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# **Principles of Collaboration**

**(Quito Metro Line One Project)**

**among**

**INTER-AMERICAN DEVELOPMENT BANK**

**INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**EUROPEAN INVESTMENT BANK**

**and**

**CORPORACION ANDINA DE FOMENTO**

**Dated December 6, 2013**

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## PRINCIPLES OF COLLABORATION

Principles of Collaboration (PoC) dated December 6, 2013 among the Inter-American Development Bank (“IDB”), the International Bank for Reconstruction and Development (“World Bank”), the European Investment Bank (“EIB”), and the *Corporación Andina de Fomento* (“CAF”) (collectively, the “Financiers” and individually each and any of them the “Financier”).

### WHEREAS

- (A) pursuant to their respective financing agreements (each a “Financing Agreement”)<sup>a</sup> signed or to be signed with the Republic of Ecuador and the Municipality of Quito (referred to severally as the “Borrower”), as the case may be, the Financiers intend to finance certain activities (as described in their respective Financing Agreements) under the Quito Metro Line One Project (the “Project”), which Project will be carried out by the Borrower; and
- (B) the Financiers consider it appropriate and advisable, in the interest of the Project and in their own interest, to cooperate in all matters relating to the implementation of the Project, as described in this PoC.

NOW THEREFORE the Financiers hereby set out their understanding as follows:

### 1. Project Financing

- (a) The amount of financing that each Financier intends to provide to the Borrower in respect of one or more Project activities is set forth in their respective Financing Agreements, as the same may be amended from time to time (including to increase or decrease the amount of the corresponding financing).
- (b) The Financiers will finance eligible expenditures in respect of the costs of works, goods and non-consulting services, and following their corresponding disbursement mechanism, in accordance with the terms and conditions set forth or referred to in their respective Financing Agreements.

### 2. General Cooperation and Coordination on Project Implementation

- (a) The Financiers will cooperate to ensure that the Project is phased, timed and integrated in accordance with the provisions of their respective Financing

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<sup>a</sup> In the case of IDB the financing agreement for the Loan Number 2882/OC-EC; in the case of the World Bank the financing agreement for the Loan Number 8285-EC; in the case of EIB the finance contract referring to the operation with the number 2011-0297; and in the case of CAF the financing agreement approved by its Board of Directors according to Resolution Number 2004/2012, dated November 27, 2012.

Agreements. To facilitate such cooperation, each of the Financiers will use reasonable efforts to:

- (i) ensure the prompt channeling of information regarding the Project and its progress with the other Financiers (subject to the applicable policies of each Financier regarding access to information);
  - (ii) arrange and organize regular joint Project review missions and other joint missions, as and when they consider it necessary or advisable;
  - (iii) arrange and organize meetings of the Financiers, as and when they consider it necessary or advisable, to discuss and resolve any issues arising during the implementation of the Project;
  - (iv) disburse funds in a manner that facilitates the Borrower's efficient utilization of funds from the various Financiers and allows cost effectiveness and liquidity so as not to delay the implementation of the Project or cause an increase in the cost thereof, all subject to the Borrower's accomplishment of the applicable conditions precedent to said disbursement as set forth in the corresponding Financing Agreement; and
  - (v) ensure timely review of financial reports and annual audited Project financial statements and promptly communicate and discuss such results with the rest of the Financiers in order to coordinate a joint response to the Borrower.
- (b) To ensure the smooth operation and efficient monitoring of the Project, the Financiers hereby agree to:
- (i) appoint the IDB as the coordinator for all matters related to the procurement, environmental and social safeguards ("Safeguards"), and financial management aspects of the Project. In that capacity the IDB agrees to coordinate procurement and Safeguards aspects of the Project in accordance with the provisions of Section 3 and 4 of this PoC, respectively; and coordinate the response to the Borrower with the results of the review of financial reports and annual audited Project financial statements in accordance with the provision of paragraph (a)(v) of this Section; and
  - (ii) put in place the Coordination Committee ("CC") composed of one (1) representative of each Financier. The CC will oversee and monitor Project implementation and hold meetings at the request of any of the Financiers to facilitate the smooth implementation of the Project. The Financiers shall promptly advise each other of the staff member nominated for the CC.



