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**CREDIT NUMBER 3859 -YEM**

# **Development Credit Agreement**

**(Third Public Works Project)**

**between**

**REPUBLIC OF YEMEN**

**and**

**INTERNATIONAL DEVELOPMENT ASSOCIATION**

**Dated April 23, 2004**



**CREDIT NUMBER 3859 -YEM**

**DEVELOPMENT CREDIT AGREEMENT**

AGREEMENT, dated April 23, 2004, between the REPUBLIC OF YEMEN (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS 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; 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 and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “Eligible Categories” means Categories (1), (2), (3) and (4) set forth in the table in paragraph A.1 of Schedule 1 to this Agreement;

(b) “Eligible Expenditures” means the expenditures for goods, works and consultants’ services referred to in Section 2.02 of this Agreement;

(c) “Environmental Management Plan” means the Borrower’s environmental management plan dated November 19, 2003, aimed at assuring: (i) the adequate development of a screening process to identify any potential negative environmental impact under the Project and undertake mitigation measures to reduce any such impacts; (ii) the implementation of a practical monitoring program to determine the effectiveness and timeliness of said interventions; and (iii) the carrying out of effective capacity building and training activities so as to improve environmental awareness and sensitivity

among Project staff, counterpart agencies and beneficiaries, as such plan may be updated from time to time by agreement between the Borrower and the Association;

(d) "Financial Monitoring Report" or "FMR" means each report prepared in accordance with Section 4.02 of this Agreement;

(e) "Investment Program" means a quarterly investment program consisting of Subprojects (as hereinafter defined) identified and appraised in accordance with the Manual of Procedures (as hereinafter defined) and referred to in paragraph 3 of Schedule 4 to this Agreement;

(f) "Manual of Procedures" means the manual of the PMU (as hereinafter defined) dated January 26, 2004, specifying the managerial, financial, administrative, engineering, procurement, environmental and social policies and procedures for the execution of the Project and the eligibility criteria for selection of Subprojects (as hereinafter defined);

(g) "Performance Indicators" means the performance indicators agreed with the Association to be utilized by the Borrower to measure the progress in the carrying out of the Project and the degree to which the objectives thereof are being achieved, and referred to in paragraph 7 of Schedule 4 to this Agreement;

(h) "PMU" means the Project Management Unit established by the Borrower for the implementation of the Second Public Works Project (Credit Number 3168-YEM) and referred to in paragraph 3 of Schedule 4 to this Agreement;

(i) "Report-based Disbursements" means the Borrower's option for withdrawal of funds from the Credit Account referred to in paragraph A.5 of Schedule 1 to this Agreement;

(j) "Special Account" means the account referred to in paragraph B of Schedule 1 to this Agreement;

(k) "Staff Service Rules" means the rules issued by the Steering Committee (as hereinafter defined) dated July 14, 1996, specifying the employment and personnel policies of the PMU, as such rules may be updated from time to time by agreement between the Borrower and the Association;

(l) "Steering Committee" means the Committee established and operating pursuant to the Borrower's Decree No. 3 of 1996, and referred to in paragraph 2 of Schedule 4 to this Agreement; and

(m) "Subproject" means a specific development activity to be carried out under Part A of the Project utilizing the proceeds of the Credit.

## **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 the Development Credit Agreement, an amount in various currencies equivalent to thirty one million three hundred thousand Special Drawing Rights (SDR 31,300,000).

Section 2.02. 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.

Section 2.03. The Closing Date shall be June 30, 2009 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 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 June 15 and December 15 in each year.

Section 2.07. (a) Subject to paragraphs (b), (c) and (d) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each June 15 and December 15 commencing June 15, 2014 and ending December 15, 2043. Each installment to and including the installment payable on December 15, 2023 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever: (i) the Borrower's per capita gross national product (GNP), as determined by the Association, shall have exceeded for three consecutive years the level established annually by the Association for determining eligibility to access the Association's resources; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the development of the Borrower's economy, modify the repayment of installments under paragraph (a) above by:

- (A) requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid; and
- (B) requiring the Borrower to commence repayment of the principal amount of the Credit as of the first semiannual payment date referred to in paragraph (a) above falling six months or more after the date on which the Association notifies the Borrower that the events set out in this paragraph (b) have occurred, provided, however, that there shall be a grace period of a minimum of five years on such repayment of principal.

