Agreement Amending Development Credit Agreement

(Irrigation and Drainage Community Development Project)

between

GEORGIA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated July 27, 2005
AGREEMENT AMENDING
DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated July 27, 2005 between GEORGIA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower and the Association have entered into a Development Credit Agreement (Irrigation and Drainage Community Development Project) (Credit Number 3542 GE) dated October 5, 2001 (the Development Credit Agreement) for the purpose of assisting in the financing of the Project described in Schedule 2 to the Development Credit Agreement (the Project);

(B) the Borrower has requested the Association to provide additional assistance towards the financing of the Project and the Association agrees to provide an additional Credit and a Grant upon the terms and conditions set forth in this Agreement;

(C) the Borrower and the Association intend, to the extent practicable, that the proceeds of the Grant be disbursed on account of expenditures in respect of the Project before disbursements of the proceeds of the Credit are made; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to provide such additional assistance to the Borrower upon the terms and conditions set forth in this Amending Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Amendments to the Development Credit Agreement

Section 1.01. Section 1.01 of the Development Credit Agreement is amended to read as follows:

“A. The “General Conditions Applicable to Development Credit Agreements” of the Association, dated January 1, 1985 (as amended through October 6, 1999) (the 1999 General Conditions) constitute an integral part of this Agreement and apply to the Initial Financing (as hereinafter defined).

B. The “General Conditions Applicable to Development Credit Agreements” of the Association, dated January 1, 1985 (as amended through May 1, 2004), with the modifications set forth below (the General Conditions), constitute an integral part of this Agreement and apply in respect of the Additional Financing (hereinafter defined):
(a) Section 5.08 of the General Conditions is amended to read as follows:

“Section 5.08. Treatment of Taxes

Except as otherwise provided in the Development Credit Agreement, the proceeds of the Credit may be withdrawn to pay for taxes levied by, or in the territory of, the Borrower on the goods or services to be financed under the Credit, or on their importation, manufacture, procurement or supply. Financing of such taxes is subject to the Association’s policy of requiring economy and efficiency in the use of the proceeds of its credits. To that end, if the Association shall at any time determine that the amount of any taxes levied on or in respect of any item to be financed out of the proceeds of the Credit is excessive or otherwise unreasonable, the Association may, by notice to the Borrower, adjust the percentage for withdrawal set forth or referred to in respect of such item in the Development Credit Agreement as required to be consistent with such policy of the Association.”

(b) Section 6.03 (c) of the General Conditions is amended by replacing the words “corrupt or fraudulent” with the words “corrupt, fraudulent, collusive or coercive”.

Section 1.02. Section 2.01. of the Development Credit Agreement is amended to read as follows:

“Section 2.01. The Association agrees to make available to the Borrower, on the terms and conditions set forth or referred to in this Agreement, an amount in various currencies equivalent to thirty million three hundred thousand Special Drawing Rights (SDR 30,300,000) (the Financing) consisting of: (i) an original amount in various currencies equivalent to twenty one million three hundred thousand Special Drawing Rights (SDR 21,300,000) (the Initial Financing); (ii) an additional amount in various currencies equivalent to five million four hundred thousand Special Drawing Rights (SDR 5,400,000) (the Additional Credit); and (iii) an additional amount of three million six hundred thousand Special Drawing Rights (SDR 3,600,000) (the Grant) (the Additional Credit and the Grant referred to collectively the Additional Financing).”

Section 1.03. Section 2.02 of the Development Credit Agreement is amended to read as follows:

“Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account and the amount of the Grant may be withdrawn from the Grant Account, in accordance with the provisions of Schedule 1 to this Agreement, for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the Financing.

Section 1.04. A new paragraph (c) is added to Section 2 to read as follows:
“(c) The Borrower may, for the purposes of the Part D of the Project, open and maintain in Dollars two separate additional special deposit accounts, one for the Additional Credit (Special Account A), and one for the Grant (Special Account B), in a commercial bank on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Special Accounts shall be made in accordance with the provisions of Schedule 2 to this Agreement.”

Section 1.05. The Closing Date set forth in Section 2.03 of the Development Credit Agreement shall be extended to “April 30, 2008.”

Section 1.06. Section 2.04 (a) and (b) of the Development Credit Agreement is amended to read as follows:

“Section 2.04. (a) The Borrower shall pay to the Association: (i) a commitment charge on the principal amount of the Financing (the Credit, the Additional Credit and the Grant) not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, such rate not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) Each 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 Borrower from the Credit Account or the Grant Account (as the case may be), or canceled; provided, however, that the commitment charge on the Additional Financing shall accrue from a date sixty (60) days after the date of the Amending Agreement; and (ii) at the respective 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 respective 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.”

Section 1.07. The word “Credit” referred to in Section 2.07 (a), (b) and (c) of the Development Credit Agreement is deleted and replaced with the words “Initial Financing”.

Section 1.08. Section 2.08 of the Development Credit Agreement is renumbered as Section 2.09, and a new Section 2.08 is added, to read as follows:

“Section 2.08. The Borrower shall repay the principal amount of the Additional Credit in semiannual installments payable on each May 15 and November 15 commencing November 15, 2015 and ending May 15, 2045. Each installment to and including the installment payable on May 15, 2025 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.”
Section 1.09. Section 3.02 of the Development Credit Agreement is amended to read as follows:

“Section 3.02. (a) Except as the Association shall otherwise agree, procurement of the goods, works and services required for the Project and to be financed out of the proceeds of the Financing shall be governed by the provisions of Schedule 3 to the Development Credit Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) The Borrower shall update the Procurement Plan in accordance with guidelines acceptable to the Association, and furnish such update to the Association not later than 12 months after the date of the preceding Procurement Plan, for the Association’s approval.”

Section 1.10. Paragraph A.1 of Schedule 1 (Withdrawal of the Proceeds of the Credit) of the Development Credit Agreement is hereby amended as set forth in the Schedule 1 to this Agreement and a new paragraph A.5 is added to read as follows:

“5. Notwithstanding the provisions of paragraphs 1 and 3 above, no withdrawals shall be made in respect of: (i) payments made for expenditures prior to this Agreement except that withdrawals, in an aggregate amount not exceeding: (A) the equivalent of SDR 420,000 may be made out of the proceeds of the Additional Credit in respect of Category 1 for Part D of the Project on account of payments made for expenditures before that date but after June 1, 2005, save for the provisions set forth in sub-paragraph (ii) below; and (B) the equivalent of SDR 280,000 may be made out of the proceeds of the Grant in respect of Categories (1), (4), (5) and (6) for Part D of the Project on account of payments made for expenditures before that date but after June 1, 2005; and (ii) payments to be financed out of the resources of the Additional Credit or Grant under Category (1) unless the Borrower has provided the Association an environmental management plan satisfactory to the Association for the works to be carried out under Part D of the Project.”

Section 1.11. In Schedule 2 of the Development Credit Agreement, an additional objective is added at the end of the first paragraph to read as follows:

“…”; and improve and secure the sustainability of river flood protection works and irrigation headworks and canals.”

Section 1.12. In Schedule 2, a new Part is added to the Project and a new Project completion date to read as follows:
“Part D: Reconstruction of flood-damaged irrigation and river embankment infrastructure

(a) Reconstruction of flood-damaged irrigation headworks and conveyance canals to restore and guarantee the original design capacities; (b) reconstruction of flood-damaged river embankment works to provide flood protection as per applicable design parameters; and (c) provision of consulting services for design and construction supervision of the reconstruction works.

The Project is expected to be completed by October 31, 2007.”

Section 1.13. In Schedule 3 of the Development Credit Agreement, Section I, Part C.1 National Competitive Bidding, is amended to read as follows:

“Works estimated to cost less than $250,000 equivalent per contract, provided however that works under Part D of Schedule 2 estimated to cost less then $1 million but more than $100,000 may be procured under contracts awarded in accordance with the provisions of paragraph 3.3 and 3.4 of the Guidelines provided…..”(no change)

Section 1.14. In Schedule 3 of the Development Credit Agreement, Section I, Part C.2 and C.4 the aggregate thresholds set forth in line two of such paragraphs shall be deleted.

Section 1.15. In Schedule 3 of the Development Credit Agreement, Section I, Part C.6, Procurement of Small Works is amended to read as follows:

“Works contracts estimated at $100,000 or less will be procured upon comparison of not less than three substantially responsive price quotations submitted by suitably qualified contractors. Invitations to quote shall include adequate description of the works to be performed and the required completion date, basic specifications, bill of quantity, drawings and a form of contract acceptable to the Bank. The contract shall be awarded to the contractor which offers the lowest price quotation for the work and who is deemed to have the capacity and resources to perform the contract successfully.”

Section 1.16. In Schedule 3, Section II, Part C of the Development Credit Agreement, an additional paragraph 3 is added to read as follows:

“Services for tasks in circumstances which meet the requirements of paragraph 3.10 of the Consultant Guidelines for Single Source Selection, may, with the Association's prior agreement, be procured in accordance with the provisions of paragraphs 3.1 and 3.8 through 3.11 of the Consultant Guidelines.”

Section 1.17. In Schedule 3, Section II, Part C an additional paragraph 4 is added to read as follows:
“Selection Based on Consultants’ Qualifications. Services estimated to cost less than $100,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.7. of the Consultant Guidelines.”

ARTICLE II

Effective Date; Termination

Section 2.01. This Amending Agreement shall not become effective until evidence satisfactory to the Association shall have been furnished to the Association, namely, that this Amending Agreement has been executed on behalf of the Borrower.

Section 2.02. As part of the evidence to be furnished pursuant to Section 2.01 of this Agreement, there shall be furnished to the Association an opinion or opinions satisfactory to the Association of counsel acceptable to the Association showing on behalf of the Borrower, that this Amending Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and is legally binding upon the Borrower in accordance with its terms.

Section 2.03. This Amending Agreement shall come into force and effect on the date upon which the Association shall dispatch to the Borrower notice of its acceptance of the evidence required pursuant to Section 2.01 of this Amending Agreement.

Section 2.04. If this Amending Agreement shall not have come into force and effect by a date ninety (90) days after the date of this Amending Agreement, this Amending Agreement and all obligations of the parties hereunder shall terminate, unless the Association establishes a later date for the purposes of this Section. If this Amending Agreement shall terminate under the provisions of this Section, the Development Credit Agreement shall continue in full force and effect, as if this Amending Agreement had not been executed.
IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Amending Agreement to be signed in their respective names in Tbilisi, Georgia as of the day and year first above written.

GEORGIA

By /s/ V. Roy Southworth
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Aleksi Aleksishvili
Authorized Representative
ANNEX

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

“1. The table below sets forth the Categories of items to be financed out of the proceeds of the Initial Financing, the Additional Financing and the Grant, the allocation of the amounts of the Initial Financing, the Additional Financing and the Grant to each Category, and the percentage of expenditures for items so to be financed in each Category:

