

Acuerdos Bilaterales

Clasificación: 45-2004

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Nombre de Acuerdo: Contribution Agreement

Materia: Relaciones Generales de Cooperación

Partes: SG/OEA y Fundación Acción Empresarial

Referencia: FAE

Fecha de Firma: 3/19/2004

Fecha de Inicio: 3/19/2004

Fecha de Terminación: 12/31/2006

Lugar de Firma: Santiago de Chile, Chile/ Washington, D.C

Unidad Encargada:

Persona Encargada:

Original:

Claves:

Cierre del proceso:

CONTRIBUTION AGREEMENT

BETWEEN

**THE GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES,
THROUGH THE EXECUTIVE SECRETARIAT FOR INTEGRAL DEVELOPMENT OF
THE INTER-AMERICAN AGENCY FOR COOPERATION AND DEVELOPMENT,**

AND THE

FUNDACION ACCION EMPRESARIAL

FOR

"THE PROMOTION OF CORPORATE SOCIAL RESPONSIBILITY"

The Parties, the Fundación Acción Empresarial ("FAE"), a Chilean private not-for-profit association with headquarters in Santiago, Chile, and the General Secretariat of the Organization of American States ("GS/OAS"), a public international organization with headquarters in Washington, D.C., through its Executive Secretariat for Integral Development of the Inter-American Agency for Cooperation and Development ("SEDI/IACD"),

WHEREAS:

The Parties desire to work together for the promotion of Corporate Social Responsibility ("CSR") in Latin America and the Caribbean,

AGREE TO THE FOLLOWING:

ARTICLE I: OBJECTIVE

1.1 The Parties agree to promote the use of CSR in Latin America and the Caribbean and thereby facilitate private and public sector collaboration in developing enduring and self-sustaining regional CSR business practices in Latin America and the Caribbean (the "Project").

ARTICLE II: NATURE OF THE PROJECT

2.1 The participation by GS/OAS in the Project is within the Program between GS/OAS and the Canadian International Development Agency ("CIDA") designed to support new programming approaches of SEDI/IACD as established in the Agreement signed by GS/OAS and CIDA on March 18, 2003.

2.2 The Project complements the initiative "Promoting Corporate Social Responsibility" (ATN/ME-8381-RG) of the Inter-American Development Bank, approved

by the Donors Committee of the Multilateral Investment Fund ("MIF"), on July 30th, 2003. The budget included in Appendix 1 to this Agreement details the GS/OAS contribution to the Project as well as that of the MIF.

2.3 The participation of FAE in the Project is in partnership with Fundemas of El Salvador; Peru 2021 of Peru; and Instituto Ethos of Brazil. The details of that Partnership are reflected in Appendix 2 to this Agreement. Notwithstanding that Partnership, FAE remains the sole responsible to GS/OAS for the execution of the Project.

2.4 The Project has three main components: I) Development of national capacity and CSR promotion; II) Demonstration of the benefits of implementing CSR in pilot groups of Small and Medium Enterprises; and III) Strengthening of a regional network and dissemination of the results. Details of activities financed by this Agreement will be the subject of yearly workplans as specified in Article 5.1.c of this Agreement.

ARTICLE III: STRUCTURE OF THE PROJECT

3.1 Within sixty (60) calendar days of the signing of this Agreement, the Parties shall form a Project Management Committee ("PMC") to be made up of one representative of each Party. Each Party may replace its representative on the PMC by advanced written notice to the other Party.

3.2 The PMC shall meet during the first month of every calendar quarter to discuss Project planning and to monitor the progress of the Project. Meetings may be held by telephone conference calls.

ARTICLE IV: FINANCIAL PROVISIONS

4.1 Subject to the funding provided by CIDA to GS/OAS, GS/OAS will make available to FAE the amount of up to US\$ 356,500 (hereinafter the "GS/OAS Contribution") over a 30-month-period for the execution of the Project. The GS/OAS Contribution is detailed in Appendix 1 to this Agreement.

4.2 FAE will execute US\$ 363,500 (in cash and in-kind) (hereinafter the "FAE Contribution") over a 30-month-period towards the activities of the Project. The FAE Contribution is detailed in Appendix 1 to this Agreement.

4.3 Line items within the budget may be modified in yearly workplans as long as they do not change the nature of the Project, and as long as they have the prior written approval of SEDI/IACD.

4.4 Any savings to the GS/OAS Contribution incurred by FAE in the execution of the Project may be re-allocated with prior written approval of SEDI/IACD.

