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**CREDIT NUMBER 3954 BOS**

# **Federation Project Agreement**

**(Urban Infrastructure and Service Delivery Project)**

**between**

**INTERNATIONAL DEVELOPMENT ASSOCIATION**

**and**

**FEDERATION OF BOSNIA AND HERZEGOVINA**

**Dated November 3, 2004**

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# **CREDIT NUMBER 3954 BOS**

## **PROJECT AGREEMENT**

AGREEMENT, dated November 3, 2004 between the INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and the FEDERATION OF BOSNIA AND HERZEGOVINA (the Federation).

WHEREAS (A) by the Development Credit Agreement of even date herewith between Bosnia and Herzegovina (the Borrower) and the Association, the Association has agreed to lend to the Borrower an amount in various currencies equivalent to thirteen million eight hundred thousand Special Drawing Rights (SDR 13,800,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that the Federation agrees to undertake such obligations toward the Association as are set forth in this Agreement; and

(B) by a subsidiary credit agreement to be entered into between the Borrower and the Federation (the Subsidiary Credit Agreement), the Borrower will make available to the Federation a portion of the proceeds of the Credit provided for under the Development Credit Agreement on terms and conditions set forth in said Subsidiary Credit Agreement; and

WHEREAS the Federation, in consideration of the Association's entering into the Development Credit Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

### **ARTICLE I**

#### **Definitions**

Section 1.01. Unless the context otherwise requires, the several terms defined in the Development Credit Agreement, the Preamble to this Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

### **ARTICLE II**

#### **Execution of the Project**

Section 2.01. (a) The Federation declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Credit Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, urban management, financial, technical and environmental practices, and shall provide, or cause

to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) For the purposes of carrying out the Project, the Federation shall relend the proceeds of the Credit received by it from the Borrower under the Federation Subsidiary Credit Agreement to each Participating Utility and Participating Canton, as the case may be, in the amounts set forth under the Federation Subsidiary Credit Agreement, under a Subsidiary Financing Agreement with such Participating Utility, or Participating Canton, as the case may be, under terms and conditions that will have been approved by the Association, including the terms and conditions set forth in paragraph (e) of Section 3.01 of the Development Credit Agreement.

(c) Without limitation upon the provisions of paragraphs (a) and (b) of this Section and except as the Association and the Federation shall otherwise agree, the Federation shall carry out the Project in accordance with the Implementation Program set forth in Schedule 1 to this Agreement.

Section 2.02. (a) Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of this Section 2.02 and Schedule 2 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) The Borrower shall update the Procurement Plan in accordance with terms of reference acceptable to the Association, and furnish such update to the Association not later than twelve (12) months after the date of the preceding Procurement Plan, for the Association's approval. Promptly following each approval by the Association of the updated Procurement Plan, the Borrower shall provide a copy of such update to each of the Entities.

(c) In respect of the procurement of goods, works and consultants' services required for the Project and to be awarded on the basis of National Competitive Bidding, the following provisions of this paragraph (c) shall apply:

(i) Registration

(A) Bidding shall not be restricted to pre-registered firms.

(B) Where registration is required, bidders shall be allowed a reasonable time to complete the registration process, and shall not be denied registration for reasons unrelated to their capability and resources to successfully perform the contract, which shall be verified through post-qualification.

(C) Foreign bidders shall not be precluded from bidding. If a registration process is required, a foreign bidder declared the lowest evaluated bidder shall be given a reasonable opportunity to register.

(ii) Advertising

Invitations to bid shall be advertised in at least one widely circulated national daily newspaper allowing a minimum of thirty (30) days for the preparation and submission of bids.

(iii) Pre-qualification

When pre-qualification shall be required for large or complex works, invitations to pre-qualify for bidding shall be advertised in at least one widely circulated national daily newspaper a minimum of thirty (30) days prior to the deadline for the submission of pre-qualification applications. Minimum experience, and technical and financial requirements, shall be explicitly stated in the pre-qualification documents.

(iv) Participation by Government-owned enterprises

Government-owned enterprises in Bosnia and Herzegovina, including those in the Federation and Republika Srpska, shall be eligible to participate in bidding only if they can establish that they are legally and financially autonomous, operate under commercial law and are not a dependent agency of the contracting authority. Furthermore, they will be subject to the same bid and performance security requirements as other bidders.

(v) Bidding Documents

Procuring entities shall use the appropriate standard bidding documents for the procurement of goods, works or services, acceptable to the Association.

