



LEG/SGO/JA/IDBDOCS-40732775

The Honourable Audley Shaw
Minister of Finance and the Public Service
Ministry of Finance and the Public Service
30 National Heroes Circle
Kingston 4
Jamaica, West Indies

Ref: Jamaica. Nonreimbursable Technical Cooperation
No. ATN/MA-15809-JA. Support to National
Water Commission for Improvements in
Corporatization & Institutional Strengthening.

Dear Honourable Minister Shaw:

The purpose of this letter of agreement, hereinafter referred to as the “Agreement”, between Jamaica, hereinafter referred to as the “Beneficiary”, and the Inter-American Development Bank, acting in its capacity as Administrator of the Multidonor Aquafund, hereinafter referred to as the “Bank”, which we are submitting for your consideration, is to formalize the terms and conditions of a grant for a nonreimbursable technical cooperation to the Beneficiary, up to the amount of five hundred thousand dollars of the United States of America (US\$500,000), chargeable to the resources of the Multidonor Aquafund, hereinafter referred to as the “Contribution”, to finance the procurement of goods and non-consulting services and the selection and contracting of consultants necessary for the execution of a technical cooperation to support the National Water Commission for improvements in corporatization and institutional strengthening, hereinafter referred to as the “Project”, which is described in the Annex to 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 attached hereto. The prevalence between the aforesaid parts and the Annex is established in Article 1 of the General Conditions.

Second. Executing Agency. The execution of the Project and the utilization of the resources of the Contribution shall be carried out by the National Water Commission of Jamaica, hereinafter referred to as the “Executing Agency”, whose legal and financial capacity to function as such is certified by the Beneficiary.

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Third. Conditions Precedent to First Disbursement. The first disbursement of the resources of the Contribution shall be subject to the fulfillment, to the satisfaction of the Bank: (a) of the conditions precedent stipulated in Article 2 of the General Conditions; and (b) of the requirement that the Beneficiary or the Executing Agency has presented evidence that there is an effective financial reporting system and internal control structure as referred to in Article 12 of the General Conditions.

Fourth. 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 October 21, 2016, and up to the date of entry into force (Effective Date) of this Agreement, provided that requirements substantially similar to those set forth in this Agreement have been fulfilled.

Fifth. Deadlines. (a) The period for execution of the Project shall be eighteen (18) months, from the Effective Date of this Agreement.

(b) The period for disbursement of the resources of the Contribution shall be twenty-four (24) months from said date. 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 only when duly justified, and with the written consent of the Bank.

Sixth. Total Cost of the Project and Additional Resources. (a) The total cost of the Project is estimated to be the equivalent of five hundred thousand dollars (US\$500,000).

(b) The Beneficiary undertakes to make timely provision of the resources required, in addition to the Contribution, including technical, logistical and administrative support necessary for the execution of the Project, as well as any other resources required for the complete and uninterrupted execution of the Project.

Seventh. Recognition of Expenses Chargeable to the Additional Resources. The Bank may recognize as part of the Additional Resources for the Project expenditures incurred or which may be incurred in the Project on or after October 21, 2016 and up to the Effective Date of this Agreement, provided that requirements substantially similar to those set forth in this Agreement have been fulfilled.

Eighth. Disbursement Currency. The Bank shall disburse the Contribution in dollars.

Ninth. Exchange Rate for Expenditures Incurred in Local Currency. For purposes of Article 9 of the General Conditions, the parties agree that the applicable exchange rate shall be that indicated in paragraph (b)(ii) of said Article. Accordingly, the agreed exchange rate shall be the exchange rate on the effective date on/in which the Beneficiary, the Executing Agency, or any other person or legal entity in whom the power to incur expenditures has been vested makes the related payments to the contractor, the supplier, or final beneficiary.

Tenth. Procurement of goods and non-consulting services. (a) For purposes of Article 10 of the General Conditions, the Parties agree that the Procurement Policies are those dated March 2011, which are contained in document GN-2349-9, approved by the Bank on April 19, 2011. If the Procurement Policies are amended by the Bank, the procurement of goods and works and non-consulting services shall be carried out in accordance with the provisions of the modified Procurement Policies, once they are made known to the Beneficiary and the Beneficiary agrees in writing to apply them.

(b) For the procurement of goods and non-consulting services, any of the methods described in the Procurement Policies may be used, provided that such method has been identified for the respective procurement in the Procurement Plan approved by the Bank. Country systems or subsystems may also be used in the manner described in Article 10(b) of the General Conditions.

(c) The threshold for determining the use of international competitive bidding will be made available to the Beneficiary or the Executing Agency, as the case may be, at www.iadb.org/procurement. Below that threshold, the selection method shall be determined according to the complexity and characteristics of the procurement, which should be reflected in the Procurement Plan approved by the Bank.

(d) Regarding the use of the national competitive bidding method, the respective national competitive bidding procedures may be used provided that, in the opinion of the Bank, these procedures ensure economy, efficiency, transparency and general consistency with the provisions of Section I of the Procurement Policies and taking into account the provisions of paragraph 3.4 of the Policy, among others.

Eleventh. Selection and Contracting of Consultant Services. (a) For purposes of the provisions of Article 10 of the General Conditions, the Parties agree that the Consultant Policies are those dated March 2011, which are contained in document GN-2350-9, approved by the Bank on April 19, 2011. If the Consultant Policies are amended by the Bank, the selection and contracting of consulting services will be carried out in accordance with the provisions of the amended Consultant Policies, once they are made known to the Beneficiary and the Beneficiary agrees in writing to apply them.

