

The Honourable Pennelope Beckles-Robinson  
Minister of Planning and Development  
Ministry of Planning and Development  
Port of Spain  
Trinidad and Tobago, W.I.

Ref: Trinidad and Tobago. Contingent  
Recovery Financing Technical  
Cooperation No. ATC/GI-19718-TT.  
Port Authority of Trinidad and  
Tobago PPP Project Preparation  
Structuring Activity.

Dear Minister:

The purpose of this letter of agreement (the "Agreement") between the Republic of Trinidad and Tobago (the "Beneficiary"), and the Inter-American Development Bank (the "Bank", and together with the Beneficiary, the "Parties"), acting in its capacity as Administrator of the Global Infrastructure Facility (the "Fund"), which we are submitting for your consideration, is to formalize the terms and conditions of a grant for a contingent recovery financing technical cooperation to the Beneficiary (the "Contingent Recovery TC"), in accordance with the provisions set forth below:

**First. Contribution.** (a) The Bank will grant resources for the Contingent Recovery TC up to the amount of one million five hundred thousand Dollars of the United States of America (US\$1,500,000), which shall be chargeable to the resources of the Fund (the "Contribution"). Unless otherwise stated in the Agreement, the term "dollars" shall hereinafter refer to the currency of legal tender in the United States of America.

(b) The Agreement is entered into pursuant to the Financial Procedures Agreement between the Inter-American Development Bank and the International Bank for Reconstruction and Development, as Trustee of the Fund, dated April 15, 2016 (the "Financial Procedures Agreement").

**Second. Project.** The Contingent Recovery TC shall finance the selection and contracting of consultants to support the design of the feasibility studies, finalize financial, technical, and legal structure, draft legal and bidding documents, and support the Beneficiary in the bidding process until the close of the commercial agreement (the "Project") necessary for the execution of a public-private partnership project for the Cargo Handling Operations of the Port Authority of Trinidad and Tobago (the "PPP"). The Project is further described in Annex I to the Agreement.

**Third. Contingent Recovery of the Contribution.** (a) The Contribution shall be provided on a contingent recovery basis. The Beneficiary shall reimburse the Bank the Reimbursement Amount, as defined below, so that the Bank may reimburse the Fund, upon the occurrence of the following events (each, a "Reimbursement Event"):

- (i) If the Bank does not receive the payment of the Reimbursement Amount from the Winning Bidder, as defined below, upon the PPP reaching Commercial Closure, as defined below, within ninety (90) calendar days from the issuance of the Reimbursement Notice. The Beneficiary shall pay the Reimbursement Amount within ninety (90) calendar days upon receiving notice by the Bank indicating that the Reimbursement Amount determined according to this subsection (a)(i) has not been paid by the Winning Bidder in the terms and conditions included in the Reimbursement Notice, or any other term as agreed upon by the Parties to comply with the requirements for timely return of the resources to the Fund.
- (ii) If the PPP is terminated at any stage because it is found to be non-viable or relevant, and hence cancelled, no reimbursement shall be required, but if required based in (iii) below, reimbursement to the Fund should follow the process set forth therein.
- (iii) If the Beneficiary: (A) fails to comply with the terms of the Agreement; (B) unilaterally terminates PPP-related activities prior to reaching Commercial Closure, for reasons other than the ones listed in the previous subsection (ii); or (C) requests the Bank to terminate the Project for reasons other than the ones listed in the previous subsection (ii). The Beneficiary shall pay the Reimbursement Amount within ninety (90) calendar days upon receiving the Reimbursement Notice.

(b) The Bank shall specify the amount owed to the Bank by the Winning Bidder or the Beneficiary, as applicable, including the Contribution due as well as any additional financial charge and fees, as defined below, if applicable, (the "Reimbursement Amount") in a notice addressed to the Beneficiary and delivered in accordance with paragraph Fourteen (the "Reimbursement Notice").

(c) The Reimbursement Amount shall be paid to the Bank in dollars.

(d) The Reimbursement Amount shall be paid to the principal office of the Bank in Washington, District of Columbia, United States of America, in the account designated for such purposes in the Reimbursement Notice.

**Fourth. Success Fee.** Upon the execution of a contractual arrangement between the Beneficiary adjudicating the PPP to the Winning Bidder (the "Commercial Closure"), the Bank shall be entitled to a success fee calculated in accordance with the methodology provided in Annex II of the Agreement (the "Success Fee"). The Success Fee will not exceed twenty percent (20%) of the Reimbursement Amount.