(vi) Bid Opening and Bid Evaluation

- (A) bids shall be opened in public, immediately after the deadline for submission of bids;
- (B) evaluation of bids shall be made in strict adherence to the monetarily quantifiable criteria declared in the bidding documents; and
- (C) contracts shall be awarded to the qualified bidder having submitted the lowest-evaluated, substantially responsive bid and no negotiation shall take place.

(vii) Price Adjustment

Civil works contracts of long duration (more than eighteen (18) months) shall contain an appropriate price adjustment clause.

(viii) Rejection of Bids

(A) All bids shall not be rejected and new bids solicited without the Association's prior concurrence.

(B) When the number of bids received is less than three, re-bidding shall not be carried out without the Association's prior concurrence.

Section 2.03. The Federation shall exercise its rights under the Subsidiary Financing Agreements to which it is a party in such manner as to protect the interests of the Federation and the Association and to accomplish the purposes of the Credit, and except as the Association shall otherwise agree, shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving any of the Subsidiary Financing Agreements or any provision thereof.

Section 2.04. (a) The Federation shall, at the request of the Association, exchange views with the Association with regard to the progress of the Project, the performance of its obligations under this Agreement, under the Federation Subsidiary Credit Agreement, under the Subsidiary Financing Agreements to which it is a party, and other matters relating to the purposes of the Credit.

(b) The Federation shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Credit, or the performance by the Federation of its obligations under this Agreement, under the Federation Subsidiary Credit Agreement and under any of the Subsidiary Financing Agreements to which it is a party.

### **ARTICLE III**

#### **Financial Covenants**

Section 3.01. (a) Except as the Association shall otherwise agree, the Federation shall cause each Group A Utility operating on its territory to produce for each of its fiscal years after its fiscal year ending on December 31, 2007, total revenues equivalent to not less than the sum of its total operating and maintenance expenses, including depreciation.

(b) Before October 31st in each of its fiscal years, the Federation shall cause each Group A Utility, on the basis of forecasts prepared by the relevant Group A Utility and satisfactory to the Association, to review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year and shall furnish to the Association the results of such review upon its completion.

(c) If any such review shows that a Group A Utility would not meet the requirements set forth in paragraph (a) for the relevant Group A Utility's fiscal years covered by such review, the Federation shall cause the relevant Group A Utility to promptly take all necessary measures (including, without limitation, efficiency improvements and adjustments of the structure or level of its rates) in order to meet such requirements.

(d) For purposes of this Section:

- (i) The term "total revenues" means the sum of total operating revenues and net non-operating income.
- (ii) The term "total operating revenues" means revenues from all sources related to operations.
- (iii) The term "net non-operating income" means the difference between:
  - (A) revenues from all sources other than those related to operations; and
  - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (iv) The term "total operating expenses" means all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, and provision for depreciation, but excluding interest and other charges on debt.

Section 3.02. (a) Except as the Association shall otherwise agree, the Federation shall cause each Group B Utility operating on its territory to produce for each of its fiscal years after its fiscal year ending on December 31, 2008, total revenues equivalent to not less than the sum of its total operating and maintenance expenses, including depreciation.

(b) Before October 31st in each of its fiscal years, the Federation shall cause each Group B Utility, on the basis of forecasts prepared by the relevant Group B Utility and satisfactory to the Association, to review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year and shall furnish to the Association the results of such review upon its completion.

(c) If any such review shows that a Group B Utility would not meet the requirements set forth in paragraph (a) for the relevant Group B Utility's fiscal years covered by such review, the Federation shall cause the relevant Group B Utility to promptly take all necessary measures (including, without limitation, efficiency improvements and adjustments of the structure or level of its rates) in order to meet such requirements.

(d) For purposes of this Section:

- (i) The term “total revenues” means the sum of total operating revenues and net non-operating income.
- (ii) The term “total operating revenues” means revenues from all sources related to operations.
- (iii) The term “net non-operating income” means the difference between:
  - (A) revenues from all sources other than those related to operations; and
  - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (iv) The term “total operating expenses” means all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, and provision for depreciation, but excluding interest and other charges on debt.

Section 3.03. (a) Except as the Association shall otherwise agree, the Federation shall cause each Participating Federation Utility not to incur any debt unless a reasonable forecast of the revenues and expenditures of the relevant Participating Federation Utility shows that the estimated net revenues of the Participating Federation Utility for each fiscal year during the term of the debt to be incurred shall be at least 1.3 times the estimated debt service requirements of the Participating Federation Utility in such year on all debt of the Participating Federation Utility, including the debt to be incurred.

