

CONFORMED COPY

GRANT NUMBER H142-0-HA

Development Grant Agreement

(Economic Governance Reform Structural Adjustment Grant)

between

REPUBLIC OF HAITI

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated January 6, 2005

GRANT NUMBER H142-0-HA

DEVELOPMENT GRANT AGREEMENT

AGREEMENT, dated January 6, 2005, between REPUBLIC OF HAITI (the Recipient) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Association has received from the Recipient a letter dated December 6, 2004, describing a program of actions, objectives and policies designed to achieve structural adjustment of the Recipient's economy (hereinafter called the Program), declaring the Recipient's commitment to the execution of the Program, and requesting assistance from the Association in support of the Program during the execution thereof;

(B) the Recipient has also requested the Association to provide additional financial assistance towards financing the Program and, by the Development Credit Agreement of the same date herewith between the Recipient and the Association (the Development Credit Agreement), the Association is agreeing to provide such assistance in an aggregate principal amount equivalent to twenty four million three hundred thousand Special Drawing Rights (SDR24,300,000) (the Credit);

(C) the Recipient and the Association intend, to the extent practicable, that the proceeds of the grant provided for in this Development Grant Agreement be disbursed on account of expenditures for the Program before disbursements of the proceeds of the Credit are made; and

(D) on the basis, inter alia, of the foregoing, the Association has decided in support of the Program to provide such assistance to the Recipient by making the Grant in two (2) tranches as hereinafter provided; and

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Grant Agreements" of the Association, dated January 1, 1985 (as amended through May 1, 2004), with the modifications set forth in Schedule 3 to this Agreement (the General Conditions), constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

- (a) “AAN” means *Autorité Aéroportuaire Nationale*, the Recipient’s Airport Authority;
- (b) “APN” means *Autorité Portuaire Nationale*, the Recipient’s Port Authority;
- (c) “CAMEP” means *Centrale Autonome Métropolitaine d’Eau Potable*, the Recipient’s Urban Water Company;
- (d) “CNIMP” means *Commission Nationale Intérimaire des Marchés Publics*, the Recipient’s Interim National Procurement Board;
- (e) “*Comptes Courants*” means the Recipient’s discretionary accounts used for channeling disbursements from the Recipient’s central budget to its public spending agencies’ own accounts;
- (f) “CSCCA” means *Cour Supérieure des Comptes et du Contentieux Administratif*, the Recipient’s Supreme Audit Institution;
- (g) “Deposit Account” means the account referred to in Section 2.02 (b) of this Agreement;
- (h) “EDH” means *Electricité d’Haiti*, the Recipient’s Electricity Company;
- (i) “Executive Secretariat” means an independent entity selected by the Recipient for the purposes of hiring civil society organizations in charge of monitoring the Recipient’s economic governance program and disseminating their work;
- (j) “FER” means *Fonds d’Entretien Routier*, the Recipient’s Road Maintenance Fund; and
- (k) “TELECO” means *Telecommunications d’Haiti, S.A.M.*, the Recipient’s Public Telecommunications Company.

ARTICLE II

The Grant

Section 2.01. The Association agrees to make available to the Recipient, on the terms and conditions set forth or referred to in the Development Grant Agreement, an amount in various currencies equivalent to sixteen million four hundred thousand Special Drawing Rights (SDR16,400,000).

Section 2.02. (a) Subject to the provisions of paragraphs (b), (c) and (d) of this Section, the Recipient shall be entitled to withdraw the proceeds of the Grant from the Grant Account in support of the Program.

(b) The Recipient shall open, prior to furnishing to the Association the first request for withdrawal from the Grant Account, and thereafter maintain in its central bank, a deposit account in U.S Dollars on terms and conditions satisfactory to the Association. All withdrawals from the Grant Account shall be deposited by the Association into the Deposit Account.

