

Public Disclosure Authorized

CONFORMED COPY

CREDIT NUMBER 3823 YF

Development Credit Agreement

(Montenegro Environmentally Sensitive Tourist Areas Project)

between

SERBIA AND MONTENEGRO

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated October 13, 2003

CREDIT NUMBER 3823 YF

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated October 13, 2003, between SERBIA AND MONTENEGRO (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(B) the Borrower will make available to the Republic of Montenegro, through the Sub-credit Agreement (as defined hereinafter), the proceeds of the Credit, as provided in this Agreement; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement,

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985 (as amended through October 6, 1999) (the General Conditions), constitute an integral part of this Agreement.

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

(a) "Euro" means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty of European Union;

(b) "Financial Monitoring Report" means each report prepared in accordance with Section 4.02 (a) of this Agreement;

(c) "MJC1" means "Lovanja" DOO Kotor, a limited liability company established by the Municipality of Budva, Municipality of Kotor and PEW, and

registered in the Commercial Court of the Republic of Montenegro on July 7, 2003, or any successor thereto;

(d) “MJC2” means a limited liability company to be established in a manner, form and structure satisfactory to the Association, and to be registered in the Commercial Court of the Republic of Montenegro, or any successor thereto;

(e) “MJC1 EMP” means the plan describing the environmental mitigation, monitoring, and institutional measures to be undertaken during the implementation of Parts A and B the Project, included in the MJC1 Sub-credit and Project Implementation Agreement, and satisfactory to the Association;

(f) “MJC2 EMP” means the plan describing the environmental mitigation, monitoring, and institutional measures to be undertaken during the implementation of Parts A and B the Project, included in the MJC2 Sub-credit and Project Implementation Agreement, and satisfactory to the Association;

(g) “MJC1 Sub-credit and Project Implementation Agreement” means the agreement entered among the Republic of Montenegro, MJC1 and PEW, referred to in Section 3.02 (a) of this Agreement, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the MJC1 Sub-credit and Project Implementation Agreement;

(h) “MJC2 Sub-credit and Project Implementation Agreement” means the agreement entered between the Republic of Montenegro, MJC2 and PEW, referred to in Section 3.02 (a) of this Agreement, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the MJC2 Sub-credit and Project Implementation Agreement;

(i) “PEW” means Crnogorsko Primorje, the Republic of Montenegro’s public enterprise for water supply, wastewater treatment and solid waste disposal, established pursuant to a decision of the Parliament of the Republic of Montenegro, dated November 18, 1991, and published in the Official Gazette No 50/91, dated December 20, 1991, registered by the Commercial Court of the Republic of Montenegro on January 23, 1992, or any successor thereto;

(j) “Special Account” means the account referred to in Section 2.02 (b) of this Agreement;

(k) “Sub-credit Agreement” means the agreement entered between the Borrower and the Republic of Montenegro, referred to in Section 3.02 (a) of this Agreement, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the Sub-credit Agreement; and

(1) "Sub-credit and Project Implementation Agreements" means the MJC1 Sub-credit and Project and Implementation Agreement and MJC2 Sub-credit and Project Implementation Agreement.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, an amount in various currencies equivalent to five million Special Drawing Rights (SDR 5,000,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit 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 Credit.

(b) The Borrower may, for the purposes of the Project, open and maintain in a commercial bank a special deposit account, in Euro, on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure and attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 4 to this Agreement.

Section 2.03. The Closing Date shall be March 31, 2008, or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

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

(b) The commitment charge shall accrue: (i) from the date sixty (60) 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 canceled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency

or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent ($3/4$ of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on September 1 and March 1 in each year.

Section 2.07. The Borrower shall repay the principal amount of the Credit in semiannual installments payable on each September 1 and March 1, commencing March 1, 2014, and ending September 1, 2023. Each installment shall be five percent (5%) of such principal amount.