(b) For the selection and contracting of consulting services, any of the methods described in the Consultant Policies may be used, provided that such method for the respective procurement has been identified in the Procurement Plan approved by the Bank. Country systems or subsystems may also be used in the manner described in Article 10(b) of the General Conditions.

(c) The threshold for determining the short list of international consultants will be made available to the Beneficiary or the Executing Agency, as the case may be, at www.iadb.org/procurement. Below that threshold, the short list may be composed entirely of national consultants of the Beneficiary's country.

Twelfth. Procurement Plan update. In order to update the Procurement Plan in accordance with the provisions of Article 10(c) of the General Conditions, the Beneficiary must

use or, where appropriate, cause the Executing Agency to use, the implementation and monitoring system of procurement plans as determined by the Bank.

Thirteenth. Monitoring and Evaluation. The Beneficiary shall present the following reports to the Bank: (i) an annual operation's plan; (ii) semi-annual progress reports, within thirty (30) days after the end of each calendar semester (January-June and July-December); (iii) a mid-term evaluation report upon completion of 12 months of the disbursement period; and (iv) a final evaluation report upon completion of 23 months of the disbursement period. These reports will inform on planned activities, progress of the activities of the Project, execution issues and means of resolution.

Fourteenth. Supervision of the Financial Management of the Project. (a) In accordance with Article 13 of the General Conditions, the Beneficiary will present a final audited financial report for the Project, within ninety (90) days following the date of last disbursement of the resources of the Contribution.

(b) For purposes of Article 13(a) of the General Conditions, the fiscal year of the Project is the period between April 1 of one year and March 31 of the following year.

Fifteenth. Access to Information. (a) 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 this Agreement to contain information that may qualify as an exception to the principle of disclosure of information under the Access to Information Policy of the Bank, in which case the Beneficiary undertakes to identify such information in the relevant provisions of the Agreement. In accordance with the aforementioned policy, the Bank will make available on its "Web" page the text of this Agreement once it has entered into effect and the aforementioned period has expired, excluding only that information which the Beneficiary has identified as an exception to the principle of disclosure of information under this policy.

(b) In accordance with the Access to Information Policy referred to above, and subject to the provisions thereof, the Bank will disclose to the public the Audited Financial Statements ("AFSs") it receives from the Beneficiary in accordance with Paragraph Fourteenth.

(c) In cases where the Beneficiary identifies information contained in the AFSs that it considers confidential under the exceptions provided in the Access to Information Policy, it shall prepare an abridged version of the AFSs, acceptable to the Bank, for public disclosure.

Sixteenth. 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 corresponding document is delivered to the addressee at the address indicated on the first page of this Agreement, unless otherwise agreed by the parties in writing.

To the Bank:

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

Facsimile: (202) 623-3096

Please confirm your acceptance of the terms and conditions of this Agreement, in representation of the Beneficiary, by signing and returning one of the originals to the Bank's Country Office in Jamaica.

This Agreement shall be signed in two (2) equally authentic originals by the Beneficiary and the Bank, each acting through its duly authorized representative, and will enter into force on the date of its signature by the Beneficiary.

Yours faithfully,

/s/

Therese Turner-Jones
Representative of the Bank in
Jamaica

Agreed:

JAMAICA

/s/

Honourable Audley Shaw, CD, MP
Minister of Finance and the Public Service

Date: April 13, 2017

**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 granted 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 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, 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; and
- (ii) Presentation to the Bank of a timetable for the use of the Additional Resources.

(b) If within one hundred eighty (180) days from the date of entry into effect 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 or to the Executing Agency, as the case may be.

Article 3. Requisites for all disbursements. As a condition for all disbursements and without prejudice to the conditions precedent to the first disbursement of the resources of the Contribution established in Article 2 of these General Conditions and/or in the Special Conditions, if any, the Beneficiary or the Executing Agency, as the case may be, undertakes to: (a) present to the Bank in writing, whether physically or by electronic means, in such form and conditions as may be specified by the Bank, a disbursement request together with the pertinent documents and other background materials required by the Bank; and (b) open and maintain one or more bank accounts in a financial institution in which the Bank shall make the disbursements of the Contribution. In addition to the

above requirements, none of the circumstances described in Article 7 of these General Conditions shall have occurred. Unless the Bank otherwise agrees, disbursement requests must be presented no later than thirty (30) calendar days prior to the expiration date of the period for disbursement of the resources or of any extension thereof which the Beneficiary or the Executing Agency, as the case may be, and the Bank may have agreed to in writing.

Article 4. Disbursement procedures of the Contribution. (a) At the request of the Beneficiary or the Executing Agency, as the case may be, the Bank may make disbursements of the resources of the Contribution through: (i) reimbursement of expenditures; (ii) advance of funds; (iii) direct payments to third parties; and (iv) reimbursement under a letter of credit guarantee.

(b) **Reimbursement of Expenditures.** The Beneficiary or the Executing Agency, as the case may be, may request disbursements under the reimbursement of expenditures method when the Beneficiary or the Executing Agency, as the case may be, has paid for eligible expenditures with its own resources. Unless the parties agree otherwise, disbursement requests for reimbursing expenditures shall be made promptly to the extent that the Beneficiary or the Executing Agency, as the case may be, has incurred such expenditures, and not later than sixty (60) days following the conclusion of each calendar semester.