**Fifth. Execution of the Contribution.** (a) As requested by the Beneficiary in its letter dated September 13, 2022, the Project shall be executed by the Bank. The Contribution shall be used to retain one or more consulting firms or individuals selected by the Bank to carry out the Project (the "Consultants"), in accordance with the Agreement and the Bank's applicable policies and guidelines.

(b) The Bank will use the resources of the Contribution to the extent that the International Bank for Reconstruction and Development, in its capacity as trustee of the Fund, transfers the resources of the Contribution and these are received by the Bank, in accordance with the provisions of the Financial Procedures Agreement.

(c) The Bank may suspend the disbursement and execution of the resources of the Contribution, or cancel the portion not disbursed thereof, in the event of: (i) delay or failure by the International Bank for Reconstruction and Development, as trustee of the Fund, of the obligations stipulated in the Financial Procedures Agreement; (ii) termination of the aforementioned Financial Procedures Agreement; (iii) breach by the Beneficiary of any obligation stipulated in this Agreement; and/or (iv) any circumstance that, in the Bank's opinion, might make it unlikely that the Project's objectives will be achieved. In the event of cancellation of the Contingent Recovery TC by the Bank by virtue of the provisions of literals (iii) or (iv) of this paragraph, the Beneficiary must reimburse the Bank, at its request, the costs incurred for the execution of the Contingent Recovery TC to the date of said cancellation, if the studies and services up to that date create products, total or partial, that are used for the Project.

**Sixth. Obligations of the Beneficiary.** Without prejudice to any other obligation set forth in the Agreement, the Beneficiary shall:

- (a) Ensure the PPP contracting authority carries out a competitive bidding process to adjudicate the PPP and includes in the respective PPP bidding documents such arrangements necessary for the payment of the Reimbursement Amount by the PPP bidding winner (the "Winning Bidder") in the terms and conditions described in the Agreement.
- (b) Provide the Bank and the Consultants with the necessary support for the full, uninterrupted, and successful execution of the Project, including: (i) providing the technical, logistical, and administrative support for the Consultants; (ii) coordinating with the Bank any activities related to the Project; and (iii) providing, in a timely manner, the information and documents that are necessary to carry out the Project.
- (c) Promptly after becoming aware of the occurrence thereof, provide written notice of: (i) any Reimbursement Event; (ii) any event or condition that has or could reasonably be expected to have a material effect on the execution of the Project; and (iii) the Commercial Closure.

- (d) Use the Bank's name, acronym, or logo only with the Bank's prior, express, and written authorization.

**Seventh. Deadlines.** (a) The period for disbursement of the Contribution (the "Disbursement Period") and execution of the Project (the "Execution Period") shall be thirty-six (36) months, from the effective date of the Agreement, or such other period agreed by the Parties in writing in accordance to the next subsection (b). Any part of the Contribution which has not been utilized within this period shall be cancelled.

(b) The Disbursement Period and Execution Period may be extended only when duly justified, and with the written consent of the Parties.

**Eighth. Financial Obligations.** The Agreement does not represent any commitment by the Bank with regards to funding any program, project, or service other than the Contingent Recovery TC in the terms and conditions detailed herein. Any other financing commitment, whether or not related or derived from the Contingent Recovery TC, shall be agreed upon by the Parties in separate legally binding instruments. Furthermore, the Agreement shall not represent any commitment on the part of either Party to give preferred treatment to the other in any matter contemplated under the Agreement or otherwise.

**Ninth. Access to Information.** The Beneficiary undertakes to notify the Bank, in writing, within a maximum period of ten (10) working days from the date of signature of the Agreement, whether it considers the Agreement to contain information that may qualify as an exception to the principle of disclosure of information under the Access to Information Policy of the Bank, in which case the Beneficiary undertakes to identify such information in the relevant provisions of the Agreement. In accordance with the aforementioned policy, the Bank will make available on its "Web" page the text of the Agreement once it has entered into effect and the aforementioned period has expired, excluding only that information which the Beneficiary has identified as an exception to the principle of disclosure of information under this policy.