Section 2.08. The Euro is hereby specified for the purposes of Section 4.02 of the General Conditions.

Section 2.09. The Minister of Finance of the Republic of Montenegro, and any person or persons whom he or she shall designate in writing, is designated as representative of the Borrower for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 of this Agreement and Article V of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. The Borrower declares its commitment to the objectives of the Project, and, to this end, without any limitation or restriction upon any of its other obligations under this Agreement, shall ensure that the Republic of Montenegro carries out the Project with due diligence and efficiency, and in conformity with appropriate administrative, financial, environmental and technical 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. (a) Without limitation upon the provisions of Section 3.01, and except as the Association and the Borrower shall otherwise agree, the Borrower, in order to ensure the implementation the Project, shall make the proceeds of the Credit available to the Republic of Montenegro, under a sub-credit agreement (Sub-credit Agreement), to be entered between the Borrower and the Republic of Montenegro, which shall be satisfactory to the Association, and which shall include provisions related to the subsequent provision of a portion of the proceeds of the Credit by the Republic of Montenegro to MJC1 and MJC2,

and the rights and responsibilities of MJC1 and MJC 2, and PEW, with respect to the implementation of Parts A and B of the Project, under two sub-credit and project implementation agreements (the MJC1 Sub-credit and Project Implementation Agreement and MJC 2 Sub-credit and Project Implementation Agreement), which shall be satisfactory to the Association, and shall include the terms and conditions set forth in Schedule 5 to this Agreement.

(b) The Borrower shall exercise its rights under the Sub-credit Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit, and, except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate, repeal or waive the Sub-credit Agreement, or any provision thereof.

Section 3.03. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Association and the Borrower shall otherwise agree, the Borrower shall ensure that:

(a) the Republic of Montenegro maintains, during the term of the Project, the PEW with staff and other resources required for Project implementation and satisfactory to the Association; and

(b) the Republic of Montenegro, MJC1, MJC2 and PEW implement the Project in accordance with the terms and conditions of the Sub-credit and Project Implementation Agreements, including the MJC1 EMP and MJC2 EMP, and do not amend, suspend, abrogate, repeal or waive the Sub-credit and Project Implementation Agreements without prior approval of the Association.

Section 3.04. The Borrower shall ensure that the Republic of Montenegro, MJC1, MJC2 and PEW:

(a) maintain policies and procedures adequate to enable them to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Borrower and 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, by May 31, 2005, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph 1 (a) of this Section 3.04, 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 October 31, 2005, or such later date as the Association shall request, the report referred to in paragraph 1 (b) of this Section 3.04, 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.

Section 3.05. For the purposes of Section 9.06 of the General Conditions and without limitation thereto, the Borrower shall:

(a) prepare, on the basis of guidelines acceptable to the Association, and furnish to the Association 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 Association, a plan for the future operation of the Project; and

(b) afford the Association a reasonable opportunity to exchange views with the Borrower on said plan.

Section 3.06. 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 Schedule 3 to this Agreement.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower shall ensure that the Republic of Montenegro shall cause MJC1, MJC2 and PEW to maintain a financial management system, including records and accounts, and prepare financial statements in accordance with accounting standards acceptable to the Association, consistently applied, adequate to reflect the operations and financial condition of MJC1, MJC 2 and PEW, and to register separately the operations, resources and expenditures related to the Project.

(b) The Borrower shall ensure that the Republic of Montenegro causes MJC1, MJC2 and PEW to:

- (i) have the MJC1, MJC2 and PEW records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with auditing standards acceptable to the Association, consistently applied, by independent auditors acceptable to the Association;
- (ii) furnish to the Association as soon as available, but in any case not later than five (5) months after the end of each

such year: (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year as so audited; and (B) an opinion on such statements, records and accounts and report of such audit, by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

- (iii) furnish to the Association such other information concerning such records and accounts, and the audit thereof, and concerning said auditors, as the Association may from time to time reasonably request.

