

The Hon. Zhivargo S. Laing
Minister of State in the Ministry of Finance
Sir Cecil Wallace-Whitfield Centre
P. O. Box N-3017
Nassau, NP,
The Bahamas

Ref.: The Bahamas. Nonreimbursable
Technical Cooperation No.
ATN/WP-11596-BH. "Legal and
Regulatory Framework Update."

Dear Minister:

This letter of agreement (the "Agreement") between the Commonwealth of The Bahamas (the "Beneficiary") and the Inter-American Development Bank (the "Bank"), acting in its capacity as Administrator of the IDB-Netherlands Water Partnership Program ("INWAP"), is to formalize the granting of a nonreimbursable technical cooperation (the "Technical Cooperation") to the Beneficiary to support the execution of a program for a legal and regulatory framework update (the "Program"). The terms of this Technical Cooperation are included in the Plan of Operations, approved on May 4, 2009, which principal terms are contained in Appendix A and which forms an integral part of this Agreement. The principal aspects of this Technical Cooperation are the following:

1. The Bank shall expend from the resources of the INWAP an amount of up to two hundred and fifty thousand dollars of the United States of America (US\$250,000) (the "Contribution") to contract and pay individual expert(s) or consulting firm(s) (the "Consultants") necessary to meet the objectives of this Technical Cooperation as described in Appendix A. The Contribution is granted on a nonreimbursable basis. Unless otherwise stated in this Agreement, the term "dollars" shall hereinafter refer to the currency of legal tender of the United States of America.
2. The Beneficiary undertakes to assist the Consultants in the performance of their tasks, and provide the necessary technical, logistic and secretarial support, and related expenses, required for the execution of the Technical Cooperation. The amount of counterpart resources to be provided by the Beneficiary is estimated to be the equivalent of fifty thousand dollars (US\$50,000).
3. The period for execution of the Program shall be eight (8) months, from the effective date of this Agreement. The period for disbursements of the resources of the Contribution shall be twelve (12) months from the same date. Any part of the Contribution which has not been utilized within this period of twelve (12) months shall be canceled. The aforementioned periods and any others that may be stipulated in this Agreement may be extended, when duly justified, with the written consent of the Bank.

4. By virtue of this Agreement, the Beneficiary agrees that the Bank shall use the resources of the Contribution directly and exclusively to contract and pay the Consultants necessary to meet the objectives of this Technical Cooperation. The Bank agrees to submit the name of each Consultant for the Beneficiary's approval, prior to contracting such Consultant for the execution of any corresponding study or other activity contemplated in this Technical Cooperation.
5. The Beneficiary undertakes to assist the Consultants in the performance of their tasks, and provide the necessary technical, logistic, and secretarial support required for the execution of the Technical Cooperation.
6. The financing of the consulting services pursuant to this Agreement does not imply any commitment whatsoever by the Bank to finance, wholly or partially, any other program or project that might directly or indirectly result from the execution of this Technical Cooperation. The opinions of the Consultants shall not commit the Bank to the same position. The Bank reserves the right to express any comments or reservations regarding such opinions as it may deem appropriate.

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

Yours faithfully,

Inter-American Development Bank

/s/ Oscar Spencer

Oscar Spencer
Representative in The Bahamas

AGREED:

Commonwealth of The Bahamas

/s/ Zhivargo S. Laing

Hon. Zhivargo S. Laing
Minister of State in the Ministry of Finance

Date: August 5, 2009

Place: Nassau, Bahamas

APPENDIX A

PLAN OF OPERATIONS

Legal and Regulatory Framework Update (Water Sector) BH-T1017

Beneficiary:	Commonwealth of The Bahamas; Water and Sewerage Corporation; Ministry of The Environment (MOTE), Public Utilities Commission and the water and sanitation sector of The Bahamas.	
Project Team:	Evan Cayetano (WSA/CJA) Team Leader; Yvon Mellinger (INE/WSA) Alternate Team Leader; Colin Forsythe (TSP/CBA); Camille Davis-Thompson (CCB/CBA); Hyun Jung Lee (LEG/SGO); and Catalina Gallego (INE/WSA).	
Executing Agency:	Inter-American Development Bank, through its Water and Sanitation Division (INE/WSA).	
Sources of	IDB (INWAP):	US\$250,000
Financing:	Local Counterpart:	50,000
	Total	US\$300,000
Objectives	The objective of this Legal and Regulatory Framework Technical Cooperation (TC) is to modernize the legislative framework of the water and sanitation sector of The Bahamas and provide for the protection of groundwater resources and economic efficiency of water and sanitation utility providers. The TC will contribute to: (i) the environmental sustainability of the water resources of the Bahamas; and (ii) the economic sustainability of the Water and Sewerage Corporation (WSC).	
Execution timetable:	Execution:	8 months
	Disbursement:	12 months
Special contractual conditions:	None	
Exceptions to Bank Policies and Procedures:	None	
Environmental and Social review	The TC profile was reviewed by the ESR Secretariat on March 19, 2009. Recommended actions are incorporated in this Plan of Operations.	
Coordination with other Official DFIs:	Not applicable	

