

Mr. Bruce R. Lindsey
Chief Executive Officer
William J. Clinton Foundation

Clinton Climate Initiative
383 Dorchester Avenue, Suite 400
Boston, MA 02127
Fax : 617-774-0220

Ref.: Regional. Non Reimbursable Technical
Cooperation No. ATN/MC-12152-RG.
“Hybrid Bus Test Program in Brazil and
Colombia.”

Dear Sir,

This Letter of Agreement (the “Agreement”) between the William J. Clinton Foundation - Clinton Climate Initiative (the “Beneficiary”) and the Inter-American Development Bank (the “Bank”), which we are submitting for your consideration, is to formalize the terms of a grant for a non-reimbursable technical cooperation (the “Contribution”) to the Beneficiary, of up to the amount of one million four hundred and ninety eight thousand seven hundred and fifty one dollars of the United States of America (US\$1,498,751), or its equivalent in other convertible currencies, which shall be chargeable to the resources of the Sustainable Energy and Climate Change Initiative – SECCI – Multi-Donor Fund (MSC). The Contribution will finance the contracting of consulting services and procurement of goods necessary for the execution of a technical cooperation to support the hybrid bus test program in Brazil and Colombia (the “Program”), 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. Executing Agency. The Executing Agency of this Program shall be the William J. Clinton Foundation - Clinton Climate Initiative, hereinafter indistinctively referred to as the “Beneficiary”, the “Executing Agency” or “WJCF-CCI”. The Executing Agency certifies its legal and financial capacity to function as such, and undertakes to fulfill all the obligations that result from this Agreement.

Third. 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.

Fourth. Special Contractual Conditions in addition to the Conditions prior to First Disbursement. For the execution of Component 2, as described in the Annex, the Executing Agency will provide evidence that a supply agreement, or equivalent instrument, has been signed for the provision of hybrid buses.

Fifth. Disbursement. (a) Disbursements of the Contribution will be made as needed for the execution of the Program. The Executing Agency will periodically update its financial plan including an estimate of resources necessary for Program execution, according to the Program's budget, activities and commitments to third parties.

(b) In accordance with Article 6 of the General Conditions, the Bank may suspend disbursements or cancel the Contribution if the Executing Agency does not make timely provision of the in-kind resources required, in particular those referred to the execution of component 2 of the Project.

Sixth. 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 Program, on or after May 7, 2010, and up to the date of this Agreement, provided that requirements substantially similar to those set forth in this Agreement have been fulfilled.

Seventh. Deadlines. (a) The period for execution of the Program shall be eighteen (18) months, from the effective date of this Agreement.

(b) The period for the last disbursement of the resources of the Contribution shall be twenty one (21) 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(b) 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.

Eighth. Total Cost of the Program and Additional Resources. (a) The Executing Agency undertakes to make timely provision of the in-kind resources required when and as such in-kind resources are provided to the Executing Agency, in addition to the Contribution, for the complete and uninterrupted execution of the Program (the "Counterpart Resources"). The total Counterpart Resources required is estimated to be the equivalent of five million seven hundred and fifty three thousand six hundred fifty three dollars (US\$5,753,653), to be contributed in kind, in order to make up a sum equivalent to seven million two hundred and fifty two thousand four hundred and four dollars (US\$7,252,404), which is estimated to be the total cost of the Program. These estimates do not reduce the obligation of the Executing Agency

to provide any reasonable resources that may be required to undertake and complete the Program in accordance with the provisions set forth in this Agreement.

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

Ninth. 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 Program, on or after May 7, 2010, and up to the date of this Agreement, provided that requirements substantially similar to those set forth in this Agreement have been fulfilled.

Tenth. 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.

Eleventh. Acquisition of Goods and Services. The acquisition of goods and related services (different from consulting services), to be financed under the Program, 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, and in accordance with the Procurement Plan referred to in paragraph Eleventh of these Special Conditions. The Executing Agency confirms its familiarity with the provisions set forth in Document GN-2349-7.

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, and in accordance with the Procurement Plan referred to in paragraph Eleventh of these Special Conditions. The Executing Agency confirms its familiarity with the provisions set forth in Document. Based on paragraph 5.4 a) of Section V of said Policies the position of Coordinator of the Project will be contracted directly.

Thirteenth. Procurement Plan. Before initiating 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 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 Program, 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 paragraph 1 of Appendixes 1 of Documents GN-2349-7 and GN-2350-7, respectively. This Procurement Plan shall be reviewed by the parties every twelve (12) months during the execution of the Program, and each updated version shall be submitted for the Bank's approval. The Beneficiary 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.