Section 4.02. (a) Without limitation upon the reporting obligations set forth in Section 3.04 of this Agreement, the Borrower shall ensure that the Republic of Montenegro causes PEW to ensure that financial monitoring reports, in form and substance satisfactory to the Association, are prepared and furnished to the Association which:

- (i) set forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Credit, and explains variances between the actual and planned uses of such funds;
- (ii) describe physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and
- (iii) set forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first Financial Monitoring Report shall be furnished to the Association not later than forty-five (45) days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each Financial Monitoring Report shall be furnished to the Association not later than forty five (45) days after each subsequent calendar quarter, and shall cover such calendar quarter.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional events are specified:

(a) the Republic of Montenegro shall have failed to perform any of its obligation under the Sub-credit Agreement;

(b) the Republic of Montenegro, MJC1 or PEW shall have failed to perform any of its obligations under the MJC1 Sub-credit Agreement Project Implementation Agreement; or

(c) the Republic of Montenegro, MJC2 or PEW shall have failed to perform any of its obligations under the MJC2 Sub-credit Agreement Project Implementation Agreement.

Section 5.02. Pursuant to Section 7.01 (h) of the General Conditions, the following additional event is specified, namely that any of the events specified in Section 5.01 of this Agreement shall occur and shall continue for a period of sixty (60) days after notice thereof shall have been given by the Association to the Borrower.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of this Agreement within the meaning of Section 12.01 (b) of the General Conditions:

(a) the Sub-credit Agreement has been executed and all conditions to the effectiveness of such agreement have been fulfilled; and

(b) one of the Sub-credit and Project Implementation Agreements has been executed, and all conditions to the effectiveness of such agreement have been fulfilled.

Section 6.02. The following is specified as an additional matter, within the meaning of paragraph (b) of Section 12.02 of the General Conditions, to be included in the opinions to be furnished to the Association, namely that the Sub-credit Agreement, and MJC1 Sub-credit and Project Implementation Agreement, or MJC2 Sub-credit and Project Implementation Agreement, as applicable, have been duly authorized or ratified by the Borrower, Republic of Montenegro, PEW, and MJC1 or MJC2, as applicable, and are legally binding upon the parties thereto.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representative of the Borrower; Addresses

Section 7.01. Except as provided in Section 2.09 of this Agreement, the Minister for International Economic Relations is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry for International Economic Relations
Bul. Mihajila Pupina 2
11000 Belgrade
Serbia and Montenegro

Facsimile:

(381 11) 311-2979

For the Association:

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

Cable address:

Telex:

Facsimile:

INDEVAS
Washington, D.C.

248423 (MCI) or
64145 (MCI)

(202) 477-6391

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

SERBIA AND MONTENEGRO

By /s/ Branko Lukovac

Authorized Representative

ASSOCIATION

INTERNATIONAL

DEVELOPMENT

By /s/ Rory O'Sullivan

Authorized Representative

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 Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items to be financed in each Category:

<u>Category</u>	<u>Amount of the Credit Allocated Expressed in SDR</u>	<u>% of Expenditures to be Financed</u>
(1) Goods	2,560,000	80%
(2) Works	1,420,000	83%
(3) Consultants' services, including auditing services	360,000	81%
(4) Unallocated	<u>660,000</u>	
TOTAL	<u>5,000,000</u>	

2. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement.

SCHEDULE 2

Description of the Project

The objectives of the Project are to create an ecologically and commercially sustainable solid waste collection and disposal system, to maintain a clean, environmentally attractive coastal area in the Republic of Montenegro, in order to support the growth of tourism in the area.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

Part A: Environmental Infrastructure

Improvement of environmental infrastructure of the coastal municipalities of Bar, Budva, Kotor, and Ulcinj, and other municipalities of the Republic of Montenegro that own shares in MJC1 or MJC2, through the rehabilitation of two existing municipal landfills in the municipalities of Kotor and Bar, conversion of such landfills into two regional landfills, and provision of equipment for the collection and transport of solid waste to the regional landfills, through the provisions of goods, works and services.

