
LOAN NUMBER 2440-SAM(SF)

GRANT NUMBER 0114-SAM(SF)

PROJECT AGREEMENT
(Sanitation and Drainage Project
– Supplementary Financing)

between

ASIAN DEVELOPMENT BANK

and

SAMOA WATER AUTHORITY

DATED 10 OCTOBER 2008

PAG:SAM 28314

PROJECT AGREEMENT

PROJECT AGREEMENT dated 10 October 2008 between the ASIAN DEVELOPMENT BANK (“ADB”) and SAMOA WATER AUTHORITY (“SWA”).

WHEREAS

(A) By a loan agreement (the “Initial Loan Agreement”) dated 1 June 2004 between the Independent State of Samoa (the “Beneficiary”) and ADB, ADB provided to the Beneficiary a loan in various currencies equivalent to five million six hundred and four thousand Special Drawing Rights (SDR 5,604,000) (the “Initial Loan”) from ADB’s Special Funds resources for the purposes of the project described in Schedule 1 to the Initial Loan Agreement (the “Project”);

(B) Section 3.01 of the Initial Loan Agreement provided that, out of the proceeds of the Initial Loan, the Beneficiary would relend to SWA an amount equivalent to two million four hundred and fifty-two thousand Special Drawing Rights (SDR2,452,000) for implementation of Component B (Wastewater Management and Sanitation) of the Project as described in Schedule 1 to the Loan Agreement);

(C) By a project agreement (the “Initial Project Agreement”) dated 1 June 2004 between SWA and ADB, SWA agreed to use the portion of the proceeds of the Initial Loan relent under the Subsidiary Loan Agreement for the purpose of carrying out Component B of the Project.

(D) The Beneficiary has applied to ADB for further financing for the purposes of covering the cost overruns of the Project;

(E) By a financing agreement of even date herewith (the “Financing Agreement”) between the Beneficiary and ADB, ADB has agreed to make to the Beneficiary a loan in various currencies of an amount equivalent to one million seven hundred and ten thousand Special Drawing Rights (SDR 1,710,000) and a grant in the amount of two million two hundred twenty thousand Dollars (\$2,220,000) on the terms and conditions set forth in the Financing Agreement, but only on the condition in each case that a portion of the proceeds of the Loan and the Grant, respectively, be made available to SWA and that SWA agrees to undertake certain obligations towards ADB as set forth in this Project Agreement; and

(F) SWA, in consideration of ADB entering into the Financing Agreement with the Beneficiary, 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 Financing Agreement, the Loan Regulations (as so defined) and the Grant Regulations (as so defined) have the respective meanings therein set forth, except that for purposes of this Project Agreement, the term "the Project" means Part (B)(i)-(ii) and Part (C)(i)-(ii) of the Project, as described in Schedule 1 to the Financing Agreement.

ARTICLE II

Particular Covenants

Section 2.01. (a) SWA shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, and environmental practices.

(b) In the carrying out of the Project and operation of the Project facilities, SWA shall perform all obligations set forth in the Financing Agreement to the extent that they are applicable to SWA.

Section 2.02. SWA shall make available, promptly as needed, the funds, facilities, services equipment, land and other resources which are required, in addition to the proceeds of the Loan and the Grant, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, SWA shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, all goods and services to be financed out of the proceeds of the Loan and the Grant shall be procured in accordance with the provisions of Schedule 4 and Schedule 5 to the Financing Agreement. ADB may refuse to finance a contract where goods or services have not been procured under procedures substantially in accordance with those agreed between the Beneficiary and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. SWA shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. SWA 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 2.05. (a) SWA shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for insurance of the

Project facilities 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, SWA 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 or the Grant 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 2.06. SWA shall maintain, or cause to be maintained, records and accounts adequate to identify the goods and services and other items of expenditure financed out of the proceeds of the Loan or the Grant, to disclose the use thereof in the Project, to record the progress of the Project and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and SWA shall cooperate fully to ensure that the purposes of the Loan and the Grant will be accomplished.

(b) SWA 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 Subsidiary Loan Agreement, or the accomplishment of the purposes of the Loan and the Grant.

(c) ADB and SWA 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, SWA and the Loan and the Grant.

Section 2.08. (a) SWA shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the Grant and the expenditure of the proceeds thereof; (ii) the goods and services and other items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of SWA; and (v) any other matters relating to the purposes of the Loan and the Grant.

(b) Without limiting the generality of the foregoing, SWA shall furnish to ADB quarterly reports on the execution of the Project and on the operation and management of the Project facilities. 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 quarter under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following quarter.

(c) Promptly after physical completion of the Project, but in any event not later than three (3) months thereafter or such later date as ADB may agree for this purpose, SWA shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by SWA of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan and the Grant.

Section 2.09. (a) SWA shall (i) maintain separate accounts for the Project and for its overall operations, including separate accounts for the Loan and the Grant; (ii) have such accounts and related 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 six (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 the Loan and the Grant proceeds and compliance with the financial covenants of the Financing Agreement as well as on the use of the procedures for imprest accounts and statement of expenditures), all in the English language. SWA 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) SWA shall enable ADB, upon ADB's request, to discuss SWA's financial statements and its financial affairs from time to time with the auditors appointed by SWA pursuant to Section 2.09(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 SWA unless SWA shall otherwise agree.

Section 2.10. SWA shall enable ADB's representatives to inspect the Project, the goods financed out of the proceeds of the Loan or the Grant, all other plants, sites, works, properties and equipment of the SWA, and any relevant records and documents.

