

Public Disclosure Authorized

CONFORMED COPY

GRANT NUMBER H567-RY

Financing Agreement

(Second Port Cities Development Project)

between

REPUBLIC OF YEMEN

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated June 28, 2010

GRANT NUMBER H567-RY

FINANCING AGREEMENT

AGREEMENT dated June 28, 2010, entered into between REPUBLIC OF YEMEN (“Recipient”) and INTERNATIONAL DEVELOPMENT ASSOCIATION (“Association”). The Recipient and the Association hereby agree as follows:

ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

- 1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.
- 1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

ARTICLE II — FINANCING

- 2.01. The Association agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a grant in an amount equivalent to twenty three million one hundred thousand Special Drawing Rights (SDR 23,100,000) (“Financing”) to assist in financing the project described in Schedule 1 to this Agreement (“Project”).
- 2.02. The Recipient may withdraw the proceeds of the Financing in accordance with Section IV of Schedule 2 to this Agreement.
- 2.03. The Maximum Commitment Charge Rate payable by the Recipient on the Unwithdrawn Financing Balance shall be one-half of one percent (1/2 of 1%) per annum.
- 2.04. The Payment Dates are June 15 and December 15 in each year.
- 2.05. The Payment Currency is Dollars.

ARTICLE III — PROJECT

- 3.01. The Recipient declares its commitment to the objectives of the Project. To this end, the Recipient shall carry out the Project through MoPIC in accordance with the provisions of Article IV of the General Conditions.
- 3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Recipient and the Association shall otherwise agree, the Recipient shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.

ARTICLE IV — TERMINATION

- 4.01. The Effectiveness Deadline is the date one hundred twenty (120) days after the date of this Agreement.
- 4.02. For purposes of Section 8.05 (b) of the General Conditions, the date on which the obligations of the Recipient under this Agreement (other than those providing for payment obligations) shall terminate is twenty (20) years after the date of this Agreement.

ARTICLE V — REPRESENTATIVE; ADDRESSES

- 5.01. The Recipient's Representative is the Minister of Planning and International Cooperation.
- 5.02. The Recipient's Address is:

Ministry of Planning and International Cooperation
PO Box 175
Sana'a, Republic of Yemen

Telephone:	Facsimile:
967-1-250-118	967-1-250-665
	967-1-250-605

- 5.03. The Association's Address is:
International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable:	Telex:	Facsimile:
INDEVAS Washington, D.C.	248423 (MCI)	1-202-477-6391

AGREED at the District of Columbia, United States of America, as of the day and year first above written.

REPUBLIC OF YEMEN

By /s/ Abdulwahab Abdullah Al-Hajri
Authorized Representative

**INTERNATIONAL DEVELOPMENT
ASSOCIATION**

By /s/ Shamshad Akhtar
Authorized Representative

SCHEDULE 1

Project Description

The objective of the Project is to improve access to, and the efficiency of, select public infrastructure in the three port cities of Aden, Hodeidah and Mukallah.

The Project consists of the following parts:

Part A: Infrastructure Development

Provision of goods, works, and consultants' services for: (i) improvements to infrastructure at the fishing port in Hodeidah and service delivery at Al Beida Al Shimaliya settlement; (ii) infrastructure improvements in and around four district markets in Aden; and (iii) expansion of the Mukalla airport passenger terminal building and improvements to the airport's lighting system and improvements at road intersections in Mukalla.

Part B: Technical Assistance and Training

Provision of goods, training and consultants' services for: (i) the development and implementation of asset management activities in Aden, Hodeidah and Mukallah; (ii) development and implementation of accounting and budgeting systems for district markets in Aden.

Part C: Project Management

Provision of goods, consultants' services, training and Incremental Operating Costs to the PMU to support Project coordination, implementation, monitoring and evaluation and management.