(c) **Advance of Funds.** The Beneficiary or the Executing Agency, as the case may be, may request disbursements under the advance of funds method, chargeable to the resources of the Contribution, in order to cover eligible expenditures of the Project.

- (i) The amount of the advance of funds shall be set by the Bank on the basis of:
 - (aa) the liquidity needs of the Project in order to cover periodic projections of eligible expenditures during a period of up to six (6) months, unless the financial plan provides for a longer period, which in no case may exceed twelve (12) months; and
 - (bb) the risks associated with the capacity demonstrated by the Beneficiary or the Executing Agency, as the case may be, to manage and use the resources of the Contribution.
- (ii) Each advance of funds shall be subject to: (aa) the request for advance of funds being presented in a manner acceptable to the Bank; and (bb) with the exception of the first advance of funds, the Beneficiary or the Executing Agency, as the case may be, having presented a justification for the use of at least eighty percent (80%) of the total cumulative balances pending justification for this purpose, and the Bank having accepted such justification, unless the financial plan specifies a lower percentage, which in no case may be less than fifty percent (50%).
- (iii) The Bank may, during the term of the financial plan, provide for a one-time increase in the amount of the last advance of funds granted to the Beneficiary or the Executing Agency, as the case may be, to the extent that additional resources are needed to pay eligible expenditures that were unforeseen in said plan.

- (iv) The Beneficiary or the Executing Agency, as the case may be, shall present the last advance of funds request no later than thirty (30) days prior to the date of the expiration of the disbursement period established in the Special Conditions or any extension thereof, in the understanding that the justification for such advance of funds shall be presented to the Bank during the closing period as established in Article 5 of the General Conditions. The Bank shall not disburse resources subsequent to the expiration of the disbursement period or any extension thereof.
- (v) The value of each advance of funds to the Beneficiary or the Executing Agency, as the case may be, must be maintained in the equivalent value expressed in the respective disbursement currency. Eligible expenditures incurred with resources of an advance of funds must be justified in the equivalent of the total amount of the advance of funds expressed in the disbursement currency, using the exchange rate established in this Agreement. The Bank may accept adjustments in the justification of the advance of funds due to exchange rate fluctuations, provided that they do not impact the execution of the Project.
- (vi) The Bank may reduce or cancel the total aggregate balance of any advance of funds should the Bank determine that the disbursed resources of the Contribution have not been duly and timely used or justified, to the Bank's satisfaction, in accordance with the provisions established in this Agreement.

(d) **Direct payments to third parties.** The Beneficiary or the Executing Agency, as the case may be, may request disbursements under the method of direct payments to third parties, by means of which the Bank directly pays providers or contractors on behalf of the Beneficiary or the Executing Agency, as the case may be. In case of direct payments to third parties, the Beneficiary or the Executing Agency shall be responsible for payment of the amount equivalent to the difference between the amount of the disbursement requested by the Beneficiary or the Executing Agency and the amount received by the third party as the result of exchange rate fluctuations, commissions, and other financial costs.

(e) **Reimbursement under a Letter of Credit Guarantee.** The Beneficiary or the Executing Agency, as the case may be, may request disbursements through reimbursement under a letter of credit, in order to reimburse commercial banks for payments made to contractors or providers of goods and services by virtue of a letter of credit issued and/or confirmed by a commercial bank and guaranteed by the Bank. The letter of credit must be issued and/or confirmed in a manner satisfactory to the Bank. The resources committed under the letter of credit and guaranteed by the Bank shall be used exclusively for the purposes established in the letter of credit for as long as the guarantee remains in effect.

Article 5. Closing Period. (a) The Beneficiary undertakes to carry out, or to cause the Executing Agency to carry out, as the case may be, the following actions within a ninety (90)-day period from the date stipulated for the final disbursement of the Contribution: (i) finalize pending

payments to third parties, if any; (ii) reconcile its books and present to the Bank's satisfaction the supporting documentation relating to expenditures charged to the Project and other information that the Bank may request; and (iii) return to the Bank the unjustified balance of disbursed resources of the Contribution.

(b) Notwithstanding the foregoing, if this Agreement provides for external financial audit reports financed with resources of the Contribution, the Beneficiary or the Executing Agency, as the case may be, agrees to reserve, in the manner agreed with the Bank, sufficient resources to cover the payment of the corresponding auditing services. In this case, the Beneficiary or the Executing Agency, as the case may be, also undertakes to agree with the Bank as to how the corresponding payments for such audits will be made. In the event the Bank does not receive the above-mentioned external financial audit reports within the periods stipulated in this Agreement, the Beneficiary or the Executing Agency, as the case may be, agrees to return to the Bank the resources reserved for such purpose, which shall not be construed as a waiver by the Bank to exercise the rights set forth in Article 7 of this Agreement.

Article 6. Expenditures chargeable to the Contribution. The Contribution shall exclusively finance the eligible expenditures included in the categories of expenditures which are set forth as chargeable to the Contribution in the budget contained in the Annex that describes the Project. Only direct and actual expenditures made for the execution of the Project may be charged to the Contribution. Indirect or general operating expenses, which are not included in the Project budget, cannot be charged to the Contribution.

