
LOAN NUMBER 2534-GEO(SF)

PROJECT AGREEMENT
(Municipal Services Development Project – Phase II)

between

ASIAN DEVELOPMENT BANK

and

MUNICIPAL DEVELOPMENT FUND OF GEORGIA

DATED 20 AUGUST 2009

PAG: GEO 43171

PROJECT AGREEMENT

PROJECT AGREEMENT dated 20 August 2009 between ASIAN DEVELOPMENT BANK ("ADB") and MUNICIPAL DEVELOPMENT FUND OF GEORGIA ("MDF")

WHEREAS

(A) by an agreement of even date herewith between Georgia (the "Borrower") and ADB (the "Loan Agreement"), ADB has agreed to make to the Borrower a loan in various currencies equivalent to nineteen million three hundred seventy-four thousand Special Drawing Rights (SDR19,374,000) on the terms and conditions set forth in the Loan Agreement, but only on condition that the proceeds of the Loan be made available to MDF and that MDF agree to undertake certain obligations towards ADB as set forth in this Project Agreement; and

(B) MDF, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth in this Project Agreement;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

ARTICLE II

Loans and Grants

Section 2.01. (a) Except as ADB may otherwise agree, the Loan proceeds may be withdrawn from the Loan Account upon terms and conditions provided in the Loan Agreement.

(b) Except as ADB may otherwise agree, the proceeds of the Loan so withdrawn shall be applied exclusively to the cost of Goods, Works, consulting services and other items of expenditure required to carry out the subprojects by the MGs in respect of which such Loan proceeds were withdrawn.

Section 2.02. (a) Whenever MDF proposes to make a subloan and grant for a subproject estimated to cost the equivalent of two million Dollars (\$2,000,000)

and more, or such other amount as shall from time to time be agreed between ADB and MDF, MDF shall, before requesting a withdrawal, submit to ADB a related SAR for review and approval, and submit the Investment Financing Agreement together with the withdrawal application. Such SAR shall be in a form and substance satisfactory to ADB.

(b) Subloan approval and withdrawal (SAW) procedure in accordance with the ADB's Loan Disbursement Handbook may be used for disbursement of the Loan proceeds for purposes of financing eligible subprojects which do not cost more than the amount specified in or agreed pursuant to paragraph (a) of this Section, subject, however, to MDF promptly furnishing to ADB an SSR, in a form satisfactory to ADB, describing the subproject and the terms and conditions of the relevant subloan and/or grant.

(c) Notwithstanding provisions in subparagraphs (a) and (b) of this Section 2.02, MDF may apply for the Imprest Fund and Statement of Expenditure procedures in accordance with the Loan Agreement and the ADB's Loan Disbursement Handbook.

(d) Except as ADB may otherwise agree, the applications and information required by paragraphs (a) and (b) of this Section shall be submitted to ADB not later than a date three and a half (3.5) years after the Effective Date.

Section 2.03. Except as ADB may otherwise agree, each subloan to be made by MDF shall carry interest at a rate of 12% per annum, have amortization schedule which (i) shall not extend beyond ten (10) years, including a grace period not exceeding one and a half (1.5) years, from the date of the first withdrawal of the subloan from the imprest account; and (ii) shall provide for approximately equal aggregate payments of principal plus interest.

Section 2.04. MDF shall promptly and effectively exercise its rights in relation to each subproject in such manner as to protect the interests of the Borrower, MDF and ADB.

ARTICLE III

Particular Covenants

Section 3.01. (a) In the carrying out of the Project and in the conduct of its business, MDF shall perform all the obligations set forth in the Loan Agreement, to the extent they are applicable to MDF, and in the Schedule to the Project Agreement.

(b) MDF shall carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental and business practices.

Section 3.02. (a) In carrying out the Project, MDF shall employ competent and qualified consultants and contractors for the subprojects, eligible for ADB financing, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to the Loan Agreement. ADB may refuse to finance a contract where Goods, Works or consulting services have not been procured under the procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 3.03. MDF shall not make a subloan or grant to any MG unless such MG has at its disposal, or has made appropriate arrangements to obtain as and when required, all local currency funds, and other resources which are required for the carrying out of its subproject.

Section 3.04. MDF shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to the Borrower and ADB. When requested by ADB, MDF shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 3.05. (a) MDF shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of the Goods financed out of the proceeds of the Loan to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, MDF undertakes to insure, or cause to be insured, the Goods to be imported for the Project and to be financed out of the proceeds of the Loan against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 3.06. MDF shall maintain records and accounts adequate to record the progress of the Project and of each subproject (including the cost thereof) and to reflect, in accordance with the International Financial Reporting Standards, the operations and financial condition of MDF.

Section 3.07. (a) ADB and MDF shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) MDF shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement or the Project Implementation Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and MDF shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, MDF and the Loan.