(c) If so requested by the Borrower, the Association may revise the modification referred to in paragraph (b) above to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(d) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

### ARTICLE III

#### Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, community, engineering, environmental, financial, managerial and technical practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Furthermore, before November 1 of each year commencing November 1, 2004, the Borrower shall furnish to the Association, for its review and comments, an annual investment plan including an estimate of: (i) the operational costs of the PMU for the subsequent year; and (ii) the counterpart funding required to be provided by the Borrower out of its own resources for Subprojects to be carried out during the subsequent year.

(c) Taking into account the comments of the Association, the Borrower shall: (i) ensure that adequate annual budgetary allocations are made prior to January 1 of each year to cover the counterpart funding required for the Subprojects to be implemented during such year; and (ii) deposit each quarter into a separate bank account the counterpart funds identified in the quarterly financial monitoring reports referred to in Section 4.02 of this Agreement.

(d) Moreover, the Borrower shall carry out the Environmental Management Plan with due diligence and efficiency and take all actions required on its behalf to ensure the effectiveness thereof.

(e) Without limitation upon the provisions of paragraphs (a), (b), (c) and (d) of this Section and except as the Borrower and the Association shall otherwise agree, the Borrower shall carry out the Project in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

Section 3.02. 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.

Section 3.03. 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.

## **ARTICLE IV**

### **Financial Covenants**

Section 4.01. (a) The Borrower shall maintain a financial management system, including records and accounts, and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect the operations, resources and expenditures related to the Project.

(b) The Borrower shall:

- (i) have the financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period agreed to by the Association), audited, in accordance with consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association;
- (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year (or such other period agreed to by the Association), (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or other period agreed to by the Association), as so audited, and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and
- (iii) furnish to the Association such other information concerning such records and accounts, and the audit of such financial statements, and concerning said auditors, as the Association may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of reports referred to in paragraph A.5 of Schedule 1 to this Agreement (Report-based Disbursements) or on the basis of statements of expenditure, the Borrower shall:

- (i) retain, until at least one year after the Association has received the audit report for, or covering, the fiscal year in which the last withdrawal from the Credit Account was made, all records



(contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;

- (ii) enable the Association's representatives to examine such records; and
- (iii) ensure that such reports and statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Association), referred to in paragraph (b) of this Section.

Section 4.02. (a) Without limitation upon the Borrower's progress reporting obligations set out in Schedule 4 to this Agreement, the Borrower shall prepare and furnish to the Association a financial monitoring report, in form and substance satisfactory to the Association, which:

- (i) sets 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) describes 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) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first FMR 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 FMR 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**

### **Termination**

Section 5.01. The date one hundred and twenty (120) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

**ARTICLE VI**

**Representative of the Borrower; Addresses**

Section 6.01. The Minister of Planning and International Cooperation of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Planning and International Cooperation  
P.O. Box 175  
Sana'a  
Republic of Yemen

Cable address:	Telex:	Facsimile:
CENPLAN Sana'a	2266 CENPLAN YE	967-1-250-665

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

REPUBLIC OF YEMEN

By /s/ Ahmad Mohammed Sofan  
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Christiaan J. Poortman  
Regional Vice President  
Middle East and North Africa

**SCHEDULE 1**

**Withdrawal of the Proceeds of the Credit**

A. General

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 so to be financed in each Category:

<u>Category</u>	<u>Amount of the Credit Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(1) Works	24,650,000	85%
(2) Goods	1,400,000	100% of foreign expenditures, 100% of local expenditures (ex-factory cost) and 85% of local expenditures for other items procured locally
(3) Consultants' services including audit and training	2,450,000	90% for consulting firms, 87% for individual consultants and 100% for training
(4) Incremental Operating Costs	1,400,000	85%
(5) Unallocated	1,400,000	
TOTAL	<u>31,300,000</u>	

2. For the purposes of this Schedule:

(a) the term “foreign expenditures” means expenditures in the currency of any country other than that of the Borrower for goods, works or services supplied from the territory of any country other than that of the Borrower;

(b) the term “local expenditures” means expenditures in the currency of the Borrower or for goods, works or services supplied from the territory of the Borrower; and

(c) the term “Incremental Operating Costs” means expenditures under Part C of the Project incurred by the Borrower to finance the staffing and functioning costs of the PMU, office rent, office supplies, fuel and maintenance of vehicles; travel costs and per diem, excluding salaries of officials of the Borrower’s civil service.

3. 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.

4. The Association may require withdrawals from the Credit Account to be made on the basis of statements of expenditure for expenditures under contracts for: (a) goods costing less than \$50,000 equivalent per contract; (b) works costing less than \$200,000 equivalent per contract; (c) services of individual consultants costing less than \$50,000 equivalent per contract; (d) services of consulting firms under contracts costing less than \$50,000 equivalent per contract; (e) training; and (f) Incremental Operating Costs, all under such terms and conditions as the Association shall specify by notice to the Borrower.

5. The Borrower may request withdrawals from the Credit Account to be made on the basis of reports to be submitted to the Association in form and substance satisfactory to the Association, such reports to include the FMR and any other information as the Association shall specify by notice to the Borrower (Report-based Disbursements). In the case of the first such request submitted to the Association before any withdrawal has been made from the Credit Account, the Borrower shall submit to the Association only a statement with the projected sources and applications of funds for the Project for the six-month period following the date of such request.

B. Special Account

1. The Borrower may open and maintain in Dollars a special deposit account in its Central Bank, on terms and conditions satisfactory to the Association.

2. After the Association has received evidence satisfactory to it that the Special Account has been opened, withdrawals from the Credit Account of amounts to be deposited into the Special Account shall be made as follows:

(a) if the Borrower is not making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex A to this Schedule 1; and

(b) if the Borrower is making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex B to this Schedule 1.

3. Payments out of the Special Account shall be made exclusively for Eligible Expenditures. For each payment made by the Borrower out of the Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for Eligible Expenditures.

4. Notwithstanding the provisions of paragraph B.2 of this Schedule 1, the Association shall not be required to make further deposits into the Special Account:

(a) if the Association, at any time, is not satisfied that the reports referred to in paragraph A.5 of this Schedule 1 adequately provide the information required for Report-based Disbursements;

(b) if the Association determines at any time that all further withdrawals for payment of Eligible Expenditures should be made by the Borrower directly from the Credit Account; or

(c) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of: (A) the records and accounts for the Special Account; or (B) the records and accounts reflecting expenditures with respect to which withdrawals were Report-based Disbursements or were made on the basis of statements of expenditure, as the case may be.

5. The Association shall not be required to make further deposits into the Special Account in accordance with the provisions of paragraph B.2 of this Schedule if, at any time, the Association shall have notified the Borrower and the Guarantor of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account pursuant to Section 6.02 of the General Conditions. Upon such notification, the Association shall determine, in its sole discretion, whether further deposits into the Special Account may be made and what procedures should be followed for making such deposits, and shall notify the Borrower and the Guarantor of its determination.

6. (a) If the Association determines at any time that any payment out of the Special Account was made for an expenditure which is not an Eligible Expenditure, or was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association, provide such additional evidence as the

Association may request, or 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. 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 determines at any time that any amount outstanding in the Special Account will not be required to cover payments for Eligible Expenditures during the six-month period following such determination, 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 subparagraph (a), (b) or (c) of this paragraph 6 shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the provisions of the Credit Agreement.

