

March 31, 2009

The Right Honourable Hubert A. Ingraham  
Prime Minister and Minister of Finance  
Sir Cecil Wallace-Whitfield Centre  
P.O. Box CB 10980  
Nassau, NP, Bahamas

Ref.: Bahamas. Contingent Recovery Technical  
Cooperation No. ATC/OC-11436-BH.  
“Strengthening the Energy Sector in The  
Bahamas.”

Dear Minister Ingraham,

This Letter of Agreement (the “Agreement”) between the Commonwealth of The Bahamas (the “Beneficiary”) and the Inter-American Development Bank (the “Bank”), a multilateral financial institution organized and existing pursuant to the Agreement Establishing the Inter-American Development Bank dated April 8, 1959, which we are submitting for your consideration, is to formalize the terms of a contingent recovery technical cooperation (the “Contribution”) to the Beneficiary, of up to the amount of seven hundred thousand dollars of the United States of America (US\$700,000), or its equivalent in other convertible currencies, which shall be chargeable to the resources of the Infrastructure Project Preparation Fund (InfraFund) of the ordinary capital of the Bank. The Contribution will finance the contracting of consulting services and procurement of goods necessary for the execution of a technical cooperation to support the strengthening of the energy sector in the Commonwealth of The Bahamas (the “Project”), which is set forth in the Annex of this Agreement. Unless otherwise stated in this Agreement, the term “dollars” shall hereinafter refer to the currency of legal tender in the United States of America.

The Bank and the Beneficiary agree upon the following:

**First. Components of the Agreement.** This Agreement consists of this part one, referred to as the “Special Conditions”; part two, referred to as the “General Conditions”; and the Annex, which are attached hereto. The prevalence between the above-mentioned Sections and the Annex is established in Article 1 of the General Conditions.

**Second. Special Definitions.** For purposes of Article 3(b) of the General Conditions, “semester” means the first or second six months of a calendar year.

**Third. Executing Agency.** The Executing Agency of this Project shall be the Beneficiary, through the Ministry of the Environment of The Bahamas, hereinafter indistinctively referred to as “Executing Agency” or “MOTE,” whose legal and financial

capacity to function as such is certified by the Beneficiary. The Beneficiary undertakes to transfer the resources of the Contribution to the Executing Agency and guarantee that the Executing Agency shall fulfill all the obligations that result from this Agreement.

**Fourth. Conditions Prior to First Disbursement.** The first disbursement of the resources of the Contribution shall be subject to the fulfillment, to the satisfaction of the Bank, of the conditions set forth in Article 2 of the General Conditions as well as the following requirement:

- (i) the Executing Agency shall have provided evidence that the Project Manager (PM) has been appointed, according to the Bank's policies and procedures or as previously agreed with the Bank.

**Fifth. Reimbursement of Expenditures Chargeable to the Contribution.** With the consent of the Bank, resources of the Contribution may be used to reimburse expenditures incurred, or to finance those that may be incurred in the Project, on or after December 17, 2008, and up to the date of this Agreement, provided that requirements substantially similar to those set forth in this Agreement have been fulfilled.

**Sixth. Deadlines.** (a) The period for execution of the Project shall be twelve (12) months, from the effective date of this Agreement.

(b) The period for the last disbursement of the resources of the Contribution shall be fifteen (15) months from the effective date of this Agreement, which shall include the period required for the payment of independent auditors referred to in Article 11 of the General Conditions. Any part of the Contribution which has not been utilized within this period shall be canceled.

(c) The aforementioned deadlines and any others that may be stipulated in this Agreement may be extended, when duly justified, with the written consent of the Bank.

**Seventh. Total Cost of the Project and Additional Resources.** (a) The Beneficiary undertakes to make timely provision of the resources required, in addition to the Contribution, for the complete and uninterrupted execution of the Project (the "Counterpart Resources"). The total Counterpart Resources required is estimated to be the equivalent of one hundred seventy five thousand dollars (US\$175,000), which will be contributed in cash, in order to make up a sum equivalent to eight hundred seventy five thousand dollars (US\$875,000), which is estimated to be the total cost of the Project. These estimates do not reduce the obligation of the Beneficiary to provide any additional resources required to complete the Project.

(b) The Counterpart Resources provided by the Beneficiary shall be used to finance the cost categories which are chargeable to it, as established in the Project's budget set forth in the attached Annex.