Part B: Environmental Rehabilitation

1. Permanent closure of five existing unlicensed waste disposal sites in an environmentally sound manner, and institution of long-term environmental monitoring of such sites, through the provision of goods and works.
2. Implementation of a pilot recycling program, including public dissemination campaign, separation of solid waste at the source, study on recycling options, demand, and markets, and improvement of the current informal recycling practices in the Kotor landfill, through the provision of goods, works and services.

Part C: Technical Assistance

1. Provision of support to MJC1, MJC2 and PEW in the management, implementation and monitoring of the Project, through the provision of goods and services, including the audit of records, accounts and financial statements referred to in Section 4.01 (b) of this Agreement.

2. Provision of support to the Government of the Republic of Montenegro in the institutional strengthening of MJC1 and MJC2, and the regulatory framework strengthening in the solid waste management sector, through the provision of services, including training.

* * *

The Project is expected to be completed by September 30, 2007.

SCHEDULE 3

Procurement and Consultants' Services

Section I. Procurement of Goods and Works

Part A: General

Goods and works 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 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines) and the provisions of the following Parts of this Section I.

Part B: International Competitive Bidding

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

Part C: Other Procurement Procedures

1. National Competitive Bidding

(a) Works estimated to cost less than \$250,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

(b) Improvement of National Competitive Bidding Procedures

- (i) Eligibility: foreign bidders shall not be precluded from bidding, and no preference of any kind shall be given to national bidders.
- (ii) Procedures: "Open Local Competitive Bidding" procedures shall be followed in all cases. 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, technical and financial requirements shall be explicitly stated in the pre-qualification documents.

- (iv) Participation by government-owned enterprises: government-owned enterprises in Serbia and Montenegro 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 government. Such enterprises shall 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 works which shall contain draft contract and conditions of contract, satisfactory to the Association.
- (vi) Submission of bids: bidders may, at their option, deliver bids either in person, by courier service, or by mail at any time prior to the deadline set the submission of bids.
- (vii) Bid opening and bid evaluation: bids shall be opened in public and, if two envelopes are submitted for technical and price components, both shall be opened simultaneously. The time for the bid opening shall be the same as for the deadline for receipt of bids or immediately thereafter; and shall be announced, together with the place for bid opening, in the solicitation documents. Evaluation of bids shall be made in strict adherence to the monetarily quantifiable criteria declared in the bidding documents. Extension of bid validity shall be allowed once only for not more than thirty (30) days. No further extensions should be requested without the prior approval of the Association. Contracts shall be awarded to qualified bidders having submitted the lowest evaluated substantially responsive bid. Negotiations shall not be allowed with the lowest evaluated bidder or any other bidder.
- (viii) Price adjustment: civil works contracts of long duration (e.g. more than eighteen (18) months) shall contain an appropriate price adjustment clause.
- (ix) Rejection of bids: all bids shall not be rejected and new bids solicited without the Association's prior concurrence.
- (x) Contracts: all contracts shall be in writing, signed and stamped by authorized signatories of the purchaser and the supplier, and shall contain identical terms and conditions of contract to those included in the tender documents.

- (xi) Securities: bid securities shall not exceed two percent (2%) of the estimated cost of the contract; performance securities shall not exceed ten percent (10%). No advance payments shall be made to contractors without a suitable advance payment security. The wording of all such securities shall be included into the bidding documents and be acceptable to the Association.

2. International Shopping

Goods estimated to cost less than \$100,000 per contract, up to an aggregate amount not to exceed \$200,000 equivalent, 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.

