

No. 24713

**BRAZIL
and
FOOD AND AGRICULTURE ORGANIZATION
OF THE UNITED NATIONS**

Trust Fund Agreement—*Technical Assistance to the Upper and Middle São Francisco Irrigation Project* (with appendices). Signed at Brasília on 31 March 1987

Authentic texts: Portuguese and English.

Registered by Brazil on 30 April 1987.

**BRÉSIL
et
ORGANISATION DES NATIONS UNIES
POUR L'ALIMENTATION ET L'AGRICULTURE**

Accord de fonds d'affectation spécial — *Assistance technique pour le projet d'irrigation de la moyenne et haute vallée du São Francisco* (avec appendices). Signé à Brasília le 31 mars 1987

Textes authentiques : portugais et anglais.

Enregistré par le Brésil le 30 avril 1987.

TRUST FUND AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Whereas the government of the Federative Republic of Brazil (hereinafter referred to as “the Government”) and the Food and Agriculture Organization of the United Nations (hereinafter referred to as “FAO”) have held consultations with regard to technical and other services to be provided by FAO within the framework of the “Upper and Middle São Francisco Irrigation Project” (hereinafter referred to as “the Project”).

Whereas the Government, after consultation with the International Bank for Reconstruction and Development (hereinafter referred to as “the Bank”) has decided to use a portion of the proceeds of a Bank loan to finance the services specified in this Agreement (hereinafter referred to as “the Services”).

Whereas FAO has agreed to provide the services identified under the symbol and title UTF/BRA/026/BRA: “Technical Assistance to the Upper and Middle São Francisco Irrigation Project” and to establish Trust Fund account No. 1687.00 for this purpose.

Now therefore, the Government and FAO agree as follows:

Article I. 1. FAO shall be responsible for the provision, with due diligence and efficiency, of the technical advisory services as well as any procurement or other services described in Appendix I to this Agreement. The duration of the Services is estimated to be 42 months, calculated from the date on which this Agreement becomes effective in accordance with the provisions of article III and paragraph 4 and article 13 hereof. The Work Plan and Terms of Reference are set forth in Appendix II to this Agreement.

2. The Government shall retain overall responsibility for the implementation of the Project.

3. FAO and the Government shall consult closely with respect to all aspects of the provision of the Services under this Agreement.

Article II. 1. The total cost of the provision of the Services, including a specified amount for FAO programme support, is estimated at US\$ 3,700,000, as set out in detail in the budget attached as Appendix III hereto. This cost shall not be exceeded without the prior agreement of the Government. Should the total cost of the Services change upwards or downwards, the amount for FAO’s programme support will be adjusted by a proportionate increase or decrease.

2. The Government undertakes, promptly after the effective date of this Agreement as defined in para. 13, to submit to IBRD an Application for Withdrawal copied to FAO (Financial Services Division) covering the total cost of the provision of the Services specified above.

Article III. 1. Upon receipt by FAO of notice from the Bank that the application specified in [article II] paragraph 2 has been received in good order and accepted, FAO shall request the Bank to make direct payment of US\$ 574,375 to the account specified in sub-paragraph [3] below to cover the estimated cost of the provision of the Services for an initial period of six months. FAO undertakes to copy this request to the Government.

¹ Came into force on 31 March 1987 by signature, in accordance with article XIV.

2. [a] Thereafter, FAO shall submit payment requests to the Bank, copied to the Government, based on quarterly statements reflecting estimated expenditures for the ensuing six months, less any payments actually received. The payment requests and statements shall indicate the amount required to cover the estimated cost of the provision of the Services during the ensuing period of six months.

[b] Payments to FAO shall not prejudice the Government's right to dispute any amount claimed by FAO and to instruct the Bank to adjust any future payment by the amount in dispute.

[c] The Government also retains the right to terminate this payment arrangement by notice in writing to FAO and the Bank of agreed changes to the schedule of payments.

3. All financial transactions shall be recorded in a separate account established for this purpose. All payments to FAO shall be made in US dollars and paid into FAO/UN General Dollar Account, Banca Commerciale Italiana-FAO Branch, Rome, indicating that the amount should be credited to Trust Fund Acct. No. 1687.00.