### 3. Procurement Arrangements

The Financiers agree to cooperate and coordinate their respective arrangements in relation to procurement and implementation of the Quito Metro Line One construction contract (hereinafter, and regardless of any other name granted to such contract under each of the Financing Agreements, referred to as the “Jointly Financed Contract”), making all reasonable efforts to reach a mutually acceptable position with respect to all procurement matters under the Jointly Financed Contract. Without limitation to the provisions of Section 2 of this PoC, the Financiers agree to use their reasonable endeavors to ensure that their cooperation will be coordinated in accordance with the following arrangements:

- (a) The Financiers confirm that, except as otherwise provided in sub-paragraphs (b), and (c) below, the IDB’s procurement policies (*Políticas para la Adquisición de Bienes y Obras Financiados por el Banco Interamericano de Desarrollo*, dated March 2011) will apply to the procurement and implementation of the Jointly Financed Contract.
- (b) As an exception to sub-paragraph (a) above, the Financiers confirm that the eligibility requirements, as set forth in the World Bank Procurement Guidelines (Guidelines: Procurement of Goods, Works and Non-consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers, dated January 2011) apply in connection with the Jointly Financed Contract, to permit the participation of firms and individuals and the procurement of goods, works and non-consulting services from all countries.
- (c) Also as an exception to sub-paragraph (a) above, with respect to the Jointly Financed Contract, the IDB confirms that it shall apply the debarment and suspension lists of the World Bank.
- (d) The Financiers agree that the bidding documents (including contract form) (the “Bidding Documents”) for the Jointly Financed Contract will follow the international financial institutions’ harmonized bidding documents, modified to take into account the agreed exceptions identified in sub-paragraphs (b) and (c) above. In addition, the Bidding Documents will: (i) reflect that the Financiers have agreed to jointly finance the Jointly Financed Contract; (ii) make reference to the applicability of the prevailing sanctions regimes of the respective Financiers; and (iii) contain a provision permitting each of the Financiers, and/or persons appointed by them, and/or entities authorized according to their respective policies, to inspect and copy all accounts, records, and other documents relating to the procurement process and performance of the Jointly Financed Contract and to inspect or audit the records and accounts of any bidders, contractors, suppliers or service

providers relating to the procurement process and performance of the Jointly Financed Contract, all in accordance with their respective policies and procedures.

- (e) The Financiers will review documents relating to the procurement process with the aim of forming a joint, mutually acceptable view on the manner in which the procurement process for the Jointly Financed Contract is carried out, including, without limitation, any request for no-objection to: (i) draft bidding documents and any subsequent amendments thereof, (ii) prequalification and bid evaluation reports and recommendations for contract award, and (iii) contract modifications. The Financiers will also review, with the same aim, responses to bidder communications and complaints.
- (f) To that end, immediately after the Borrower distributes the procurement documentation to each of the Financiers, a committee comprising relevant technical/procurement experts from each Financier (the "Procurement Committee") shall meet (if necessarily, connecting remotely) to discuss their positions and make recommendations on any of the aforementioned matters. In the event that the Financiers form a mutually acceptable position: (i) the IDB will issue a formal response to the Borrower jointly on its behalf and on behalf of the World Bank; and (ii) CAF and EIB will communicate their views to the Borrower separately, using a similar language to that used by the IDB in its formal response. Without limitation to the provisions of Section 7 (b) of this PoC, if no mutually agreed decision can be reached during the Procurement Committee meeting(s), and provided that all the corresponding documentation has been received and discussed appropriately: (i) the World Bank will accept the views of the IDB, that will implement its decision promptly; and (ii) CAF and EIB will communicate their views to the Borrower separately.
- (g) Without limitations to the provisions of their respective Financing Agreements, the Financiers agree to jointly discuss procurement-related grounds to exercise remedies under their respective Financing Agreements, including declarations of misprocurement.

#### **4. Cooperation on Safeguards Requirements**

- (a) The Financiers recognize the importance of environmental and social safeguards compliance requirements under the Project and agree to cooperate with each other in the coordination, implementation and monitoring of the requirements of each of the Safeguards documents prepared for the Project (the "Safeguard Documents").