SCHEDULE 2

Project Execution

Section I. Implementation Arrangements

A. Institutional Arrangements.

The Recipient shall carry out the Project in accordance with the following institutional and other arrangements:

1. The Recipient, through the PMU, shall carry out the Project, in accordance with the requirements, criteria, organizational arrangements and operational procedures set forth in the IT and the FM Manual, and shall not assign, amend, abrogate or waive any provisions of the IT or the FM Manual, without prior approval of the Association.
2. At all times during the implementation of the Project, the Recipient shall maintain the PMU with a composition, resources, and terms of reference satisfactory to the Association.
3. The Recipient, through the PMU, shall carry out the Project in accordance with the requirements and procedures of the Framework ESMP, the ESMPs and the RPF and shall not assign, amend, abrogate or waive any provisions of the Framework ESMP, the ESMPs or the RPF without prior approval of the Association.
4. The Recipient shall:
 - (a) prepare, prior to the commencement of any construction works requiring land acquisition under the Project, a Resettlement Action Plan, satisfactory to the Association, in accordance with the RPF;
 - (b) implement the Resettlement Action Plan, including, unless otherwise agreed with the Association, payment in full of compensation to all affected people prior to commencing of any related works; and
 - (c) not amend, suspend or abrogate any of the provisions of the Resettlement Action Plan without the prior agreement of the Association.
5. The Recipient shall:
 - (a) prepare, prior to the commencement of any works under the Project, an ESIA, satisfactory to the Association, in accordance with the Framework ESMP;
 - (b) carry out the ESIA in accordance with the Framework ESMP; and

- (c) not amend, suspend or abrogate any of the provisions of the ESIA without the prior agreement of the Association.

B. Anti-Corruption

The Recipient shall ensure that the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines.

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

1. The Recipient shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of indicators agreed with the Association. Each Project Report shall cover the period of one calendar quarter, and shall be furnished to the Association not later than one month after the end of the period covered by such report.
2. Not later than thirty (30) months after Effectiveness, the Recipient shall carry out jointly with the Association, a midterm review of the progress made in carrying out the Project (hereinafter referred to as the Midterm Review). The Midterm Review shall cover, amongst other things:
 - (a) progress made in meeting the Project's objective; and
 - (b) overall Project performance against Project performance indicators.
3. The Recipient shall furnish to the Association, prior to the Midterm Review, a quarterly progress report describing the status of implementation of each component of the Project and a summary report of Project implementation generally.

B. Financial Management, Financial Reports and Audits

1. The Recipient shall maintain or cause to be maintained a financial management system in accordance with the provisions of Section 4.09 of the General Conditions.
2. The Recipient shall prepare and furnish to the Association not later than forty five (45) days after the end of each calendar quarter, interim unaudited financial reports for the Project covering the quarter, in form and substance satisfactory to the Association.
3. The Recipient shall have its Financial Statements audited in accordance with the provisions of Section 4.09 (b) of the General Conditions. Each audit of the

Financial Statements shall cover the period of one fiscal year of the Recipient. The audited Financial Statements for each such period shall be furnished to the Association not later than six (6) months after the end of such period.

Section III. Procurement

A. General

- 1. **Goods and Works.** All goods and works required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section.
- 2. **Consultants' Services.** All consultants' services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines, and with the provisions of this Section.
- 3. **Definitions.** The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Association of particular contracts, refer to the corresponding method described in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

B. Particular Methods of Procurement of Goods and Works

- 1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods and works shall be procured under contracts awarded on the basis of International Competitive Bidding.
- 2. **Other Methods of Procurement of Goods and Works.** The following table specifies the methods of procurement, other than International Competitive Bidding, which may be used for goods and works. The Procurement Plan shall specify the circumstances under which such methods may be used:

<u>Procurement Method</u>
(a) National Competitive Bidding, subject to the following additional provisions: the procedures to be followed for National Competitive Bidding under this paragraph shall be those set forth in Law No. 23 for 2007, concerning Government Tenders, Auctions and Stores, and its Regulations, subject to the following additional procedures: (1) a Recipient-owned enterprise in the Republic of Yemen shall be eligible to bid only if it can establish that it is legally and financially autonomous, operates under commercial law, and is not a dependent agency of the Recipient;