I. BACKGROUND AND JUSTIFICATION

A. Main Issues to be addressed by the Technical Cooperation

- 1.1 The existing legal framework governing groundwater abstraction in The Bahamas is not sufficient to support proper groundwater regulation and management, leading to increasing stress on the country's water resources. Additionally, the current legal framework does not provide for transparent costs recovery for the operation, maintenance (OPEX) and capital expenditure (CAPEX) of the Water and Sewerage Corporation (WSC), the state-owned company and the main water and sanitation service provider in The Bahamas. These issues are causing a downward spiral in the quality and efficiency of the services provided by the WSC, which has consequently become a drain on Government financing.
- 1.2 In The Bahamas, apart from a minor amount of rain water harvesting, all water supplies are drawn from groundwater, whether fresh, brackish or saline in quality. Saline and brackish groundwater is treated by reverse osmosis (RO) to provide fresh water. Eight specific threats to the groundwater resources have been identified, *e.g.*: over abstraction, physical disturbance, point-source pollution, solid waste disposal, wastewater disposal, septic tanks, abstraction wells, and diffuse pollution. In addition to these anthropogenic threats, there are the naturally occurring threats posed by storms and hurricanes. The practical solutions to address the negative impacts these threats have on groundwater consist of good working practice in the construction and operation of wells, good design and good construction of underground storage and septic tanks. These, in turn, require control, enforcement of standards, and public education.
- 1.3 In March 2008, the GOB requested Bank's assistance to help address the threats to ground water resources. An initial support has been provided in the context of the Water Strategic Sector Plan (WSSP) for The Bahamas, which included a review and update of WSC Business Plan as well as a review of the existing tariff structure. These studies have been presented to GOB leading the GOB into recognizing the need for an adequate legal and regulatory framework. Consequently, in January 2009, the GOBH requested Bank's assistance through INWAP for that purpose.

B. Link to Institutional Strategy

- 1.4 The Bank's Country Strategy for The Bahamas which is currently under preparation contemplates two pillars: (i) Infrastructure for Growth and Environmental Sustainability; and (ii) Institutions for Competitiveness and Social Sustainability. The Infrastructure for Growth and Environmental Sustainability

pillar identifies the need for technical assistance to update the legal and regulatory framework for the water and sanitation sector.

C. IDB-Netherlands Water Partnership Program (INWAP)

- 1.5 The general objective of the INWAP is to support the implementation of internationally recognized principles of integrated water resources management in Latin America and the Caribbean. This general objective is to be achieved through joint efforts to internally improve and strengthen the Bank's operational capacity in the area of integrated water resources management, and externally to improve such capacity in the Bank's borrowing member countries. The specific objectives of the INWAP that apply to this operation are: (i) To increase the capacity for policy and sector work in water resources management in a borrowing member country; and (ii) To support the reform and modernization processes currently being undertaken in the Region in the water sector. INWAP is financed by the Netherlands Ministry of Foreign Affairs and implemented through a trust fund (Fund).