Fifteenth. Financial Statements. (a) The Beneficiary shall submit to the Bank's satisfaction, the financial statements of the Program, in accordance with the provision set forth in Article 11(b) of the General Conditions.

(b) The auditing referred to in subparagraph (a) above, will be financed with resources of the Contribution.

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. Foundation Marks. The parties acknowledge the William J. Clinton Foundation's ownership of the its name and logos, the names and logos of the Foundation's programs and initiatives and, as President Clinton's representative, the name, voice, likeness and images of President Clinton, in any format (collectively, the "Foundation Marks"). This Agreement shall not be construed to grant any license to use the Foundation Marks without the prior written consent of the Foundation. Any and all requests for use of the Foundation Marks, expressly including images or quotes of President Clinton, shall be submitted to the Foundation and will require its prior written approval prior to any such use.

Eighteenth. 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, with a copy to:

Chris Johnson, Finance Director
Clinton Climate Initiative
383 Dorchester Ave. Suite 400
Boston, MA 02127
cjohnson@clintonfoundation.org

Facsimile: (617) 774-0220

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

Please confirm your acceptance to the terms and conditions of this Agreement, in representation of the Executing Agency, by signing and returning one of the originals to the Bank's Office in Washington D.C.

This Agreement shall be signed in two (2) originals of equal tenor by duly authorized representatives, and will enter into force on the date of its signature by the Executing Agency.

Yours faithfully,

/s/ Rodrigo Parot

Rodrigo Parot
Representative of the Bank in Colombia

Agreed:

William J. Clinton Foundation

/s/ Bruce R. Lindsey

Bruce R. Lindsey
Chief Executive Officer

Date: August 31, 2010

**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 and Other Measures. (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; (ii) if it is determined at any stage that evidence is sufficient to support a finding that an employee, agent, or representative of the Beneficiary, Executing Agency or Contracting Agency, has engaged in an act of fraud and corruption during the bidding process, negotiation of a contract, or the execution of the contract; or (iii) 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, Executing Agency or Contracting Agency have committed

any acts of fraud and corruption, either in the process of selecting the supplier or consultant or in the negotiation or 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, acts of fraud and corruption shall be understood to include, but not be limited to, acts of: (i) a corrupt practice is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of another party; (ii) a fraudulent practice is any act or omission, including a misrepresentation, which misleads, or attempts to mislead, a party in order to obtain a financial or other benefit or to avoid an obligation; (iii) a coercive practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or property of the party to influence the actions of a party; and (iv) a collusive practice is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

(e) If, in accordance with the administrative procedures of the Bank, it is demonstrated that any firm, entity or individual bidding for or participating in a Bank-financed Program including, *inter alia*, Beneficiary, bidders, suppliers, contractors, sub-contractors, applicants, consultants, Executing Agency or Contracting Agency (including their respective officers, employees and agents) has engaged in an act of fraud or corruption, the Bank may:

- (i) decide not to finance any proposal to award a contract or a contract awarded for works, goods, related services and consultant services financed by the Bank;
- (ii) suspend disbursement of the Contribution as described in Article 6 (a) above of these General Conditions if it is determined at any stage that evidence is sufficient to support a finding that an employee, agent or representative of the Beneficiary, Executing Agency or Contracting Agency has engaged in an act of fraud or corruption;
- (iii) cancel, the portion of the Contribution earmarked for a contract as described in Article 6 (c) above of these General Conditions, when there is evidence that the representative of the Beneficiary has not taken the adequate remedial measures within a time period which the Bank considers reasonable, and in accordance with the due process guarantees of the Beneficiary country's legislation;
- (iv) issue a reprimand in the form of a formal letter of censure of the firm, entity or individual's behavior;
- (v) issue a declaration that an individual, entity or firm is ineligible, either permanently or for a stated period of time, to be awarded or participate in contracts under Bank-financed Programs except under such conditions as the Bank deems to be appropriate;
- (vi) refer the matter to appropriate law enforcement authorities; and/or

- (vii) impose other sanctions that it deems to be appropriate under the circumstances, including the imposition of fines representing reimbursement of the Bank for costs associated with investigations and proceedings. Such other sanctions may be imposed in addition to or in lieu of other sanctions.

(f) The imposition of any action to be taken by the Bank pursuant to the provisions referred to above may be public or private.