- (b) For the purposes of this Section:
  - (i) The term “debt” means any indebtedness of the relevant Participating Federation Utility maturing by its terms more than one year after the date on which it is originally incurred.
  - (ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.
  - (iii) The term “net revenues” means the difference between:
    - (A) the sum of revenues from all sources related to operations and net non-operating income; and
    - (B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.

- (iv) The term “net non-operating income” means the difference between:
  - (A) revenues from all sources other than those related to operations; and
  - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (v) The term “debt service requirements” means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.
- (vi) The term “reasonable forecast” means a forecast prepared by the relevant Participating Federation Utility not earlier than twelve (12) months prior to the incurrence of the debt in question, which both the Association and the Borrower accept as reasonable and as to which the Association has notified the Borrower of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of the Participating Federation Utility.
- (vii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Association.

Section 3.04. The Federation shall cause each Participating Federation Utility to establish, not later than by September 30, 2004, and thereafter maintain, a financial management system, including records and accounts, and prepare financial statements to produce sufficient information for appropriate management, all in accordance with accounting standards acceptable to the Association, consistently applied, adequate to reflect its operations and financial conditions and to register separately the operations, resources and expenditures related to the Project.

Section 3.05. The Federation shall ensure that the records, accounts and financial statements of each of the Group A Utilities are audited starting with the 2007 fiscal year and continuing thereafter, and for each of the Group B Utilities starting with the 2008 fiscal year and continuing thereafter, in accordance with consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association and the Borrower, and furnish to the Association and the Borrower not later than six (6) months after the end of such year certified copies of the financial statements for such year so audited and the report of such audit by the auditors of such scope and such detail as the Borrower and the Association shall have reasonably requested.



Section 3.06. The Federation shall cause each Participating Federation Utility, until the actions stipulated in Section 3.05 shall have been implemented, to have its annual financial statements audited in accordance with consistently applied locally applicable audit standards by independent auditors and furnish to the Association and the Borrower not later than six (6) months after the end of such year certified copies of the financial statements for such year so audited and the report of such audit by the auditors.

#### **ARTICLE IV**

##### **Effective Date; Termination; Cancellation and Suspension**

Section 4.01. This Agreement shall come into force and effect on the later of:

- (i) the date upon which the Development Credit Agreement becomes effective; and
- (ii) the date when this Agreement has been executed by the parties hereto.

Section 4.02. (a) This Agreement and all obligations of the Association and of the Federation thereunder shall terminate on the earlier of the two following dates:

- (i) the date on which the Development Credit Agreement shall terminate in accordance with its terms; or
- (ii) the date twenty (20) years after the date of this Agreement.

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a) (ii) of this Section, the Association shall promptly notify the Federation of this event.

Section 4.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

## ARTICLE V

### Miscellaneous Provisions

Section 5.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telex or facsimile to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other addresses as such party shall have designated by notice to the party giving such notice or making such request. Deliveries made by facsimile transmission shall also be confirmed by mail. The addresses so specified are:

For the Association:

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

Cable address:

INDEVAS  
Washington, D.C.

Telex:

248423 (MCI) or  
64145 (MCI)

Facsimile:

(202) 477-6391

For the Federation:

Federation Ministry of Finance  
Mehmeda Spahe 5  
71000 Sarajevo  
Bosnia and Herzegovina

Facsimile:

387 33 203 152

Section 5.02. Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Agreement on behalf of the Federation or by the Federation on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by its Minister of Finance, or by such other person or persons as the Federation shall designate in writing, and the Federation shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

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

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Niko Lozancic  
Authorized Representative

FEDERATION OF BOSNIA AND HERZEGOVINA

By /s/ Dirk Reinermann  
Authorized Representative

## **SCHEDULE 1**

### **Implementation Program**

1. The Federation shall adopt and thereafter maintain the Operational Manual, and shall also maintain the Federation Subsidiary Credit Agreement, in form and content satisfactory to the Association, and duly perform all its obligations under the Operational Manual and the Federation Subsidiary Credit Agreement and shall not take or concur in any action which would have the effect of amending, assigning, abrogating or waiving the Operational Manual or the Federation Subsidiary Credit Agreement without obtaining the prior approval of the Association.

