
GRANT NUMBER 0458-SAM (SF)

PROJECT AGREEMENT
(Samoa Submarine Cable Project)

between

ASIAN DEVELOPMENT BANK

and

SAMOA SUBMARINE CABLE COMPANY LIMITED

DATED 2 November 2016

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PROJECT AGREEMENT

PROJECT AGREEMENT dated *2 November 2016* between ASIAN DEVELOPMENT BANK ("ADB") and SAMOA SUBMARINE CABLE COMPANY LIMITED ("SSCC").

WHEREAS

(A) by a Grant Agreement 3 December 2015 between Independent State of Samoa ("Recipient") and ADB, ADB has agreed to make to the Recipient a grant of twenty-five million Dollars (\$25,000,000) on the terms and conditions set forth in the Grant Agreement, but only on the condition that a portion of the proceeds of the grant be made available to SSCC and that SSCC agrees to undertake certain obligations towards ADB set forth herein; and

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

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. (a) 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, except that for purposes of this Project Agreement:

- (i) the term "the Project" means Parts A and B of the Project, as described in Schedule 1 to the Grant Agreement;
- (ii) the term "Subsidiary Agreement" means the Subsidiary Agreement between the Recipient and SSCC relating to the Samoa Connectivity Project.

ARTICLE II

Particular Covenants

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

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

Section 2.02. SSCC shall make available, promptly as needed, and on terms and conditions acceptable to ADB, 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, SSCC 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, SSCC shall procure all items of expenditures to be financed out of the proceeds of the Grant 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 Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. SSCC shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. SSCC 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) SSCC shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of 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, SSCC 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. SSCC 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 SSCC shall cooperate fully to ensure that the purposes of the Grant will be accomplished.

(b) SSCC 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 Agreement, or the accomplishment of the purposes of the Grant.

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

Section 2.08. (a) SSCC 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 SSCC; and (v) any other matters relating to the purposes of the Grant.

(b) Without limiting the generality of the foregoing, SSCC shall furnish to ADB periodic 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, SSCC 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 SSCC of its obligations under this Project Agreement and the accomplishment of the purposes of the Grant.

Section 2.09. (a) SSCC shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Grant proceeds, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the close of the fiscal year to which they relate, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) In addition to annual audited financial statements referred to in subsection (a) hereinabove, SSCC shall (i) provide its annual financial statements prepared in accordance with financing reporting standards acceptable to ADB; (ii) have its financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iii) as part of each such audit, have the auditors prepare the auditors' opinion(s) on the financial statements and compliance with the financial covenants of the Grant Agreement; and (iv) furnish to ADB, no later than 1 month after approval by the relevant

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authority, copies of such audited financial statements and auditors' opinion(s), all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(d) SSCC shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and SSCC and its financial affairs where they relate to the Project with the auditors appointed by SSCC pursuant to subsections (a)(iii) and (c)(ii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of SSCC, unless SSCC shall otherwise agree.

Section 2.10. SSCC shall enable ADB's representatives to inspect the Project, the Goods and Works and any relevant records and documents.

Section 2.11. (a) SSCC 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) SSCC 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) SSCC 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, SSCC 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, SSCC 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, SSCC shall duly perform all its obligations under the Subsidiary 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 Agreement.

Section 2.15. SSCC shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its constitutional documents, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. SSCC shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

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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 SSCC of such date.

Section 3.02. (a) This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the Grant Agreement shall terminate in accordance with its terms.

(b) If the Grant Agreement terminates in accordance with its terms before the date specified in subsection (a)(ii) hereinabove, ADB shall promptly notify SSCC of this event.

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, 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
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

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

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For SSCCL

Samoa Submarine Cable Company Limited
No. 203A Goldstar Building, ACC Mall, Matafele
Apia, Samoa.

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 SSCC may be taken or executed by its Chief Executive Officer or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) SSCC shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, 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 Jauncey
ROBERT ANDREW JAUNCEY
Regional Director

SAMOA SUBMARINE CABLE
COMPANY LIMITED

By Pepe Fia'Ailetoa Christian Fruean
PEPE FIA'AILETOA CHRISTIAN FRUEAN
Chairperson

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