3. Procurement of Small Works

Works estimated to cost less than \$100,000 equivalent per contract, up to an aggregate amount not to exceed \$350,000 equivalent, may be procured under lump-sum, fixed-price contracts awarded on the basis of quotations obtained from 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.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

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

2. Prior Review

(a) With respect to each contract awarded in accordance with the provisions of Parts B and C.1 of Section I of this Schedule, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

(b) With respect to each contract to be procured in accordance with the procedures referred to in Parts C.2 and C.3 of Section I of this Schedule, the following procedures shall apply:

- (i) prior to the execution of any contract, the Borrower shall provide to the Association a report on the comparison and evaluation of quotations received and a copy of the specifications and the draft contract; and
- (ii) the procedures set forth in paragraphs 2 (f), 2 (g) and 3 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

Part A: General

Consultants' services shall be procured in accordance with the provisions of the Introduction, Section IV of, and Appendix 2 to the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Association in January 1997 and revised in September 1997, January 1999 and May 2002 (the Consultant Guidelines); and (b) the provisions of the following Parts of this Section II.

Part B: Quality- and Cost-based Selection

Except as otherwise provided in Part C of this Section, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Guidelines, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality-and cost-based selection of consultants.

Part C: Other Procedures for the Selection of Consultants

1. Least-cost Selection

Auditing services under Part C.1 of the Project, estimated to cost less than \$70,000 equivalent per contract, may be procured under contracts awarded 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 and 3.7 of the Consultant Guidelines.

3. Individual Consultants

Services of individual consultants for: (a) tasks that meet the requirements set forth in paragraph 5.1 of the Consultant Guidelines shall be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.1 through 5.3 of the Consultant Guidelines; and (b) tasks related to Project management and implementation support under Part C of the Project may be selected on a sole-source basis in accordance with the provisions of paragraphs 5.3 and 5.4 of the Consultant Guidelines, subject to prior approval of the Association.

Part D: Review by the Association of the Selection of Consultants

1. Selection Planning

A plan for the selection of consultants, which shall include contract cost estimates, contract packaging, and applicable selection criteria and procedures, shall be furnished to the Association, for its review and approval, prior to the issuance to consultants of any requests for proposals. Such plan shall be updated every 6 months during the execution of the Project, and each such updating shall be furnished to the Association for its review and approval. Selection of all consultants' services shall be undertaken in accordance with such selection plan (as updated from time to time), as shall have been approved by the Association.

2. Prior Review

(a) With respect to each contract for the employment of consulting firms, the procedures set forth in paragraphs 2, 3 and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to each contract for the employment of individual consultants, the report on the comparison of the qualifications and experience of candidates (with respect to services to be procured under paragraph 3 (a) of Part C of Section II of this Agreement), and the terms of reference and terms of employment of the consultants shall be furnished to the Association for its prior review and approval. The contract shall be awarded only after the said approval shall have been given.

SCHEDULE 4

Special Account

1. For the purposes of this Schedule:

(a) the term “eligible Categories” means Categories (1) through (3) 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 goods, works and consultants’ services required for the Project and to be financed out of the proceeds of the Credit 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 an amount equivalent to □150,000 to be withdrawn from the Credit Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule, provided, however, that, unless the Association shall otherwise agree, said Authorized Allocation shall be limited to an amount equivalent to □50,000 until the aggregate amount of withdrawals from the Credit Account of amounts allocated to the Special Account plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall equal or exceed the equivalent of SDR 1,000,000.

2. Payments out of the 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 Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall ensure that the government of the Republic of Montenegro furnishes to the Association, on behalf of the Borrower, a request or requests for deposit into the 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 Special Account such amount or amounts as the government of the Republic of Montenegro shall have requested.

(b) (i) For replenishment of the Special Account, the Borrower shall ensure that the government of the Republic of Montenegro furnishes to the Association requests for deposits into the Special Account at such intervals as the Association shall specify.