2. The Federation shall take, or cause to be taken, all measures necessary to ensure that:

(a) the PITs shall discharge their obligations and responsibilities under the Project under the overall coordination, management and supervision of the PMT established within the Ministry of Foreign Trade and Economic Relations of the Borrower, which PMT shall be responsible for, among other matters, the clearance, management and supervision of Project procurement activities;

(b) the PITs shall follow the operational and administrative procedures for the implementation of the Project set forth in the Operational Manual;

(c) the Sub-projects are implemented in a timely manner in full compliance with the Environmental Management Plans and the Environmental Management Plan Framework;

(d) the PITs are maintained and adequately staffed throughout the implementation of the Project, satisfactory to the Association; and

(e) the Cantonal Ministries of Urban Planning and Environment provide their approval of or comments upon the urban management development plans referred to in clause (c)(ii) of paragraph 3 of Schedule 1 to the Development Credit Agreement no later than by thirty (30) calendar days of their respective receipt of the proposed urban management development plans.

3. The Federation shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the indicators agreed upon among the Borrower, the Entities and the Association, the carrying out of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Association, and furnish to the Association, on or about December 31, 2006, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section 3, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Association, by March 31, 2007, or such later date as the Association shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association's views on the matter.

## **SCHEDULE 2**

### **Procurement**

#### Section I. General

A. All goods, works and services (other than consultants' services) shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" dated May 2004 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants' services shall be procured in accordance with Sections I and IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" dated May 2004 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Association of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

#### Section II. Particular Methods of Procurement of Goods, Works and Services (other than Consultants' Services)

##### A. International Competitive Bidding

Except as otherwise provided in Part B of this Section, contracts shall be awarded on the basis of International Competitive Bidding. Standard documents of the Association for International Competitive Bidding will be used.

##### B. Other Procurement Procedures

###### 1. National Competitive Bidding

Works estimated to cost less than \$500,000 equivalent per contract may be procured under contracts awarded on the basis of National Competitive Bidding and the additional provisions described in paragraph (c) of Section 2.02 of this Project Agreement.

###### 2. Shopping

Contracts for goods which cannot be grouped into larger bidding packages and estimated to cost less than \$100,000 equivalent per contract may be procured under contracts awarded on the basis of Shopping, based on a model request for quotations satisfactory to the Association. In case of direct invitation (not publicly advertised) the list of firms to be invited should be determined by a committee or commission.

Minor works estimated to cost less than \$100,000 equivalent per contract may also be procured under contracts awarded on the basis of Shopping and lump-sum, fixed-price contracts awarded on the basis of quotations obtained from at least three (3) qualified domestic contractors in response to a written invitation. The invitation shall include a detailed description of the

works, including basic specifications, the required completion date, a basic form of agreement acceptable to the Association, and relevant drawings, where applicable. The award shall be made to the contractor who offers the lowest price quotation for the required work, and who has the experience and resources to complete the contract successfully. In case of direct invitation (not publicly advertised) the list of firms to be invited should be determined by a committee or commission.

3. Direct Contracting

Direct contracting of works and goods will be allowed only with the previous approval of the Association and only under the circumstances described in paragraph 3.6 of the Procurement Guidelines.

Section III. Particular Methods of Procurement of Consultants' Services

A. Quality- and Cost-based Selection

Except as otherwise provided in Part B of this Section, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection. For purposes of paragraph 2.7 of the Consultant Guidelines, the short list of consultants for services estimated to cost less than \$100,000 equivalent per contract may comprise entirely national consultants, with the prior agreement of the Association and provided that sufficient participation and competition is ensured.

B. Other Procedures

1. Least-cost Selection

Services for assignments which the Association agrees meet the requirements of paragraph 3.6 of the Consultant Guidelines and estimated to cost less than \$100,000 equivalent per contract may be procured under contracts awarded on the basis of Least-cost Selection in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

2. 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, 3.7 and 3.8 of the Consultant Guidelines.

3. Single Source Selection

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 3.9 through 3.13 of the Consultant Guidelines.

4. Individual Consultants

Specialized advisory services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines and selected by comparison of qualifications of three (3) candidates may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines. In case of direct invitation (not publicly advertised) the list of individuals to be invited to submit *curriculum vitae* should be determined by a committee or commission. Under the circumstances described in paragraph 5.4 of the Consultant Guidelines, such contracts may be awarded to individual consultants on a sole-source basis.

Section IV. Review by the Association of Procurement Decisions

Except as the Association shall otherwise determine by notice to the Borrower, the following contracts shall be subject to Prior Review by the Association: (a) each contract for goods and works procured on the basis of International Competitive Bidding or direct contracting and the first two contracts for works procured on the basis of National Competitive Bidding; and (b) each contract for consultants' services procured on the basis of Quality- and Cost-based Selection or on a sole-source basis for consultants' services provided by firms or individuals. All other contracts shall be subject to Post Review by the Association.