(g) 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, Executing Agency or Contracting Agency, as the case may be, has agreed to provide from the resources of the Contribution to make payments to a supplier of goods and related services or consultant services. The exceptions set forth in this paragraph (g) shall not apply if the Bank determines that acts of fraud and corruption occurred with respect to the procurement of, or the negotiation or execution of the contract for, such goods and related services or consultant 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 Programs, 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 Programs, 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 Programs, 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 Programs, 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 Programs, 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 Programs, 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 15 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, the Executing Agency, or the Contracting 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 for a minimum of three (3) years after the date of final disbursement of the Contribution, in such a way that: (a) make it possible to identify the sums received from the various sources; (b) 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) include sufficient detail to show the works performed, the goods acquired and the services contracted, as well as the utilization of such works, goods and services; (d) such documents include documentation relating to the bidding process and the execution of the contracts financed by the Bank including, but not limited to, bid requests, bid packages, summaries, bid evaluations, contracts, correspondence, work product and drafts, and invoices, including documents relating to the payment of commissions, and payments to agents, consultants and contractors; and (e) show the cost of the investments in each category and the progress of the Program.

Article 13. Inspections. (a) The Bank may establish such inspection procedures as it deems necessary to assure the satisfactory development of the Program.

(b) The Beneficiary, the Executing Agency and the Contracting Agency, if any, shall permit the Bank to inspect at any time the Program, the equipment and materials involved therein, and to examine such records and documents as the Bank may deem pertinent. The personnel which the Bank shall send or designate as investigators, agents, auditors or experts for this purpose shall receive the complete cooperation of the respective authorities. All the costs relating to transportation, salaries, and other expenses of such personnel shall be borne by the Bank.

(c) The Beneficiary, the Executing Agency or the Contracting Agency, as the case may be, shall, upon request of an authorized representative of the Bank, provide to the Bank any documents, including procurement-related documents, that the Bank might reasonably request. In addition, the Beneficiary, the Executing Agency and the Contracting Agency shall make their personnel available, upon reasonable notice, to respond to questions from Bank personnel, which arise during the review or audit of such documents. The Beneficiary, the Executing Agency or the Contracting Agency, as the case may be, shall produce the documents in a timely manner or shall submit an affidavit to the Bank setting forth the reasons why the requested material is unavailable or is being withheld.

(d) If the Beneficiary, the Executing Agency or Contracting Agency, as the case may be, refuses to comply with the Bank's request, or otherwise obstructs the Bank's review of the matter, the Bank in its sole discretion, may take appropriate action against the Beneficiary, Executing Agency or Contracting Agency, as the case may be.

Article 14. 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 15. Publication of Documents. Any document issued under the Bank's name or logotype, as part of a special Program, joint program, research Program or any other event financed with the resources of the Program intended for publication, shall be previously approved by the Bank.

Article 16. 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 17. 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 Program that may be undertaken directly or indirectly as a result of the execution of the Program.

Article 18. 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.

In cases of Agreements with Argentina, the parties agree that prior paragraphs (a) and (b), where it reads: "Secretary General of the Organization of American States", it shall read instead: "President of the International Court of Justice."

(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.

In cases of Agreements with Argentina, the parties agree that this paragraph (c) shall read instead: "The Arbitration Tribunal shall be convened at the place and date it designates and, once convened, it shall meet on the date decided by the Tribunal."

(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.

In cases of Agreements with Ecuador, the parties agree that, for the purposes of notification, this paragraph (f) shall read: “All notifications regarding the arbitration proceeding or to the award, shall be made in the manner provided in the Agreement. The parties expressly waive any other form of notification. Notwithstanding the foregoing, any party delivering a notification hereunder must also notify the Attorney General (Procurador General del Estado) of Ecuador.”

ANNEX

The Project

HYBRID BUS TEST PROGRAM IN BRAZIL AND COLOMBIA

I. Objective

- 1.01** The main objective of this project is to significantly accelerate the ability for cities to incorporate more fuel efficient, low-carbon buses in their transit systems, thereby greatly reducing CO₂ emissions.
- 1.02** The program consists of a multi-city coordinated hybrid test bus program with the objective of providing data and analysis to municipalities throughout the region regarding the reliability of hybrid buses, estimated emissions reduction and life-cycle costs, and other benefits and risks associated with the adoption of hybrid bus technology.

II. Description

- 2.01** In order to achieve the objective stated above, this Technical Cooperation will finance activities included in the three components that follow. Components reflect the three distinct phases of the Program. The project will include training, technical studies and analysis, purchase of testing equipment, and information dissemination. Buses for the test program will be provided by the suppliers as in kind contributions and made available by the Executing Agency.

Component 1 - Test preparation.