**Annex A  
to  
SCHEDULE 1**

**Operation of Special Account  
When Withdrawals Are Not  
Report-based Disbursements**

1. For the purposes of this Annex, the term “Authorized Allocation” means the amount of \$4,000,000 to be withdrawn from the Credit Account and deposited into the Special Account pursuant to paragraph 2 of this Annex.
2. 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 furnish to the Association a request or requests for deposit into the Special Account of an amount or amounts which in the aggregate do not exceed the Authorized Allocation. 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 Borrower shall have requested.
  - (b) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposit into the Special Account at such intervals as the Association shall specify. Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph B.3 of Schedule 1 to this Agreement 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 Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for Eligible Expenditures. Each such deposit into the Special Account shall be withdrawn by the Association from the Credit Account under one or more of the Eligible Categories.
3. The Association shall not be required to make further deposits into the Special Account, once the total unwithdrawn amount of the Credit minus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions 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 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.



**Annex B  
to  
SCHEDULE 1**

**Operation of Special Account  
When Withdrawals Are  
Report-based Disbursements**

1. Withdrawals from the Credit Account shall be deposited by the Association into the Special Account in accordance with the provisions of Schedule 1 to this Agreement. Each such deposit into the Special Account shall be withdrawn by the Association from the Credit Account under one or more of the Eligible Categories.
  
2. Upon receipt of each application for withdrawal of an amount of the Credit, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account an amount equal to the lesser of: (a) the amount so requested; and (b) the amount which the Association has determined, based on the reports referred to in paragraph A.5 of this Schedule 1 applicable to such withdrawal application, is required to be deposited in order to finance Eligible Expenditures during the six-month period following the date of such reports.

## **SCHEDULE 2**

### **Description of the Project**

The objectives of the Project are to assist the Borrower in providing needed infrastructure to improve services and environmental conditions affecting in particular women and children and creating short term employment.

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: Community Infrastructure

Carrying out of Subprojects in selected rural and urban areas to construct, upgrade, rehabilitate and maintain community infrastructure, including:

- (i) rural and urban water supply and sanitation systems;
- (ii) storm drainage, flood protection and water harvesting systems;
- (iii) rural roads and sidewalks;
- (iv) health centers;
- (v) vocational training facilities; and
- (vi) schools and furniture thereof.

#### Part B: Technical Assistance

1. Provision of technical assistance to design and implement a program aimed at ensuring the sustainability of Part A of the Project, including: (a) support to concerned local communities and governments in the preparation of proposals to adequately identify Subprojects for financing; (b) preparation of feasibility studies, engineering design and tender documentation for Subproject proposal; (c) supervision of construction during Subproject execution; (d) benefit assessment surveys; (e) support for auditing of PMU; (f) training and workshops in the area of Project implementation for consulting firms, contractors and non-governmental organizations; (g) training of local communities and beneficiaries in operations and maintenance of infrastructure; (h) preparation of environmental assessments and design of mitigation measures and monitoring systems thereof; and (i) other technical assistance necessary to improve the Borrower's capacities in community infrastructure sustainability.

2. Provision of technical assistance to support about fifty (50) districts for:  
(a) carrying out assessments of their infrastructure needs and their capacity for implementation; (b) the preparation of medium term investment plans; (c) carrying out assessments of sources of revenues; and (d) the establishment of the management information systems.
3. Provision of technical assistance for carrying out a study on the options for sustaining the activities carried out under this Project and the future role of the PMU.

Part C: Project Management

Implementation of a program designed to strengthen the administrative, financial and technical management capacities of the PMU and thereby further improve the selection, appraisal, supervision and post-evaluation of Subprojects and the overall positive impact of the Project, including training of PMU staff and provision of office equipment and vehicles.

\* \* \*

The Project is expected to be completed by December 31, 2008.

### **SCHEDULE 3**

#### **Procurement**

##### 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 following provisions of Section I of this Schedule.

###### Part B: International Competitive Bidding

1. 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.

