

CONFORMED COPY

LOAN NUMBER 3890 LV

Project Agreement

(Jelgava District Heating Rehabilitation Project)

among

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

THE CITY OF JELGAVA

and

THE JELGAVA DISTRICT HEATING COMPANY

Dated September 18, 1995

LOAN NO. 3890 LV

PROJECT AGREEMENT

AGREEMENT, dated September 18, 1995, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and the CITY OF JELGAVA and the JELGAVA DISTRICT HEATING COMPANY (JDHC).

WHEREAS (A) by the Loan Agreement of even date herewith between the Republic of Latvia (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to fourteen million dollars (\$14,00,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the City of Jelgava and JDHC agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by a subsidiary loan agreement to be entered into between the Borrower and the City of Jelgava, the proceeds of the loan provided for under the Loan Agreement will be relent to the City of Jelgava for on-lending to JDHC on the terms and conditions set forth in said Subsidiary Loan Agreement;

(C) by a sub-loan Agreement to be entered into between the City of Jelgava and JDHC, the proceeds of the subsidiary loan provided for under the Subsidiary Loan Agreement will be on-lent by the City of Jelgava to JDHC on the terms and conditions set forth in said Sub-loan Agreement; and

WHEREAS the City of Jelgava and JDHC, in consideration of

the Bank's entering into the Loan Agreement with the Borrower, have 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 Loan Agreement and the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project Obligations of the City of Jelgava

Section 2.01. (a) The City of Jelgava declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, without any limitation or restriction upon any of its other obligations under the Project Agreement, shall cause JDHC to perform in accordance with the provisions of the Project Agreement all the obligations of JDHC herein set forth, shall take or cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable JDHC to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) The City of Jelgava shall on-lend the proceeds of the Subsidiary Loan to JDHC under a sub-loan agreement to be entered into between the City of Jelgava and JDHC under terms and conditions which shall have been approved by the Bank.

(c) The City of Jelgava shall duly perform all its obligations under the Subsidiary Loan Agreement and the Sub-loan Agreement and exercise its rights under the Sub-loan Agreement in such manner as to protect the interests of the Borrower, the Bank and the City of Jelgava and to accomplish the purposes of the Loan. Except as the Bank shall otherwise agree, the City of Jelgava shall not take or concur in any actions which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Loan Agreement or any provision thereof or the Sub-loan Agreement or any provision thereof.

Section 2.02. Without limitation upon the generality of the obligations of the City of Jelgava set forth in Section 2.01 of this Agreement, the City of Jelgava shall:

(a) take all measures necessary to enable JDHC to meet the financial covenant set forth in Section 5.02 of this Agreement through periodic adjustment of tariffs of JDHC, which tariff adjustments shall be determined in accordance with a methodology acceptable to the Bank;

(b) take all measures necessary to reconstitute JDHC as a joint stock company by March 31, 1996, as set forth in Section 3.01(b) of this Agreement; and

(c) by March 31, 1996, adopt a Decision vesting in JDHC the ownership of all the equipment, wherever located, which has been or will be purchased by or for JDHC.

Section 2.03. (a) The City of Jelgava shall, at the request

of the Bank, exchange views with the Bank with regard to progress of the Project, the performance of its obligations under this Agreement, under the Subsidiary Loan Agreement and under the Sub-loan Agreement, and other matters relating to the purposes of the Loan.

(b) The City of Jelgava shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Loan, or the performance by the City of Jelgava of its obligations under this Agreement, under the Subsidiary Loan Agreement and under the Sub-loan Agreement.

Article III

Execution of the Project Obligations of JDHC

Section 3.01. JDHC declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, environmental, engineering and district heating management practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

Section 3.02. Except as the Bank shall otherwise agree, procurement of the goods and services required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of the Schedule to this Agreement.

Section 3.03. (a) JDHC shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement.

(b) Without limitation upon the provisions of Article IX of the General Conditions, JDHC shall:

- (i) prepare and furnish to the Bank not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Bank, a plan, of such scope and in such detail as the Bank shall reasonably request, for the future operation of the facilities constructed under the Project;
- (ii) afford the Bank a reasonable opportunity to exchange views with the Borrower on said plan; and
- (iii) thereafter, carry out said plan with due diligence and efficiency and in accordance with appropriate practices, taking into account the Bank's comments thereon.

Section 3.04. JDHC shall duly perform all its obligations under the Sub-loan Agreement. Except as the Bank shall otherwise agree, JDHC shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Sub-loan Agreement or any provision thereof.

Section 3.05. (a) JDHC shall, at the request of the Bank, exchange views with the Bank with regard to progress of the Project, the performance of its obligations under this Agreement and under the Sub-loan Agreement, and other matters relating to the purposes of the Loan.

(b) JDHC shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Loan, or the performance by JDHC of its obligations under this Agreement and under the Sub-loan Agreement.

ARTICLE IV

Management and Operations of JDHC

Section 4.01. (a) JDHC shall carry on its operations and conduct its affairs in accordance with sound administrative, financial and district heating management practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

(b) JDHC shall, by March 31, 1996, take all measures necessary to be reconstituted as a joint-stock company under the applicable laws and regulations of the Borrower with operational and other policies and procedures acceptable to the Bank.

Section 4.02. JDHC shall at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and district heating management practices.

Section 4.03. JDHC shall take out and maintain with responsible insurers, or make other provision satisfactory to the Bank for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

ARTICLE V

Financial and Other Covenants

Section 5.01. (a) JDHC shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) JDHC shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and funds flow statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year: (A) certified copies of its financial statements for such year as so audited; and (B) the report of such audit by said auditors of such scope and in such detail as the Bank shall have reasonably requested; and
- (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

Section 5.02. (a) JDHC shall periodically prepare in accordance with a methodology acceptable to the Bank and adopt the necessary adjustments to its tariffs that would enable it to cover the costs of production, operations and maintenance, depreciation, interest payments on debt and make a reasonable

contribution to reserves.

