

**Revised Grant Agreement No: C20636/EBSF-2010-09-140REV**

**REVISED GRANT AGREEMENT**

for

**Kotayk Solid Waste Management - Environmental and Social Due Diligence**

in

**Armenia**

between

**Ministry of Urban Development**

and

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

as Administrator of Grant Funds provided by EBRD Shareholder Special Fund under  
the  
**EBRD Shareholder Special Fund**

26 January 2011



## REVISED GRANT AGREEMENT

Revised Grant Agreement No: **C20636/EBSF-2010-09-140rev**, dated 26 January 2011 between the **Ministry of Urban Development** (the "Client") of Government Building 3, Republic Square, YEREVAN, 0010, Armenia and **European Bank for Reconstruction and Development** (the "Bank") with its Headquarters at One Exchange Square, London EC2A 2JN, United Kingdom, an international financial institution formed under the Agreement Establishing the Bank signed in Paris on 29<sup>th</sup> May 1990, acting as administrator of the grant funds held in the EBRD - Canadian Technical Cooperation Fund 2006-2009 provided by the governments of various countries (the "Donor").

### PREAMBLE

**WHEREAS** the Bank has been requested to consider providing technical co-operation for the following **Armenia: Kotayk Solid Waste Management - Environmental and Social Due Diligence** (the "Project").

**WHEREAS** COWI A/S (the "Consultant") has entered or intends to enter into a Consultancy Contract for provision of Services with the Client, (the "Consultancy Contract"), substantially in the form attached as Appendix B, for **Armenia: Kotayk Solid Waste Management - Environmental and Social Due Diligence** (the "Services");

**WHEREAS** the Consultant has agreed to provide the Services for the Project as they are defined in the Consultancy Contract on the terms and conditions set forth therein for a ceiling amount of **EUR 120,000.00**;

**WHEREAS** pursuant to a Technical Co-operation Fund Agreement between the Donor and the Bank, the Donor has approved and agreed to make available funds of up to **EUR 120,000.00** on a grant basis (the "Grant") to finance the Services of the Consultant on the terms and conditions hereinafter set forth;

**WHEREAS** the Bank has agreed to administer the Grant on the terms and conditions set forth;

**NOW THEREFORE** the parties agree the following express terms:

### ARTICLE I - Definitions

#### 1.01 Definitions and Interpretation

Wherever used in this Agreement, unless the context otherwise requires, the following capitalised terms shall have the meanings ascribed below:

- a) **Bank or EBRD:** means European Bank for Reconstruction and Development.
- b) **Budget Breakdown:** means (i) in a Fee Based Contract, the schedule, which itemises rates, per diem allowances and the provision for any reimbursable expenses and (ii) in a Lump Sum Contract, it is the schedule on which the Maximum Contract Amount is expressed on an all-inclusive payment basis.
- c) **Client:** means the party to whom the Services under the Consultancy Contract shall be delivered.
- d) **Consultant:** means the party who will perform the Services.
- e) **Consultancy Contract:** means the agreement entered, or to be entered, into between the Client and the Consultant for the performance of the Services, including all attachments thereto and all documents incorporated therein.
- f) **Country of Assignment:** means the country wherein the Services are to be provided and/or the country (ies) of the Client.
- g) **Donor:** means the provider of the Grant funds as specified in the Preamble of this Agreement
- h) **Fee Based Contract:** means a contract under which the Services are provided on the basis of chargeable time at a fixed fee rate.
- i) **Grant:** means the amount of funds to be made available by the Donor to the Bank, as administrator, for the purposes of financing the Consultancy Contract.
- j) **Grant Agreement:** means this Agreement and all appendices attached hereto as the same may be amended from time to time.
- k) **Lump Sum Contract:** means an agreement under which the Services are provided on the basis of an agreed all-inclusive payment.
- l) **Maximum Contract Amount:** means the maximum amount to be paid to the Consultant under a Consultancy Contract, including all fees, allowances and expenses.
- m) **Operation Leader:** means the Bank staff member responsible for monitoring the implementation of the Consultancy Contract on behalf of the Bank.
- n) **Services:** means the Services to be performed by the Consultant for the Client as set out in the Consultancy Contract.



- o) **Terms of Reference:** means the document prepared by the Client setting out its requirements and the objectives in respect of the provisions of Services, specifying where relevant the methods and resources to be used by the Consultant and/or the results to be achieved.

## 1.02 Interpretation

- (a) The headings in this Agreement are for convenience only and shall not affect its interpretation.
- (b) In this Agreement, reference to an Act is to such Act and to the regulations made pursuant to such Act as such Act and regulations may at any time be amended or modified and in effect, and to any act or regulations that may be passed that have the effect of supplementing or superseding such act or regulations.
- (c) In this Agreement, a reference to any gender includes a reference to all other genders, the singular number shall include the plural and vice versa and references to persons shall include bodies corporate, unincorporated associations and partnerships. Reference to a person shall include successors and permitted assigns.

## ARTICLE II - The Grant

### 2.01 The Grant

- (a) The Bank agrees to make available to the Client, on the terms and conditions set forth in this Agreement, the Grant in an amount not to exceed EUR 120,000.00 or its equivalent.
- (b) The Grant will be applied solely to finance the Services during the term of engagement of the Consultant.

### 2.02 Disbursement

- (a) The Client and the Bank agree that the Bank shall be authorised to make disbursements direct to the Consultant on behalf of the Client.
- (b) The amount of the Grant will be disbursed by the Bank directly to the Consultant on behalf of and upon the instructions of the Client in accordance with the provisions of Article III of the Consultancy Contract.
- (c) Upon receipt of an invoice and supporting documents from the Consultant, submitted in accordance with the provisions of Schedule B of the Consultancy Contract, the Client shall without delay check, and verify the invoice and the satisfactory performance of those Services of the Consultant to which the invoice relate.

- (d) If those Services are found satisfactory, and Client is satisfied that the amounts charged in the invoice correspond to the amounts set out in Schedule B of the Consultancy Contract, the invoice, supporting documents and a statement (as set out in Appendix A to the Grant Agreement) certifying approval of the Services should then be forwarded to the Funds Financial Control Unit of the Bank for payment.

### **2.03 Taxes and Duties**

- (a) The Client agrees that Grant funds shall not be used to finance any taxes (including any indirect taxes such as VAT) related to the Services or this Grant Agreement imposed under the laws and regulations which are in effect in the Country of Assignment.
- (b) The Client shall advise the Bank whether any indirect taxes (including VAT) are chargeable in respect of the Consultancy Contract.
- (c) The Client agrees that any indirect taxes (including VAT) payable shall be paid by the Client to the Consultant.
- (d) If any indirect tax (including VAT) is chargeable, when providing certification to the Bank under Clause 2.02 (d), the Client shall also certify its payment of indirect taxes (including VAT) payable on any previous invoice of the Consultant and undertake to pay the indirect tax (including VAT) on the current invoice.
- (e) Failure by the Client to pay any indirect tax (including VAT) may result in termination of this Agreement in accordance with Clause 5.03.

## **ARTICLE III - Execution of the Project**

### **3.01 Co-operation and Information**

- (a) The Bank and the Client shall co-operate fully with respect to the administration of the Consultancy Contract.

The Bank and the Client shall from time to time, at the request of either of them, exchange views with regard to the progress of the Project, the Services, the purposes for which the Grant is made, the performance of the Client's obligations under this Agreement, and the performance of the Client's and the Consultant's obligations under the Consultancy Contract and furnish to the other party all such relevant information as the other party shall reasonably request.

- (b) The Client shall promptly inform the Bank of any proposed change in the nature or scope of the Project, or the Services or the business or operations



of the Client and of any event or condition which might materially affect the carrying out of the Project, or the Services or the carrying on of the Client's business or operations.

- (c) Without prejudice to the generality of the foregoing, the Client shall not make any material variation, including any decision relating to assignment and sub-contracting, to the Consultancy Contract without obtaining the prior written consent of the Bank which consent will not be unreasonably withheld. In any event, all variations to the Consultancy Contract shall be notified to the Bank by the Client.

### 3.02 Records and Reports

- (a) The Client shall:
  - (i) maintain procedures and records adequate to record and monitor the progress of the Services (including their cost and the benefits to be derived from them), and to identify the Services financed out of the proceeds of the Grant, and will make such records available to the Bank's representatives on request of the Bank.
  - (ii) maintain accounts and financial statements (balance sheets, statements of income and expenses and related statements) necessary to monitor and record the progress of the Services, including costs and the benefits to be derived from such Services, and to furnish to the Bank upon request copies of such information in such detail as the Bank shall have reasonably requested.
  - (iii) enable the Bank's representatives at the Bank's request to visit any facilities included, or referred to, in the Project or the Consultancy Contract and to examine the Services financed out of the proceeds of the Grant and any plants, installations, sites, works, buildings, property, equipment, records and documents relevant to the performance of the obligations of the Client or the Consultant under this Agreement or the Consultancy Contract.
  - (iv) furnish to the Bank's representatives all such information as the Bank shall reasonably request concerning the Project and the Services, their cost and, where appropriate the benefits to be derived from them, and the expenditure of the proceeds of the Grant.
  - (v) furnish, or cause to be furnished, to the Bank's representatives promptly upon their preparation, any plans, specifications, reports, contracts, documents (including the deliverables under the Consultancy Contract) and any material modifications thereof or additions thereto, in such detail as the Bank shall reasonably request.
- (b) Promptly after completion of the Services, the Client shall prepare and furnish to the Bank a report in the specified language, of such scope and in such detail as the Bank shall reasonably request, on the execution and

operation of the Services, the cost and the benefits derived and to be derived from them, and the performance by the Client, the Consultant and the Bank of their respective obligations under the Grant Agreement and the Consultancy Contract, as the case may be.

- (c) All reports and records produced by the Client shall be created in Microsoft Word and/or Excel, be compatible with Acrobat and be provided in document and electronic form.

### 3.03 Confidentiality

Except with the prior written consent of the Bank, the Client shall not divulge nor cause or permit their agents or sub-contractors to divulge to third parties nor use for their own purposes any information relating to the Services, the Project or the Bank, including information regarding the financial terms of the Grant Agreement or Consultancy Contract. The Client may provide such data and information if required by law or applicable regulation, but only that portion of the data and information which, to the extent permitted by the relevant law or regulatory requirement is legally required to be furnished. If such a demand is made the Client shall promptly inform the Bank.

### 3.04 Conduct of Operations

Unless the Bank shall otherwise agree, the Client shall conduct its business and operations (including the operations of any subsidiaries) in accordance with internationally recognised sound administrative, technical, financial and environmental standards and practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

## ARTICLE IV – Representation

### 4.01 Authorised Representative

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement shall be taken or executed:

- (a) on behalf of the Client by **Avag Hakobyan**, or a designated representative; and
- (b) on behalf of the Bank by the Director, Consultancy & Corporate Procurement Department, or any authorised representative of the Bank.



#### 4.02 Notices or Requests

Any notice, request or consent required or permitted to be given or made under this Agreement shall be in writing in the English language. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorised representative of the party to whom the communication is addressed, or when sent by registered mail, e-mail, or facsimile to such party at the following address:

For the Client:	Address:	Government Building 3, Republic Square YEREVAN 0010 Armenia
	Attention:	<b>Avag Hakobyan</b>
	Telephone:	+37410 565131
	E Mail:	av.hakobyan@mud.am
For the Bank:	Address:	European Bank for Reconstruction and Development One Exchange Square London EC2A 2JN, United Kingdom
	Attention:	<b>Levan Sharvadze</b> <b>the "Operation Leader"</b>
	Facsimile:	+ 44 20 7338 6964
	Email:	sharvadl@ebrd.com

- (a) Notice will be deemed to be effective as follows:
- i) in the case of personal delivery or registered mail, on delivery; and
  - ii) in the case of email and facsimiles following confirmed transmission.
- (b) A party may change its address for the providing of Notices or Requests by giving the other party reasonable notice pursuant to this Clause.

### ARTICLE V - Suspension and Termination

#### 5.01 Client Notification

The Client shall promptly notify the Bank of the suspension or termination of the Consultancy Contract, or of any event that may lead to the suspension or termination of the Consultancy Contract.



### 5.02 Suspension of Disbursements

If any of the following events shall have happened and be continuing, the Bank may by written notice to the Client immediately suspend in whole or in part disbursements due thereafter to the Consultant in accordance with the terms of this Agreement:

- (a) the Bank shall have suspended disbursements from the loan or equity investment to the Client for the Project, if any.
- (b) the Consultancy Contract shall have been suspended or terminated in accordance with the terms of the Consultancy Contract.
- (c) the Client has failed to pay the element of indirect taxes (including any VAT) on Consultants invoices to the Consultant in a timely manner in accordance with the terms of the Consultancy Contract.
- (d) any other condition has arisen which, in the reasonable opinion of the Bank, interferes, or threatens to interfere, with the successful carrying out of the Services or the Project, or the accomplishment of the purposes of this Agreement.

### 5.03 Termination of this Agreement by the Bank

- (a) The Bank may by written notice to the Client terminate this Agreement if:
  - i. any of the conditions referred to in Clause 5.02 shall continue for a period of thirty (30) days after the Bank shall have suspended in whole or in part disbursements due to the Consultant and given written notice thereof to the Client; or
  - ii. the loan agreement or equity subscription agreement for the Project, if any or the Consultancy Contract shall have expired or been terminated in accordance with its terms; or
  - iii. the Client and the Bank agree to terminate in accordance with the terms of this Agreement; or
  - iv. the Donor cancels funding of the Grant.
- (b) In any event, the Bank may terminate this Agreement at any time by giving not less than forty days' prior written notice to the Client.

### 5.04 Termination procedure

Upon termination of this Agreement pursuant to Clause 5.03 the Client shall take immediate steps to reduce losses and to keep further expenditures under the Consultancy Contract to a minimum.



## **Article VI General**

### **6.01 Exclusion of Liability**

Notwithstanding any other provision of this Agreement, the Bank shall not be liable to the Client or the Consultant under or in connection with this Agreement or the Consultancy Contract for any loss or damage whether or not caused by the negligent act or omission of the Bank. This provision shall not apply in relation to any negligent act or omission of the Bank, which gives rise to death, or personal injury of the Client's or Consultant's personnel or Experts.

### **6.02 Indemnity**

The Client shall, subject to the Bank's privileges and immunities, defend and hold harmless the Bank, its directors, officers, employees, agents and contractors against all claims, damages, costs, expenses, liabilities, proceedings, losses arising from, out of or in connection with any act or omission, whether tortuous, negligent or otherwise, of the Client or the Consultant, their employees, sub-contractors or agents, or any breach by them of their obligations under this Agreement, the Consultancy Contract or any failure by them to comply with any acts, rules or regulations.

### **6.03 Corrupt and Fraudulent Practice**

The Bank, without prejudice to any other remedy for breach of the Agreement, may terminate this Agreement forthwith if the Client and/or the Consultant, in the judgement of the Bank, have engaged in corrupt or fraudulent practices in competing for or in executing the Consultancy Contract.

"corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party in connection with the selection process or in the Contract execution in order to obtain or retain business or other improper advantage in the conduct of business.

"fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

"coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party in connection with the selection process or in the Contract execution in order to obtain or retain business or other improper advantage in the conduct of business.

“collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party and includes any arrangements among the consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Client of the benefits of free and open competition.

**6.04 Inspection and Audit by the Bank**

The Client shall permit the Bank or its authorised representative, to inspect their accounts and records relating to the performance of this Agreement, the Consultancy Contract and the Services and to have such accounts audited by auditors appointed by the Bank, if so required by the Bank.

**6.05 Intentionally left blank**

**6.06 Governing Law and Dispute Settlement**

- (a) This Agreement shall be construed in accordance with English law. Any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with English law.
- (b) Any dispute controversy or claim arising out of, or relating to this Agreement or the breach, termination or invalidity hereof or any non-contractual obligations arising out of or in connection with this Agreement which cannot be amicably settled, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as in force and effect on the date of this Agreement. There shall be one (1) arbitrator, and the appointing authority for the purposes of the UNCITRAL Rules shall be the LCIA (London Court of International Arbitration). The seat and place of arbitration shall be London, England and the English language shall be used throughout the arbitral proceedings. The Parties hereby waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek determination of a preliminary point of law by, the courts of England or elsewhere. The arbitrator shall not be authorised to take or provide, and the Client agrees that it shall not seek from any judicial authority, any interim measures of protections or pre-award relief against the Bank, any provisions of the UNCITRAL Arbitration Rules notwithstanding.
- (c) Nothing in this Agreement shall be construed as a waiver, renunciation or modification by the Bank of any immunities, privileges and exemptions of the Bank accorded under the Agreement Establishing the European Bank for Reconstruction for Development, international convention or any applicable law.

**6.07 Effectiveness**

This Agreement shall become effective upon the later signature of the parties as of the date first written above, and unless suspended or terminated in accordance with Article V shall remain in full force until the Services and all payments under the Consultancy Contract have been completed.

**6.08 Variation of Agreement**

This Agreement may only be varied by written agreement between the Bank and the Client duly executed by authorised representatives.

**6.09 Entire Agreement**

This Agreement together with all appendices hereto as amended from time to time in accordance with Clause 6.08 contains the entire understanding and agreement between the parties hereto and suspends all other proposals or agreements relating to the subject matter of this Agreement. No party has relied upon any undertaking or representation made by any other party which is not a term of this Agreement.

**6.10 Successors**

This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

**6.11 Exclusion of Third Party Rights**

This Agreement does not create any right under the Contracts (Rights of Third Party) Act 1999 enforceable by any person or entity not a party to it except that a person or entity that is the successor to or permitted assignee of the rights of a party is deemed to be a party to this Agreement.

**6.12 Survival of Clauses**

Clauses 3.03, 6.01, 6.02, 6.03, 6.04, and 6.06 shall survive termination or expiry of this Agreement.

**6.13 Language**

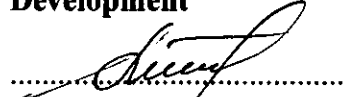
English shall be the language of the Agreement except as otherwise agreed or required by the Bank, all communication, documentation and reports under this Agreement and the Consultancy Contract shall be prepared and presented in the English language. In any dispute over language, the English version shall prevail.

**IN WITNESS WHEREOF**, the parties, acting through their duly authorised representatives have caused this Agreement, in the English language, to be signed as of the day and year first above written.

*This Agreement enters into force after the signature of both parties on the date the notification on completion of domestic procedures envisaged by the State National Legislation of the Country of the Client is received by the Bank.*

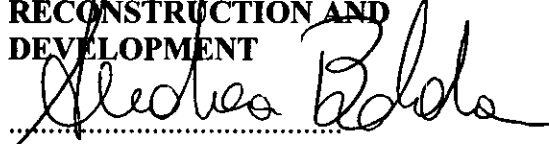


**FOR AND ON BEHALF OF THE CLIENT  
Deputy Minister, Ministry of Urban Development**

  
.....  
**Avag Hakobyan**

**Date:** *02/2/2011*.....

**FOR AND ON BEHALF OF EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

  
.....

**Andrea Baldan (Mr)  
Senior Advisor  
Consultancy Services Unit**

**Date:** *26/I/2011*.....

**APPENDIX A STATEMENT OF APPROVAL OF CONSULTANCY SERVICES**

**APPENDIX B REVISED CONSULTANCY CONTRACT**

**6.15 Further Assurances**

The Client shall, or shall cause the Consultant to, at any time and from time to time, upon the Bank's request, execute and deliver such further documents and do such further acts and things as the Bank may reasonably request in order to evidence, carry out and give full legal effect to the terms, conditions, intent and meaning of this Agreement.

**6.16 Time is of the Essence**

Time is of the essence of this Agreement.

**6.17 Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

**6.18 EBRD Logo**

The Client is advised that the Bank's logo is a registered service mark and the Client shall not reproduce such Logo without the express written permission of the Bank.

**APPENDIX A TO REVISED GRANT AGREEMENT**

**STATEMENT OF APPROVAL OF CONSULTANCY SERVICES**

*To be signed by the Client and sent with the invoice(s) for Services by the Consultant.*

Invoice No:            Invoice Date:            Invoice Amount:  
Revised Grant Agreement No: **C20636/EBSF-2010-09-140rev**, OL: **Levan Sharvadze**

1. Pursuant to the revised Consultancy Contract for Armenia: Kotayk Solid Waste Management - Environmental and Social Due Diligence (the “**Services**”), dated 26 January 2011, made between Ministry of Urban Development (the “**Client**”) and COWI A/S (the “**Consultant**”); and pursuant to Clause 2.02(c) of the revised Grant Agreement for the Services, dated 26 January 2011, made between the **European Bank for Reconstruction and Development** (the “**Bank**”) and the Client, the Client states that:
  - (i) the Client has received and is satisfied with the Services of the Consultant that were contracted for in the revised Consultancy Contract and are covered by the attached invoice(s);
  - (ii) the Client has checked the invoice(s) and all supporting documents which relate to the performance of the Services against the amount(s) set out in Schedule B of the revised Consultancy Contract and is satisfied that:
    - (a) the invoice(s) is (are) a true representation of the Services provided by the Consultant; and
    - (b) the amount(s) charged in the invoice(s) correspond(s) to the amount(s) set out in Schedule B of the revised Consultancy Contract;
  - (iii) the invoice(s) and all supporting documents have been forwarded together with this Statement of Approval to the TC Invoicing Team, Invoice Control Unit of the Bank for payment; and
  - (iv) the Client has paid any indirect taxes including VAT to the Consultant in respect of previous invoices and undertakes to pay the indirect taxes including VAT in respect of the invoice(s) attached within 30 days of the date of this Statement of Approval.
2. The Client states that by signing this document the Client authorises the Bank to make the disbursement agreed in the revised Consultancy Contract to the Consultant on behalf of the Client.

**IN WITNESS WHEREOF**, the party, acting through its duly authorised representative has signed this Statement as of .....[date].

**FOR AND ON BEHALF OF**  
**Deputy Minister, Ministry of Urban Development**

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**APPENDIX B TO REVISED GRANT AGREEMENT**

**REVISED CONSULTANCY CONTRACT**



**REVISED CONSULTANCY CONTRACT**

**Armenia**

**Kotayk Solid Waste Management - Environmental and Social Due Diligence**

between

**Ministry of Urban Development**

and

**COWI A/S**

**26 January 2011**

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is cursive and appears to be a name followed by a date or initials.