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

- (a) Preference for domestically manufactured goods and domestic contractors

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 and works to be carried out by domestic contractors.

- (b) Dispute Review Board

Each contract for works estimated to cost \$50,000,000 equivalent or more shall include the provisions for a dispute review board set forth in the standard bidding documents for works referred to in paragraph 2.12 of the Guidelines.

- (c) Notification and Advertising

The invitation to pre-qualify or bid for each contract estimated to cost \$10,000,000 equivalent or more shall be advertised in accordance with the procedures applicable to large contracts under paragraph 2.8 of the Guidelines.

Part C: Other Procurement Procedures

1. National Competitive Bidding

(a) Works estimated to cost less than \$300,000 equivalent per contract, up to an aggregate amount not to exceed \$37,000,000 equivalent; and goods estimated to cost less than \$100,000 equivalent per contract, up to an aggregate amount not to exceed \$500,000 equivalent, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines, including the clarifications set forth in paragraph (b) of this Part C.1 required to comply with the provisions of the Guidelines.

(b) The procedures to be followed for National Competitive Bidding under this Part C.1 shall be those set forth in Law No. 3 for 1997 concerning Government Tenders, Auctions and Stores, and its Regulations, with the following modifications required for compliance with paragraph 3.3 of the Guidelines:

- (i) a government-owned enterprise in the Republic of Yemen shall be eligible to bid only if it can establish that it is legally and financially autonomous, operates under commercial law, and is not a dependent agency of the Borrower;
- (ii) bidding (or pre-qualification, if required) shall not be restricted to any particular class of contractors or suppliers, and non-registered contractors and suppliers shall also be eligible to participate;
- (iii) tenders shall be advertised for at least two (2) consecutive days in two (2) local newspapers of wide circulation;
- (iv) prospective bidders shall be allowed a minimum of thirty (30) days for the preparation and submission of bids, such thirty (30) days to begin with the availability of the bidding documents or the advertisement, whichever is later;
- (v) until national standard bidding documents acceptable to the Association are available, bidding documents approved by the Association shall be used, and may be prepared in Arabic;
- (vi) registration shall not be used to assess bidders' qualifications; qualification criteria (in case pre-qualification was not carried out) and the method of evaluating the qualification of each bidder shall be stated in the bidding documents; and before contract award, the bidder having submitted the lowest evaluated responsive bid shall be subject to post-qualification;

- (vii) a foreign bidder shall not be required to register or to appoint an agent as a condition for submitting its bid and, if determined to be the lowest evaluated responsive bidder, shall be given reasonable opportunity to register, without let or hindrance; the registration process shall not be applicable to sub-contractors;
- (viii) all bids shall be submitted in sealed envelopes and may be submitted, at the bidder's option, in person or by courier service;
- (ix) all bids shall be opened at the same time in a public bid opening which bidders shall be allowed to attend and which shall follow immediately after the deadline for submission of bids;
- (x) evaluation of bids shall be carried out in strict adherence to the criteria declared in the bidding documents and contracts shall be awarded to the lowest evaluated responsive bidder, without resorting to the rejection of bids above or below a certain percentage of the pre-bid estimate (bid price bracketing);
- (xi) no bidder shall be requested or permitted to modify its bid after the bid closing date shall have elapsed and bids submitted after the deadline for submission of bids shall be returned to the bidder unopened;
- (xii) post-bidding negotiations with the lowest or any other bidder shall not be permitted;
- (xiii) under exceptional circumstances, the procuring entity may, before the expiration of bid validity, request all bidders in writing to extend the validity of their bids, in which case bidders shall not be requested nor permitted to amend the price or any other condition of their bids; a bidder shall have the right to refuse to grant such an extension without forfeiting its bid security, but any bidder granting such extension shall be required to provide a corresponding extension of its bid security;
- (xiv) price adjustment provisions may be included in contracts for works with a duration of more than one year; and
- (xv) each contract financed from the proceeds of the Credit shall provide that the contractor or supplier shall permit the Association, at its request, to inspect their accounts and records relating to the performance of the contract and to have such

accounts and records audited by auditors appointed by the Association.