ARTICLE V: RESPONSIBILITIES OF THE PARTIES

5.1 FAE shall:

- a. Be responsible for Project execution and the monitoring of each component of the Project as per this Agreement.
- b. Disburse the FAE Contribution for the execution of the Project, in accordance with Appendix 1 to this Agreement.
- c. Prepare yearly workplans for submission to and approval by SEDI/IACD. FAE will submit the yearly workplan no later than November 30 of 2004 and 2005, respectively.
- d. Prepare semi-annual narrative and financial reports of the Project, for consideration by the PMC, and for final approval by SEDI/IACD. These reports, along with all the relevant documentation, must be submitted within the first fifteen (15) calendar days from the beginning of each relevant period. Financial reports will be certified by FAE treasurer. Financial obligations that appear in the financial reports shall be supported by legal and binding commitments. Expenses reported in these reports must be for amounts actually disbursed.
- e. In addition to submission of the required reports in paragraph d, above, keep SEDI/IACD informed of the status of Project execution via written or verbal communications. Inform SEDI/IACD, in cases when problems arise in the execution of the Project, as soon as a situation develops which might prevent the timely execution of the Project, and indicate all steps taken to correct this situation and to ensure that the Project meets the programmed objectives. FAE shall respond to any requests for additional specific reports made by SEDI/IACD within fifteen (15) calendar days. Failure to provide an appropriate reply to such requests is cause for suspension of disbursements of financial resources under this Agreement.
- f. Keep income and expense vouchers and/or supporting documents for the accounting records of the GS/OAS Contribution for a period of three years after the Project is completed.
- g. Cooperate fully with the representatives that GS/OAS designates in writing to perform the Project evaluations deemed necessary by GS/OAS. To this end, FAE shall allow such persons free access to the premises on which the Project is being executed and to all property, staff, and technical and financial documents pertaining to the Project.
- h. Cooperate fully with the Inspector General of GS/OAS (hereinafter the "IG"), and/or with the auditors designated by the IG, in the conduct of any audits, inspections, evaluations, or investigations that the IG decides upon and that involve financial or operational matters related to the Project and/or to the transactions carried out using the GS/OAS Contribution. In fulfilling the requirements of this paragraph h,

FAE shall allow the IG and the auditors designated by the IG, full, free, and unrestricted access to the functions, activities, operations, records, property, and staff of the Project, and to the relevant technical and financial documents.

- i. Provide to SEDI/IACD a copy of the final External Audit Report of the project ATN/ME-8381-RG. If this External Audit Report does not cover all the GSOAS Contribution, and if SEDI/IACD so requests, FAE will contract a mutually agreeable external auditing firm to conduct a project's audit that would result in rendering an opinion on the financial statements, an evaluation of internal control, and a certification that the accounting records that served as a basis for the preparation of the financial reports are reliable and accurate.
- j. Reimburse to SEDI/IACD the remaining amount of the GS/OAS Contribution that is not spent as of January 31, 2007 at the latest. This amount shall be reimbursed by means of a remittance in United States dollars payable to SEDI/IACD.

5.2 SEDI/IACD shall:

- a. Promote the Project and its results.
- b. Make the GS/OAS Contribution available as specified in Appendix 1 and Article VI of this Agreement, once the narrative and financial reports required by Article 5.1.d of this Agreement have been approved by SEDI/IACD, and FAE has complied with the financial requirements established in every approved workplan by SEDI/IACD, and has justified to SEDI/IACD's satisfaction projected expenditures over the next six month period.
- c. Evaluate the narrative and financial reports submitted by FAE. If SEDI/IACD should determine that execution of the Project is unsatisfactory, in light of the reports and documents submitted, or if those reports and documents present problems that make it impossible to approve them, SEDI/IACD shall notify FAE of its observations in writing. FAE must respond to these observations within a period of time not to exceed fifteen (15) calendar days counting from the date of receipt of notification. SEDI/IACD shall suspend disbursement of the GS/OAS Contribution until the problems are resolved to SEDI/IACD satisfaction.
- d. Collaborate with FAE to design and plan complementary initiatives in support of CSR in Latin America and the Caribbean.

ARTICLE VI: CASH MANAGEMENT

6.1 Upon signature of this Agreement, and approval of the first yearly workplan by SEDI/IACD, GS/OAS will make the first disbursement of the GS/OAS Contribution in accordance with FAE's request as specified in Article 6.3 of this Agreement.

6.2 Subsequent disbursements may be requested by FAE to SEDI/IACD in compliance with article 5.2.b of this Agreement, and subject to the conditions established in this Article VI.

6.3 FAE shall authorize one person to serve as FAE's representative to request payments of the GS/OAS Contribution to be received by FAE or other institutions designated by FAE. FAE may revoke this authorization and designate another representative upon provision of written notification to SEDI/IACD accompanied by an original sample of the new representative's signature. Such notification must be received by SEDI/IACD at least five (5) calendar days prior to a request for payment by FAE under its new representative's signature.

6.4 GS/OAS shall make the disbursements referred in Articles 6.1 and 6.2 of this Agreement by way of checks or another means, upon receipt of a written request by FAE's representative subject to the following conditions:

a. There are sufficient funds in the GS/OAS Contribution to cover the requested disbursement;

b. The GS/OAS official in charge of issuing the disbursements has no knowledge of any specific written instruction from SEDI/IACD prohibiting him/her from making such payment;

c. The request from FAE's representative is signed by that person, and the GS/OAS official issuing the disbursement, at his/her discretion, considers that there is reason to believe that the signature is valid; and

d. The request from FAE is no less than US\$5.000 for each disbursement

6.5 If, at the written request of FAE's representative, a portion or all of the GS/OAS Contribution is converted to or paid in a currency other than United States dollars, the Project shall bear any losses resulting from devaluation.