- (b) In accordance with the Financing Agreements of each of the Financiers, the Project shall be carried out pursuant to, and in compliance with, the environmental and social policies, practices, procedures and guidelines of each Financier. To this end, any new environmental and/or social documentation to be developed and adopted by the Borrower during Project preparation and implementation (e.g., site-specific environmental and social impact assessments or management plans and site-specific resettlement action plans) will be prepared pursuant to, and in compliance with, the policies, practices, procedures and guidelines of each Financier.
- (c) Each Financier will independently review drafts of the Safeguard Documents, with the aim of forming a joint, mutually acceptable position; provided, however, that no Financier shall be obliged to appraise, supervise and/or monitor any requirement of another Financier's policies, practices, procedures and guidelines which the first Financier deems is beyond the scope of its mandate. In the event a Financier has specific comments pursuant to its policies, practices, procedures and guidelines to the draft versions of any of the Safeguard Documents, only that Financier would be responsible for: (i) ensuring such documents comply with its specific requirements; and (ii) appraising, supervising and monitoring Project activities to ensure compliance with such requirements.
- (d) Without limitation to the provisions of paragraphs (b) and (c) above, the Financiers agree that the IDB will: (i) take the lead in organizing meetings to discuss safeguard aspects of the Project (the "Safeguards Committee Meetings") on a periodic basis; (ii) chair the Safeguards Committee Meetings and in that role take the lead in facilitating dialogue among the Financiers, and document discussions and decisions adopted; (iii) coordinate safeguards supervision mission schedules; and (iv) in order to minimize reporting requirements, coordinate and issue joint communications to the Borrower.
- (e) In the event the Financiers cannot form a mutually acceptable position on any of the aforementioned matters, the procedure set forth in Section 7 (a) of this PoC shall apply.

## **5. Integrity Matters**

- (a) In accordance with their respective Financing Agreements, and subject to their respective applicable policies and guidelines, the Financiers agree to pursue their best efforts to consult and inform each other in the case that an allegation of fraud, corruption, collusion, coercion or obstruction (collectively "fraud or corruption") relating to the procurement process, and/or the Jointly Financed Contract performance and/or Project

implementation occurs, with a view to agreeing on a coordinated approach to such allegations, including, where appropriate, joint or parallel investigations.

- (b) The Financiers will, subject to their respective policies on access to information, promptly exchange information in relation to any such allegation of fraud or corruption, and investigations relating to such allegations, in accordance with Section 6 of this PoC.
- (c) Without limiting their rights under their respective Financing Agreement, the Financiers will endeavor to consult with each other before exercising contractual remedies arising from fraud or corruption in connection with the Project, with a view to agreeing on a common view among the Financiers, including in respect of any actions to be required of the Borrower to address, or remedy the harm caused by, such fraud or corruption. The Financiers will also explore how sanctions or other results of investigations taken by one of the Financiers can be supported by the other Financiers.

#### **6. Cooperation, Coordination and Exchange of Information**

Subject to their respective applicable policies, in particular those on access to information, and their rights and obligations under their respective Financing Agreement, the Financiers agree to:

- (a) Keep each other informed of the status of: (i) fulfillment of conditions of effectiveness of their respective Financing Agreements or similar arrangements with the Borrower; and (ii) disbursement of funds under their respective Financing Agreement(s).
- (b) Coordinate, cooperate and, subject to the requirements of their respective policies on access to information, exchange information in relation to fraud or corruption relating to the procurement process, and/or the Jointly Financed Contract performance and/or Project implementation.
- (c) Promptly inform the other Financiers of any substantial breach committed by the Borrower under the Financing Agreement(s) with the Financier concerned.
- (d) Make reasonable efforts to promptly inform the other Financiers prior to:
  - (i) declaring its Financing Agreement(s) with the Borrower effective;

- (ii) granting any waivers pursuant to its Financing Agreement(s) with the Borrower that may have an impact on the implementation of the Project; and
  - (iii) agreeing to any substantive changes in the specifications, scope of construction works, costs and work schedules for the relevant goods, works and non-consulting services.
- (e) Promptly inform the other Financiers and make reasonable efforts to consult with all of them and seek the best solution for the Project prior to:
  - (i) amending materially its Financing Agreement for the Project;
  - (ii) suspending or terminating, in whole or in part, the right of the Borrower to make withdrawals of proceeds for its financing for the Project or cancelling any amounts thereof; or
  - (iii) declaring its financing to be due and payable prior to the agreed maturity thereof.

**7. Resolution of Differences**

- (a) The Financiers will, to the extent possible, strive to resolve promptly and amicably questions of interpretation and application of this PoC and any disputes arising out of or in relation to this PoC. Any material differences on the implementation of the Project, and the interpretation and application of this PoC will be resolved through consultation and dialogue by the CC, except for those that will be resolved through the mechanism referred to in Section 3 (f) of this PoC. If the CC is not able to resolve any such differences in a reasonable period of time, the differences will be referred to the Financiers' management for support.
- (b) Notwithstanding any other provision of this PoC, each Financier reserves the right to enforce all its rights under its respective Financing Agreement. In case of any conflict between this PoC and the respective Financing Agreement, the latter shall take precedence.

**8. Execution, Effectiveness, Termination, Amendments and Miscellaneous**

- (a) This PoC may be signed in several counterparts, all of which will be an original.
- (b) This PoC will come into operation upon signature by the last signatory among the Financiers.