D. Water and Sanitation Strategic Sector Plan

- 1.6 The Bank is currently financing the preparation of a Water and Sanitation Strategic Sector Plan. This assignment includes the preparation of a ten-year Business Plan for the WSC as well a tariff request. It has been determined that the WSC Act has not been updated since 1976 and its provisions are not adequate in the current environment. The current legislations need to be revised in the light of severe environmental, health, and financial issues facing the country the water and sanitation sector.
- 1.7 There is the need to ensure adequate recovery of costs for operation, maintenance and required capital expenditures to ensure that WSC complies with its mandates. A review of the financial situation of the WSC confirms that the operational costs of the WSC over the past ten years have been increasing as water production has been increasing; but the volume of water sold remained relatively constant and the average price of water sold has been decreasing. A primary reason for the increasing cost of water production is the increased use of reverse osmosis water, which is an expensive means of production of potable water compared to pumping freshwater; and this cost has not been tied to any tariff increase – indeed, there has been no tariff increase since 1993. The data also shows increases in water losses as production volumes increase. The margin required to meet OPEX and CAPEX of the utility company has therefore been shrinking over these past years. Exacerbating the situation, the WSC Act 1976 is outdated and allocates to WSC the conflicting roles of the WSC as a utility service provider and a water regulator. At the same time, the WSC lacks financial and operational autonomy necessary for an efficient utility.

- 1.8 The request to the INWAP is to assist the GOB, WSC, and the water sector in The Bahamas as a whole in revising the current legislation in light of severe environmental, health, and financial issues facing the country in the area of water and sanitation. This proposed technical cooperation will make recommendations for the required legal and regulatory changes regarding the role of WSC and MOTE for the protection of groundwater resources. It will also make recommendations regarding the transfer of responsibilities of economic regulator to the Public Utilities Commission (PUC), which is an independent regulator of utilities in The Bahamas.

II. PROJECT DESCRIPTION

A. Project Goal and Purpose

- 2.1 The objective of this Legal and Regulatory Framework Technical Cooperation is to modernize the legislative framework of the water and sanitation sector of The Bahamas and provide for the protection of groundwater resources and economic efficiency of water and sanitation utility providers. The TC will contribute to: (i) the environmental sustainability of the water resources of the Bahamas; and (ii) the economic sustainability of the Water and Sewerage Corporation (WSC).
- 2.2 The expected outcome is a legislative framework document, including draft bills that would be presented to Cabinet for its approval and subsequent adoption as law.

B. Components of the Project

- 2.3 The TC has two components, which would jointly address the issues. These are: (i) Environment – Water Resources Management, and (ii) Economic Regulations.
- 2.4 ***Component 1: Environment – Water Resources Management.*** This component will address the issues of groundwater abstraction and the control of pollution. It will finance consulting services to review the existing reports on groundwater management and pollution control, and plans pertaining to integrated water resources management: Water and Sanitation Strategic Sector Plan 2009. The consultants will prepare recommendations for required legal and regulatory changes including definition of the agency responsible for enforcement and the corresponding resources required, and fee structure for water resources management. A timetable for the phased implementation of the legislation including temporary measures is also to be prepared.
- 2.5 ***Component 2: Economic Regulations.*** This component will address the need for an independent economic regulator for the water and sanitation sector. It will finance the consulting services to review the WSC Corporate Business Plan,

audited financial statements, and its cost of service. The consultants will prepare recommendations for fee structure for the Public Utilities Commission (PUC) as the regulator of the water and sanitation service providers and propose a process for the PUC to regulate the water sector – pricing, and quality of the service. Recommendations for transition period for the full implementation of the tariff and fee structures and a phased implementation of the legislation including temporary measures to be adopted will also be prepared.

III. COSTS AND FINANCING

- 3.1 This TC will finance the contracting of a consulting firm with wide experience in the water sector, environmental law and legislation drafting for a total of US\$250,000 to carry out this TC. Funding will be provided on a non-reimbursable basis by the INWAP. Local counterpart of US\$50,000 will be provided by the WSC/GOB for local staff time and related expenses.

Cost Table (US\$)

Component	IDB (INWAP)	Local	Total
Component 1: Environment – Water Resources Management	\$100,000	\$25,000	\$125,000
Component 2: Economic Regulation	100,000	25,000	125,000
Contingency	50,000		50,000
TOTAL	\$250,000	\$50,000	\$300,000

IV. EXECUTION OF THE PROJECT

- 4.1 Executing Agency: This TC will be executed by the IDB (INE/WSA). This is to ensure adequate coordination as this TC will span several agencies (MOTE, PUC, Ministry of Finance, and Attorney General's Office). A consulting firm will be hired to implement the TC.
- 4.2 Executing mechanism: The TC will be executed with the support and in coordination with MOTTE and WSC, as the beneficiary, under the supervision of the Water and Sanitation Division of the Infrastructure and Environment Department (INE/WSA) who will be responsible for contracting a consulting firm and monitoring the implementation of the Project. The Bank's Project team will coordinate activities among the various stakeholder agencies involved in the execution of the TC.
- 4.3 Project implementation readiness: The procurement process was initiated in February 2009 contingent upon the approval of the funds. Expressions of interests have been received and a short list of eligible consulting firms has been prepared. With the concurrence of the Beneficiary and approval of the assigned Bank Procurement Specialist, these firms will be invited to respond to the Request for Proposals, which includes the terms of reference for the assignment.