(c) The Recipient undertakes that the proceeds of the Grant shall not be used to finance expenditures excluded pursuant to the provisions of Schedule 1 to this Agreement. If the Association shall have determined at any time that any proceeds of the Grant shall have been used to make a payment for an expenditure so excluded, the Recipient shall, promptly upon notice from the Association; (i) deposit into the Deposit Account an amount equal to the amount of said payment; or (ii) if the Association shall so request, refund such amount to the Association. Amounts refunded to the Association upon such request shall be Granted to the Grant Account for cancellation.

(d) No withdrawals shall be made from the Grant Account after the aggregate of the proceeds of the Grant withdrawn from the Grant Account shall have reached the equivalent of twelve million four hundred thousand Special Drawing Rights (SDR12,400,000), unless the Association shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Association:

- (i) with the progress achieved by the Recipient in the carrying out of the Program;
- (ii) that the macroeconomic policy framework of the Recipient is satisfactory; and
- (iii) that the actions described in Schedule 2 to this Agreement have been taken.

If, after said exchange of views, the Association is not so satisfied, the Association may give notice to the Recipient to that effect and, if within 90 days after such notice, the Recipient shall not have taken steps satisfactory to the Association, in respect of (i), (ii) and (iii) above, as the case may be, then the Association may, by notice to the Recipient, cancel the unwithdrawn amount of the Grant or any part thereof.

Section 2.03. The Closing Date shall be December 31, 2005 or such later date as the Association shall establish. The Association shall promptly notify the Recipient of such later date.

Section 2.04. (a) The Recipient shall pay to the Association a commitment charge on the principal amount of the Grant not withdrawn from time to time at a rate to be set by the

Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Recipient from the Grant Account or cancelled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Recipient; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. Commitment charges shall be payable semiannually on May 15 and November 15 in each year.

Section 2.06. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Particular Covenants

Section 3.01. (a) The Recipient and the Association shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program and the actions specified in Schedule 2 to this Agreement.

(b) Prior to each such exchange of views, the Recipient shall furnish to the Association for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Association shall reasonably request.

(c) Without limitation upon the provisions of paragraph (a) of this Section, the Recipient shall exchange views with the Association on any proposed action to be taken after the disbursement of the Grant which would have the effect of materially reversing the objectives of the Program, or any action taken under the Program, including any action specified in Schedule 2 to this Agreement.

Section 3.02. The Recipient shall:

(a) have the Deposit Account audited in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;

(b) furnish to the Association as soon as available, but in any case not later than four months after the date of the last disbursement from the Deposit Account has been made, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

(c) furnish to the Association such other information concerning the Deposit Account and the audit thereof as the Association shall have reasonably requested.

ARTICLE IV

Additional Event of Suspension

Section 4.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional event is specified, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.

ARTICLE V

Termination

Section 5.01. The date April 6, 2005 is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VI

Representative of the Recipient; Addresses

Section 6.01. The Minister of Economy and Finance of the Recipient is designated as the representative of the Recipient for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Recipient:

Minister of Economy and Finance
Palais des Ministères
Port-au-Prince, Haiti

Facsimile:

(509) 299-1732

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

Telex:

Facsimile:

INDEVAS
Washington, D.C.

248423 (MCI) or
64145 (MCI)

(202) 477-6391

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

REPUBLIC OF HAITI

By /s/ Raymond Joseph

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Pamela Cox

Regional Vice President
Latin America and the Caribbean Region

SCHEDULE 1

Excluded Expenditures

For purposes of Section 2.02 (c) of this Agreement, the proceeds of the Grant shall not be used to finance any of the following expenditures:

1. expenditures in the currency of the Recipient or for goods or services supplied from the territory of the Recipient;
2. expenditures for goods or services supplied under a contract which any national or international financing institution or agency other than the Bank or the Association shall have financed or agreed to finance, or which the Association or the Bank shall have financed or agreed to finance under another Grant or a loan;
3. expenditures for goods included in the following groups or subgroups of the Standard International Trade Classification, Revision 3 (SITC, Rev.3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev.3 (1986) (the SITC), or any successor groups or subgroups under future revisions to the SITC, as designated by the Association by notice to the Recipient:

<u>Group</u>	<u>Subgroup</u>	<u>Description of Items</u>
112	-	Alcoholic beverages
121	-	Tobacco, unmanufactured, tobacco refuse
122	-	Tobacco, manufactured (whether or not containing tobacco substitutes)
525	-	Radioactive and associated materials
667	-	Pearls, precious and semiprecious stones, unworked or worked

<u>Group</u>	<u>Subgroup</u>	<u>Description of Items</u>
718	718.7	Nuclear reactors, and parts thereof; fuel elements (cartridges), non-irradiated, for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971	-	Gold, non-monetary (excluding gold ores and concentrates)

4. expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;
5. expenditures for environmentally hazardous goods (for purposes of this paragraph the term "environmentally hazardous goods" means goods, the manufacture, use or import of which is prohibited under the laws of the Recipient or international agreements to which the Recipient is a party);
6. expenditures on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; and
7. expenditures under a contract in respect of which the Association determines that corrupt or fraudulent practices were engaged in by representatives of the Recipient or of a beneficiary of the Grant during the procurement or execution of such contract, without the Recipient having taken timely and appropriate action satisfactory to the Association to remedy the situation.

SCHEDULE 2

Actions Referred to in Section 2.02 (d) of this Agreement

1. (a) The execution of the Recipient's fiscal year 2004-05 budget has been in accordance with its objectives and the allocations of the approved budget; and (b) key data regarding such execution has been disseminated to the local media.
2. No more than 10% of the Recipient's cumulative non-salary current public expenditures since beginning of its fiscal year 2004-05 has been disbursed through *Comptes Courants*.
3. The Recipient has enacted and published in the official gazette a decree, satisfactory to the Association, modifying the organization and functioning of CSCCA.
4. The Recipient has: (a) completed the competitive recruitment of CNIMP's members; (b) hired international procurement consultants; (c) adopted standard bidding documents; (d) disseminated via internet and/or local newspapers the results of all bids tendered since December 2004; and (e) created a database of government suppliers available to the public through CNIMP.
5. The Recipient has completed: (a) data collection from a survey on corruption practices; and (b) the first draft report on said survey.
6. FER has awarded and published its first road maintenance contract since its creation.
7. In at least three of the following Recipient's public enterprises the following actions have been taken:

CAMEP: (a) international audit firm has been selected to carry out a financial audit; and (b) international technical review firm has been selected to carry out a management and technical audit.

AAN and APN: (a) international audit firms have been selected to carry out a financial audit; and (b) financial audits of APN and AAN have been initiated.

EDH: (a) accounting rehabilitation of EDH is ongoing and has progressed satisfactorily; (b) international audit firm has been selected to carry out a

financial audit; and (c) bidding process to recruit an international firm to carry out an assessment of environmental liabilities has been started.

TELECO: (a) international firm has been selected to carry out financial audit; and (b) the Recipient has selected an option for restructuring the telecommunications sector based on, inter alia, the results of a sector-wide review.

8. The Recipient has: (a) provided on a timely basis all necessary information to civil society organizations in charge of monitoring selected modules of the Recipient's economic governance program; and (b) held monthly discussions with the Executive Secretariat and said civil society organizations on the results of said monitoring activities.

SCHEDULE 3

Modifications to the General Conditions

For the purpose of this Agreement, the provisions of the General Conditions are modified as follows:

1. Sections 3.02, 3.03, 3.04 (a), 3.04 (b), 6.05 and Article VII are deleted in their entirety.

2. Wherever used in the General Conditions, the following terms are modified to read as follows:

(a) The term "Borrower" is modified to read "Recipient".

(b) The term "Credit" is modified to read "Grant".

(c) The term "Credit Account" is modified to read "Grant Account".

(d) The term "Development Credit Agreement" is modified to read "Development Grant Agreement".