- (c) This PoC will terminate in respect of a Financier on the earlier of (i) the date that the Financier has notified the other Financiers of its decision not to proceed with its proposed financing of the Project; and (ii) the Loan Closing Date as set forth in its Financing Agreement(s).
- (d) All additions, amendments or variations to this PoC will be binding only if in writing and signed by the duly authorized representative(s) of the Financiers.
- (e) This PoC represents the entire understanding among the Financiers in relation to the subject matter thereof and supersedes any or all previous agreements or arrangements between the Financiers in respect of arrangements for matters of common interest relating to the Project, whether oral or written.
- (f) Nothing in this PoC will operate or will be construed as a waiver, renunciation or any other modification of any of the privileges, immunities or exemptions of any Financier under its organizational documents, or any international convention, or any applicable law, including, without limiting the generality of the foregoing, the privileges, immunities and exemptions of: (i) the IDB under the Agreement Establishing the Inter-American Development Bank (as amended), (ii) the World Bank under the Articles of Agreement of the International Bank for Reconstruction and Development, (iii) the EIB under its Statute and under the European Union Treaties, or (iv) CAF under the CAF Constitutive Agreement executed in the City of Bogota on February 7, 1968, or under the agreements entered among CAF and the Republic of Ecuador and under any applicable laws.
- (g) The IDB will exercise the same care in the discharge of its role of coordinator of the procurement, financial management and Safeguards aspects of the Project under this PoC as it exercises with respect to the administration and management of its own affairs, and will have no further responsibility in respect thereof to any other Financier.
- (h) This PoC may be disclosed by any of the Financiers in accordance with such Financier's policy on transparency and disclosure of information.
- (i) This PoC does not constitute any commitment with regard to the financing of the Project on the part of the Financiers and nothing in this PoC will be construed as imposing any financial obligation on the part of the Financiers. Any such commitment will be exclusively reflected in the respective Financing Agreements.

- (j) No provision of this PoC shall be construed so as to run counter to, or modify, the respective statutory or charter obligations of any Financier, per such Financier's applicable regulatory framework.

**9. Notices**

Any notice of request required or permitted to be given or made under this PoC will be in writing. Such notice or request will be deemed to have been duly given or made when it will be delivered by hand or mail, facsimile or electronic mail to the party to which it is required to be given or made at such party's address specified below:

For World Bank:

International Bank for Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America  
Phone: 1- 202-473-1000  
Fax: 1-202-477-6391

For IDB:

Inter-American Development Bank  
1300 New York Avenue, N.W.  
Washington, D.C. 20577  
United States of America  
Phone: 1-202-623-1000  
Fax: 1-202-623-3096

For EIB:

European Investment Bank  
98-100, boulevard Konrad Adenauer  
L-2950 Luxembourg  
Phone: (+352) 43 79 1  
Fax: (+352) 43 77 04

For CAF:

*Corporación Andina de Fomento*  
Ave. Luis Roche, Torre CAF  
Altamira, Caracas - Venezuela  
Phone: 58 (212) 209-2111  
Fax: 58 (212) 209-2444

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this PoC to be signed in their respective names as of the date first hereinabove mentioned.

INTER-AMERICAN DEVELOPMENT  
BANK

By 

Name: Morgan Doyle  
Title: Representative in Ecuador

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND  
DEVELOPMENT

By 

Name: Hasan Tuluy  
Title: Vice President, Latin America and  
the Caribbean Region

EUROPEAN INVESTMENT BANK

By 

Name: Magdalena Álvarez Arza  
Title: Vice President responsible for  
Transport

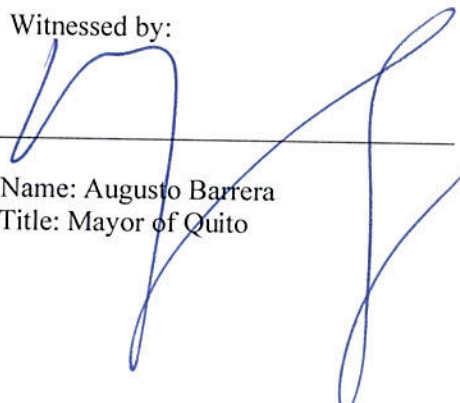
CORPORACION ANDINA DE  
FOMENTO

By 

Name: Antonio Juan Sosa  
Title: Vice President of Infrastructure

Witnessed by: 

Name: Fausto Eduardo Herrera Nicolalde  
Title: Minister of Finance of Ecuador

Witnessed by: 

Name: Augusto Barrera  
Title: Mayor of Quito