## REVISED CONSULTANCY CONTRACT

Revised Contract No: C20636/EBSF-2010-09-140REV dated 26 January 2011 between **Ministry of Urban Development** of Government Building 3, Republic Square, YEREVAN, 0010, Armenia (the "**Client**"), and **COWI A/S** of Parallelvej 2, LYNGBY, DK-2800, Denmark (the "**Consultant**").

### PREAMBLE

**WHEREAS** the **European Bank for Reconstruction and Development** (the "**Bank**") with its Headquarters situated at One Exchange Square, London EC2A 2JN, United Kingdom, an international financial institution formed under the Agreement Establishing the Bank, signed in Paris on 29<sup>th</sup> May 1990, has agreed to provide technical co-operation for the **Kotayk Solid Waste management Project Environmental and Social Due Diligence** (the "**Project**").

**WHEREAS** the Client has requested the Consultant to provide services (the "**Services**") necessary for the effective preparation and/or implementation of the Project;

**WHEREAS** the Consultant has agreed to provide the Services on the terms and conditions set forth in this Contract;

**WHEREAS** by an Agreement dated 26 January 2011 between the Client and the Bank (the "**Revised Grant Agreement**"), the Bank has agreed to make funds available for the purpose of contributing to the financing of the Services from the EBRD - Canadian Technical Cooperation Fund 2006-2009 Fund up to **EUR 120,000.00** as a grant.

**NOW, THEREFORE**, the parties hereto agree as follows:

### ARTICLE I

#### 1.01 Definitions

In this Contract, the following capitalised terms shall have the following meanings:

- a) **Bank or EBRD:** means the European Bank for Reconstruction and Development.
- b) **Budget Breakdown:** means (i) in a Fee Based Contract, the schedule, which itemises rates, per diem allowances and the provision for any reimbursable expenses and (ii) in a Lump Sum Contract, the schedule on which the Maximum Contract Amount is expressed on an all-inclusive basis.
- c) **Client:** means the party to whom the Services under this Consultancy Contract shall be delivered.

- d) **Consultant:** means the party who will perform the Services.
- e) **Country of Assignment:** means the country wherein the Services are to be provided and/or the country of the Client.
- f) **Donor:** means the provider of the Grant funds as specified in the Preamble Grant Agreement.
- g) **Experts:** means those individuals listed in Schedule B who will be performing the Services.
- h) **Fee Based Contract:** means a contract under which services are provided on the basis of chargeable time at a fixed fee rate.
- i) **Grant:** means the amount of funds to be made available by the Donor to the Bank, as administrator, for the purposes of financing the Consultancy Contract.
- j) **Grant Agreement:** means the Agreement between the Bank and the Client and all appendices attached thereto as the same may be amended from time to time.
- k) **Lump Sum Contract:** means a contract under which the services are provided on the basis of an agreed all-inclusive payment.
- l) **Maximum Contract Amount:** means the maximum amount to be paid to the Consultant under this Contract, including all fees, allowances and reimbursable expenses as set out in Appendix 1 excluding any indirect taxes (including VAT) chargeable in respect of this Contract or the Services provided hereunder, which are not otherwise recoverable by the Consultant.
- m) **Operation Leader:** means the Bank staff member responsible for monitoring the implementation of the Consultancy Contract on behalf of the Bank.
- n) **Services:** means the services to be performed by the Consultant as set out in this Contract.
- o) **Terms of Reference:** means the requirements and the objectives in respect of the provisions of Services, specifying, where relevant the methods and resources to be used by the Consultant and/or the results to be achieved and as set out in Schedule A.

#### 1.02 Interpretation

- (a) The headings in this Contract are for convenience only and shall not affect its interpretation.
- (b) In this Contract, reference to an Act is to such Act and to the regulations made pursuant to such Act as such Act and regulations may at any time be



amended or modified and in effect, and to any act or regulations that may be passed that have the effect of supplementing or superseding such act or regulations.

- (c) In this Contract, a reference to any gender includes a reference to all other genders, the singular number shall include the plural and vice versa and references to persons shall include bodies corporate, unincorporated associations and partnerships. Reference to a person shall include successors and permitted assigns.

### **1.03 The Services**

The Consultant shall perform the Services under this Contract in accordance with the Terms of Reference set forth in Schedule A.

### **1.04 Start Date**

The Consultant will commence the Services no later than the dates or events specified in Appendix I.

## **ARTICLE II**

### **Expert(s)**

#### **2.01 Expert(s)**

- (a) The Services shall be carried out by the Experts specified in Schedule B for the respective periods of time which may be indicated in this Contract. The Consultant and the Client may agree upon minor adjustments to such periods as may be appropriate to ensure the efficient performance of the Services, provided that such adjustments will not cause payments made under the Contract to exceed the Maximum Contract Amount.
- (b) The Consultant may grant the Experts holiday and sick leave in accordance with its usual practice provided that the Services are provided within the time frames indicated in Appendix 1 and Schedule A. If the holidays and sick leave cause disruption to the Project, the Client may require leave to be limited to four (4) weeks in a year.
- (c) Except as the Client may otherwise agree no changes shall be made in the Experts, provided, however, that if for any reason beyond the reasonable control of the Consultant it becomes necessary to replace any of the Experts, the Consultant shall forthwith assign as a replacement, a person of equivalent or better qualification, at the same rate of remuneration set out in Schedule B. In this event prior written agreement from the Client will be necessary.
- (d) In the event that any Expert is found by the Client to be incompetent in discharging their assigned duties, the Client may request the Consultant

forthwith to provide a replacement person with qualifications and experience acceptable to the Client.

- (e) Any expenses incurred by reason of replacement of Experts pursuant to Clause 2.01 (c) or (d) shall be borne by the Consultant. Except as the Client may otherwise agree the Consultant shall bear all additional travel and other costs arising out of or incidental to any replacement and the remuneration to be paid for the replacement person shall not exceed the remuneration which would have been payable to the person replaced.

## 2.02 Project Manager

The Consultant shall ensure that at all times during which the Services are provided in the Country of Assignment, a project manager, acceptable to the Client, shall take charge of such operations (the "Project Manager"). The Project Manager shall be responsible for liaison between the Consultant's Headquarters and the Client. The Project Manager shall be responsible for providing progress reports on delivery of the Services within a reasonable time upon request by the Client.

## ARTICLE III

### Payments to the Consultant

#### 3.01 Maximum Contract Amount

- (a) Payments under this Contract shall not exceed the aggregate amount of the "Maximum Contract Amount".
- (b) Maximum Contract amount does not include indirect taxes (including VAT) on Services, if chargeable in respect of the Services or this Contract provided hereunder.
- (c) Any indirect taxes chargeable in respect of this Contract or the Services provided hereunder shall be paid by the Client for the Consultant. Provision of this Sub-Clause is not applicable to any of the Consultant's subcontractors.
- (d) No element of the Grant shall be used for financing any indirect taxes referred to in sub-paragraph (c) above.

#### 3.02 Currency Payment

Except as otherwise agreed between the Client and the Consultant any payment under this Contract shall be made in the currency specified in Appendix I.



### 3.03 Fees of the Consultant

- (a) The Client shall pay or cause to be paid to the Consultant amounts properly due in respect of the Services, subject to the Maximum Contract Amount, plus any indirect taxes (including VAT) payable, and the terms of this Contract.
- (b) Where the fees are expressed in terms of daily rate, the time spent in performing the Services shall be determined on the basis of the number of working days actually spent by the Expert in performing the Services including necessary travel time. Except as otherwise agreed between the Client and the Consultant, no payments shall be made to the Consultant in respect of work performed other than during the Term of Engagement specified in Appendix I. Calculation of fees payable on a monthly basis shall be based on a maximum of twenty-two (22) working days per calendar month.
- (c) Where the fees are expressed in terms of a daily rate, the fee – unless otherwise specified in Schedule B - shall include the Consultant's and/or Experts':
  - (i) overhead;
  - (ii) ancillary services, such as secretarial and research services;
  - (iii) administrative expenses, such as e-mail, telephone and documentation expenses,
  - (iv) equipment and office supplies; and
  - (v) other sundry and miscellaneous expenses that may be incurred for the purpose of the services, unless otherwise specified in Schedule B.

Per diem and allowances, if any, shall be paid separately in accordance with Schedule B.

- (d) Where the fees are expressed in terms of a lump sum against deliverables, the fee shall include the Consultant's and/or Experts':
  - (i) overhead;
  - (ii) ancillary services, such as secretarial and research services;
  - (iii) administrative expenses, such as e-mail, telephone and documentation expenses,
  - (iv) equipment and office supplies; and
  - (v) other sundry and miscellaneous expenses including any per diem and allowances that might be applicable and may be incurred for the purpose to the services unless otherwise specified in Schedule B.
- (e) The overhead, whether daily-rate or lump sum, specified in Schedule B shall be deemed to include provision for all leave, insurance, social welfare or pension charges or contributions to which the Consultant and/or Expert may be or may become liable to pay (by law or by agreement) during the Term of Engagement. The Consultant has full and sole responsibility for complying with all applicable laws, regulations, administrative rules and guidance in this respect and shall indemnify the

Client against any claim made against the Client for non-compliance, thereof, whether made before or after the termination or expiry of the Contract.

### 3.04 Allowances and Expenses of the Consultant

Where the Contract is a Fee Based Contract, the Consultant may be paid the following allowances, costs and expenses at the rates and if so provided in Appendix B, subject to the provisions of the Contract:

- (a) a per diem allowance for each night the Expert is required by the Contract to be away from his or her usual place of residence. The per diem allowance shall cover costs of the hotel room, food and incidental expenses, but not local travel. Unless other rates are specified in Schedule B, per diem allowances will be paid according to the United Nations per diem rates in force at the time for the place and country of assignment, as published under the title "Schedule of Daily Subsistence Allowance Rates" by the International Civil Service Commission. No per diem allowance shall be paid for periods of leave or for the day of return.
- (b) an accommodation allowance when the Expert is required by the Contract to be away from the usual place of residence and to reside in the Country of Assignment for a period of three (3) months or more. For the purpose of determining this period as well as the entitlement to the allowance, short absences from the Country of Assignment shall not be counted.
- (c) transport expenses actually and properly incurred by the Expert(s) in travelling for the purpose of the Services. All travel should be via the most cost effective routes and methods available; air travel is only authorised at Economy Class fare (commonly designated as fare basis Y). Original ticket stubs and invoices shall be required as evidence of payment, together with boarding cards and travel agency receipts. Travel by train may be made in first class, apart from EuroStar, which shall be by second class. Travel by a private car may only be used if expressly stated in the Contract. Private car costs shall be reimbursed at the mileage specified in Schedule B.
- (d) other miscellaneous expenses of the Consultant or the Expert(s) arising directly out of the Services, to the extent they are specified in Schedule B.

All reimbursable expenses shall be reimbursed at actual cost, unless otherwise explicitly provided in Schedule B, and in no event shall reimbursement be made in excess of the Maximum Contract Amount.

### 3.05 Valuation of Currencies

Where it shall be necessary to determine the equivalent of an amount in one currency in terms of another for the purposes of:

- (a) calculating the Maximum Contract Amount; or
- (b) making payments in respect of reimbursable expenses



the conversion shall be made on the basis of the exchange rates specified below:

The conversion rate from other currencies into Euro shall be made using monthly rates published in the supplement to the European Union's Official Journal (OJ) after the tenth (10<sup>th</sup>) day of each month. Where the Contract currency is not Euro, reimbursable expenses shall be invoiced and paid in the currency of the Contract after conversion from the currency in which they were incurred to the Contract currency, at a conversion rate set out in the Financial Times on the first Monday of the month of the invoice, if it is convertible, or against submission of evidence of the exchange rate applied when purchasing local currency for the corresponding reimbursable expenses.

### **3.06 Payment of Fees and Expenses**

Billings and payments in respect of the Services shall be made as follows:

- (a) Where the Term of Engagement is less than two months, the fees, per diem allowance and reimbursable expenses owing to the Consultant, shall be payable upon satisfactory completion of the Term of Engagement or termination of the Contract whichever is earlier after deduction of any advance payments made to the Consultant.
- (b) When the Term of Engagement is two months or more, the Consultant shall be paid in such periodic instalments as specified in the Contract.
- (c) Within thirty (30) days of receiving a correctly presented invoice from the Consultant for the advance payment (if any) the Bank, on behalf of the Client, shall pay or cause to be paid the advance payment to the Consultant subject to the conditions set out in Appendix I.
- (d) The Consultant shall submit to the Client an itemised invoice in respect of the relevant period during the Term of Engagement showing the amounts payable under the Contract, supported by such receipts, vouchers, invoices, time sheets and other evidence as the Client or Bank may reasonably require. The details of the bank account, as set out in Appendix I, where payment shall be made must be supplied on each invoice. Invoices shall be submitted and payments made in accordance with Appendix I and with the Payments provisions specified in Schedule B. The Consultant shall submit a copy of the itemised invoice referred to in this Clause to the Bank for information purposes only and on the understanding that the Bank will not be authorised to release payment for the invoice until the original invoice is approved and forwarded to the Bank by the Client.

Within thirty (30) days of the receipt of any invoice, other than that referred to in Clause 3.06(c) (above), the Client shall confirm to the Bank that the invoiced amounts are correct and payable to the Consultant by sending the Bank confirmation of its approval and authorising payment of the invoice.



- (e) If the payment schedule provides for payments against deliverables, as soon as practicable and no later than the fifteenth (15th) day after a deliverable has been appropriately approved by the Client, the Consultant shall submit to the Client and the Bank, an invoice itemised according to Schedule B, expressed in the currencies provided for in Clause 3.02 of the Contract and accompanied by appropriate evidence of the submission and approval of the deliverable, as well as by receipted invoices, vouchers, tickets and other appropriate supporting materials as applicable, of the amounts payable.
- (f) The Client may withhold or cause to be withheld payment of all or any portion of an invoice that is not satisfactorily supported with such documentation that is reasonably requested provided, however, that if any discrepancy should be found to exist at any time between payment actually made to the Consultant and costs authorised to be incurred by such a Consultant, the Client may add or subtract the difference from any subsequent payment(s).
- (g) Payments in respect of any costs that would exceed the estimates set forth in Schedule B may be chargeable to the contingency amounts provided for in the respective estimates only if such costs are approved by the Client in writing prior to being incurred, and subject always to the Maximum Contract Amount not being exceeded.
- (h) Final payment under this Clause 3.06 shall be made only after the final report and a final invoice, identified as such, have been submitted by the Consultant and approved as satisfactory by the Client.
- (i) Any payment made by the Client of (i) amounts not due under the Contract, or (ii) any amount in excess of the fees and costs actually incurred, (except as applicable when payments have been agreed to be made as a fixed fee or lump sum against deliverables) will be reimbursed by the Consultant to the Client within thirty (30) days after receipt by the Consultant of relevant notice.
- (j) All payments to the Consultant under this Contract shall be made solely to the bank account of the Consultant specified in Appendix I.

## ARTICLE IV

### Undertakings of the Client

#### 4.01 Confirmation

The Client confirms that it has the power to enter into and perform this Contract and that the Contract constitutes a legal, valid and binding obligation of the Client enforceable in accordance with its terms.



#### 4.02 Taxes and Duties

- (a) Subject to Clause 5.03, the Client shall use its best efforts to ensure that the Government of the Country of the Assignment shall exempt the Consultant from any taxes, duties, fees, levies and other impositions imposed under the laws and regulations which are in effect in the Country of Assignment, provided that if the Client cannot obtain such exemption any such tax shall be borne by the Client. Any such tax shall not be calculated or included as part of the Maximum Contract Amount.
- (b) The Client's obligation to seek exemption from taxes, duties, fees, levies and other 'charges' applies in respect of the following:
  - (i) any payments made to the Consultant, other than payments to nationals of the Country of Assignment, in connection with the carrying out of the Services; and
  - (ii) equipment, materials and supplies brought into the Country of Assignment for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn therefrom; and
  - (iii) any property brought into the Country of Assignment by the Consultant, the Expert(s), or the eligible dependants of the Expert(s) for their personal use or consumption which will be consumed in the Country of Assignment or will subsequently be withdrawn therefrom upon the departure of the Consultant and the Expert(s) from the country of assignment.
- (c) Any equipment imported for the purpose of carrying out the Services and paid for out of funds provided under this Contract will be treated as the property of the Client.
- (d) The Consultant and the Expert(s) shall follow the usual customs procedures in the Country of Assignment concerning the import of property.
- (e) If the Consultant or Expert(s) fail to withdraw, and instead disposes in the Country of Assignment, any property upon which customs duty and taxes have been exempted, the Consultant shall pay such customs duties and taxes in conformity with the applicable regulations.

#### 4.03 Assistance with Local Requirements

To the extent it is able, the Client shall use its best efforts to:

- (a) assist the Consultant and each of the Expert(s) to obtain the necessary work permit(s) and such other documents as shall be necessary to enable them to perform the Services;
- (b) if applicable, assist the Expert(s) and, if appropriate their eligible dependants, to obtain all necessary entry and exit visas, residence permits,

exchange permits and travel documents required for any stay in the Country of Assignment to perform the Services.

- (c) facilitate clearance through customs of any property required for the Services and of the personal effects of the Expert(s) and their eligible dependants;
- (d) provide all such information to government officials, agents and representatives as may be necessary or appropriate for the prompt and effective performance of the Services; and
- (e) assist the Consultant, the Expert(s) or approved sub-contractors employed by the Consultant for the Services to be exempted from requirements to register or obtain any permit to practice their relevant profession(s) or to establish themselves either individually or as a corporate entity according to the laws of the Country of Assignment.

#### **4.04 Access to Land**

The Client warrants that the Consultant and Expert(s) shall have, free of charge, unimpeded access to all land in respect of which access is required for the performance of the Services. The Client shall be responsible for any damage to such land or property thereon resulting from such access (other than damage caused by the wilful default or negligence of the Consultant or the Expert(s)) and the Client shall indemnify the Consultant and each of the Expert(s) in respect of liability for any such damage.

#### **4.05 Services, Facilities and Equipment**

The Client shall make available to the Consultant and the Expert(s), for the purpose of the Services, in a timely manner and free of any charge, the counterparts, services, facilities, equipment and property described in Schedule A.

### **ARTICLE V**

#### **Undertaking of the Consultant**

##### **5.01 General Standard of Performance by the Consultant**

- (a) The Consultant shall carry out the Services with due diligence and efficiency, and shall exercise such reasonable skill and care in the performance of the Services as is consistent with sound professional practices.
- (b) The Consultant shall act at all times so as to protect the interests of the Client and shall take all reasonable steps to keep all expenses to a minimum, consistent with sound professional practices. The Consultant shall fully co-operate with the Bank to allow it to fulfil its monitoring obligations and facilitate reporting to the Bank or the Donor on how their funds are being used for the Services and the Project.



## **5.02 Records**

- (a) The Consultant shall keep accurate and systematic records and accounts in respect of the Services in such form and detail as is customary in the profession and as shall be sufficient to establish accurately that the costs and expenditure referred to in Article III have been duly incurred.
- (b) Upon reasonable notice, the Consultant shall permit the duly authorised representatives of the Client and the Bank, from time to time to inspect its records and accounts relating to the Services and to make copies and shall permit the Client, the Bank, or any person authorised by the Client or the Bank, from time to time, to audit such records and accounts during the performance of the Services.

## **5.03 Applicability of Taxes**

The Consultant shall determine whether any direct or indirect taxes, including VAT, are payable or chargeable by the Consultant in respect of the Services or this Contract. The Consultant shall take all appropriate and reasonable steps to eliminate or minimise any such tax, including without limitation registration of this Contract pursuant to any bilateral agreement concerning exemption from taxation of aid funding between the government of the Donor and the Country of Assignment or any double taxation treaty between the governments of the Country of Assignment and the Consultant's country.

## **5.04 Information**

The Consultant shall furnish the Client and the Bank with such information relating to the Services as the Client and the Bank may from time to time reasonably request.

## **5.05 Assignments and Sub-Contracting**

- (a) Except with the Clients' prior written approval, which the Client may withhold at its discretion, the Consultant shall not assign or transfer the Contract or any part thereof nor engage any independent consultant or sub-contractor to perform any part of the Services.
- (b) When the Consultant is permitted to associate with individual consultants, consultancy firms, partnerships, entities or other persons, in a consortium or through subcontracting or association, as appropriate, the Consultant will ensure that each such consortium member, subcontractor and/or associate fully complies with the Consultant's obligations under this Contract. The Consultant shall be liable for the acts or omissions of such consortium members, subcontractors and/or associates. The Consultant will not be relieved of its obligations under this Contract by use of such individual consultants, firms, partnerships, entities or other persons. Such permitted individual consultants, firms, partnerships, entities or other persons in the consortium, association or subcontracting arrangement may only be changed with the prior consent of the Client and the Bank.

- (c) In the event that any such independent consultants or sub-contractors are found by the Client to be incompetent in discharging their assigned duties, the Client may request the Consultant forthwith either to provide a replacement consultant or sub-contractor with qualifications experience and a rate of remuneration acceptable to the Client or to resume the performance of the Services itself.

#### **5.06 Confidentiality**

Except with the prior written consent of the Client, the Consultant shall not disclose nor cause or permit the Consultant's Expert(s), employees, agents and sub-contractors to disclose to third persons nor use for the Consultant's own purposes any information relating to the Services, the Project, the Client or the Bank, including information in respect of rates of remuneration and conditions of contracting. The Consultant may provide such data and information if required by applicable law or regulation, but only that portion of the data or information, which, to the extent permitted, by the relevant law or regulatory requirement is legally required to be furnished. If such a demand is made the Consultant shall promptly inform the Client and the Bank. This provision shall survive the termination and expiration of the Contract.

#### **5.07 Prohibition on Additional Project Work**

Except with the prior written consent of the Client and the Bank, the Consultant agrees that during and for a period of two years following the termination of this Contract, the Consultant's and or Expert(s)' participation in the Project shall be limited to the provision of the Services, hereby disqualifying them and any other contractor, consulting firm, manufacturer or individual with which the Consultant is associated or affiliated from the provision of goods, works and services (other than the Services) for the Project, and for tendering for any part of the Project. For the purpose of this Clause "affiliate" means any other person that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under the common control with, the Consultant; "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or activities of a person, whether through the ownership of securities, by contract or agency or otherwise.

#### **5.08 Conflict of Interest**

The Consultant shall ensure that no circumstances arise during the Term of Engagement in which the Consultant's activities under the Contract conflict or might conflict with the personal interest of the Consultant or the Expert(s) or with any services which the Consultant or the Expert(s) may render to third parties.