Article 7. Suspension and cancellation of disbursements. (a) The Bank, by means of a notice to the Beneficiary, may suspend disbursements or cancel the undisbursed portion of the Contribution if any of the following circumstances occurs: (i) the failure of the Beneficiary or the Executing Agency, as the case may be, 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 Project. Under these circumstances, the Bank shall notify in writing the Beneficiary or the Executing Agency, as the case may be, 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 Beneficiary or the Executing Agency, which, in the Bank's opinion, might affect the timely attainment of the Project'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) In addition to the provisions of paragraph (a) above, the Bank may: (i) suspend disbursements if, in accordance with the Bank's sanctions procedures, it is determined at any stage that an employee, agent or representative of the Beneficiary or the Executing Agency has committed a prohibited practice, as defined in Article 8 of these General Conditions (hereinafter "Prohibited Practices") during the procurement process or during the execution of a contract; and (ii) cancel the undisbursed portion of the Contribution pertaining unequivocally to the procurement of certain

goods, works or related services, or consulting services, if (aa) it determines at any time that the procurement was carried out without following the procedures set forth in this Agreement; or (bb) in accordance with the Bank's sanctions procedures, it is determined that any firm, entity or individual bidding for or participating in a Bank-financed activity including, inter alia, applicants, bidders, contractors, consulting firms and individual consultants, personnel, subcontractors, sub-consultants, providers of goods or services, concessionaires, the Beneficiary or the Executing Agency (including their respective officers, employees and representatives, irrespective of whether the agency is express or implied) has committed a Prohibited Practice during any stage of procurement or during the execution of a contract, when there is evidence that the representative of the Beneficiary or the Executing Agency has not taken the appropriate corrective action (including, among other things, adequate notice to the Bank upon learning of the Prohibited Practice) within a time period which the Bank considers reasonable.

Article 8. Prohibited Practices. (a) For the purposes of this Agreement, a Prohibited Practice shall be understood to include the following practices: (i) a “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party; (ii) a “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party 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 the property of the party to influence improperly the actions of a party; (iv) a “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party; and (v) an “obstructive practice” is: (aa) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or making false statements to investigators in order to materially impede a Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided in this Agreement.

(b) In addition to the provisions in Articles 7(c)(i) and 7(c)(ii)(bb) of these General Conditions, if it is demonstrated that in accordance with the sanctions procedures of the Bank any firm, entity or individual bidding for or participating in a Bank-financed activity including, inter alia, applicants, bidders, suppliers, contractors, consulting firms and individual consultants, personnel, sub-contractors, sub-consultants, goods and service providers, concessionaires, the Beneficiary or the Executing Agency (including their respective officers, employees, and agents, irrespective of whether the agency is express or implied) has engaged in a Prohibited Practice, during any stage of the procurement process or during the execution of a contract, the Bank may:

- (i) decline to finance any proposal to award a contract for the procurement of works, goods, related services and the contracting of consultant services;
- (ii) declare a procurement ineligible for Bank financing, when there is evidence that the representative of the Beneficiary or the Executing Agency has not taken the adequate remedial measures (including, among other things,

adequate notice to the Bank upon learning of the Prohibited Practice) within a time period which the Bank considers reasonable;

- (iii) issue a reprimand in the form of a formal letter of censure of the firm's, entity's or individual's behavior;
- (iv) declare that a firm, entity, or individual is ineligible, either permanently or for a stated period of time, to (aa) be awarded or participate in Bank-financed activities, and (bb) be designated sub-consultant, sub-contractor, or goods and services supplier of an otherwise eligible firm being awarded a contract to execute Bank-financed activities;
- (v) refer the matter to appropriate law enforcement authorities; and/or
- (vi) 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 the sanctions mentioned in Article 7(c)(i), in Article 7(c)(ii)(bb) and in this Article 8(b), numerals (i) through (v).

(c) The provisions of Article 7(c)(i) and Article 8(b)(i) shall be applicable in cases where the parties have been declared temporarily ineligible for the award of new contracts pending a final decision of a sanction proceeding, or otherwise.

(d) The imposition of any measure to be taken by the Bank pursuant to the provisions referred to above may be public.

(e) Any firm, entity or individual bidding for or participating in a Bank-financed activity including, inter alia, applicants, bidders, contractors, consulting firms and individual consultants, personnel, sub-contractors, sub-consultants, providers of goods or services, concessionaires, the Beneficiary or the Executing Agency (including their respective officers, employees, and agents, irrespective of whether the agency is express or implied) may be subject to sanctions pursuant to agreements that the Bank may have with other international financing institutions regarding the mutual enforcement of debarment decisions. For purposes of this sub-paragraph (e) the term "sanction" shall mean any debarment, conditions on future contracting or any publicly-disclosed action taken in response to a violation of an international financing institution applicable framework for addressing allegations of Prohibited Practices.

(f) When a Beneficiary procures goods, works or services other than consulting services directly from a specialized agency or hires a specialized agency to provide technical assistance under an agreement between the Beneficiary and such specialized agency, all provisions contained in this Agreement regarding sanctions and Prohibited Practices shall apply in their entirety to applicants, bidders, contractors, consulting firms or individual consultants, personnel, sub-contractors, sub-consultants, suppliers of goods and services (including their respective officers, employees, and

agents, irrespective of whether the agency is express or implied), or any other entity that has signed contracts with such specialized agency to supply such goods, works or services other than consulting services in connection with Bank-financed activities. The Bank retains the right to require the Beneficiary to invoke remedies such as suspension or termination. The Beneficiary agrees that contracts with specialized agencies shall include provisions requiring said agencies to consult the Bank's list of firms and individuals declared ineligible temporarily or permanently by the Bank. In the event that a specialized agency signs a contract or purchase order with a firm or an individual declared ineligible either temporarily or permanently by the Bank, the Bank will not finance the related expenditures and will apply other remedies as appropriate.