- 4.4 Execution period and disbursement schedule: This TC will be implemented within an eight (8) month period; the disbursement period will be twelve (12) months.
- 4.5 Procurement: The procurement of the consulting firm will be realized according to IDB policies defined in document GN-2350-7.
- 4.6 In the execution of the TC, the Bank's Project Team will work closely with the Executing Agency to ensure that recommendations in relation to the authority for water resources allow for some independence and potentially a higher degree of resource protection. Equally, due attention will be given to the absorptive capacity and autonomy of the authority for administering the resources. Macro issues related to development planning and priorities, sector performance requirements (pollution control and conservation) and climate change will also be considered along with their implications to legislative and institutional changes that may be required in other sectors to make the new proposed framework effective.

V. MONITORING AND EVALUATION

- 5.1 Monitoring: The work of the consulting firm and its compliance with the Terms of Reference for this project will be monitored by INE/WSA and WSC, based on the submission of intermediate and final products as required in the TOR.
- 5.2 Technical and basic responsibility: Technical and basic responsibility for the project rests with the Water and Sanitation Division of the Infrastructure and Environment Department (INE/WSA).
- 5.3 Evaluation: This project will be evaluated based on the intermediate and final products listed in the Terms of Reference. Given that the project has an execution period of 8 months, no logical framework will be developed. Nevertheless, the TOR clearly detail the contents of the various reports, and strict adherence to the requirements in the TOR will be ensured by the project team, as well as verified during the consultations with stakeholders.
- 5.4 Auditing, financial management of the resources and reporting: Standard Bank procedures will be followed with respect to auditing, financial management of the resources and reporting.

VI. PROGRAM BENEFITS AND RISKS

- 6.1 Project benefits and development impacts: The principal benefit of this TC will be the modernization of the laws governing the water sector of The Bahamas. Under the TC legislation will be drafted for economic and environmental regulations of the water sector, which would be presented to Cabinet for its approval and subsequent adoption as law. These will address issues pertaining to abstraction,

health and safety, and pollution control. It will also address the need for an independent economic regulator of water and sanitation service providers.

- 6.2 Target beneficiaries: The beneficiaries of this TC will be the Water and Sewerage Corporation (WSC), MOTE and the Bahamian public at large. The WSC will benefit by having an independent economic regulator that would determine a tariff consistent with the principles of cost recovery. MOTE will benefit by having legislation that would allow it to manage the water resources and provide for pollution control.
- 6.3 Risks: The risks identified relate to; (i) the unwillingness of the authorities to allow the PUC to be responsible for setting the tariff; (ii) inability of some section of the population to afford increased water tariff; (iii) institutional constraints on the part of MOTE to take on the responsibility for water resource management and pollution control; and (iv) the possibility that the GOB may prefer in the future not to adopt a new Water and Sanitation Act. The likelihood of backtracking on the need for an independent economic regulator is low, given the large annual subsidies that the Government currently provides to the WSC. This situation, coupled with the dire need for pollution control to ensure sustainable use of groundwater resources, provide compelling reasons for the GOB to adopt a new Water and sanitation Act. Regarding the impact on the lower income and special groups, the TC proposes that the consulting firm considers cross-subsidies and other mechanisms to ensure access to water by low income groups. Also, due consideration will be given to the social aspects of water management including consultation and participation, transparency and management of potential conflicts. With respect to institutional constraints on the part of MOTE, care will be taken regarding how this will add to MOTE's portfolio and to whether it will have the necessary capacity and autonomy to administer the resource and alternative arrangement proposed.

VII. ENVIRONMENTAL AND SOCIAL IMPACTS

- 7.1 The TC Profile was reviewed by the ESR Secretariat on March 19, 2009. Recommended action is incorporated in this Plan of Operations. The present technical cooperation has positive social and environmental effects, because it promotes separation of regulatory functions from the utility provider. The operation doesn't have negative environmental or social aspects, because only studies related to legislative updates will be elaborated. The classification and evaluation of risk according to the criteria set out in "screening and safeguard" of ESR is C.