2. International or National Shopping

Goods estimated to cost less than \$50,000 equivalent per contract, up to an aggregate amount not to exceed \$1,500,000 equivalent, may be procured under contracts awarded on the basis of international or national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

3. Procurement of Small Works with Community Participation

Small works required under Part A of the Project shall be procured in accordance with procedures acceptable to the Association, including simplified bidding and contract documents with basic description and specifications of the required small works, posting of Invitations to Bid in a public place within the community, transparent procedures for accepting sealed bids, public bid opening, bid evaluation, and contract award to the bidder with the lowest price who can provide the requisite skills, equipment and other resources to complete the contract satisfactorily. The contracts for small works awarded on this basis shall be for fixed prices or lump sums, with estimated contract values of less than \$20,000 equivalent, up to an aggregate amount not to exceed \$600,000 equivalent.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to pre-qualify for bidding or 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. Such plan shall be updated every twelve (12) months during the execution of the Project, and each such updating shall be furnished to the Association for its review and approval. Procurement of all goods and works shall be undertaken in accordance with such procurement plan (as updated from time to time) as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

With respect to: (i) each contract for goods estimated to cost the equivalent of \$50,000 or more; and (ii) each contract for works estimated to cost the equivalent of \$200,000 or more, 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

Part A: General

Consultants' services shall be procured in accordance with the provisions of Sections I and IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Bank in January 1997 and revised in September 1997, January 1999 and May 2002 (the Consultant Guidelines), paragraph 1 of Appendix 1 thereto, Appendix 2 thereto and the following provisions of Section II of this Schedule.

Part B: Quality- and Cost-based Selection

1. 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.

2. The following provision shall apply to consultants' services to be procured under contracts awarded in accordance with the provisions of the preceding paragraph: the short list of consultants for services under Parts B.1 (a), (b), (c) and (d) of the Project, estimated to cost less than \$50,000 equivalent per contract, may comprise entirely national consultants in accordance with the provisions of paragraph 2.7 and footnote 8 of the Consultant Guidelines.

Part C: Other Procedures for the Selection of Consultants

1. Selection Based on Consultants' Qualifications

Services estimated to cost less than \$50,000 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.

2. Single Source Selection

Services under Parts B and C of the Project, may, with the Association's prior agreement, be procured in accordance with the provisions of paragraphs 3.8 through 3.11 of the Consultant Guidelines.



3. Individual Consultants

Services of individual consultants: (a) for tasks that meet the requirements set forth in paragraph 5.1 of the Consultant Guidelines shall be procured under contracts awarded in accordance with the provisions of paragraphs 5.1 through 5.3 of the Consultant Guidelines; and (b) under Part B 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 twelve (12) 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 estimated to cost the equivalent of \$50,000 or more, 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 to be selected on a sole source basis, or estimated to cost the equivalent of \$50,000 or more, the report on the comparison of the qualifications and experience of candidates, the qualifications, experience, 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. The provisions of paragraph 3 of Appendix 1 to the Consultant Guidelines shall also apply to such contracts.

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 Consultant Guidelines shall apply.

## **SCHEDULE 4**

### **Implementation Program**

1. The Borrower shall carry out the Project through the Steering Committee and the PMU in accordance with the Manual of Procedures, as such Manual may be updated from time to time by agreement between the Borrower and the Association.

2. For the purpose of ensuring the proper coordination and execution of the Project, the Borrower shall maintain the Steering Committee throughout Project implementation, with membership and terms of reference satisfactory to the Association. The functions of said Steering Committee shall include, *inter alia*: (a) approval of Subproject selection criteria, Staff Service Rules, and the Manual of Procedures; (b) entering into and termination of contracts for senior PMU staff and reviewing the performance of the PMU staff; (c) determination of remuneration for PMU staff; (d) review and approval of annual budgets for operation of the PMU, and of quarterly Investment Programs; (e) review of quarterly audit reports and quarterly and annual progress reports; (f) approval of contracts for the provision of goods and the carrying out of civil works with a value of \$200,000 or more prior to conclusion thereof by the PMU; (g) appointment and termination of internal auditors for ensuring adequate internal controls; and (h) appointment and termination of external auditors for preparing Project quarterly audit reports.