- (2) bidding (or pre-qualification, if required) shall not be restricted to any particular class of contractors or suppliers, and non-registered contractors and suppliers shall also be eligible to participate;
- (3) tenders shall be advertised for at least two (2) consecutive days in two (2) local newspapers of wide circulation;
- (4) prospective bidders shall be allowed a minimum of thirty (30) days for the preparation and submission of bids, such thirty (30) days to begin with the availability of the bidding documents or the advertisement, whichever is later;
- (5) until national standard bidding documents acceptable to the Association are available, bidding documents approved by the Association shall be used, and may be prepared in Arabic;
- (6) registration shall not be used to assess bidders' qualifications; qualification criteria (in case pre-qualification was not carried out) and the method of evaluating the qualification of each bidder shall be stated in the bidding documents, and before contract award the bidder having submitted the lowest evaluated responsive bid shall be subject to post-qualification;
- (7) a foreign bidder shall not be required to register or to appoint an agent as a condition for submitting its bid and, if determined to be the lowest evaluated responsive bidder, shall be given reasonable opportunity to register, without let or hindrance; the registration process shall not be applicable to sub-contractors;
- (8) all bids shall be submitted in sealed envelopes and may be submitted, at the bidder's option, in person or by courier service;
- (9) all bids shall be opened at the same time in a public bid opening which bidders shall be allowed to attend and which shall follow immediately after the deadline for submission of bids;
- (10) evaluation of bids shall be carried out in strict adherence to the criteria declared in the bidding documents and contracts shall be awarded to the lowest evaluated responsive bidder, without resorting to the rejection of bids above or below a certain percentage of the pre-bid estimate (bid price bracketing);
- (11) no bidder shall be requested or permitted to modify its bid after the bid closing date shall have elapsed and bids submitted after the deadline for submission of bids shall be returned to the bidder unopened;
- (12) post-bidding negotiations with the lowest or any other bidder shall not be permitted;

<p>(13) under exceptional circumstances, the procuring entity may, before the expiration of bid validity, request all bidders in writing to extend the validity of their bids, in which case bidders shall not be requested nor permitted to amend the price or any other condition of their bids; a bidder shall have the right to refuse to grant such an extension without forfeiting its bid security, but any bidder granting such extension shall be required to provide a corresponding extension of its bid security;</p> <p>(14) price adjustment provisions may be included in contracts for works with a duration of more than eighteen (18) months;</p> <p>(15) rejection of all bids is justified when there is lack of effective competition, or bids are not substantially responsive, however, lack of competition shall not be determined solely on the basis of the number of bidders; and</p> <p>(16) each contract financed from the proceeds of the Grant shall provide that the contractor or supplier shall permit the Association, at its request, to inspect their accounts and records relating to the performance of the contract and to have such accounts and records audited by auditors appointed by the Association</p>
(b) Shopping

C. Particular Methods of Procurement of Consultants’ Services

1. **Quality- and Cost-based Selection.** Except as otherwise provided in paragraph 2 below, consultants’ services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection.
2. **Other Methods of Procurement of Consultants’ Services.** The following table specifies methods of procurement, other than Quality- and Cost-based Selection, which may be used for consultants’ services. The Procurement Plan shall specify the circumstances under which such methods may be used.

Procurement Method
(a) Quality-based Selection
(b) Selection under a Fixed Budget
(c) Least Cost Selection
(d) Selection based on Consultants’ Qualifications
(e) Single-source Selection
(f) Procedures set forth in paragraphs 5.2 and 5.3 of the Consultant Guidelines for the Selection of Individual Consultants

D. Review by the Association of Procurement Decisions

The Procurement Plan shall set forth those contracts which shall be subject to the Association's Prior Review. All other contracts shall be subject to Post Review by the Association.