**Eighth. Recognition of Expenses Chargeable to the Counterpart Resources.**

The Bank may recognize, as part of the local contribution, expenditures incurred or which may be incurred in the Project, on or after December 17, 2008, and up to the date of this Agreement, provided that requirements substantially similar to those set forth in this Agreement have been fulfilled.

**Ninth. Currencies for Disbursements.** The Bank shall disburse the Contribution in dollars or its equivalent in other convertible currencies. The Bank may convert these convertible currencies into other currencies, including the local currency, by applying the exchange rate indicated in Article 7 of the General Conditions.

**Tenth. Contingent Recovery of the Contribution.** (a) The Contribution is made under the contingent recovery modality, and it shall be reimbursed by the Beneficiary to the Bank if the Project results in a loan proposal that is not financed by the Bank. The modality of reimbursement of the Contribution by the Beneficiary to the Bank shall be the following:

- (i) In case the loan proposal is financed by another financing entity (either commercial, bilateral or multilateral), the full amount of the Contribution shall become payable to the Bank at the time the Beneficiary and the relevant financing entity enter into an agreement or equivalent legal document formalizing the involvement of such entity in the financing. The payment of the Contribution shall be made in one installment, without interest, at the time of the first disbursement from the other financing entity. However, in case the Bank co-finances at least 25% of the total amount of the resulting loan, the Contribution shall become non-reimbursable.
- (ii) In case the Beneficiary decides to use its own resources, the Beneficiary shall repay to the Bank, without interest and in one installment, the full amount of the Contribution, at the time of the corresponding budgetary allocation.

(b) Regardless of the foregoing, the Beneficiary shall not be obligated to reimburse the Contribution to the Bank when: (i) the Bank is unable to provide the financing for the resulting loan proposal; (ii) the Project does not result in a loan proposal within three (3) years of the conclusion of the Project, counted from the date of expiration of the execution period indicated in Section Sixth (a) of these Special Conditions, as such period may from time to time be extended in accordance with Section Sixth (c) of these Special Conditions.

**Eleventh. Procurement of Goods.** The acquisition of goods and related services (different from consulting services) will be carried out by the Executing Agency in accordance with the provisions set forth in Document GN-2349-7 ("Policies for the Procurement of Works and Goods Financed by the Inter-American Development Bank") dated July 2006. The Beneficiary confirms its familiarity with the provisions of Document GN-2349-7. Furthermore, the Beneficiary, through the Executing Agency, will be able to use the "shopping" procedure in

accordance with the provisions set forth in paragraph 3.5 of Document GN-2349-7 for contracts estimated to be below fifty thousand dollars (US\$50,000) per contract.

**Twelfth. Selection and Contracting of Consulting Services.** The selection and contracting of consulting services will be carried out by the Executing Agency in accordance with the provisions set forth in Document GN-2350-7 (“Policies for the Selection and Contracting of Consultants Financed by the Inter-American Development Bank”) dated July 2006. The Beneficiary confirms its familiarity with those provisions of Document GN-2350-7. The Beneficiary, through the Executing Agency, will be able to use the method of selection based on the cost and the quality set forth in Section II and in paragraphs 3.2 to 3.8 of Section III of Document GN-2350-7; and any of the methods set forth in Section V of Document GN-2350-7 for the selection and contracting of individual consultants. For purposes of paragraph 2.7 of Document GN-2350-7, the short list of consultants whose contracts are estimated to be below two hundred thousand dollars (US\$200,000) per contract may be composed in its entirety by national consultants.

**Thirteenth. Procurement Plan.** Before starting any competitive bidding process or any request for proposals for the acquisition of goods and services (different from consulting services) and for the contracting of consulting services, the Beneficiary, through the Executing Agency, shall prepare and furnish to the Bank for its approval, a Procurement Plan acceptable to the Bank setting forth the particular contracts for acquisitions or consulting services required to carry out the Project, including the estimated cost of each contract, and the proposed methods for acquisition of goods and selection and contracting of consultants’ services, in accordance with paragraphs 1 of Appendixes 1 of Documents GN-2349-7 and GN-2350-7, respectively. This Procurement Plan shall be reviewed by the parties every six (6) months during the execution of the Project, and each updated version shall be submitted for the Bank’s approval. The Beneficiary, through the Executing Agency, shall implement the Procurement Plan in the manner in which it has been approved by the Bank.