<table>
<thead>
<tr>
<th>Category</th>
<th>Initial Financing (Expressed in SDR equivalent)</th>
<th>Additional Credit (Expressed in SDR equivalent)</th>
<th>Grant (Expressed in SDR equivalent)</th>
<th>% of Expenditures to be financed</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Works</td>
<td>9,040,000</td>
<td>5,400,000</td>
<td>3,080,000</td>
<td>80%</td>
</tr>
<tr>
<td>(2) Development Plans under Part B.1 of the Project</td>
<td>4,480,000</td>
<td></td>
<td></td>
<td>80% of amounts disbursed under a Development Plan</td>
</tr>
<tr>
<td>(3) Goods</td>
<td>360,000</td>
<td></td>
<td></td>
<td>100% of foreign expenditures, 100% of local expenditures (ex-factory cost) and 80% of local expenditures for other items procured locally</td>
</tr>
<tr>
<td>(4) Consultants’ services and training</td>
<td></td>
<td></td>
<td></td>
<td>80% for local firms and individuals, 90% for foreign firms and individuals and 100% for eligible social charges</td>
</tr>
<tr>
<td>(a) consultants’ services, including auditing services</td>
<td>1,300,000</td>
<td></td>
<td>310,000</td>
<td></td>
</tr>
<tr>
<td>Category</td>
<td>Initial Financing (Expressed in SDR equivalent)</td>
<td>Additional Credit (Expressed in SDR equivalent)</td>
<td>Grant (Expressed in SDR equivalent)</td>
<td>% of Expenditures to be financed</td>
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<tr>
<td>--------------------------------------------</td>
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<tr>
<td>(b) training and study tours</td>
<td>480,000</td>
<td></td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>(5) Project Management Services</td>
<td>1,890,000</td>
<td>140,000</td>
<td></td>
<td>80% for local firms and individuals, 90% for foreign firms and individuals and 100% for eligible social charges</td>
</tr>
<tr>
<td>(6) Incremental Operating Costs of the PCCCST and the IDPIU</td>
<td>590,000</td>
<td>70,000</td>
<td></td>
<td>80% until December 31, 2004 and 70% thereafter</td>
</tr>
<tr>
<td>(7) Refunding of Project Preparation Advance</td>
<td>950,000</td>
<td></td>
<td></td>
<td>Amount due pursuant to Section 2.02 (b) of this Agreement</td>
</tr>
<tr>
<td>(8) Unallocated</td>
<td>2,210,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>21,300,000</td>
<td>5,400,000</td>
<td>3,600,000</td>
<td></td>
</tr>
</tbody>
</table>
SCHEDULE 2

Special Accounts

1. For the purposes of this Schedule:

   (a) the term “eligible Categories” means Category (1) with respect to the Additional Financing and Categories 1, 4, 5 and 6 with respect to the Grant set forth in the table in paragraph 1 of Schedule 1 to this Agreement;

   (b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of works and services required for Part D of the Project and to be financed out of the proceeds of the Additional Financing allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and

   (c) the term “Authorized Allocation” means in respect of the Special Account A an amount equivalent to $1,000,000 and in respect of Special Account B an amount equivalent to $750,000.

2. Payments out of the respective Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Association has received evidence satisfactory to it that the respective Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the respective Special Account shall be made as follows:

   (a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for deposit into the respective Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the respective Special Account such amount or amounts as the Borrower shall have requested.

   (b) (i) For replenishment of the respective Special Account, the Borrower shall furnish to the Association requests for deposits into the respective Special Account at such intervals as the Association shall specify.

   (ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association
shall, on behalf of the Borrower, withdraw from the Grant Account or Credit Account and deposit into the respective Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the respective Special Account for eligible expenditures. All such deposits shall be withdrawn by the Association from the Grant or Credit Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the respective Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into any Special Account:

   (a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Grant or Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

   (b) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01 (b)(ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of the records and accounts for the Special Accounts;

   (c) if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Credit or Grant Account pursuant to the provisions of Section 6.02 of the General Conditions; or

   (d) once the total unwithdrawn amount of the Additional Financing allocated to the eligible Categories for the respective Special Account, minus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Grant or Credit Account of the remaining unwithdrawn amount of the Grant allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all
such amounts remaining on deposit in the respective Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of any Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the respective Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into any Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

   (b) If the Association shall have determined at any time that any amount outstanding in any Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

   (c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Accounts.

   (d) Refunds to the Association made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Credit or Grant Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.