**Tenth. Privileges and Immunities.** Nothing in the Agreement or any other agreements, arrangements, or understanding between the Parties shall operate as or be construed to constitute a waiver, renunciation or any other modification of any privilege or immunity of the Bank or its employees under the Agreement Establishing the Inter-American Development Bank, international law or other applicable law; nor shall any such thing operate to restrict, limit or defeat any rights, privileges or immunities granted to the Bank or the Bank's personnel under any treaty or domestic or international law. Nothing herein shall preclude the Bank from taking whatever actions are necessary to prevent harm to its privileges and immunities.

**Eleventh. Modifications and Waivers.** Any modification or waiver of the provisions of the Agreement shall be agreed upon in writing by the Parties.

**Twelfth. Validity.** The rights and obligations established in the Agreement are valid and enforceable in accordance with the terms agreed upon herein, regardless of the laws of any given country.

**Thirteenth. Arbitration Procedure.** For the solution of any controversy which may arise hereunder, and which is not resolved by agreement of the Parties, the Parties shall unconditionally and irrevocably submit to the following arbitration procedure and award:

- (a) Composition of the Tribunal. The Arbitration Tribunal shall be composed of three (3) members, to be appointed in the following manner: one by the Bank, another by the Beneficiary, and a third, hereinafter called the "Referee", by direct agreement between the Parties or through their respective arbitrators. If the Parties or the arbitrators fail to agree on who shall be the Referee, or if one of the Parties fails to appoint the arbitrator, the Referee shall be appointed, at the request of either Party, by the Secretary General of the Organization of American States. If either of the Parties fails to appoint an arbitrator, he or she shall be appointed by the Referee. If either of the appointed arbitrators or the Referee is unwilling or unable to act or to continue to act, his or her successor shall be appointed in the same manner as for the original appointment. The successor shall perform the same functions and shall have the same powers as his or her predecessor.
- (b) Initiation of the Procedure. In order to submit the controversy to arbitration, the claimant shall address to the other Party a written communication setting forth the nature of the claim, the satisfaction or compensation sought, and the name of the arbitrator it has appointed. The Party receiving such communication shall, within forty-five (45) days, notify the adverse Party of the name of the person it has appointed as arbitrator. If, within thirty (30) days after delivery of such notification to the claimant, the Parties have not agreed upon the person who is to act as Referee, either Party may request the Secretary General of the Organization of American States to make the appointment.
- (c) Convening of the Tribunal. The Arbitration Tribunal shall be convened in Washington, District of Columbia, on the date designated by the Referee and, once convened, the Tribunal itself shall decide when it shall meet.
- (d) Procedure. (i) The Tribunal shall be competent only to hear the matter in controversy. It shall adopt its own procedures and may on its own initiative designate whatever experts it considers necessary. In any case, it shall give the Parties the opportunity to make oral presentations; (ii) The Tribunal shall proceed ex aequo et bono, basing itself on the terms of this Agreement, and shall issue an award even if either Party should fail to appear or to present its case; and (iii) The award shall be in writing and shall be adopted with the concurrent vote of at least two of the members of the Tribunal. It shall be handed down within sixty (60) days from the date on which the Referee has been appointed, unless the Tribunal determines that, due to special and unforeseen circumstances, such period should be extended. The Parties shall be notified of the award by means of a communication signed by at least two members of the Tribunal. The Parties agree that any award of the Tribunal shall be complied with within thirty (30) days from the date of notification and it shall be final and not be subject to any appeal.



- (e) Costs. The fees of each arbitrator shall be paid by the Party which appointed him or her and the fees of the Referee shall be paid by both Parties in equal proportion. Prior to the convening of the Tribunal, the Parties shall agree on the remuneration of any other person who by mutual agreement, they deem should participate in the arbitration proceedings. If such agreement is not reached in a timely manner, the Tribunal itself may determine the compensation that is reasonable for such person under the circumstances. Each Party shall defray its own expenses in the arbitration proceedings but the expenses of the Tribunal shall be divided and borne equally by both Parties. Any doubt regarding the division of expenses or the manner in which they are to be paid shall be determined, without appeal, by the Tribunal.
- (f) Notification. All notifications regarding the arbitration proceeding or the award shall be made in the manner provided in this Article. The Parties expressly waive any other form of notification.

**Fourteenth. Notice.** Any notice, request, or communication from one Party to another by virtue of the Agreement shall be made in writing and shall be considered to have been made when the corresponding document is delivered to the addressee at the address indicated below, or by other electronic means under such terms and conditions as the Bank may establish and communicate to the Beneficiary, unless otherwise agreed by the Parties in writing.