6.6 GS/OAS will serve as a trustee for the custody and disbursement of the GS/OAS Contribution. In this capacity, the fiduciary responsibilities of GS/OAS are limited solely to those expressly stated in this Article VI. No additional fiduciary duties or responsibilities on its part may be legally inferred.

6.7 FAE and other institutions designated by FAE, in accordance with Articles 6.1 and 6.2 of this Agreement, shall place the money received from GS/OAS in an interest-bearing account. Interest accrued on the GS/OAS Contribution may not be used for purposes of the Project without prior written approval by GS/OAS. Otherwise, the interest must be returned to GS/OAS at the end of the Project.

6.8 FAE will account for disbursements made against these disbursements in financial reports presented to SEDI/IACD.

ARTICLE VII: WARRANTIES AND LIABILITIES

7.1 Each Party shall be exclusively responsible for its own actions and omissions in relation to this Agreement and the Project.

7.2 If, for any reason, a third party should file a claim against GS/OAS, either directly or through SEDI/IACD, in relation to this Agreement and/or in relation to execution of the Project, FAE shall be considered as the principal vis-à-vis the claimant and as the sole party obligated to respond. FAE shall further be required to indemnify GS/OAS for any damages GS/OAS may suffer as a result of said claims, including court costs and attorneys' fees.

ARTICLE VIII: PUBLICATIONS

8.1 Every document published in regard to the Project must include the OAS and SEDI/IACD logo and explicit mention and recognition of the fact that the Project has been executed or is in the process of being executed with the participation of SEDI/IACD, with the support from CIDA. At the same time, it must be clearly stated therein that the opinions expressed in those documents are not necessarily the opinions of the OAS, the GS/OAS and/or any of their organs, officers, employees, and agents, or of the OAS Member States.

ARTICLE IX: DISPUTE RESOLUTION

9.1 Any dispute or complaint that may arise in conjunction with the fulfillment or interpretation of this Agreement, including those that may arise in connection with the execution of the Project, shall be settled by arbitration pursuant to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), currently in effect. The place of arbitration shall be Washington, D.C. The court of arbitration that is set up in accordance with those rules shall decide by friendly mediation or *ex aequo et bono* and its decision shall be final and binding.

9.2 Nothing in this Agreement constitutes a waiver, express or implied, of the privileges and immunities of the OAS, GS/OAS, or their personnel, under international law and the domestic law of OAS Member States.

ARTICLE X: INSTITUTIONAL COORDINATION AND NOTICE

10.1 The representative of GS/OAS designated to receive and give written notice under this Agreement is:

Name: L. Ronald Scheman
Title: Director General of IACD
Address: OAS General Secretariat Building
1889 F. Street, N.W.
Washington, D.C. 20006
Tel: (202) 458-3510
Fax: (202) 458-3526
E-mail: rscheman@oas.org

10.2 The representative of FAE designated to receive and give written notice under this Agreement is:

Name: Amparo Carmona
Title: Project Manager
Address: Vitacura 2808, Oficina 901,
Santiago CHILE
Tel: 56 2 431 0310
Fax: 56 2 435 0052
E-mail:

10.3 Either Party may replace its designated representative under this Article by providing advanced written notice to the other.

ARTICLE XI : TERM, MODIFICATION AND TERMINATION

11.1 This Agreement may be modified by written articles of amendment or an exchange of letters signed by the duly authorized representatives of the Parties, dated, and attached hereto.

11.2 This Agreement shall enter into force from the date upon which the duly authorized representatives of the Parties sign it. It shall remain in force until December 31, 2006.



11.3 GS/OAS may terminate this Agreement for justified reasons, by giving notice in writing to FAE ten (10) calendar days in advance of the termination date. The following shall be considered as justified reasons for termination: noncompliance with any of the obligations assumed by FAE under this Agreement; the existence of irregularities in the management of GS/OAS Contribution; and bankruptcy by FAE.

11.4 Either Party may terminate this Agreement because of unforeseen circumstances by giving written notice to the other thirty (30) calendar days in advance of the termination date. Acts of God or cases of *force majeure* shall be considered as unforeseen circumstances.

11.5 In the situations indicated in Articles 11.3 and 11.4 of this Agreement, FAE may not contract any further obligations with GS/OAS Contribution after the date of the termination notice. Moreover, FAE must submit a final (narrative and financial) report within a period of no more than thirty (30) calendar days of notification of termination.

11.6 Within fifteen (15) calendar days of the termination date, FAE shall reimburse SEDI/IACD for the portion of GS/OAS Contribution that was not spent and/or was not irrevocably obligated to third parties prior to the applicable time period in Article 11.3 or 11.4, respectively. The reimbursement shall be made by a remittance in United States dollars payable to the order of SEDI/IACD.

SIGNED by the duly authorized representatives of the Parties in **triplicate originals** as of the Effective Date listed below, and at the place indicated below:

FOR Fundación Acción Empresarial:	FOR GS/OAS:
	
Javier Cox Irrarrazaval	L. Ronald Scheman
Presidente FAE	Director General IACD
Date: Friday 19, March 2004	Date:
Location: Santiago, CHILE	Location: