TG Project Agreement

(Energy Loss Reduction Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

TAJIK GAS

Dated September 8, 2005
PROJECT AGREEMENT

AGREEMENT, dated September 8, 2005, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and TAJIK GAS.

WHEREAS (A) by the Development Financing Agreement of even date herewith between Republic of Tajikistan (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to five million one hundred thousand Special Drawing Rights (SDR 5,100,000), on the terms and conditions set forth in the Development Financing Agreement, but only on conditions that Tajik Gas agree to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by a Subsidiary Loan Agreement to be entered into between the Borrower and Tajik Gas, the proceeds of the Credit and Grant provided for under the Development Financing Agreement will be made available to Tajik Gas on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS Tajik Gas, in consideration of the Association’s entering into the Development Financing Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

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

ARTICLE II

Execution of the Project

Section 2.01. Tajik Gas declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Financing Agreement, and, to this end, shall carry out Parts B and C.3 of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and environmental practices, and shall provide, or cause to be provided, as its contribution, promptly as needed, the funds, facilities, services and other resources required for the Project.
Section 2.02. (a) Except as the Association shall otherwise agree, procurement of the goods, works and consultants’ services required for the Project and to be financed out of the proceeds of the Credit and the Grant shall be governed by the provisions of Schedule 3 to the Development Financing Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) Tajik Gas shall update the Procurement Plan in accordance with guidelines acceptable to the Association, and furnish such update to the Association not later than 12 months after the date of the preceding Procurement Plan, for the Association’s approval.

Section 2.03. (a) Tajik Gas shall carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement and Parts B and C.3 of the Project.

(b) For the purposes of Section 9.06 of the General Conditions and without limitation thereto, Tajik Gas shall:

(i) 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 Association and Tajik Gas, a plan for the future operation of the Project; and

(ii) afford the Association a reasonable opportunity to exchange views with Tajik Gas on said plan.

Section 2.04. Tajik Gas shall duly perform all its obligations under the TG Subsidiary Loan Agreement. Except as the Association shall otherwise agree, Tajik Gas shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the TG Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) Tajik Gas shall, at the request of the Association, exchange views with the Association with regard to the progress of the Project, the performance of its obligations under this Agreement and under the TG Subsidiary Loan Agreement, and other matters relating to the purposes of the Credit.

(b) Tajik Gas shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Credit, or the performance by Tajik Gas of its obligations under this Agreement and under the TG Subsidiary Loan Agreement.
Section 2.06. Tajik Gas shall:

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

(b) prepare, under terms of reference satisfactory to the Association, and furnish to the Association, on or about March 31, 2008, 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

(c) review with the Association, by June 30, 2008, 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.

ARTICLE III

Management and Operations of Tajik Gas

Section 3.01. Tajik Gas shall carry on its operations and conduct its affairs in accordance with sound administrative, engineering, financial and environmental practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. Tajik Gas shall at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and technical practices.

Section 3.03. Tajik Gas shall take out and maintain with responsible insurers, or make other provision satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

ARTICLE IV

Financial Covenants

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

(b) Tajik Gas shall:

(i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with auditing standards acceptable to the Association, consistently applied, by independent auditors acceptable to the Association;

(ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year: (A) certified copies of the financial statements referred to in paragraph (a) of this Section, for such year as so audited; and (B) an opinion on such statements and report of such audit, by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

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

Section 4.02. (a) Without limitation upon Tajik Gas’ reporting obligations set out in Section 3.04 to this Agreement, Tajik Gas shall prepare and furnish to the Association a Financial Monitoring Report (FMR) 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 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 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

Section 4.03. Unless otherwise agreed with the Association Tajik Gas shall:

(a) finance not less than thirty percent (30%) of its annual average capital investment program from its net revenues;

(b) ensure that all bill collections shall be in cash and such collections shall be deposited and held in a separate account in a commercial bank, to enable the monitoring of cash collections by the Borrower and the Association;

(c) ensure that the account receivables from its gas customers, other than state owned enterprises and budgetary organizations, amount to no more than sixty (60) days’ average billing to such consumers;

(d) by or before November 30 of each year during the period of the Project, beginning with the calendar year 2006, adopt an investment program for the ensuing year, satisfactory to the Association; and

(e) by or before November 30 of each year during the period of the Project, beginning with the calendar year 2006, submit to the Association for its review and concurrence, a five-year rolling forecast business plan for Tajik Gas integrating the operational, financial and investment program information.

(f) For the purposes of this Section 4.03:

(i) The term “net revenues” means the difference between:

(A) the sum of revenues from all sources related to operations, after making adequate provisions for uncollectible debts; and

(B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, debt service, and changes in working capital other than cash, but excluding provision for depreciation and other non-cash operating charges.

(ii) The term “debt service” means the aggregate amount of repayment (including sinking fund payments, if any) and interest and other charges on debt, including lease payments under finance leases if any.
(iii) The term “debt” means any indebtedness of Tajik Gas maturing by its terms more than one year after the date on which it is originally incurred.

(iv) Debt shall be deemed to be incurred: (a) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; (b) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into; and (c) financial liabilities incurred by Tajik Gas as a lessee under finance leasing agreements.

(v) The term “changes in working capital other than cash” means the difference between current assets other than cash that can be converted to cash within a 12 month period and current liabilities that need to be settled in a 12 month period.

(vi) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Association.

(vii) The term “annual average capital investment Program” means the average of capital expenditures program of Tajik Gas for the current year, the previous year and the immediate ensuing year.

(viii) The term “average billings” means the average of the bills sent out to the consumers from the beginning of the calendar year to the month preceding the current month.

**ARTICLE V**

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

Section 5.01. This Agreement shall come into force and effect on the date upon which the Development Financing Agreement becomes effective.

Section 5.02. (a) This Agreement and all obligations of the Association and of Tajik Gas thereunder shall terminate on the earlier of the following two dates:
(i) the date on which the Development Financing Agreement shall terminate in accordance with its terms; or

(ii) the date twenty years after the date of this Agreement.

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

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telex or facsimile to the party to which it is required or permitted to be given or made at such party’s address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. Deliveries made by facsimile transmission shall also be confirmed by mail. The addresses so specified are:

For the Association:

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

Cable address: Telex: Facsimile:
INDEVAS  248423 (MCI) or  (202) 477-6391
Washington, D.C.  64145 (MCI)
For Tajik Gas:

Tajik Gas
6, Rudaki ave.
Dushanbe
Republic of Tajikistan

Facsimile:
992 372 21 66 68

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of Tajik Gas, or by Tajik Gas on behalf of the Borrower under the Development Financing Agreement, may be taken or executed by the Director General of Tajik Gas or such other person or persons as its Chairman shall designate in writing, and Tajik Gas shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

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

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Cevdet A. Denizer
Authorized Representative

TAJIK GAS

By /s/ Khossein Aliev
Authorized Representative