**Fourteenth. Review by the Bank.** Unless the Bank agrees otherwise in writing, each contract for the acquisition of goods and for the contracting of consulting services shall be subject to an *ex ante* review, in accordance with the procedures established in paragraphs 2 and 3 of Appendixes 1 of Documents GN-2349-7 and GN-2350-7, respectively, except for the following contract, which shall be subject to an *ex post* review in accordance with the procedures established in Document GN-2350-7: the selection and contracting of the Project Manager for an amount of forty thousand dollars (US\$40,000).

**Fifteenth. Financial Statements.** The Beneficiary, through the Executing Agency, shall present to the Bank the financial statement of the Project, in accordance with the provisions of Article 11(b) of the General Conditions.

**Sixteenth. Information Disclosure.** The Beneficiary undertakes to notify the Bank, in writing, within a maximum period of ten (10) working days from the date of signature of this Agreement, whether it considers any part of the Agreement to be confidential or sensitive, or whether there be information that may adversely affect relations between the Beneficiary and the Bank or between private sector clients and the Bank, in which case the Beneficiary undertakes to

identify those provisions. In accordance with the Bank's Disclosure of Information Policy, the Bank will make the text of this Agreement available to the public once it has been signed and has entered into effect, with the sole exception of that information which the Beneficiary has specifically identified as confidential, sensitive or adverse to relations with the Bank in the manner indicated in this paragraph.

**Seventeenth. Notice.** Any notice, request, or communication from one party to another by virtue of this Agreement shall be made in writing and shall be considered to have been made when the relevant documents are delivered to the addressee, unless the parties otherwise agree in writing. If to the Beneficiary, such notice shall be addressed to the same address indicated above and to the facsimile: (247) 327-5806.

If to the Bank, such notice shall be addressed to:

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

Facsimile: (202) 623-3096

IN WITNESS WHEREOF, the Beneficiary and the Bank, each acting through its authorized representative, have signed this Agreement, in two (2) equally authentic copies in Medellín, Colombia, on the date above written.

THE COMMONWEALTH OF THE  
BAHAMAS

INTER-AMERICAN DEVELOPMENT  
BANK

/s/ Hubert A. Ingraham

/s/ Luis Alberto Moreno

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The Right Honourable  
Hubert A. Ingraham  
Prime Minister and Minister of Finance

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Luis Alberto Moreno  
President

**GENERAL CONDITIONS APPLICABLE TO  
NONREIMBURSABLE TECHNICAL COOPERATIONS**

**Article 1. Application and Scope of General Conditions.** (a) These General Conditions set forth terms and conditions generally applicable to all nonreimbursable technical cooperations made by the Bank, and their provisions form an integral part of this Agreement. Any exception to these General Conditions shall be expressly stated in the text of the Special Conditions.

(b) If any provision of the Special Conditions or of the Annex or Annexes should present any inconsistency or contradiction with these General Conditions, the provisions of the Special Conditions or the corresponding Annex shall prevail. In case of inconsistencies or contradictions between the Special Conditions and the corresponding Annex or Annexes, specific provisions shall prevail over general provisions.

**Article 2. Conditions Prior to First Disbursement.** (a) The first disbursement of the Contribution shall be subject to the fulfillment of the following requirements, by the Beneficiary, directly or through the Executing Agency:

- (i) designation of the person or persons authorized to represent it in all acts relating to the execution of this Agreement, and submission to the Bank of authenticated specimen signatures of such persons. If two or more officials are designated, the designation shall indicate whether they may act severally or jointly;
- (ii) submission to the Bank of a request for disbursement, justified in writing; and
- (iii) presentation to the Bank of a timetable for use of the Counterpart Resources.

(b) If within one hundred and eighty (180) days from the effective date of this Agreement, or within such longer period as the parties may agree in writing, the conditions precedent to the first disbursement established in this Article and in the Special Conditions have not been fulfilled, the Bank may terminate this Agreement by giving notice to the Beneficiary.

**Article 3. Disbursement Procedure.** (a) The Bank shall make disbursements of the Contribution to the Beneficiary, through the Executing Agency, each time it requests such disbursements and provides justification, to the Bank's satisfaction, for the expenses to be paid with the Contribution resources.