Section 3.08. (a) MDF shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the Project; (iii) the MGs, the subprojects, the subloans and/or

grants; (iv) the administration, operations and financial condition of MDF; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, MDF shall furnish to ADB semi-annual reports on the execution of the Project and on the operation and management of MDF. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after the closing date for withdrawals from the Loan Account, but in any event not later than six (6) months after the said closing date or such later date as ADB may agree for this purpose, MDF shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the utilization of the Loan, the execution of the subprojects, their costs, the performance by MDF of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 3.09. (a) MDF shall (i) maintain separate accounts for the Project; (ii) have such accounts and financial statements (balance sheet, statement of income and expenses, and related statements) audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, and (iii) furnish to ADB, promptly after their preparation but in any event not later than 6 months after the close of the fiscal year to which they relate, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of Loan proceeds and compliance with the financial covenants of the Loan Agreement as well as on the use of the procedures for imprest account), all in the English language. MDF shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) MDF shall enable ADB, upon ADB's request, to discuss MDF's financial statements and its financial affairs from time to time with the auditors appointed by MDF pursuant to Section 3.09(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of MDF unless MDF shall otherwise agree.

Section 3.10. MDF shall enable ADB's representatives to inspect, with regard to the Project, any MG, any subproject, the Goods and Works financed out of the proceeds of the Loan, and any relevant records and documents.

Section 3.11. (a) MDF shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its business.

(b) Except as ADB may otherwise agree, MDF shall not sell, lease, transfer or otherwise dispose of any of its core assets that would materially and adversely affect the course of the Project.

Section 3.12. MDF shall cause each of its subsidiaries (if any) to observe and perform the obligations of MDF under this Project Agreement to the extent to which such obligations may be applicable thereto, as though such obligations were binding upon each of such subsidiaries.

Section 3.13. Except as ADB may otherwise agree, MDF shall duly perform all its obligation under the Project Implementation Agreement and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Project Implementation Agreement.

ARTICLE IV

Effective Date; Termination

Section 4.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement shall come into force and effect. ADB shall promptly notify MDF of such date.

Section 4.02. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement. If and when the entire principal amount of the Loan withdrawn from the Loan Account and all interest charges which shall have accrued on the Loan shall have been paid, the Project Agreement and all obligations of the parties thereunder shall forthwith terminate.

ARTICLE V

Miscellaneous

Section 5.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project 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, electronic mail or facsimile to the party to which it is required or permitted to be given or made at its 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. The addresses so specified are:

For ADB

Asian Development Bank
P.O. Box 789
0980 Manila, Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636- 4284

For MDF

III floor, 150 D. Agmashenebeli Ave,
0112 Tbilisi, Georgia

Facsimile Number:

(99532)- 484 555.

Section 5.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or under Section 7.01 of the Loan Agreement by or on behalf of MDF may be taken or executed by its Executive Director or by such other person or persons as the Executive Director shall so designate in writing notified to ADB.

(b) MDF shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) of this Section, together with the authenticated specimen signature of each such person.


Section 5.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

ASIAN DEVELOPMENT BANK

By 
HARUHIKO KURODA
President

MUNICIPAL DEVELOPMENT FUND OF
GEORGIA

By 
Authorized Representative

SCHEDULE

Execution of Project; Financial Matters

Project Executing Agency

1. MDF shall be the Project Executing Agency responsible for carrying out the Project.

Subproject Eligibility Criteria

2. (a) Subprojects must be for the rehabilitation, construction, repair, and extension of the existing municipal infrastructure in the following categories: (i) water supply, including resources development and improvement, (ii) sewerage collection and treatment; (iii) waste water and solid waste collection and disposal; (iv) urban transport; and (v) local road improvement including drainage and street lighting, traffic management, and other municipal services and goods.

(b) To be eligible for financing from the Loan proceeds, each subproject must:

- (i) serve the purpose of improving the quality of life, helping meet basic social, environmental, public health standards, and/or promoting local economic development;
- (ii) be identified primarily on the basis of locally determined needs communicated to MDF by the MGs;
- (iii) demonstrate that it can yield benefits that can be quantified or otherwise identified with an acceptable degree of certainty;
- (iv) be in full compliance with all relevant provisions of the Borrower's legislation and regulations, including environmental legislation;
- (v) be in compliance with ADB's *Environment Policy* (2002); and
- (vi) not trigger ADB's *Involuntary Resettlement Policy* (1995).

Eligibility Criteria for MGs

3. (a) Unless otherwise agreed between ADB and MDF, to be eligible for financing under Window 1, an MG must have a borrowing capacity determined according to the following criteria:

- (i) total annual debt service payments (principal, interest, and any other charges) on all outstanding and proposed subloans for the current year should not exceed six percent (6%) of the forecast revenues for the same year;

- (ii) forecast revenues are the sum of tax, non-tax, and capital revenues, and the unconditional equalization transfer from the central government for the current year as recorded in the approved annual budget;
- (iii) total outstanding debt should not exceed a hundred percent (100%) of forecast revenues; and
- (iv) capacity to repay at least GEL 182,000 per annum in debt service and forecast revenues of more than GEL 3,037,000.