(b) Before May 31 in each of its fiscal years, JDHC shall, on the basis of forecasts prepared by JDHC and found satisfactory to the Bank, review whether it would be able to cover the said costs of production, operations and maintenance, depreciation, interest payments on debt and make a reasonable contribution to reserves in respect of such year and the next following fiscal year and shall furnish to the Bank the results of such review upon its completion.

(c) If any such review shows that JDHC would not meet the requirements set forth in paragraph (a) for JDHC's fiscal years covered by such review, JDHC shall promptly take all necessary measures in order to meet such requirements.

Section 5.03. (a) Except as the Bank shall otherwise agree, JDHC shall not incur any debt, unless the net revenues of JDHC for the fiscal year immediately preceding the date of such incurrence or for a later twelve-month period ended prior to the date of such incurrence, whichever is the greater, shall be at least 1.3 times the estimated maximum debt service requirements of JDHC for any succeeding fiscal year on all debt of JDHC, including the debt to be incurred.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of JDHC 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, including subsidies, if any, 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) 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 Bank.

Section 5.04. By May 31, in each of its fiscal years beginning with its fiscal year 1996, JDHC shall prepare and furnish to the Bank, in a form acceptable to the Bank, a report of the five-year financial projections, which shall consist of income statements, sources and applications of funds statements and balance sheets, along with financial performance indicators.

ARTICLE VI

Effective Date; Termination; Cancellation and Suspension

Section 6.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 6.02. This Agreement and all obligations of the Bank and the City of Jelgava and of JDHC thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify the City of Jelgava and JDHC thereof.

Section 6.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VII

Miscellaneous Provisions

Section 7.01. 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, telegram, cable, telex or radiogram 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 address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Bank:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INTBAFRAD
Washington, D.C.

Telex:

248423 (RCA)
82987 (FTCC)
64145 (WUI) or
197688 (TRT)

For the City of Jelgava:

11 Liela Street
Jelgava
LV-3001
Latvia

For JDHC:

Katolu 6/8
Jelgava
LV-3001
Latvia

Section 7.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of the City of Jelgava and JDHC may be taken or executed by the Chairman of Jelgava City Council and the Director of JDHC, respectively, or such other person or persons as the Chairman of Jelgava City Council and the Director of JDHC, respectively, shall designate in writing, and the City of Jelgava and JDHC shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 7.03. 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 the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ B. Kavalsky
Acting Regional Vice President
Europe and Central Asia

CITY OF JELGAVA

By /s/ O. Kalnins
Authorized Representative

JELGAVA DISTRICT HEATING COMPANY

By /s/ O. Kalnins
Authorized Representative

SCHEDULE

Procurement and Consultants' Services

Section I. Procurement of Goods

Part A: General

Goods shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 (the Guidelines) and the following provisions of this Section, as applicable.

Part B: International Competitive Bidding

1. Except as otherwise provided in Part C of this Section, goods shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2. The following provisions shall apply to goods to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B.

Preference for domestically manufactured goods

The provisions of paragraphs 2.54 and 2.55 of the Guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Borrower.

Part C: Other Procurement Procedures

1. International Shopping

Goods estimated to cost \$300,000 equivalent or less per contract and \$1,800,000 equivalent or less in the aggregate, may be procured under contracts awarded on the basis of international shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

2. National Shopping

Goods estimated to cost \$50,000 equivalent or less per contract and \$200,000 equivalent or less in the aggregate, may be procured under contracts awarded on the basis of national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

3. Direct Contracting

Goods which should be procured as an extension of an existing contract, must be purchased from the original supplier to be compatible with existing equipment, are of a proprietary nature, must be procured from a particular supplier as a condition of a performance guarantee, and costing \$1,000,000 equivalent or less in the aggregate, may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraph 3.7 of the Guidelines.

Part D: Review by the Bank of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to prequalify for bidding or to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Bank for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Bank, and with the provisions of said paragraph 1.

2. Prior Review

With respect to each contract for goods estimated to cost the equivalent of \$300,000 or more, the first three contracts for goods awarded in accordance with Part C.1 of this Schedule and all contracts awarded in accordance with Part C.3 of this Schedule, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

1. Consultants' services shall be procured under contracts awarded in accordance with the provisions of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981 (the Consultant Guidelines). For complex, time-based assignments, such contracts shall be based on the standard form of contract for consultants' services issued by the Bank, with such modifications thereto as shall have been agreed by the Bank. Where no relevant standard contract documents have been issued by the Bank, other standard forms acceptable to the Bank shall be used.

2. Notwithstanding the provisions of paragraph 1 of this Section, the provisions of the Consultant Guidelines requiring prior Bank review or approval of budgets, short lists, selection procedures, letters of invitation, proposals, evaluation reports and contracts, shall not apply to (a) contracts for the employment of consulting firms estimated to cost less than \$100,000 equivalent each or (b) contracts for the employment of individual consultants estimated to cost less than \$50,000 equivalent each. However, said exceptions to prior Bank review shall not apply to (a) the terms of reference for such contracts, (b) single-source selection of consulting firms, (c) assignments of a critical nature, as reasonably determined by the Bank, (d) amendments to contracts for the employment of consulting firms raising the contract value to \$100,000 equivalent or above, or (e) amendments to contracts for the employment of individual consultants raising the contract value to \$50,000 equivalent or above.