(b) At the request of the Beneficiary, through the Executing Agency, and provided that the requirements set forth in paragraph (a) above, in Article 2 and in the Special Conditions have been satisfied, the Bank may establish a revolving fund with the Contribution resources, which the Beneficiary, through the Executing Agency, shall utilize to cover eligible Program expenses charged against the Contribution. The Beneficiary, through the Executing Agency,

shall inform the Bank about the status of the revolving fund within a period of sixty (60) days from the closing date of each semester.

(c) The Bank may replenish the revolving fund entirely or in part as the resources are used, if the Beneficiary, through the Executing Agency, so requests and presents to the Bank's satisfaction, a detailed statement of expenses charged to such fund, together with the supporting documents thereof and a justification for such request. The detailed statement of expenses shall be submitted according to the catalog of accounts indicated in the Annex of this Agreement, which describes the Program.

**Article 4. Expenditures Chargeable to the Contribution.** The Contribution shall exclusively finance those eligible expenses which are set forth in the Program budget contained in the Annex that describes the Program. Only direct and actual Program expenses may be charged to the Contribution. Indirect or general operating expenses, which are not included in the Program budget, cannot be charged to the Contribution.

**Article 5. Request for Final Disbursement.** The Executing Agency shall present the final request for disbursement of the Contribution, accompanied by the appropriate supporting documentation, to the Bank's satisfaction, at least thirty (30) days before the expiration of the disbursement period referred to in the Special Conditions of this Agreement, or of any extension thereto that the parties may have agreed upon in writing. This final request for disbursement shall include the supporting documentation required for payment of the auditing services mentioned in Article 11 of these General Conditions.

**Article 6. Suspension and Cancellation of Disbursements.** (a) The Bank may suspend the disbursements or cancel the Contribution if any of the following circumstances occurs: (i) the failure of the Beneficiary to fulfill any obligation stipulated in this Agreement; or (ii) any circumstance which, in the Bank's opinion, may render unlikely the attainment of the objectives of the Program. Under these circumstances, the Bank shall notify the Executing Agency in writing so that it may present its points of view, and after thirty (30) days from the date of the Bank's notice, it may suspend the disbursement or cancel the undisbursed portion of the Contribution.

(b) Pursuant to paragraph (a) above, the parties agree that upon the occurrence of institutional or organizational changes within the Executing Agency, which, in the Bank's opinion, might affect the timely execution of the Program's objectives, the Bank shall review and evaluate the likely attainment of the objectives and may at its discretion, suspend, condition or cancel the disbursements of the Contribution.

(c) The Bank may cancel the part of the Contribution pertaining to the procurement of certain goods, works or related services, or consulting services, if it determines at any time that: (i) the procurement was carried out without following the procedures set forth in this Agreement; or (ii) representatives of the Beneficiary have committed corrupt practices, either in the process of selecting the supplier or contractor or in the execution of the respective contract, and the Beneficiary has not taken timely and remedial measures, observing the due process guarantees of the legislation of the Beneficiary's country, which are acceptable to the Bank.

(d) For the purposes of the above paragraph, corrupt practices shall be understood to include, but not be limited to, acts of: (i) bribery, meaning the offering or giving of anything of value to influence the actions or decisions of third parties or the receiving or soliciting of any benefit in exchange for actions or omissions related to the performance of duties; (ii) extortion or coercion, meaning the act of obtaining something, compelling an action or influencing a decision through intimidation, threat or the use of force, where potential or actual injury may befall upon a person, his/her reputation or property; (iii) fraud, meaning any action or omission intended to misrepresent the truth so as to induce others to act in reliance thereon, with the purpose of obtaining some unjust advantage or causing damage to others; and (iv) collusion, meaning a secret agreement between two or more parties to defraud or cause damage to a person or entity or to obtain an unlawful purpose.

(e) The provisions established in the precedent paragraphs (a) and (c) shall not affect the disbursement by the Bank of any amounts which the Bank by specific written agreement with the Beneficiary or Executing Agency, as the case may be, has agreed to provide from the resources of the Contribution to make payments to a supplier of goods or services. The exceptions set forth in this paragraph (e) shall not apply if the Bank determines that corrupt practices have occurred with respect to the procurement of, or the execution of the contract for, such goods or services.

