model of which is attached hereto, shall be submitted to the Representative in respect of any purchase which OFEDES makes using the funds obtained from the Grant.

3. OFEDES shall provide the Representative with the following documents:

- (a) programme of purchases;
- (b) within 30 days after the end of each half-year, an itemized statement of all purchases made during the preceding half-year;
- (c) within 90 days after completion of the Project, a general report on the Project including an evaluation of the results achieved and an evaluation of the functioning of the supply, inventory-control and planning services adopted by OFEDES.

C. Responsibilities of the Administrator of UNDP Project NER/74/013

1. The Administrator of UNDP Project NER/74/013 shall be responsible for establishing within OFEDES a supply and inventory service including a system of inventory-control records and procedures for planning its needs.

2. The Administrator of UNDP Project NER/74/013 shall be responsible, in accordance with the provisions of section A above, for certifying any disbursement from the amount of \$235,000 made available to OFEDES by the Representative.

D. Pre-condition

The pre-condition for any disbursement out of the funds obtained from the Grant shall be that the Representative must be satisfied that OFEDES will, as agreed, receive from the Government budget financing in a total minimum amount of 97,500,000 CFA francs (\$460,000), and 21 million CFA francs (\$99,000) for spare parts.

CERTIFICATE OF CONFORMITY

I, the undersigned (insert title of signer), of the Office d'études des eaux du sous-sol (OFEDES) (Office of Ground-water Studies), hereby certify that the purchase made by OFEDES, for which invoices are attached, using funds provided by the United Nations Capital Development Fund, was made in strict conformity with normal OFEDES supply regulations and procedures.

.....
(Signature and date)