3. For the purpose of ensuring the proper supervision of the execution of the Project, the Borrower shall maintain the PMU throughout Project implementation with organization, staffing and terms of reference satisfactory to the Association. The Borrower shall ensure that the PMU shall: (a) provide assistance to local governments in preparing priority investment programs, including subprojects based on established selection criteria; (b) appoint consultants and non-governmental organizations for specific assignments, including engineering and construction supervision, and for works involving community participation; (c) enter into contracts for goods and civil works with a value of less than US\$200,000; (d) carry out annual monitoring and evaluation reviews, with adjustments to be made in work approach and procedures on the basis of experience gained; (e) coordinate with governmental and non-governmental authorities and financing agencies; (f) revise and update the Staff Service Rules and the Manual of Procedures as needed; (g) enter into and terminate contracts with PMU support staff; and (h) build the capacity of local consulting and construction firms and non-governmental organizations, and enhance community participation.

4. For purposes of Part A of the Project, the Borrower shall, from time to time:

(a) propose to the Association, for its review and approval, the financing out of the proceeds of the Credit of other activities that have a high labor content and positive impacts on the Borrower's economy, social development, education, health and environment; and

(b) upon the Association's approval of any such proposal, the Borrower, through the PMU, shall arrange for the identification and appraisal of the corresponding Subprojects, to be submitted for the Association's approval as provided in paragraph 3 (a) of this Schedule.

5. (a) The Borrower shall enter into agreements satisfactory to the Association with governmental organizations (including any local government agency of the Borrower), non-governmental organizations, community organizations, or private firms that are selected for the purposes of carrying out Subprojects, providing, *inter alia*, for: (i) the institutional and operational arrangements to be undertaken for the preparation of the Subprojects; (ii) their obligation to carry out the Subprojects with due diligence and efficiency and in accordance with appropriate managerial, administrative, engineering, procurement, environmental and financial practices; and (iii) the establishment and maintenance of separate records and accounts adequate to reflect, in accordance with sound accounting practices, the operation, resources and expenditures in respect of each Subproject.

(b) Except as the Association shall otherwise agree, the Borrower shall not amend or fail to enforce the provisions of the agreements referred to in paragraph (a) of this paragraph.

6. The Borrower shall ensure that any land or right of way required for the carrying out of Subprojects shall not involve the involuntary acquisition of land or involuntary resettlement of occupants or owners of such land or displacement of their economic activities; and that such land shall be provided in a voluntary manner pursuant to a memorandum of understanding satisfactory to the Association, between the owner/occupant of such land and the Borrower.

7. The Borrower shall ensure that the PMU:

(a) shall maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the Performance Indicators, the carrying out of the Project and the achievement of the objectives thereof; and

(b) without limitation or restriction upon the provisions of Sections 9.01 and 9.06 (a) of the General Conditions, furnish the following reports, of such scope and in such detail as the Association may reasonably request:

- (i) quarterly reports on the progress achieved in the execution of the Project, within one (1) month after the end of each reporting period;
- (ii) not later than February 1 of each year of Project implementation, a report integrating the results of the aforementioned quarterly progress reports, including a review of the Performance

Indicators and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the subsequent period;

(c) review with the Association, not later than March 1 of each year until completion of the Project, or such later date as the Association shall request, the report referred to in subparagraph (b) (ii) hereof, and, thereafter, take all measures required to ensure the efficient implementation and completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of said report and the Association's views on the matter.

(d) prepare, under terms of reference satisfactory to the Association, and furnish to the Association, on or about October 31, 2005, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, 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

(e) review with the Association, by January 31, 2006, 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.