(b) The MGs that do not meet the criteria set out in paragraph (a) above shall be eligible for financing under Window 2.

Financing Windows

4. Except as ADB may otherwise agree, MDF shall ensure that the following conditions shall apply to financing under Window 1:

- (a) the total cost of a subproject shall not be below \$500,000 equivalent in current prices;
- (b) each subloan shall be on the terms and conditions described in Section 2.03 of this Project Agreement;
- (c) each MG shall finance at least twenty (20%) of the estimated cost of the subproject; and
- (d) each MG shall transfer the requested amount in Lari from its total contribution specified in paragraph 4 (c) above into a designated account of MDF, within fifteen (15) days upon notice from MDF.

5. Except as ADB may otherwise agree, MDF shall ensure that the following conditions shall apply to financing under Window 2:

- (a) the total cost of a subproject shall not be below \$100,000 equivalent and shall not exceed \$3,000,000 equivalent in current prices; pooling of smaller but related and contiguous subprojects may be allowed to meet the minimum investment requirement;
- (b) each MG shall finance at least fifteen percent (15%) of the estimated cost of the subproject; and
- (c) each MG shall transfer the requested amount in Lari from its total contribution specified in paragraph 5 (b) above into a designated account of MDF, within fifteen (15) days upon notice from MDF.

Subproject Documentation

6. The SAR shall provide information on (i) the scope of the subproject, (ii) investment and financing plans, (iii) environmental screening, and (iv) economic, financial, social and other benefits and risks.

7. The SSR shall provide a short description of the subproject, its cost, scope and implementation arrangements, investment and financing plans, and possible benefits.

8. The Investment Financing Agreement shall set out terms and conditions of financing, the scope of the subproject, implementation arrangements, expected completion date, roles and responsibilities of the parties thereto, and shall include, among other things, provisions to the effect that:

- (a) the MG shall operate the subproject with due diligence and efficiency and in accordance with sound administrative, financial and environmental practices, including maintenance of adequate accounts and records;
- (b) the Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be used exclusively in the carrying out of the subproject;
- (c) ADB and MDF shall each have the right to inspect, with respect to subprojects, such Goods and Works, the MG and any relevant records and documents;
- (d) the MG shall provide for further maintenance of the facilities rehabilitated under subproject and shall not sell or burden them with any obligations towards third parties without written notice to MDF, prior to full repayment of the principal and the interest of the subloan;
- (e) ADB and MDF shall each be entitled to obtain all such information as each shall reasonably request relating to the subloans and/or grants, the Goods, Works and consulting services financed out of the proceeds of the Loan, the subproject, the MG (with respect to subproject) and other related matters; and
- (f) MDF shall be entitled to suspend or terminate further access by the MG to the use of the proceeds of the subloan upon failure by the MG to perform its obligations under the Investment Financing Agreement.

Environment and Social Aspects

9. MDF shall ensure that the Project is carried out in compliance with the applicable environmental laws and regulations of the Borrower and ADB's *Environment Policy* (2002) and each subproject is screened and/or assessed in accordance with the agreed EARF. MDF shall also ensure that all subprojects are carried out within the existing right-of-ways and do not involve any land acquisition and/or resettlement that would trigger ADB's *Involuntary Resettlement Policy* (1995). MDF and the MGs shall carry out subprojects in a socially responsible manner seeking mitigation of any potential social risks. Specifically,

MDF shall ensure civil works contractors (i) comply with all applicable labor laws; (ii) provide equal pay to men and women for work of equal type; and (iii) and abstain from engaging child labor.

Operations Manual

10. MDF shall ensure that subproject preparation, appraisal, and implementation comply with the agreed Operations Manual. MDF shall not amend or waive any condition of the Operations Manual without prior ADB approval of such amendment or waiver.

Sustainability

11. MDF shall annually update its medium-term strategic plans, including action plans.

Anticorruption

12. MDF shall ensure that (a) ADB's *Anticorruption Policy* (1998, as amended to date) is complied with throughout the Project implementation, it is being understood that ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices related to the Project; and (b) all bidding documents and contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine Project related records and accounts of MDF, the MGs, contractors, suppliers, consultants, and other service providers. In furtherance of the principles of transparency, accountability and anticorruption, MDF shall enhance its web-site to provide the public with information on the Project, subprojects, major procurement activities under the subprojects.

Project Performance Management System

13. MDF shall maintain its project management and information system including relevant indicators to monitor and evaluate the technical performance benefits of this Project at 6-months interval.

Project Review

14. The Borrower, MDF and ADB shall undertake Project review twice a year for the first two (2) years of the Project implementation and once a year thereafter. A mid-term review shall be conducted two (2) years after the commencement of the Project implementation. The mid-term review shall include a detailed evaluation of the Project scope, implementation arrangements and progress in achieving scheduled targets and compliance with Loan covenants.