4. FAO shall not be required to commence or continue the provision of the Services until the respective payments referred to above have been received and FAO shall not be required to assume any liability in excess of the funds paid into the account referred to above.

Article IV. 1. FAO shall either provide the personnel needed to carry out the Services, or shall subcontract part or all of these Services, provided that the recruitment of any personnel (other than FAO staff) or any subcontractor, and the terms and conditions thereof, shall be made after approval by the Government.

(a) FAO shall make arrangements to meet all payments due to such personnel or subcontractors and any other expenses in connection with their assignment.

(b) In the discharge of their responsibilities in accordance with the respective terms of reference in their contracts, such personnel or subcontractors shall be assigned to work with the designated Government Agency responsible for the Project, shall cooperate closely with Government staff and shall assist in Project implementation in accordance with the overall directives laid down by the Government in consultation with FAO. FAO shall provide such personnel or subcontractors with appropriate guidance, administrative support, technical backstopping and advisory services as FAO may deem necessary for the successful implementation of the Services.

2. FAO shall provide, in consultation with the Government, the fellowships and training referred to in Appendix I hereto.

3. FAO shall procure the equipment and supplies specified in Appendices I and III hereto. Title to such equipment and supplies shall vest in the Government. To the extent that the costs in respect of any customs duties, levies or charges related to the landing, warehousing clearance and inland forwarding of such equipment and supplies into the country are not the subject of an exemption by the Government, the Government shall be responsible for such costs out of resources other than those specified in Appendix III.

4. FAO shall, in addition to the insurance arrangements existing under its normal procedures as specified in the relevant provisions of Appendix II, make appropriate arrangements for such other insurance in respect of the Services under this Agreement as may be requested by the Government. Such arrangements shall be as agreed between the Government and FAO.

Article V. Except as otherwise agreed in writing between the Government and FAO, the Government shall be responsible, out of resources other than those specified in Appendix III, for the required supporting administrative services such as local secretarial

and other personnel services, office space, equipment and supplies, transportation within the country and communications as required for the implementation of the Project and these Services.

Article VI. All financial accounts and statements shall be expressed in United States dollars and shall be subject exclusively to the internal and external auditing procedures laid down in the Financial Regulations, Rules and Directives of FAO.

Article VII. The following general financial and accounting arrangements shall be followed in respect of the Services under this Agreement.

(a) Expenditures for personnel services as may be provided in Appendix III shall cover salaries, allowances and other entitlements applicable to FAO staff. FAO shall budget for such costs on the basis of estimated actual costs. FAO shall be reimbursed for the provision of such services on the basis of actual costs. Adjustments in the duration, nature and cost of such services, as required, may be made after consultation between the Government and FAO if this is found to be in the best interest of the Project.

(b) Expenditures for subcontracting as may be provided in Appendix III shall be specified in the contracts between FAO and the respective subcontractors and shall be limited to the costs arising from such contracts. Adjustments in the duration of their services, referred to in Appendix III, may be made after consultation between the Government and FAO if this is found to be in the best interest of the Project.

(c) Expenditures for fellowships, or other training, as may be provided in Appendix III shall be made in accordance with the directives of FAO relating to fellowships and training. Within such total allocation, adjustments with respect to the training component may be made after consultations between FAO and the Government, if this is found to be in the best interest of the Project.

(d) Expenditures for purchase of equipment shall be made in accordance with the allocations specified in Appendix III.

(e) If, due to unforeseen circumstances, the funds stipulated under article II paragraph 1 of this Agreement prove to be insufficient to cover the total cost of the provision of the Services, FAO shall inform the Government accordingly. The parties shall then hold consultations with a view to agreeing upon appropriate modifications to the Services so as to ensure that the funds provided by the Government shall be sufficient to cover all expenses for the provision of the Services.

Article VIII. 1. (a) FAO shall submit such reports relating to the Services as may reasonably be required by the designated Government Agency responsible for the Project in the exercise of its duties as provided in Appendix II. In addition, FAO staff shall assist the Government, if required, in the preparation of reports in connection with its obligations to the Bank.