3. Section 1.01 is modified to read as follows:

"Section 1.01. Application of General Conditions

These General Conditions set forth the terms and conditions generally applicable to the Development Grant Agreement to the extent and subject to any modifications set forth in such agreement."

4. Article II is modified as follows:

(a) Section 2.01, paragraph 3, is modified to read as follows:

"3. "Recipient" means the party to the Development Grant Agreement to which the Grant is made."

(b) Section 2.01, paragraph 12, is modified to read:

"Project" means the program, referred to in the Preamble to the Development Grant Agreement, in support of which the Grant is made.";

5. Article III is modified as follows:

- (a) The heading of Article III is modified to read “Grant Account; Partial Payment”, and the heading of Section 3.04 is modified to read “Partial Payment”.
 - (b) The words “The principal of, and service charges on, the Credit” in Section 3.05 are modified to read “All amounts required to be paid under the Development Grant Agreement”.
6. Article IV is modified as follows:
- (a) Section 4.01 is modified to read:

“Except as the Recipient and the Association shall otherwise agree, withdrawals from the Grant Account shall be made in the currency of the deposit account specified in Section 2.02 of the Development Grant Agreement.”;
 - (b) Section 4.02 (a) is modified to read as follows:

“Section 4.02. *Currencies in which Payments are to be Made*

 - (a) The Recipient shall pay all amounts required to be paid by it under the Development Grant Agreement in the currency specified in such agreement or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to paragraph (c) or (e) of this Section.”
 - (c) Wherever used in Section 4.02(c) and (e) of the General Conditions, the words “principal and service charges” are modified to read “amounts”.
 - (d) Section 4.03 is modified to read as follows:

“Section 4.03. *Amount of the Grant*

The amount of the Grant withdrawn from time to time shall be the equivalent in terms of SDR (determined as of the date or respective dates of withdrawal from the Grant Account) of the value of the currency or currencies so withdrawn.”
 - (e) Section 4.06 (b) is modified to read as follows:

“(b) All amounts which the Recipient shall be required to pay under the Development Grant Agreement shall be paid without restrictions of any kind imposed by, or in the territory of, the Recipient.”

7. Article V is modified as follows:
 - (a) Section 5.01 is modified to read:

“The Recipient shall be entitled to withdraw the proceeds of the Grant from the Grant Account in accordance with the provisions of the Development Grant Agreement and of these General Conditions”;
 - (b) The last sentence of Section 5.03 is deleted;
8. Article VI is modified as follows:
 - (a) The word “credit” in paragraphs (a)(ii) and (c)(i) of Section 6.02 is replaced with the words “credit, grant or financing”.
 - (b) Section 6.03 (c) is modified by replacing the words “corrupt or fraudulent” with the words “corrupt, fraudulent, collusive or coercive”.
9. Section 8.01(a) is modified to read as follows:

“(a) All amounts which the Recipient shall be required to pay under the Development Grant Agreement shall be paid without deduction for, and free from, any taxes levied by, or in the territory of, the Recipient.”
10. Article IX is modified as follows:
 - (a) Section 9.06 (c) is modified to read:

“(c) Not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Recipient and the Association, the Recipient shall prepare and furnish to the Association a report, of such scope and in such detail as the Association shall reasonably request, on the execution of the program referred to in the Preamble to the Development Grant Agreement, the performance by the Recipient and the Association of their respective obligations under the Development Grant Agreement and the accomplishment of the purposes of the Grant.”; and
 - (b) Section 9.04 is deleted and Sections 9.05, 9.06 (as modified above), 9.07 and 9.08 are renumbered, respectively, Sections 9.04, 9.05, 9.06 and 9.07
11. Section 12.05 and its heading are modified to read as follows:

“Section 12.05. *Termination of Development Grant Agreement.*

The obligations of the Recipient under the Development Grant Agreement shall terminate on the date 20 years after the date of the Development Grant Agreement.”

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