Agreement Amending Development Credit Agreement

(Pamir Private Power Project)

between

REPUBLIC OF TAJIKISTAN

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated November 26, 2008
AGREEMENT AMENDING DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated November 26, 2008, between the REPUBLIC OF TAJIKISTAN (the Borrower) and the INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower and the Association have entered into a Development Credit Agreement (Pamir Private Power Project), dated July 3, 2002 (the Development Credit Agreement), as amended, for the purpose of improving the quantity and reliability of supply of electricity in the GBAO region of the Borrower, as described in the Recital of the Development Credit Agreement (the Project);

(B) the Borrower has requested the Association to provide further additional assistance in support of the Project by increasing the amount made available under the Development Credit Agreement by an amount in various currencies equivalent to one million six hundred thousand Special Drawing Rights (SDR 1,600,000); and

WHEREAS (C) the Association has agreed, on the basis, inter alia, of the foregoing, to provide such additional assistance to the Borrower upon the terms and conditions set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Amendments to the Development Credit Agreement

Section 1.01. Paragraph (B) of the Preamble to the Development Credit Agreement is amended as follows:

“(B) the Project will be carried out by Pamir Energy Company (PamirEnergy) with the Borrower’s assistance and, as part of such assistance, the Borrower will make the proceeds of the Credit and the Grant provided for in Article II of this Agreement (the Financing) available to PamirEnergy, as set forth in this Agreement; and”

Section 1.02. The penultimate paragraph of the Preamble to the Development Credit Agreement is amended as follows:
“WHEREAS the Association has agreed, on the basis, *inter alia*, of the foregoing, to extend the Financing to the Borrower upon the terms and conditions set forth in this Agreement and in the agreement of even date herewith between the Association and PamirEnergy (the Project Agreement);”

Section 1.03. Section 1.02 to the Development Credit Agreement is amended by deleting the “and” at the end of Subsection (p), substituting “; and” for “;” at the end of Subsection (q), and adding a new Subsection (r) and (s) as follows:

“(r) “Amending Agreement” means the agreement amending the Development Credit Agreement between the Borrower and the Association, dated July 3, 2002.

“(s) “Amending Project Agreement” means the agreement amending the Project Agreement between the Association and PamirEnergy, dated July 3, 2002.”

Section 1.04. Section 1.02(p) of the Development Credit Agreement is amended to read as follows:

“(p) “Special Account” means Special Account A or Special Account B referred to in Section 2.02(b) of this Agreement; and “Special Accounts” means both Special Account A and Special Account B; and”

Section 1.05. Section 2.01 of the Development Credit Agreement is amended to read as follows:

“Section 2.01. The Association agrees to make available to the Borrower, on the terms and conditions set forth or referred to in this Agreement:

(a) an amount in various currencies equivalent to seven million nine hundred thousand Special Drawing Rights (SDR 7,900,000) (the Credit); and

(b) an amount in various currencies equivalent to one million six hundred thousand Special Drawing Rights (SDR 1,600,000) (the Grant).”

Section 1.06. Section 2.02(a) of the Development Credit Agreement is amended as follows:

“Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account and the amount of the Grant may be withdrawn from the Grant 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 and services required for the Project and to be financed out of the proceeds of the Financing.”
Section 1.07. The Closing Date in Section 2.03 of the Development Credit Agreement is amended to read “December 31, 2010.”

Section 1.08. Section 2.04 is amended as follows:

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

(b) Each commitment charge shall accrue: (i) from the date sixty (60) days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or the Grant Account (as the case may be), or canceled; and (ii) at the respective 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 respective 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; provided however that the commitment charge on the Grant shall accrue from a date sixty (60) days after the date of the Amending 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 1.09. Section 3.01 (b) of the Development Credit Agreement is hereby amended as follows:

“(b) “The Borrower shall relend out of the proceeds of the Financing the amount allocated from time to time under Categories (1), (2), (3) and (4) to PamirEnergy under a subsidiary loan agreement entered between the Borrower and PamirEnergy, under terms and conditions which shall have been approved by the Association, which shall include the principal terms and conditions specified in paragraph (c) of this section.”