(b) Following FAO's completion of the Services, a final statement of expenditures shall be submitted to the Government.

Article IX. Any balance of funds that is undisbursed and uncommitted by FAO on the completion of the Services shall be held by FAO at the disposal of the Government in the account referred to in article III paragraph 3.

Article X. 1. In all matters connected with performance under this Agreement, the Government shall apply to FAO, its property, funds and assets, officials and any person designated by FAO to perform services under this Agreement, the provisions of the

Convention on the Privileges and Immunities of the Specialized Agencies¹ and Annex II² thereof relating to FAO, as stipulated in article V (b) of the Basic Technical Assistance Agreement signed by the Government of Brazil and the United Nations on 29 December 1964.³

2. The Government shall be responsible for dealing with and settling any claims by third parties brought against FAO, its officials or other persons performing services on its behalf, which are not covered by the insurance arrangements made by FAO under article IV paragraph 4 of this Agreement, except where it is agreed by FAO and the Government that such claims or liabilities arise from the gross negligence or willful misconduct of such personnel or persons.

Article XI. Any dispute, controversy or claim arising out of or in connection with this Agreement or any breach thereof, shall, unless it is settled by direct negotiation, be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in force on the date when this Agreement takes effect. The parties hereto agree to be bound by any arbitration award rendered in accordance with this paragraph as the final adjudication of any dispute.

Article XII. Nothing in or relating to any provision in this Agreement shall be deemed a waiver of the privileges and immunities of FAO.

Article XIII. Any amendment to this Agreement or its Appendices shall be effected by mutual agreement of the parties through an exchange of letters.

Article XIV. This Agreement shall become effective on the date on which it has been signed by both parties hereto.

Article XV. 1. This Agreement may, at any time, be terminated by the Government by written notice to FAO.

2. This Agreement may, at any time, be terminated by FAO by written notice to the Government, if, in the opinion of FAO, an event beyond the reasonable control of FAO occurs which makes it impossible for FAO to carry out its obligations under this Agreement.

3. This Agreement shall terminate sixty days after receipt of notice.

4. The obligations assumed by the parties under this Agreement shall survive the termination of the Agreement to the extent necessary to permit the orderly conclusion of activities, the withdrawal of personnel, funds and property, the settlement of accounts between the parties hereto and the settlement of contractual liabilities that are required in respect of any personnel, subcontractors, consultants or suppliers.

¹ United Nations, *Treaty Series*, vol. 33, p. 261. For the final and revised texts of annexes published subsequently, see vol. 71, p. 318; vol. 79, p. 326; vol. 117, p. 386; vol. 275, p. 298; vol. 314, p. 308; vol. 323, p. 364; vol. 327, p. 326; vol. 371, p. 266; vol. 423, p. 284; vol. 559, p. 348; vol. 645, p. 340; vol. 1057, p. 320, and vol. 1060, p. 337.

² *Ibid.*, vol. 33, p. 292.

³ *Ibid.*, vol. 684, p. 248.

MADE in Brasília on March 31st, 1987 in two original copies in English and Portuguese being both texts equally authentic.

For the Government
of the Federative Republic of Brazil:

[Signed]

Name: ROBERTO DE ABREU SODRE

Title:

Date: March 31st, 1987

[Signed]

VICENTE FIALHO

Ministro de Estado Extraordinário
Para Assuntos de Irrigação

[Signed]

ERASMO JOSÉ DE ALMEIDA

Coordenador Geral da PROINE

[Signed]

ELIZEU DE ANDRADE ALVES

Presidente da CODEVASF

For the Food and Agriculture
Organization of the United Nations:

[Signed]

Name: Dr. EDOUARD SAOUMA

Title: Director General

Date: March 31st, 1987

[Signed]

PIERRE BONNEMAISON

Representante da FAO no Brasil

APPENDIX I¹

DESCRIPTION OF SERVICES

APPENDIX II¹

WORK PLAN AND TERMS OF REFERENCE

APPENDIX III¹

TABLE OF EXPENDITURES

¹ Not published herein, pursuant to the provisions of article 12 (2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations as amended in the last instance by General Assembly resolution 33/141 A of 19 December 1978.