**Article 7. Exchange Rate for Programs Financed with Funds Expressed in Dollars of the United States of America.**

(a) Disbursements: (i) The equivalence in dollars of the United States of America of other convertible currencies in which the disbursements of the Contribution might be made, shall be calculated applying the exchange rate in effect in the market on the date of the disbursement; and

(ii) the equivalence in dollars of the United States of America of the local currency, or other non-convertible currencies, in the case of regional projects, in which the disbursements of the Contribution might be made, shall be calculated applying, on the date of the disbursement, the exchange rate established pursuant to the understanding in force between the Bank and the respective country for the purpose of maintaining the value of its currency, or other non-convertible currencies, in the case of regional projects, held by the Bank.

(b) Expenses: (i) The equivalence in Dollars of the United States of America of an expenditure made with convertible currencies shall be calculated applying the exchange rate in effect in the market on the date in which payment is rendered for the expenditure in question.

(ii) The equivalence in Dollars of the United States of America of an expenditure made in local currency, or in other non-convertible currencies, in the case of regional projects, shall be calculated applying, on the date in which payment is rendered for the expenditure in question, the exchange rate established pursuant to the understanding in force between the Bank and the respective country for the purpose of maintaining the value of its currency held by the Bank.



- (iii) For purposes of subparagraphs (i) and (ii) above, it is understood that the date of payment for the expenditure, is the date on which the Beneficiary, the Executing Agency, or any other natural or legal person to whom the right to make expenditures has been delegated, makes the respective payments to the contractor, consultant or supplier.

**Article 8. Exchange Rate for Programs Financed with Funds Constituted in Convertible Currencies Other than the US Dollar.** (a) Disbursements. The Bank may convert the disbursed currency chargeable to the resources of the trust fund indicated in the Special Conditions in: (i) other convertible currencies applying the exchange rate in effect in the market on the date of the disbursement; or

- (ii) the local currency or other non-convertible currencies, in the case of regional projects, applying, on the date of the disbursement, the following procedure: (A) the equivalence of the currency of the trust fund indicated in the Special Conditions shall be calculated in Dollars of the United States of America, applying the exchange rate in effect in the market; (B) next, the equivalence of these Dollars of the United States of America shall be calculated in local currency or other non-convertible currencies, in the case of regional projects, applying the exchange rate established pursuant to the understanding in force between the Bank and the respective country for the purpose of maintaining the value of its currency held by the Bank.

(b) Expenses: (i) The equivalence in the currency of the trust fund, indicated in the Special Conditions, of an expenditure made with convertible currencies shall be calculated applying the exchange rate in effect in the market on the date in which payment is rendered for the expenditure in question.

- (ii) The equivalence in the currency of the trust fund, indicated in the Special Conditions, of an expenditure made in local currency or other non-convertible currencies, in the case of regional projects, shall be calculated in the following manner: (A) the equivalence in Dollars of the United States of America of such expenditure, applying, on the date in which payment is rendered for the expenditure in question, the exchange rate established pursuant to the understanding in force between the Bank and the respective country for the purpose of maintaining the value of its currency held by the Bank; (B) next, the equivalence in the currency of the trust fund indicated in the Special Conditions of the value of the expenditure in Dollars of the United States of America, shall be calculated applying the exchange rate in effect in the market on the date in which payment is rendered for the expenditure in question.
- (iii) For purposes of subparagraphs (i) and (ii) above, it is understood that the date of payment for the expenditure, is the date on which the Beneficiary, the Executing Agency, or any other natural or legal person to whom the right to make

expenditures has been delegated, makes the respective payments to the contractor, consultant or supplier.

**Article 9. Other Contractual Obligations of Consultants.** In addition to the special requirements included in the Special Conditions, Annex or Annexes and in the respective terms of reference, the Executing Agency agrees that contracts signed with Consultants shall also specify the Consultants' obligations to:

(a) provide any clarifications or additional information that the Executing Agency or the Bank consider necessary with respect to the Consultants' reports required under the terms of reference set forth in their respective contracts;

(b) provide the Executing Agency and the Bank with any additional information as they may reasonably request concerning the performance on their work;

(c) in the case of international consultants, perform their work in an integrated manner with the local professional staff assigned or contracted by the Beneficiary to participate in the execution of the Program, with a view to carrying out technical and operational training of such staff by the conclusion of the work;

(d) assign copyrights, patents and any other form of industrial property right to the Bank in cases where such rights result from the work and documents carried out by the Consultants under the consulting contracts financed with resources of the Program; and

(e) notwithstanding paragraph (d) above, in order to obtain a timely dissemination of the results of the Program, the Bank authorizes the Beneficiary, or the Executing Agency, to make use of the products resulting from the consulting services financed with the resources of the Program, with the understanding that the Beneficiary, or the Executing Agency, shall utilize such consulting products under the terms set forth in Article 14 of these General Conditions.