Article 9. Exchange Rate. (a) The Beneficiary undertakes to justify, or to cause the Executing Agency to justify, as the case may be, expenditures chargeable to the Contribution or the Additional Resources, expressing such expenditures in the currency of denomination of the respective disbursement.

(b) To determine the equivalence of an eligible expenditure incurred in the local currency of the Beneficiary's country in relation to the currency in which the disbursements are made, for purposes of accounting and justification of expenses, regardless of the source of financing of the eligible expenditure, one of the following exchange rates shall be used, pursuant to the Special Conditions:

- (i) the exchange rate in force on the date on which the disbursement currency is converted into the local currency of the Beneficiary's country; or
- (ii) The exchange rate in force on the date of payment of the expenditure in the local currency of the Beneficiary's country.

(c) In those cases in which the exchange rate established in paragraph (b)(i) of this Article is selected, to determine the equivalent of expenditures incurred in the local currency chargeable to the Additional Resources or the reimbursement of expenditures chargeable to the Contribution, the rate used shall be the exchange rate agreed upon with the Bank in the Special Conditions.

Article 10. Selection and contracting of non-consulting services and procurement of goods and contracting of consulting services. (a) Subject to the provisions of paragraph (b) of this Article, the Beneficiary undertakes to carry out or, where appropriate, cause the Executing Agency or the contracting agency, if any, to carry out the procurement of non-consulting services, as well as the procurement of goods, in accordance with the Procurement Policies and the Procurement Plan approved by the Bank, and the selection and contracting of consulting services, in accordance with the Consultant Policies and the Procurement Plan approved by the Bank. The Beneficiary represents that it is aware of the Procurement Policies and Consultant Policies and undertakes to inform the Executing Agency, the Contracting Agency, and the specialized agency, as the case may be, of these policies.

(b) When the Bank has validated a system or subsystem of the member country of the Bank where the Project will be executed, the Beneficiary or the Executing Agency, as the case may be, may carry out the procurement and contracting financed wholly or partially with resources of the Contribution using such systems or subsystem, in accordance with the terms of the validation of the Bank and applicable validated legislation and processes. The terms of such validation shall be notified in writing by the Bank to the Beneficiary and the Executing Agency. Use of the country system or subsystem may be suspended by the Bank when, in its opinion, changes have occurred in the parameters or practices the Bank used as the basis for its validation, until such time as the Bank determines whether such changes are compatible with international best practices. During such suspension, the Procurement Policies and Consultant Policies of the Bank will apply. The Beneficiary, directly or through the Executing Agency, as the case may be, undertakes to notify the Bank of any change in the applicable legislation or processes that have been so validated. The use of country systems or subsystems does not constitute a waiver of the application of the provisions set forth in Section I of the Procurement Policies and Consultant Policies, including the requirement that the respective procurement and contracting of services be contained in the Procurement Plan and is subject to the remaining provisions of this Agreement. The provisions of Section I of the Procurement Policies and Consultant Policies shall apply to all contracts, regardless of amount or contracting method. The Beneficiary agrees to include, or to cause the Executing Agency, as the case may be, to include in the model bidding documents, contracts, and instruments used in electronic or information systems (in physical or electronic media) measures to ensure the application of the provisions set forth in Section I of the Procurement Policies and Consultant Policies, including the provisions on Prohibited Practices.

(c) The Beneficiary, directly or via the Executing Agency as the case may be, undertakes to update the Procurement Plan at least annually or more frequently, depending on the Project needs. Each updated version of the Procurement Plan shall be submitted for review and approval of the Bank.

(d) The Bank will conduct a review of the selection process, contracting and procurement, as set forth in the Procurement Plan. At any time during the execution of the Project, the Bank may change the method of review of these processes, with prior notice to the Beneficiary or the Executing Agency. The changes approved by the Bank shall be reflected in the Procurement Plan.

(e) For purposes of this Article: (i) "Contracting Agency" means the entity with legal capacity to enter into contracts and, as agreed with the Beneficiary or the Executing Agency, as the case may be, assumes all or part of the responsibility of carrying out the procurement of goods and works, consulting services or non-consulting services for the Project; (ii) "Procurement Plan" means a tool for programming and monitoring the procurement related to the Project, in the terms described in the Procurement Policies and Consultant Policies; (iii) "Procurement Policies" means the Policies for the Procurement of Works and Goods financed by the Inter-American Development Bank in force at the time of the approval of the Project by the Bank; (iv) "Consultant Policies" means the Policies for the selection and contracting of consultants financed by the Inter-American Development Bank, which are in force at the time of the approval of the Project by the Bank.

(f) With resources of the Contribution and up to the amount allocated for that purpose in the budget set forth in the Annex that describes the Project, the Beneficiary or the Executing Agency, as the case may be, may procure the goods and contract the consulting services and non-consulting services required for the execution of the Project.