Section 2.11. (a) SWA 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) SWA shall at all times conduct its business in accordance with sound administrative, financial and environmental practices, and under the supervision of competent and experienced management and personnel.

(c) SWA shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound administrative, financial, engineering, environmental and maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, SWA shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, SWA shall apply the proceeds of the Loan and the Grant to the financing of expenditures on the Project in accordance with the provisions of the Financing Agreement and this Project Agreement, and shall ensure that all goods and services financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, SWA shall duly perform all its obligations under the Subsidiary Loan 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 Subsidiary Loan Agreement.

Section 2.15. SWA shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its Charter and shall afford ADB an adequate opportunity to comment on such proposal prior to taking any action thereon.

ARTICLE III

Effective Date; Termination

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Financing Agreement shall come into force and effect. ADB shall promptly notify SWA of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the Financing Agreement shall terminate in accordance with its terms;

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Financing Agreement.

ARTICLE IV

Miscellaneous

Section 4.01. 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, telegram, cable, telex, facsimile or radiogram 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) 636-2445.

For SWA

c/o Managing Director
P.O Box 245,
Apia, Samoa

Facsimile Numbers:

(685) 21298 or 31785.

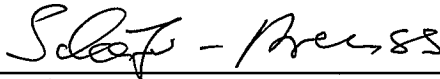
Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or under Section 7.01 of the Financing Agreement by or on behalf of SWA may be taken or executed by its Chairperson or by such other person or persons as he/she shall so designate in writing notified to ADB.

(b) SWA 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 4.03. 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 

URSULA SCHAEFER-PREUSS
Vice-President
Knowledge Management and
Sustainable Development

SAMOA WATER AUTHORITY

By 

CEPPIE KURNIADI SUMADILAGA
Authorized Representative

SCHEDULE

Execution of Project; Financial Matters

Sewerage Tariffs and Environmental Charges

1. SWA shall, for each Fiscal Year starting 1 July 2009 until the Closing Date and in compliance with the Cost Recovery Mechanism, prepare environmental charges and tariff reviews with respect to the septic tank subcomponent (Subcomponent B(i)) and the sewerage system subcomponent (Subcomponent B(ii)) for the Cabinet's review.
2. SWA shall, for each Fiscal Year, design and implement (a) an investment program and an operations and maintenance works program for the septic tanks subcomponent (Subcomponent B(i)); and (b) an operations and maintenance works program for the wastewater subcomponent (Subcomponent B(ii)), each in compliance with the Cost Recovery Mechanism.

Private Sector Participation

3. SWA shall actively explore opportunities to outsource operations and maintenance activities to the private sector in accordance with the procurement standards and procedures of the Government's Tender Board.

Labor, Health and Safety Laws

4. SWA shall ensure that all consultants' and works contracts under the Project incorporate provisions and sufficient budget to require that all consultants and contractors: (a) comply with all applicable labor laws of the Beneficiary and related international treaty obligations and do not employ child labor; (b) do not provide differential wages or benefits to men and women for work of equal value; (c) comply with all applicable health, and safety laws and regulations, including access to basic water and sanitation facilities for men and women on the work sites as well as access on the work sites to separate toilet facilities for men and women; (d) provide day care service for the children of women employed in connection with the Project, if so requested; and (e) carry out HIV/AIDS prevention and awareness campaigns at the workers' campsites and/or residences and social halls (in the case of non-local workers), and include community heads and women leaders, with such campaigns being held in coordination with the Beneficiary's existing programs and other initiatives.

Environment

5. SWA shall ensure that (a) the contractors engaged under the works contracts comply strictly with all environmental impact mitigation and monitoring requirements set out in the EMP and the contract documents, and (b) the consultants engaged for construction supervision closely monitor compliance of the contractors with the environmental impact mitigation and monitoring requirements and reporting requirements.

Gender and Employment

6. SWA shall ensure that the contractors and consultants employed for the Project do not discriminate against female applicants and shall expressly encourage them to employ women for both skilled and unskilled labor needs.

Governance

7. SWA shall ensure that its Project staff, as well as contractors and consultants are fully knowledgeable of and comply with the Beneficiary's and ADB's procedures, including, but not limited to, procedures for (i) implementation, (ii) procurement, (iii) use of consultants, (iv) disbursement, (v) reporting, (vi) monitoring, and (vii) prevention of fraud and corruption.

Anti-Corruption.

8. SWA shall comply with ADB's *Anticorruption Policy* (1998). SWA agrees: (a) that ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; and (b) to cooperate fully with any such investigation and extend all necessary assistance, including providing access to all relevant information and records, for the satisfactory completion of any such investigation. SWA shall also: (a) conduct periodic inspections on the contractors' activities relating to fund withdrawals and settlements; and (b) ensure that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of all contractors, suppliers, consultants and other service providers of the Project.

Physical Component Maintenance Policy

9. Within six (6) months prior to the Project completion date, SWA, acting jointly with the Beneficiary, shall confirm maintenance plans for the physical components constructed under the Project, including budget and implementation arrangements, and submit them to ADB for review and concurrence.

SWA Management

10. SWA shall ensure that a dedicated division with adequate staffing remains in place within SWA to carry out wastewater management and sanitation services throughout Project implementation.

Twinning Arrangement

11. SWA shall enter into a twinning arrangement acceptable to ADB with a successful regional wastewater treatment utility identified by the Beneficiary, whereby the latter will assist the Beneficiary and SWA in developing the managerial, technical, and financial capabilities required for efficient management of a commercially oriented wastewater treatment utility.