- 2.02** This component will include a review and analysis of each of the technologies to be included in the test; specific technical and performance differences of each technology that could affect test results. The activities to be financed will also include the development of methodologies for assessing cities driving cycles and for the scope and design of the hybrid bus tests. Finally, the component will include the identification of program risks and mitigation measures, a review of stakeholders and their commitments, and preparation of measurements and deliverables for each test and city.

Component 2 - Test execution.

- 2.03** This component will include tests in each city of the selected buses. Up to 10 hybrid buses in total will be made available by the Executing Agency. The Executing Agency therefore will make the necessary arrangements to ensure the compliance of the commitments made on the part of bus suppliers in each case. The Executing Agency will also facilitate the expected collaboration of bus transit operators, cities and research institutions, according to their involvement per city. Each hybrid bus will be tested against a relatively new diesel bus (baseline bus) with the same driving cycle. All testing

will include bus import and legal processing, tuning, driver training, mechanics training, and maintenance. Within this component two tests will be performed: one assessing bus performance (air emissions and propulsion systems) at maximum loading capacity with weights; and one assessing bus performance (air emissions and propulsion systems) over a 120 days operating under normal operating conditions. This component will also include operation costs analysis under different scenarios, data analysis, and report preparation on the results of the tests.

Component 3 - Economic analysis.

- 2.04** This component will include an analysis and recommendations for structuring the economic, financial, institutional, and regulatory strategy to foster the hybrid technology market in LAC. Specific attention will be given to finding solutions for the existing barriers, mainly addressing the incremental cost that exists between the conventional and hybrid technologies (period to be adjusted according to results from Component 1). This component will also include analysis and development of financial strategies and tariff structures to enable cities to increase or transform the bus fleets to include hybrid buses, and a strategy for information and dissemination of the results.

III. Cost and Financing

- 3.01** The Bank's financing for this project – totaling US\$1,498,751 – will be provided by the Sustainable Energy and Climate Change Multi-Donor Fund. Additional financing of US\$5,753,653 will be made available by the Executing Agency as an in-kind contribution in the form of providing the buses for the execution of the test (Component 2) and in assigning the necessary number of professionals on a part time basis to support Program execution.

Budget (US\$)			
Components	SECCI Fund	Clinton Foundation (in-kind)	Total
1. Test Preparation	120,000	0	120,000
2. Test Execution	1,255,971	5,725,933	6,981,904
3. Economic Analysis	41,000 0	0	41,000
Auditing	10,200	0	10,200
Project Coordinator and Administration	41,580	27,720	69,300
Evaluation	30,000	0	30,000
Total	1,498,751	5,753,653	7,252,404

Note: The estimated costs in components 1 and 2 include contingencies

IV. Execution

- 4.01** The William J. Clinton Foundation through the Clinton climate Initiative (WJCI/CCI) in taking on the role of Executing Agency of the program will work in collaboration with the Bank through the Transport Division (INE/TSP) and the Sustainable Energy and Climate Change Unit (INE/ECC) of the Infrastructure and Environment Department, both of which will work closely with the Country Offices in each country in the monitoring and supervision of the TC during the execution phase.
- 4.02** The Executing Agency will hire or designate a Project Coordinator, who will be financed with resources from the program and will be responsible for: (i) planning the activities included in this TC (ii) contracting with firms or consultants for the works, goods and services to be purchased with the resources of this TC; (iii) monitoring the activities implemented through this TC; and (iv) reporting to the IDB.
- 4.03** The Executing Agency will maintain a separate and specific bank account for the purposes of managing this Program and will be responsible for managing the Program's financial resources through the Project Coordinator.
- 4.04** Standard Bank procedures for auditing, international accounting norms and reporting will be followed. No later than 90 days after the date of project completion, the Executing Agency will present to the Bank an audit report on the financial statements of the Program. The report will be prepared by an independent auditing firm previously accepted by the Bank and will include the audit of cash receipts and disbursements, internal control procedures implemented by the Executing Agency and compliance to Bank procurement procedures.
- 4.05** The Executing Agency will also present to the Bank a Progress Report at the end of each phase/component (2.01) and a Final Report to the IDB within three (3) months after the date of project completion date. The Progress report will include information on: (a) the progress achieved in terms of the targets established in the Logical Framework agreed upon between the Executing Agency and the Bank; and (b) a summary of the problems encountered during the respective period, if any, and how they were resolved. An external final evaluation will be contracted by the Executing Agency and financed by the Bank.
- 4.06** The disbursements of the Contribution shall be based on the achievement of specific milestones previously agreed upon between the Executing Agency and the Bank, and in accordance with agreed means of verification for each case. The modality of execution by results does not exempt the Executing Agency from compliance with Bank policies in terms of eligibility of expenses and provision of the corresponding required documentation.