Section 1.10. Section 3.01 (c) of the Development Credit Agreement is hereby amended as follows:
“The principal terms of the conditions of the Subsidiary Loan Agreement shall be as follows: (i) funds withdrawn from the Credit Account shall have a term of twenty five (25) years including a grace period of ten (10) years; (ii) the interest rate on the amount withdrawn and outstanding from the Credit Account from time to time from categories (1), (2), (3) and (4) shall be six percent (6%) per annum, except for the period from July 1, 2008 through to 2011, when payment on interest equivalent to four and three quarter of a percent (4.75%) shall be deferred, such deferred amount to be paid to the Republic of Tajikistan from 2012 over fifteen (15) years or as otherwise determined by the Parties following a review of PamirEnergy in 2011, and on terms and conditions mutually acceptable to PamirEnergy, the Republic of Tajikistan and the Association; (iii) funds withdrawn from the Grant Account shall have a term of twenty (20) years including a grace period of ten (10) years; (iv) the interest rate on the amount withdrawn and outstanding from the Grant Account from time to time from categories (1), (2), (3) and (4) shall be three-fourths of one percent (3/4 of 1%) per annum; (v) the Subsidiary Loan shall be denominated in U.S. Dollars; and (vi) the principal amount of the Subsidiary Loan repayable to the Borrower shall be the equivalent in U.S. Dollars of the amount of the Subsidiary Loan withdrawn and outstanding such equivalent to be expressed as of the date or respective dates of withdrawal from the Credit Account and the Grant Account on account of expenditures incurred by PamirEnergy.”

Section 1.11. Section 3.01 (d) of the Development Credit Agreement is amended to read as follows:

“(d) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit and the Grant, and, except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the Subsidiary Loan Agreement or any provision thereof.”

Section 1.12. Section 3.02 of the Development Credit Agreement is amended to read as follows:

“Section 3.02. Except as the Association shall otherwise agree, procurement of the goods and works required for the Project and to be financed out of the proceeds of the Financing shall be governed by the provisions of Schedule 1 to the Project Agreement.”

Section 1.13. Schedule 1 to the Development Credit Agreement is hereby revised as indicated in Annex 1 to this Amending Agreement.

Section 1.14. Schedule 3 to the Development Credit Agreement is hereby revised as indicated in Annex 2 to this Amending Agreement.
Section 1.15. All other provisions of the Development Credit Agreement, including Schedules 2 and 4 shall remain in full force and effect.

ARTICLE II

Effective Date; Termination

Section 2.01. This Amending Agreement shall not become effective until evidence satisfactory to the Association shall have been furnished to the Association that: (a) the execution and delivery of this Amending Agreement on behalf of the Borrower have been duly authorized or ratified by all necessary governmental action; (b) the execution and delivery of the Amending Project Agreement on behalf of PamirEnergy have been duly authorized or ratified by all necessary governmental action; and (c) the execution and delivery of the Subsidiary Loan Agreement on behalf of the Borrower and PamirEnergy, on terms and conditions satisfactory to the Association, have been duly authorized or ratified by all necessary governmental action.

Section 2.02. As part of the evidence to be furnished pursuant to Section 2.01 of this Amending Agreement, there shall be furnished to the Association an opinion or opinions satisfactory to the Association of counsel acceptable to the Association showing: (a) that this Amending Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and is legally binding upon the Borrower in accordance with its terms; and (b) that the Project Agreement has been duly authorized or ratified by PamirEnergy and is legally binding upon Pamir Energy in accordance with its terms; and (c) that the Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and Pamir Energy and is legally binding upon the Borrower and Pamir Energy in accordance with its terms.

Section 2.03. This Amending Agreement shall come into force and effect on the date upon which the Association shall dispatch to the Borrower notice of its acceptance of the evidence required by Section 2.01 of this Amending Agreement.

Section 2.04. If this Amending Agreement shall not have come into force and effect by the date ninety (90) days after the date of this Amending Agreement, this Amending Agreement and all obligations of the parties hereunder shall terminate, unless the Association establishes a later date for the purposes of this Section. If this Amending Agreement shall terminate under the provisions of this Section, the Development Credit Agreement shall continue in full force and effect, as if this Amending Agreement had not been executed.
IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Amending Agreement to be signed in their respective names in Dushanbe, Republic of Tajikistan, as of the day and year first above written.