(g) When the goods and services procured for the Project are financed entirely with Additional Resources, the Beneficiary or the Executing Agency, as the case may be, shall, whenever possible, follow procedures that allow for the participation of several bidders or proponents, and shall take into account principles of economy, efficiency and reasonability of price.

(h) When sources of financing other than resources of the Contribution or of the Additional Resources are used, the Beneficiary or the Executing Agency, as the case may be, may agree with the financing entity the procedure to be followed for the procurement of goods and related services and the contracting of consultants. Notwithstanding, at the Bank's request, the Beneficiary or the Executing Agency, as the case may be, shall demonstrate the reasonability of both the price agreed upon or paid for the procurement of such goods and related services or the contracting of consultants. The Beneficiary or the Executing Agency, as the case may be, shall likewise demonstrate that the quality of the goods and related services and of the consultants meets the technical requirements of the Project.

(i) During the execution of the Project, the goods referred to in subsection (f) above shall be used exclusively for the execution of the Project. Following the completion of the execution of the Project, such goods may be used for other purposes.

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

Article 11. Other contractual obligations of consultants. (a) In addition to the special requirements included in Article 12(d), Article 13(g) and Article 14(e) of these General Conditions, in the Special Conditions, in the Annex or Annexes and in the respective terms of reference, the Beneficiary or the Executing Agency, as the case may be, agrees that contracts signed with consultants shall also specify the consultants' obligations to:

- (i) Provide any clarifications or additional information that the Beneficiary, 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;
- (ii) Provide the Beneficiary or the Executing Agency and the Bank with any additional information they may reasonably request concerning the performance of their work;
- (iii) In the case of international consultants, perform their work in an integrated manner with the local professional staff assigned or contracted by the

Beneficiary or the Executing Agency to participate in the execution of the Project, with a view to carrying out technical and operational training of such staff by the conclusion of the work;

- (iv) 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 or produced by the consultants under the consulting contracts financed with resources of the Project; and

(b) Notwithstanding paragraph (a)(iv) above, in order to obtain a timely dissemination of the results of the Project, 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 Project, with the understanding that the Beneficiary or the Executing Agency shall utilize such consulting products under the terms set forth in Article 16 of these General Conditions.

Article 12. Financial information and internal control systems. (a) The Beneficiary shall maintain, or cause the Executing Agency to maintain, as the case may be, internal controls so as to reasonably ensure: (i) that Project resources are used for the purposes of this Agreement, devoting special attention to the principles of economy and efficiency; (ii) that Project assets are adequately safeguarded; (iii) that Project transactions, decisions, and activities are duly authorized and executed in accordance with the provisions of this Agreement and any other contract related to the Project; and (iv) that transactions are properly documented and recorded in a way that facilitates the production of timely and reliable reports.

(b) The Beneficiary shall maintain, and shall cause the Executing Agency, if any, to maintain, an acceptable and reliable financial management system for the timely management of Project resources that provides for: (i) financial planning; (ii) accounting, budgetary, and financial record-keeping; (iii) contract administration; (iv) payment processing; and (v) the issuance of financial audit reports and other reports associated with the resources of the Contribution, the Additional Resources, and other financing sources of the Project, if any.

(c) The Beneficiary shall preserve, and shall cause the Executing Agency, as the case may be, to preserve, the original records of the Project for a minimum period of three (3) years after the expiration date of the disbursement period of the resources or any extension thereof. Such documents and records shall be maintained adequately in order to: (i) substantiate Project-related activities, decisions, and transactions, including all expenditures incurred; and (ii) show the correlation of the expenditures incurred chargeable to the Contribution with the respective disbursement made by the Bank.

(d) The Beneficiary shall include, or cause the Executing Agency and the Contracting Agency, if any, to include in all bidding documents, requests for proposals, and contracts financed with the resources of the Contribution that they enter into, respectively, a provision requiring that providers of goods or services, contractors, subcontractors, consultants and their agents, personnel, subconsultants, subcontractors, or concessionaires contracted by them, keep all documents and

records related to activities financed with resources of the Contribution for a period of seven (7) years after completion of the work contemplated in the relevant contract.

Article 13. External Financial Audit Reports and other Financial Reports. (a) Unless the Special Conditions establish otherwise, the Beneficiary, directly or through the Executing Agency, as the case may be, shall present the Bank with the external financial audit reports and other reports identified in the Special Conditions within one hundred twenty (120) days following the closing of each fiscal year of the Project, during the disbursement period or any extension thereof, and within one hundred twenty (120) days following the date of the last disbursement.

(b) In addition, the Beneficiary, directly or through the Executing Agency, as the case may be, shall present to the Bank other financial reports in such form and with such content and frequency as the Bank may reasonably request during the Project's execution when, in the opinion of the Bank, the analysis of the level of the Project's fiduciary risk, complexity, or nature so warrant.

(c) Any external audit that may be required under the provisions of this Article and the corresponding provisions of the Special Conditions shall be performed by external auditors who have been previously accepted by the Bank or by a supreme audit institution previously accepted by the Bank, in accordance with auditing principles and standards acceptable to the Bank. The Beneficiary, directly or through the Executing Agency, as the case may be, shall authorize the supreme audit institution or the independent auditors to provide the Bank with such additional information it may reasonably request with respect to the external financial audit reports.