**Article 10. Acquisition of Goods and Services.** (a) The Beneficiary may acquire, chargeable to the Contribution, the goods and services (other than consulting services) required for the execution of the Program, in an amount not to exceed the allocation specified for that purpose in the budget set forth in the Annex that describes the Program.

(b) When the goods acquired and services (other than consulting services) contracted for the Program are entirely financed with local counterpart contribution, the Beneficiary shall, whenever possible, follow procedures that allow the participation of several bidders, and shall take into account principles of economy, efficiency and price reasonability.

(c) When sources of financing other than resources of the Contribution or of the Counterpart Resources are used, the Beneficiary may agree with the financing entity the procedure to be followed for the acquisition of goods and services. Notwithstanding, at the Bank's request, the Beneficiary shall prove the reasonability of both the price agreed upon or paid for the acquisition of such goods and services, and of the financial conditions of such

credits. The Beneficiary shall likewise demonstrate that the quality of the goods meets the technical requirements of the Program.

(d) During the execution of the Program, the goods referred to in subsection (a) above shall be used exclusively for the execution of the Program.

(e) The goods included in the Program shall be adequately maintained according to generally accepted technical standards, at a level compatible with the services that they should provide.

**Article 11. Financial Statements.** (a) When the period for execution of the Program exceeds one (1) year, and the amount of the Contribution exceeds one million five hundred thousand Dollars of the United States of America (US\$1,500,000), the Beneficiary, through the Executing Agency, undertakes to submit, to the Bank's satisfaction:

- (i) annual financial statements, and one final financial statement, regarding Program expenditures charged to the Contribution and to the Counterpart Resources. These financial statements shall be audited by independent public accountants acceptable to the Bank, in accordance with procedures satisfactory to the Bank;
- (ii) the annual financial statements shall be presented no later than ninety (90) days following the close of each year of execution, beginning with the year that corresponds to the fiscal year in which disbursements of the Contribution begin; and the final financial statement shall be presented no later than ninety (90) days following the date of the last disbursement of the Contribution, with the exception of the disbursement of the resources necessary to cover the cost of the auditing services referred to in this Article. These time periods shall only be extended with the written consent of the Bank; and
- (iii) the Bank may suspend disbursements of the Contribution, if it does not receive, to its satisfaction, the annual financial statements within the periods stipulated in paragraph (ii) above, or within any extension of these periods it may have authorized.

(b) When the period for execution of the Program does not exceed one (1) year, or the amount of the Contribution is equal to or less than the equivalent of one million five hundred thousand Dollars of the United States of America (US\$1,500,000), the Beneficiary, through the Executing Agency, undertakes to submit to the Bank's satisfaction, and within ninety (90) days following the date of the last disbursement of the Contribution, with the exception of the disbursement of the resources necessary to cover the cost of the auditing services referred to in this Article, a financial statement of Program expenditures charged to the Contribution and to the Counterpart Resources, audited by independent public accountants acceptable to the Bank and in accordance with procedures satisfactory to the Bank.

**Article 12. Internal Control and Records.** The Beneficiary, or the Executing Agency, as the case may be, shall maintain an appropriate system of internal accounting and

administrative controls. The accounting system shall be organized so as to provide the necessary documentation to permit the verification of transactions and facilitate the timely preparation of financial statements and reports. The records of the Program shall be maintained in such a way that: (a) they make it possible to identify the sums received from the various sources; (b) they show, in accordance with the catalogue of accounts approved by the Bank, the investments in the Program, both with the resources of the Contribution and with the other funds to be provided for its complete execution; (c) they include sufficient detail to show the goods acquired and the services contracted, as well as the utilization of such goods and services; and (d) they show the cost of the investments in each category and the progress of the works.

**Article 13. Other Commitments.** The Beneficiary, through the Executing Agency shall also:

- (a) provide the Consultants and local experts with secretarial services, offices, office supplies, communication services, transport and any other logistical support required for the execution of their work;
- (b) present to the Bank a copy of the Consultants reports and their comments thereof;
- (c) provide the Bank with any other additional information or legal reports as it may reasonably request concerning execution of the Program and the use of the Contribution and the Counterpart Resources; and
- (d) keep the Bank's Representative in the respective country or countries informed of all aspects of the Program.