REPUBLIC OF TAJIKISTAN

By: /s/ Safarali Najmiddinov
   Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: /s/ Chiara Bronchi
   Authorized Representative
ANNEX 1

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Financing, the allocation of the amounts of the Credit and the Grant to each Category and the percentage of expenditures for items so to be financed in each Category:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount of the Credit Allocated (Expressed in SDR Equivalent)</th>
<th>% of Expenditures to be Financed</th>
<th>Amount of the Grant Allocated (Expressed in SDR Equivalent)</th>
<th>% of Expenditures to be Financed</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Works</td>
<td>2,700,000</td>
<td>100% of foreign expenditures and 90% of local expenditures</td>
<td>80,000</td>
<td>100%</td>
</tr>
<tr>
<td>(2) Goods</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) cement and steel</td>
<td>163,839.89</td>
<td>100% of foreign expenditures, 100% of local expenditures (ex-factory cost) and 90% of local expenditures for other items procured locally</td>
<td>0</td>
<td>100%</td>
</tr>
<tr>
<td>(b) other goods</td>
<td>4,486,160.11</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(3) Technical Assistance</td>
<td>200,000</td>
<td>100%</td>
<td>20,000</td>
<td>100%</td>
</tr>
<tr>
<td>(4) Emergency Assistance</td>
<td>350,000</td>
<td>100%</td>
<td>0</td>
<td>100%</td>
</tr>
<tr>
<td>(5) Unallocated</td>
<td>0</td>
<td></td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>7,900,000</td>
<td></td>
<td>1,600,000</td>
<td></td>
</tr>
</tbody>
</table>
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 or services supplied from the territory of any country other than that of the Borrower; and

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

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, except that: (a) with respect to the Credit, withdrawals, in an aggregate amount not exceeding the equivalent of SDR 630,000, may be made on account of payments made for expenditures before that date but after March 15, 2002; and (b) with respect to the Grant, withdrawals, in an aggregate amount not exceeding the equivalent of SDR 870,000, may be made on account of payments made for expenditures before that date but after June 7, 2007.
ANNEX 2

SCHEDULE 3

Special Accounts

1. For the purposes of this Schedule:

   (a) the term “eligible Categories” means in the case of Special Account A, Categories (1), (2), (3) and (4) set forth in the table in paragraph 1 of Schedule 1 to this Agreement; and means in the case of Special Account B, Categories (1), (2) and (3) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;

   (b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Financing allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and

   (c) the term “Authorized Allocation” means an amount equivalent to $1,000,000 to be withdrawn from the Credit Account and deposited into Special Account A and an amount equivalent to $300,000 from the Grant Account and deposited into Special Account B pursuant to paragraph 3(a) of this Schedule, provided, however, that unless the Association shall otherwise agree, the Authorized Allocation under Special Account A shall be limited to an amount equivalent to $500,000 until the aggregate amount of withdrawals from the Credit Account plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall be equal to or exceed the equivalent of SDR 5,000,000.

2. Payments out of Special Account A and Special Account B shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Association has received evidence satisfactory to it that Special Account A and Special Account B have been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish Special Account A or Special Account B 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 Special Account A or Special Account B of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account or the Grant Account and
deposit into Special Account A or Special Account B such amount or amounts as the Borrower shall have requested.

(b) (i) For replenishment of Special Account A or Special Account B, the Borrower shall furnish to the Association requests for deposits into Special Account A or Special Account B at such intervals as the Association shall specify.

(ii) 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 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account or the Grant Account and deposit into Special Account A or Special Account B 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 Special Account A or Special Account B for eligible expenditures. All such deposits shall be withdrawn by the Association from the Credit Account or the Grant Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the respective 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.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into Special Account A or Special Account B:

   (a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account or the Grant Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

   (b) if the 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 the records and accounts for the Special Account;
(c) if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account and the Grant Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Credit and the Grant allocated to the eligible Categories, minus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Credit Account and the Grant Account of the remaining unwithdrawn amount of the Credit and the Grant allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in Special Account A and Special Account B as of the date of such notice will be utilized in making payments for eligible expenditures.

6.  (a) If the Association shall have determined at any time that any payment out of Special Account A or Special Account B: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into Special Account A or Special Account B (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into Special Account A or Special Account B shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association shall have determined at any time that any amount outstanding in Special Account A or Special Account B will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in Special Account A or Special Account B.

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