(d) The Beneficiary, directly or through the Executing Agency, as the case may be, shall select and contract the external auditors indicated in paragraph (c) above, in accordance with the procedures and terms of reference agreed upon with the Bank. In addition, the Beneficiary or the Executing Agency, as the case may be, shall provide to the Bank any information it requests relating to the independent auditors under contract.

(e) In the event an external audit required under the provisions of this Article and the corresponding provisions of the Special Conditions is to be performed by a supreme audit institution and such agency is unable to perform the audit in accordance with requirements satisfactory to the Bank or within the deadlines, for the period, or with the frequency stipulated in this Agreement, the Beneficiary or the Executing Agency, as the case may be, shall select and contract the services of external auditors acceptable to the Bank, as provided under paragraphs (c) and (d) of this Article.

(f) Notwithstanding the provisions above, the Bank may, on an exceptional basis, select and contract the services of external auditors to audit the financial audit reports and other reports as provided in this Agreement when: (i) pursuant to the findings of a Bank-conducted cost-benefit analysis, it is determined that the benefits associated with the hiring of such services by the Bank outweigh the costs; (ii) there is limited access to auditing services in the country; or (iii) special circumstances warrant the selecting and hiring of such services by the Bank.

(g) The Bank reserves the right to request the Beneficiary or the Executing Agency, as the case may be, to have external audits other than financial audits or to have services carried out

relating to the auditing of projects, of the Executing Agency and related entities, of the financial information system, and of the bank accounts of the Project, among others. The nature, frequency, scope, timing, methodology, type of applicable auditing norms, reports, auditor selection procedures, and terms of reference for the audits shall be agreed upon between the parties.

(h) Bidding documents and contracts that the Beneficiary or the Executing Agency enter into with a supplier of goods or services, contractor, sub-contractor, consultant, sub-consultant, personnel or concessionaire shall include a provision allowing the Bank to inspect any accounts, records and other documents relating to the submission of proposals and contract performance and to have them audited by auditors appointed by the Bank.

Article 14. Inspections. (a) The Bank may establish such inspection procedures as it deems necessary to ensure the satisfactory development of the Project.

(b) The Beneficiary or the Executing Agency, as the case may be, shall permit the Bank to inspect at any time the Project and the equipment and materials involved therein, and to examine such records and documents as the Bank may deem pertinent. The personnel whom the Bank sends or designates 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 or the Executing 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 may reasonably request. In addition, the Beneficiary and the Executing Agency shall make their personnel available, when requested and upon reasonable notice, to respond to questions from Bank personnel, which arise during the review or audit of such documents. The Beneficiary or the Executing 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 or the Executing 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 such measures as it considers appropriate against the Beneficiary or Executing Agency, as the case may be.

(e) The Beneficiary agrees that bidding documents, requests for proposals and contracts financed with resources of the Contribution that the Beneficiary or the Executing Agency enter into shall include a provision that requires applicants, bidders, providers of goods or services and their representatives, contractors, sub-contractors, consultants and their representatives, sub-consultants, service providers and concessionaires to: (i) permit the Bank to inspect any and all accounts, records, and other documents relating to the submission of bids and contract performance as well as to have them audited by auditors appointed by the Bank; (ii) assist the Bank with its investigation; and (iii) deliver any document necessary for the investigation of allegations of Prohibited Practices and make available their employees or agents with knowledge of the Bank-financed activities to respond to questions from Bank personnel or any properly designated investigator, agent, auditor or

consultant relating to the investigation. If the applicant, bidder, supplier and its agent, contractor, consultant, personnel, subcontractor, sub-consultant, service provider or concessionaire fails to cooperate and/or comply with the Bank's request, or otherwise obstructs the investigation, the Bank, in its sole discretion, may take appropriate action against the applicant, bidder, supplier and its agent, contractor, consultant, personnel, sub-contractor, subconsultant, service provider or concessionaire.

Article 15. Other Commitments. The Beneficiary, either directly or through the Executing Agency shall also:

- (a) Provide the consultants and local experts with administrative support, 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 thereon;
- (c) Provide the Bank with any other additional information or legal reports as it may reasonably request concerning the execution of the Project and the use of the Contribution and the Additional Resources; and
- (d) Keep the Bank's Representative in the respective country or countries informed of all aspects of the Project.

Article 16. Publication of Documents. Any document issued under the Bank's name or logotype, which is intended for publication as part of a special project, joint program, research initiative or any other activity financed with the resources of the Project, shall be previously approved by the Bank.

Article 17. Supervision in the Field. Without prejudice to the supervision of the Project activities performed by the Beneficiary or the Executing Agency, as the case may be, the Bank may supervise the Project in the field.

Article 18. Limitation of the Bank's Obligation. It is understood that the granting of the Contribution by the Bank does not constitute any obligation whatsoever on its behalf to totally or partially finance any project or program that may directly or indirectly result from the execution of the Project.

Article 19. 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 or the arbitrators fail to agree on who shall be the Referee, or if one of the parties fails to appoint the arbitrator, the Referee shall be appointed, at the request of either party, by

the Secretary General of the Organization of American States. If either of the parties fails to appoint an arbitrator, he or she shall be appointed by the Referee. If either of the appointed arbitrators or the Referee is unwilling or unable to act or to continue to act, his or her successor shall be appointed in the same manner as for the original appointment. The successor shall perform the same functions and shall have the same powers as his or her predecessor.