Section IV. Withdrawal of the Proceeds of the Financing

A. General

1. The Recipient may withdraw the proceeds of the Financing in accordance with the provisions of Article II of the General Conditions, this Section, and such additional instructions as the Association shall specify by notice to the Recipient (including the "World Bank Disbursement Guidelines for Projects" dated May 2006, as revised from time to time by the Association and as made applicable to this Agreement pursuant to such instructions), to finance Eligible Expenditures as set forth in the table in paragraph 2 below.
2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Financing ("Category"), the allocations of the amounts of the Financing to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

Category	Amount of the Grant Allocated (expressed in SDR)	Percentage of Expenditures to be Financed (inclusive of taxes)
(1) Goods, and consultants' services under Part A of the Project	1,350,000	100%
(2) Works under Part A of the Project	19,750,000	100%
(3) Goods, Training, and consultants' services under Part B of the Project	1,000,000	100%
(4) Goods, consultants' services, training and Incremental Operating Costs under Part C of the Project	1,000,000	100%
TOTAL AMOUNT	23,100,000	

For the purpose of this table:

- (a) the term "Incremental Operating Costs" means the reasonable costs of expenditures incurred by the PMU for the implementation of the Project, namely, costs of office rental, transportation, maintenance of vehicles, fuel, office supplies, banking charges, utilities, communications, procurement advertising, audits, local travel and *per diem*, but excludes the salaries of officials of the Recipient's civil service, and the purchase of vehicles; and
- (b) "Training" means Project related study tours, training courses, seminars, workshops and other training activities which are not included under goods or service providers' contracts, including reasonable costs of training materials, space and equipment rental, local travel, *per diem* costs of trainees and trainers' fees, and interpretation and translation services.

B. Withdrawal Conditions; Withdrawal Period

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made:
 - (a) for payments made prior to the date of this Agreement, except that withdrawals up to an aggregate amount not to exceed \$250,000 equivalent may be made for payments made prior to this date but on or after June 30, 2010, for Eligible Expenditures under Categories (1), (2), (3) and (4); or
 - (b) under Category (2): (i) in the event that the RPF requires the preparation of a RAP, unless the Recipient has accordingly prepared, disclosed and held consultations on the aforementioned RAP, and has made payment in full of compensation to all affected people to the satisfaction of the Association, for the particular site for which the application for withdrawal is submitted; and (ii) unless an ESIA has been prepared for the particular site for which the withdrawal application is submitted in accordance with paragraph 5 of Section I.A of Schedule 2 of this Agreement.
2. The Closing Date is July 25, 2015.

APPENDIX

Section I. Definitions

1. “Anti-Corruption Guidelines” means the “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006.
2. “Consultant Guidelines” means the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” published by the Bank in May 2004 and revised in October 2006.
3. “ESIA” means the Environmental and Social Impacts Assessment for each of the Mukalla and Hodeidah Sub-projects (the Sub-projects), prepared and approved by the Recipient on February 2010 and further disclosed on March 12, 2010, and in the Association’s Infoshop on March 12, 2010, and to be prepared by the Recipient pursuant to paragraph 5 of Section I.A of Schedule 2 of this Agreement, setting out: (i) a description of the baseline environmental and socio-economic conditions of the site where each of the Sub-project is to be carried out; (ii) the potential environmental and social impacts and mitigation measures to be implemented to mitigate, eliminate or otherwise offset adverse environmental impacts under each of the Sub-project; such mitigation measures being included in an ESMP (herein defined); and “ESIAs” means more than one such “ESIA”.
4. “ESMP” means the environmental and social management plan, prepared by the Recipient, as part of each of the ESIAs (herein defined) and described in Chapter Seven (7) of said ESIA, and defining the institutional arrangements, including stakeholder participation, budget and capacity building measures for the implementation, monitoring and supervision of the mitigation measures defined in the ESIA for each of the Sub-project.
5. “FM Manual” means the Recipient’s manual of financial procedures, dated December 10, 2006, describing the related guidelines encompassing the authorization and internal control cycles for the flow of funds under the Project.
6. “Framework ESMP” means the framework environmental management plan prepared by the Recipient and disclosed on March 12, 2010, satisfactory to the Association, consisting of, *inter alia*: (i) the potential and actual adverse environmental impacts of the activities of subprojects under the Project; and (ii) measures to be taken during the implementation and operation of the Project to mitigate, eliminate or otherwise offset adverse environmental and social impacts under the Project.