**Article 14. Publication of Documents.** Any document issued under the Bank's name or logotype, as part of a special project, joint program, research project or any other event financed with the resources of the Program intended for publication, shall be previously approved by the Bank.

**Article 15. Supervision in the Field.** Without prejudice to the supervision of the Program activities performed by the Executing Agency, the Bank may supervise the Program in the field through its Country Office in the country or countries as it may designate for such purpose.

**Article 16. Limitation of the Bank's Obligation.** It is understood that the granting of the Contribution by the Bank does not constitute any obligation whatsoever to totally or partially finance any program or project that may be undertaken directly or indirectly as a result of the execution of the Program.

**Article 17. Arbitration.** For the solution of any controversy which may arise hereunder and which is not resolved by agreement of the parties, said 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 fail to agree on who shall be the Referee, or if one of the parties fails to appoint the Referee, 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 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 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 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 of making 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.
- (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 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 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 to the award shall be made in the manner provided in the present Agreement. The parties expressly waive any other form of notification.

## **THE ANNEX**

### **THE PROJECT**

#### **Strengthening the Energy Sector in The Bahamas**

##### **I. Objective**

- 1.01** The general objective of the Project is to upgrade and strengthen the capacity of the Ministry of the Environment of The Bahamas (MOTE), which is the entity with responsibility for the Energy Sector in the Commonwealth of The Bahamas (The Bahamas), as well as to provide alternatives to minimize The Bahamas' dependency on fossil fuels.
- 1.02** The specific objectives of the Project are to: (i) provide technical assistance to the Ministry of Finance (MF) and MOTE to assist the Bahamas Electricity Corporation (BEC) in achieving financial and operational sustainability; (ii) explore alternatives for BEC's expansion plan including Renewable Energy (RE) and Waste to Energy (WE); (iii) prepare an analysis of the current regulatory, financial and fiscal frameworks with recommendations to achieve a sustainable energy matrix in The Bahamas; and (iv) support institutional strengthening in Energy Efficiency (EE) and capacity building in the areas of RE and WE.

##### **II. Description**

- 2.01** In order to achieve the aforementioned objectives, the Project will finance the following components:

###### **Component I - Financial and Operational Technical Assistance:**

- 2.02** Under this component, the Project resources will finance: (i) the preparation of a financial and operational audit of BEC; (ii) the assistance of BEC in improving its operational and financial management in order to strengthen the capacity to service debt; (iii) based on the results of the operational and financial audit, the analysis of alternatives on how to improve BEC's cash management; (iv) the examination of the operations of BEC to identify any inefficiencies and to recommend measures to increase efficiency, reduce cost and improve services; and (v) the preparation of a strategic pipeline of projects that includes refinancing options, future financing needs for expansion of its system and financial viability for BEC's long terms investments (analyzing and prioritizing projects).
- 2.03** Under this component, the Project resources will also finance to address the following issues: (i) diagnosis of the present situation, based in existing information and interviews of key stakeholders; (ii) review the historical financial statements made of BEC; (iii) identify issues and assist BEC in improving its operational and financial management (e.g., establishment of indicators for measurable improvements of operational efficiency, tariff structure, including technical and commercial losses, thermal generation efficiencies, operation and management (O&M) costs, increased collection ratios);

(iv) analysis of technical and non-technical electricity losses in transmission and distribution lines and proposals to control it; (v) modeling and forecasts BEC's financial statements based on expansion programs and commercial operations forecasts obtained in other activities of the study, showing the effect and importance of specific actions and programs to solve BEC's financial constraints; and (vi) evaluation of strengths and weaknesses of BEC's Human Resources policies including an appraisal of the current employee performance and present performance indicators in order to compare BEC's performance with similar utilities.

**Component II – Explore alternatives for BEC's expansion plan including WE, RE and natural gas (NG):**

- 2.04** Specifically, under this component, the Project resources will finance: (i) the assessment of BEC's expansion program in Generation, Transmission and Distribution (in New Providence – Paradise Island and in the Family Islands) using traditional energy and assess the potential for diversification of their energy matrix with RE and WE; (ii) the assessment of the possibility of using NG for electricity generation, assuming that NG could be available in The Bahamas (in coordination with other studies done for The Bahamas), evaluate costs and potential saving of the operation, mainly for New Providence; (iii) the provision of technical assistance to support the preparation of Purchase Power Agreements (PPAs) to purchase/sell power from independent power producers (IPPs) from/to the grid; (iv) the determination of cost of implementation of RE and WE; and (v) the establishment of a prioritized plan of action to include RE and WE in the energy matrix, in coordination with other studies done for The Bahamas and prepare a prioritized list of projects.