(ii) Prior to or at the time of each such request, the Borrower shall ensure that the government of the Republic of Montenegro furnishes 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 Credit Account and deposit into the Special Account such amount as the government of the Republic of Montenegro shall have requested on behalf of the Borrower, and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures. All such deposits shall be withdrawn by the Association from the 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 government of the Republic of Montenegro on behalf of the Borrower out of the Special Account, the Borrower shall ensure that the government of the Republic of Montenegro, at such time as the Association shall reasonably request, furnishes 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 Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower or the government of the Republic of Montenegro on behalf of the Borrower directly from the 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 government of the Republic of Montenegro 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 Account;

(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 Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Credit allocated to eligible Categories, minus the total amount of all outstanding special commitments entered into

by the Association pursuant to Section 5.02 of the General Conditions in respect of expenditures to be financed out of the proceeds of the Credit allocated to said Categories, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit allocated to the said 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 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 the 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 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 the 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 the 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 Account.

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

SCHEDULE 5

Terms and Conditions of the Sub-credit and Project Implementation Agreements

1. The Sub-credit and Project Implementation Agreements shall provide that the sub-credits to MJC1 and MJC2 shall:
 - (a) be denominated and be repayable (principal and interest) in Euro;
 - (b) be repayable in fourteen (14) years, including a four (4) year grace period; and
 - (c) carry an interest rate on the principal amount of the sub-credit withdrawn and outstanding from time to time equal to the interest rate specified in Section 2.05 of this Agreement, and a commitment charge on the amount of the sub-credit not withdrawn from time to time equal to the percentage of the commitment charge paid by the Borrower to the Association pursuant to Section 2.04 of this Agreement.

2. The Sub-credit and Project Implementation Agreements shall describe the rights and obligations of MJC1 or MJC2, as appropriate, and of PEW, and shall require, inter alia, that MJC1, MJC2, or PEW, as appropriate:
 - (a) carry out the activities with due diligence and efficiency under the supervision of qualified and experienced management assisted by competent staff in adequate numbers, and in accordance with sound technical, financial, environmental, commercial and managerial standards, including the requirements set forth in the MJC1 EMP or MJC2 EMP, as appropriate;
 - (b) register separately the operations, resources and expenditures related to the sub-credit;
 - (c) have the records, accounts and financial statements related to the sub-credit for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors satisfactory to the Republic of Montenegro and the Association, and furnish to the Republic of Montenegro not later than five (5) months after the end of each 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 Republic of Montenegro and the Association shall have reasonably requested;

(d) procure the goods, works and services to be financed by the sub-credit in accordance with the provisions of Schedule 4 to this Agreement, and to use such goods, works and services exclusively in the carrying out of the activities under the Project;

(e) allow the Republic of Montenegro, by itself or jointly with representatives of the Association, if the Association shall so request, to inspect such goods and the sites, works, plants and construction financed by the sub-credit, the operation thereof, and any relevant records and documents;

(f) take out and maintain with responsible insurers such insurance, against such risks and in such amounts, as shall be consistent with sound business practice, including insurance covering hazards incident to the acquisition, transportation and delivery of goods financed out of the proceeds of the sub-credit to the place of use or installation, any indemnity thereunder to be made to replace or repair such goods;

(g) provide assistance to and cooperate with PEW with respect to PEW's procurement, disbursement, accounting and reporting functions under the Project;

(h) submit to the Republic of Montenegro, in a manner and by date satisfactory to the Republic of Montenegro and the Association, a completion report; and

(i) give the Republic of Montenegro the right to suspend or terminate the right of MJC1 or MJC 2, as applicable, to the use of the proceeds of the sub-credit upon failure by such party to perform its obligations under the Sub-credit and Project Implementation Agreement.

3. Each Subsidiary Loan Agreement shall be subject to the following condition of effectiveness: a legal opinion satisfactory to the Republic of Montenegro has been issued certifying that the Sub-credit and Project Implementation Agreement has been duly executed, delivered and authorized or ratified by all necessary actions, and that such agreement is legally valid and binding on the parties thereto, in accordance with its terms.