
GRANT NUMBER 0256-TON(SF)

PROJECT AGREEMENT
(Tonga-Fiji Submarine Cable Project)

between

ASIAN DEVELOPMENT BANK

and

TONGA CABLE LIMITED

DATED 9 September 2011

TON 44172

PROJECT AGREEMENT

PROJECT AGREEMENT dated 9 September 2011 between ASIAN DEVELOPMENT BANK ("ADB") and TONGA CABLE LIMITED ("TCL").

WHEREAS

(A) by a Grant Agreement of even date herewith between the Kingdom of Tonga (the "Recipient") and ADB, ADB has agreed to make available to the Recipient a grant of nine million seven hundred thousand US dollars (\$9,700,000) on the terms and conditions set forth in the Grant Agreement, but only on the condition that the proceeds of the Grant be made available to TCL and that TCL agrees to undertake certain obligations towards ADB as set forth in this Project Agreement; and

(B) TCL, in consideration of ADB entering into the Grant Agreement with the Recipient, has agreed to undertake the obligations set forth in this Project Agreement;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

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

ARTICLE II

Particular Covenants

Section 2.01. (a) TCL shall carry out the Project with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

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

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

Section 2.03. (a) In the carrying out of the Project, TCL shall employ competent and qualified consultants and contractors in accordance with the Procurement Guidelines.

(b) Except as ADB may otherwise agree, all items of expenditures financed out of the proceeds of the Grant shall be procured in accordance with the provisions of Schedule 3 to the Grant Agreement. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Recipient and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. TCL shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. TCL 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) TCL shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, TCL undertakes to insure, or cause to be insured, the Goods to be imported for the Project 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. TCL shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Grant, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

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

(b) TCL 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 Share Purchase Agreement, or the accomplishment of the purposes of the Grant.

(c) ADB and TCL 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, TCL and the Grant.

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

(b) Without limiting the generality of the foregoing, TCL 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 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 physical completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, TCL 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 TCL of its obligations under this Project Agreement and the accomplishment of the purposes of the Grant.

Section 2.09. (a) TCL shall (i) maintain separate accounts for the Project and for its overall operations; (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 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 Grant proceeds and compliance with the covenants of the Grant Agreement), all in the English language. TCL 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) TCL shall enable ADB, upon ADB's request, to discuss TCL's financial statements and its financial affairs from time to time with the auditors appointed by TCL pursuant to Section 2.09(a) hereinabove, 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 TCL unless TCL shall otherwise agree.

Section 2.10. TCL shall enable ADB's representatives to inspect the Project, the Goods and Works, all other plants, sites, properties and equipment of TCL, and any relevant records and documents to the extent they relate to the Project.

Section 2.11. (a) TCL 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 operations.

(b) TCL shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

(c) TCL 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 applicable technical, financial, business, development, operational and maintenance practices.

Section 2.12. Except as ADB may otherwise agree, TCL 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, TCL shall apply the proceeds of the Grant to the financing of expenditures on the Project in accordance with the provisions of the Grant Agreement and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, TCL shall duly perform all its obligations under the Share Purchase 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 Share Purchase Agreement.

Section 2.15. TCL shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its constitutional documents 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 Grant Agreement comes into force and effect. ADB shall promptly notify TCL of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the Grant Closing Date, except that (i) the obligations of TCL under paragraphs 3, 4, 5, 6(b), 6(c), 8, 9, 13, 14 of Schedule 4 to the Grant Agreement and (ii) the obligations of TCL under Sections 2.05(a), 2.06, 2.07, 2.08(a), 2.09(b), 2.10, 2.11, 2.12, 2.14 or 2.15 shall terminate on a date 20 years after the date of this Project Agreement.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Grant 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, by mail, or by 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
6 ADB Avenue
Mandaluyong City 1550 Metro Manila
Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636-2446.

For TCL

Unit 4, PATCO Centre
Taufa'ahua Road
Nuku'alofa
Kingdom of Tonga

Facsimile Number:

(676) 22444.

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 by or on behalf of TCL may be taken or executed by its Managing Director or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) TCL 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 as of the day and year first above written, and to be delivered at the principal office of ADB.

ASIAN DEVELOPMENT BANK

By



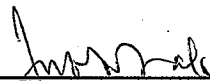
ROBERT WIHTOL

Director General

Pacific Asia Regional Department

TONGA CABLE LIMITED

By



INOKE F. VALA

Chairman of the Board