7. “General Conditions” means the “International Development Association General Conditions for Credits and Grants”, dated July 1, 2005 (as amended through October 15, 2006), with the modifications set forth in Section II of this Appendix.
8. “Implementation Tool” or “IT” means the document dated April 4, 2010, adopted by the Recipient, specifying the Recipient’s managerial, financial, administrative, monitoring and evaluation, procurement, engineering and environmental and social policies and procedures for implementation of the Project
9. “MoPIC” means “the Ministry of Planning and International Cooperation of the Recipient or any successor or successors thereto.
10. “PMU” means the project management unit (formerly the national coordination unit) of MoPIC established by Decree No. 244/2001, as amended by Decree No. 39/2007, which includes: (i) a project director general; (ii), a procurement officer; (iii) a procurement assistant; (iv) a financial officer; (v) an accountant; (vi) an engineer; (vii) a social development officer; (viii) an environmental consultant; (ix) an implementation specialist; and (x) a monitoring specialist.
11. “Procurement Guidelines” means the “Guidelines: Procurement under IBRD Loans and IDA Credits” published by the Bank in May 2004 and revised in October, 2006.
12. “Procurement Plan” means the Recipient’s procurement plan for the Project, dated April 6, 2010, and referred to in paragraph 1.16 of the Procurement Guidelines and paragraph 1.24 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.
13. “Resettlement Action Plan” or “RAP” means the site-specific resettlement action plan and/or land acquisition plan, to be prepared and adopted by the Recipient, pursuant to paragraph 4 of Section I.A of Schedule 2 to this Agreement, including an abbreviated resettlement action plan, satisfactory to the Association, containing, *inter alia*, a program of actions, measures and policies for compensation of persons affected by land acquisition, as defined in the Entitlement Matrix for Affected Persons annexed to the RPF, including compensation arrangements, budget and cost estimates, and sources of funding, together with adequate institutional, monitoring and reporting arrangements capable of ensuring proper implementation of, and regular feedback on compliance with its terms for each site; and “RAPs” means more than one such RAP.
14. “RPF” or “Resettlement Policy Framework” means the Recipient’s policy framework, disclosed on the Recipient’s website, and at Infoshop on March 12, 2010, providing procedures and guidelines for the preparation, adoption, implementation and monitoring of a Resettlement Action Plan including the

definition of type of losses, entitled persons, compensation policy and standards and implementation measures as referred to in the Entitlement Matrix for Affected Persons annexed to said RPF, and referred to in paragraphs 3 and 4 of Section I.A of Schedule 2 to this Agreement, as said framework may be amended from time to time with the prior approval of the Association.

15. "Sub-project" means a specific infrastructure development under Part A of the Project.

Section II. Modifications to the General Conditions

The modifications to the General Conditions for Credits and Grants of the Association, dated July 1, 2005 (as amended through October 15, 2006) are as follows:

1. Section 2.07 is modified to read as follows:

"Section 2.07. Refinancing Preparation Advance

If the Financing Agreement provides for the repayment out of the proceeds of the Financing of an advance made by the Association or the Bank ("Preparation Advance"), the Association shall, on behalf of the Recipient, withdraw from the Financing Account on or after the Effective Date the amount required to repay the withdrawn and outstanding balance of the advance as at the date of such withdrawal from the Financing Account and to pay all accrued and unpaid charges, if any, on the advance as at such date. The Association shall pay the amount so withdrawn to itself or the Bank, as the case may be, and shall cancel the remaining unwithdrawn amount of the advance."

2. Paragraph (i) of Section 6.02 is modified to read as follows:

"Section 6.02. Suspension by the Association

... (1) *Ineligibility.* The Association or the Bank has declared the Project Implementing Entity ineligible to receive proceeds of any financing made by the Association or the Bank or otherwise to participate in the preparation or implementation of any project financed in whole or in part by the Association or the Bank, as a result of a determination by the Association or the Bank that the Project Implementing Entity has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of any financing made by the Association or the Bank."

3. The following terms and definitions set forth in the Appendix are modified or deleted as follows, and the following new terms and definitions are added in alphabetical order to the Appendix as follows, with the terms being renumbered accordingly:

- (a) The term “Project Preparation Advance” is modified to read “Preparation Advance” and its definition is modified to read as follows:

“‘Preparation Advance’ means the advance referred to in the Financing Agreement and repayable in accordance with Section 2.07.”