**Component III - Regulatory Framework:**

- 2.05** Under this component, the Project resources will finance: (i) the revision and provision of recommendations to the existing energy legislation and regulatory policies in The Bahamas; (ii) the preparation of an analysis of the current regulatory framework and its impacts on the sustainability of BEC and the generation of electricity nationally; (iii) the recommendation of regulation and policy to achieve a sustainable energy sector; (iv) the revision of the mandate of the Public Utilities Commission and make recommendations; (v) the preparation and recommendation of regulation and policies for on-grid connected WE and RE operated IPPs or BEC's owned facilities; and (vi) the provision of recommendations to achieve a long-term sustainability of BEC.

**Component IV – Integration of EE, RE, WE and NG to the Bahamas Energy Matrix:**

- 2.06** Under this component, the Project resources will finance: (i) the provision of technical assistance to review and recommend legislation, regulatory and policy issues to integrate EE, RE, WE and traditional energy (diesel, fuel oil and eventually NG, if it is available) in the energy matrix of The Bahamas; (ii) the analysis of the current energy matrix of The Bahamas; (iii) the assessment, from energy planning point of view, using computer based energy models, of how to integrate EE, RE, WE and traditional energy to the existing energy matrix; and (iv) with the information gathered and generated in the previous



components, this sub-component will finance and support the preparation of the National Energy Policy and the reformulation of the Bahamas Electricity Act.

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

- 3.01** The cost of the Project is estimated to be US\$875,000, in accordance with the Budget contained in the table below. Part of that amount will be financed with the resources of the InfraFund of the ordinary capital of the Bank up to the amount of US\$700,000. Such amount shall be of contingent recovery in accordance with the provisions of Section Tenth of the Special Conditions of the Agreement. The Beneficiary, through the MOTE, shall provide a local counterpart financing in cash of US\$175,000.

Component	Financing		
	Bank	Local	Total Funding
	(US\$)	(US\$)	(US\$)
Component I - Financial and Operational Technical Assistance	250,000	175,000	425,000
Component II - Explore alternatives for BEC's expansion plan including WE, RE and NG option	180,000	--	180,000
Component III - Regulatory Framework	150,000	--	150,000
Component IV – Integration of EE, RE, WE and NG to the Bahamas Energy Matrix	70,000	--	70,000
Monitoring and Audits	40,000	--	40,000
Contingencies	10,000	--	10,000
<b>TOTAL</b>	<b>700,000</b>	<b>175,000</b>	<b>875,000</b>
<b>Percentage</b>	<b>80%</b>	<b>20%</b>	<b>100%</b>

### **IV. Execution**

- 4.01** In order to facilitate the coordination and execution of this Project, a Project Manager (PM), who will have to be part of the MOTE, will be hired. The PM will also coordinate the activities of the technical cooperations BH-T1016 ("Promoting Sustainable Energy in the Bahamas") and BH-X1001 ("Implementation of Sustainable Energy Projects in the Bahamas"). The PM will be responsible for overall project guidance, access to key stakeholders, orderly implementation of the Project, the selection of the consulting firm(s) that will carry out the four components of the Project, revision of the products prepared by the consulting firm(s), budget administration, logistics, local support and coordination between BEC, the Bahamas Environment, Science & Technology Commission (BEST), MOTE, MF, the Bank and the consulting firm(s). The consulting services will be carried out by an international consulting firm or association of firms. The MOTE will participate in the technical selection committees and will be in charge of coordinating logistical support and facilitating access to information. As beneficiaries of this Project, the MOTE and BEC will provide counterpart staff and will review the technical reports.
- 4.02** Monitoring: The work of the consulting firm(s) and its compliance with the Terms of Reference (TOR) for this project will be monitored by the MOTE in close coordination with the Bank.

- 4.03** Progress and final reports: Intermediate and final reports of each study will be submitted to the MOTE. The MOTE will distribute the reports to the Bank. The MOTE and the Bank will submit comments to the reports. The MOTE will be responsible for approval of the final reports.