- (b) **Initiation of the Procedure.** In order to submit the controversy to arbitration, the claimant shall address to the other party a written communication setting forth the nature of the claim, the satisfaction or compensation sought, and the name of the arbitrator it has appointed. The party receiving such communication shall, within forty-five (45) days, notify the adverse party of the name of the person it has appointed as arbitrator. If, within thirty (30) days after delivery of such notification to the claimant, the parties have not agreed upon the person who is to act as Referee, either party may request the Secretary General of the Organization of American States to make the appointment.
- (c) **Convening of the Tribunal.** The Arbitration Tribunal shall be convened in Washington, District of Columbia, on the date designated by the Referee and, once convened, the Tribunal itself shall decide when it shall meet.
- (d) **Procedure.**
 - (i) The Tribunal shall be competent only to hear the matter in controversy. It shall adopt its own procedures and may on its own initiative designate whatever experts it considers necessary. In any case, it shall give the parties the opportunity to make oral presentations.
 - (ii) The Tribunal shall proceed *ex aequo et bono*, basing itself on the terms of this Agreement, and shall issue an award even if either party should fail to appear or to present its case.
 - (iii) The award shall be in writing and shall be adopted with the concurrent vote of at least two of the members of the Tribunal. It shall be handed down within sixty (60) days from the date on which the Referee has been appointed, unless the Tribunal determines that, due to special and unforeseen circumstances, such period should be extended. The parties shall be notified of the award by means of a communication signed by at least two members of the Tribunal. The parties agree that any award of the Tribunal shall be complied with within thirty (30) days from the date of notification and it shall be final and not be subject to any appeal.
- (e) **Costs.** The fees of each arbitrator shall be paid by the party which appointed him or her and the fees of the Referee shall be paid by both parties in equal proportion. Prior to the convening of the Tribunal, the parties shall agree on the remuneration of any

other person who by mutual agreement, they deem should participate in the arbitration proceedings. If such agreement is not reached in a timely manner, the Tribunal itself may determine the compensation that is reasonable for such person under the circumstances. Each party shall defray its own expenses in the arbitration proceedings but the expenses of the Tribunal shall be divided and borne equally by both parties. Any doubt regarding the division of expenses or the manner in which they are to be paid shall be determined, without appeal, by the Tribunal.

- (f) **Notification.** All notifications regarding the arbitration proceeding or the award shall be made in the manner provided in this Article. The parties expressly waive any other form of notification.

ANNEX

THE PROJECT

Support to National Water Commission for Improvements in Corporatization & Institutional Strengthening

I. Objective

- 1.01** The general objective of the Project is to support the National Water Commission (NWC) with improving the quality and sustainability of the NWC's services to its customers. Specifically, the Project aims to: (i) improve NWC's capacity to fund its investment program; (ii) support the preparation of plans for improvements of NWC corporate governance (CG) arrangements; and (iii) develop a detailed training plan for institutional strengthening of NWC's business planning and operations and maintenance (O&M) protocols.

II. Description

- 2.01** In order to achieve the above mentioned objective, the Program would finance consulting services to define CG improvements, and the preparation of a detailed training plan for institutional strengthening of NWC's business planning and O&M protocols. Accordingly, the TC has two components as follows:

Component 1. Corporate Governance Improvements

- 2.02** Under this component the project will finance the contracting of a consultant to apply the Corporate Governance tool, as outlined in IDB Technical Note 106 Corporate Governance in water and sanitation enterprises, formulate an improvement plan for Corporate Governance practices within the NWC, and issue a professional opinion for development of a specific project to implement the Corporate Governance Action Plan. The consultant will review the various models of public private partnership arrangements that have involved water utilities in Latin America, the Caribbean and elsewhere, broadly categorizing them into: (a) management contract; (b) lease contract; (c) BOT/BOO; (d) concession; (e) fully-utility concession; and (f) asset sale (privatization). In addition, examination of instances of public offerings and private placement should also be reviewed. The consultant will define steps towards, and the potential benefits of, diversification of the ownership structure of NWC. In conducting this assignment, the consultant will undertake the tasks in collaboration with the NWC Board of Commissioners and the Ministry responsible for the NWC.

Component 2. Institutional Strengthening

- 2.03** Under this component, the project will finance consulting services to assess NWC's strategic plan, business planning mechanisms and O&M arrangements. The consultants will benchmark good practices from a comparable country and identify where improvements are needed in the following areas: business planning and tariff setting/negotiations; project identification and feasibility studies; project execution; customer service delivery; and O&M. Based on the identified needs, the consultants will prepare training and capacity building programs to be institutionalized within NWC.

III. Total Cost of the Project

- 3.01** The estimated cost of the Project is the equivalent of US\$500,000, in accordance with the following Budget:

Budget
(in US\$)

ACTIVITY/COMPONENT	DESCRIPTION	BANK	TOTAL
Corporate Governance Improvements	Definition of CG improvements	144,388	144,388
Institutional Strengthening	Development of business planning and tariff setting/negotiations; project identification and feasibility studies; project management; and O&M	254,870	254,870
Other costs	Contingencies, financial audit, and evaluation	100,742	100,742
Total		500,000	500,000

IV. Execution

- 4.01** The Executing Agency of the Project will be the NWC. The Project will be implemented by the NWC Project Executing Unit, under the leadership of the Program Manager who reports to the NWC President. The NWC will be responsible for the contracting of the required consulting services.