For the Beneficiary:

Mailing address:

Ministry of Planning and Development  
Level 14, Eric Williams Finance Building, Eric Williams Plaza  
Independence Square  
Port of Spain  
Trinidad and Tobago, W.I.

Facsimile: 1-868-623-8123

For the Bank:

Mailing address:

Inter-American Development Bank  
1300 New York Avenue, N.W.  
Washington, D.C. 20577  
U.S.A.

Facsimile: (202) 623-3096

Please confirm your acceptance of the terms and conditions of this Agreement, in representation of the Beneficiary, by signing and returning this Agreement to the Bank. Once signed by the duly authorized representatives of the parties, this Agreement will enter into force on the date of its signature by the Beneficiary.

Yours faithfully,



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Carina Cockburn  
Representative of the Bank in  
Trinidad and Tobago

Agreed:



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The Honourable Pennelope Beckles-Robinson  
Minister of Planning and Development

Date: 18/04/2023, 2023

## **ANNEX I**

### **Port Authority of Trinidad and Tobago PPP Project Preparation Structuring Activity**

#### **I. Objective**

- 1.01** The objective is to provide support to the Government of the Republic of Trinidad and Tobago (GoRTT) in the structuring activities for a PPP for the Cargo Handling Operations of the Port Authority of Trinidad and Tobago (PATT), where the Port of Port of Spain (PPOS) is the first and major multi-purpose port of the country, strategically located at the crossroads of major trade links via the Panama Canal. The GoRTT's objective is to upgrade PPOS' infrastructure through private investments to enhance the competitiveness of and catch up with their regional competitors. The project feasibility studies under the proposed Project Preparation and Structuring Activities (PPSA) will support the government in the structuring process for a potential Public Private Partnership (PPP) for the Cargo Handling Operations of the PPOS. The ultimate goal of the Project is to promote Trinidad and Tobago's economic growth and development by improving port efficiency and competitiveness in the country through a PPP in line with the National Development Strategy (Vision 2030) 2016-2030, "Improving Productivity through Quality Infrastructure and Transportation.

#### **II. Description**

- 2.01** The Technical Cooperation will finance the following activities: (i) finalizing feasibility studies (technical, financial, legal) to design the best model and define the framework for bidders to present their proposals; (ii) final financial, technical, and legal structure, draft PPP contract, and bidding documents; and (iii) support to the GoRTT in the bidding process until the commercial close (signature of the PPP contract).

#### **III. Total Cost of the Project**

**Budget**  
(in US\$)

<b>Component</b>	<b>Description</b>	<b>Bank</b>	<b>Counterpart Funding</b>	<b>TOTAL</b>
<b>Component 1. Project Preparation and Structuring Activities (PPSA)</b>	(i) feasibility studies (technical, financial, legal) to design the best model and define the framework for bidders to present their proposals; (ii) final financial, technical, and legal structure, draft PPP contract, and bidding documents; and (iii) support to the government in the bidding process until the commercial close (signature of the PPP contract).	1,500,000	0	1,500,000
<b>TOTAL</b>		<b>1,500,000</b>	<b>0</b>	<b>1,500,000</b>

#### **IV. Execution**

- 3.01** The Contingent Recovery TC will be executed by the Bank.



## **ANNEX II**

### **Port Authority of Trinidad and Tobago PPP Project Preparation Structuring Activity**

1. In the event of Commercial Closure, as provided for in paragraph Fourth of the Agreement, a Success Fee shall be additionally paid to the Bank. The Success Fee will not exceed twenty percent (20%) of the Reimbursement Amount.
2. The Success Fee referred to in the previous paragraph will be calculated based on the methodology presented below:

$$\text{Success Fee} = \left[ \left\{ 1.2 \times \min \left( \frac{\text{Cot0}}{\text{Cot1}}, 1 \right) \right\} - 1 \right] \times \text{Reimbursement}$$

Where:

- a) Success Fee: dollar value to be eventually added to the Contribution as part of the reimbursement, limited to 20%.
- b) Cot0: Purchase rate in dollars, in TTD, related to the closing price of the last day of the calendar month in which the PPP project or concession tender was published.
- c) Cot1: Purchase rate in dollars, in TTD, related to the closing price of the last day of the calendar month in which Commercial Closure took place.
- d) (min. (1, (Cot0/Cot1))): Lower value between the number 1 and the relationship between the purchase rates of dollars.