
LOAN NUMBER 2440-SAM(SF)

GRANT NUMBER 0114-SAM(SF)

FINANCING AGREEMENT
(Special Operations)

(Sanitation and Drainage Project
– Supplementary Financing)

between

INDEPENDENT STATE OF SAMOA

and

ASIAN DEVELOPMENT BANK

DATED 10 OCTOBER 2008

FAS:SAM 28314

**FINANCING AGREEMENT
(Special Operations)**

FINANCING AGREEMENT dated 10 October 2008 between the INDEPENDENT STATE OF SAMOA (the "Beneficiary") and the ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

BACKGROUND

(A) By a loan agreement (the "Initial Loan Agreement") dated 1 June 2004 between 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 the Samoa Water Authority ("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, and accordingly, the Beneficiary and SWA entered into a subsidiary loan agreement (the "Subsidiary Loan Agreement") on 27 August 2004 for this purpose;

(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 Agreement relend 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 and ADB has agreed to make available to the Beneficiary a loan and a grant from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and SWA; and

(E) The Beneficiary and ADB have further agreed to amend the description of the scope of the Project for the purpose of the financing provided herein, as set forth in Schedule 1 to this Financing Agreement.

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations and Grant Regulations; Definitions

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 (the "Loan Regulations"), are hereby made applicable to the Loan made pursuant to this Financing Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) the term "Loan Agreement", wherever it appears in the Loan Regulations, shall be substituted by the term "Financing Agreement"; and

(b) the term "Borrower", wherever it appears in the Loan Regulations, shall be substituted by the term "Beneficiary" as defined in the opening paragraph of this Agreement.

Section 1.02. All provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (the "Grant Regulations"), are hereby made applicable to the Grant made pursuant to this Financing Agreement with the same force and effect as if they were fully set forth herein subject, however, to the following modifications:

(a) the term "Grant Agreement", wherever it appears in the Grant Regulations, shall be substituted by the term "Financing Agreement"; and

(b) the term "Recipient", wherever it appears in the Grant Regulations, shall be substituted by the term "Beneficiary" as defined in the opening paragraph of this Agreement.

Section 1.03. The definitions set forth in the Loan Regulations and Grant Regulations are applicable to this Agreement, in each case unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "Affected Person" means any person whose living environment and/or livelihood activities have been or will be adversely affected by the resettlement activities undertaken or proposed to be undertaken by the Project;

(b) "Cabinet" means the Cabinet of Ministers of the Beneficiary;

(c) "CBA" means the central business area in Apia;

(d) "community service obligation" means an obligation under Section 9 of the Public Bodies (Performance and Accountability) Act 2001 of the Beneficiary;

(e) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by the Asian Development Bank and its Beneficiaries, dated February 2007, as amended from time to time;

(f) "Cost Recovery Mechanism" has the meaning ascribed to it in Section 6.01(a);

(g) "Fiscal Year" means the fiscal year of the Beneficiary, covering the

period from 1 July of the current year to 30 June of the following year (i.e. Fiscal Year 2008 denotes 1 July 2008 to 30 June 2009);

- (h) "Government" means the government of the Beneficiary;
- (i) "EMP" means the environmental management plan prepared for the Project, as amended at 20 June 2007, and as may be further amended with the concurrence of ADB
- (j) "EU" means the European Union;
- (k) "EU Financing" means the financing to be provided by the EU for certain Project subcomponents identified in Schedule 1;
- (l) "IEE" means the initial environmental examination dated November 2003, prepared for the project;
- (m) "LARP" means the Land Acquisition and Resettlement Plan prepared for the Project and approved by ADB on 19 May 2008 and as may be further amended with the concurrence of ADB;
- (n) "MAF" means the Ministry of Agriculture and Fisheries of the Beneficiary, or any successor thereto;
- (o) "MNRE" means the Ministry of Natural Resources and Environment of the Beneficiary, or any successor thereto;
- (p) "MOF" means the Ministry of Finance of the Beneficiary, or any successor thereto;
- (q) "MOH" means the Ministry of Health of the Beneficiary, or any successor thereto;
- (r) "MWCSO" means the Ministry of Women Community and Social Development of the Beneficiary, or any successor thereto;
- (s) "MWTI" means the Ministry of Works, Transport and Infrastructure of the Beneficiary, or any successor thereto;
- (t) "PMU" means the project management unit established for the Project as specified in paragraph 4 of Schedule 6 to the Initial Loan Agreement and paragraph 4 of Schedule 5 to this Agreement;
- (u) "PPMS" means the project performance management system;
- (v) "Procurement Guidelines" means ADB's Procurement Guidelines dated February 2007, as amended from time to time;

(w) “Procurement Plan” means the procurement plan for the Project dated 15 July 2008, as may be amended from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(x) “Project Executing Agency” for the purposes of, and within the meaning of, the Loan Regulations and Grant Regulations, means the MOF;

(y) “Project Facilities” means all equipment and facilities to be provided under the Project;

(z) “Project Implementing Agency” means either MWTI or SWA as specified in paragraph 3 of Schedule 6 to the Initial Loan Agreement and paragraph 4 of Schedule 5 to this Agreement;

(aa) “Project Safeguard Documents” means the LARP and the IEE, including the EMP;

(bb) “PSC” means the project steering committee established for the Project as specified in paragraph 2 of Schedule 6 to the Initial Loan Agreement and in paragraph 2 of Schedule 5 to this Agreement;

(cc) “Public Bodies Act” means the Public Bodies (Performance and Accountability) Act 2001 of the Beneficiary, including all schedules thereto;

(dd) “PUMA” means the Planning and Urban Management Agency under MNRE, or any successor thereto;

(ee) “SNA” means a Special Needs Area, i.e. any area outside the CBA with particularly significant pollutant sources and other factors requiring prioritization for improvement of wastewater management, and shall include, but not be limited to, the following priority SNAs: the National Hospital, the Malifa Education Compound, the Fugalei Market area, and the commercial area from Mulivai Stream to Vaisigano Stream along the Main Beach Road in Apia;

(ff) “Subsidiary Loan Agreement” means the agreement, between the Beneficiary and SWA referred to in Section 3.01 of this Agreement, as amended on or about the date hereof;

(gg) “SUNGO” means the Samoa Umbrella Non Government Organisation;

(hh) “tala” means the national currency of the Beneficiary;

(ii) “WSPP” means the Water Sector Support program, an EU-funded program to support water supply and sanitation development in Samoa’s rural areas; and

(jj) “WWTP” means wastewater treatment plant.

ARTICLE II

The Loan and the Grant

Section 2.01. ADB agrees to provide to the Beneficiary from ADB's Special Funds resources, on terms and conditions set forth in this Agreement:

(a) a loan in various currencies of an amount equivalent to one million seven hundred and ten thousand Special Drawing Rights (SDR 1,710,000) (the "Loan"); and

(b) a grant in the amount of two million two hundred twenty thousand Dollars (\$2,220,000) (the "Grant").

Section 2.02. (a) The Beneficiary shall pay to ADB an interest charge at the rate of one percent (1%) per annum during the grace period, and one and one-half percent (1.5%) per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to payment of the first principal amount of the Loan on the payment date in accordance with the amortization schedule set forth in Schedule 2 to this Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 May and 15 November in each year.

Section 2.04. The Beneficiary shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Section 4.03(a) and 4.04 of the Loan Regulations shall be US Dollar.

ARTICLE III

Use of Proceeds of the Financing

Section 3.01. (a) The Beneficiary shall relend four million four hundred and thirty-one thousand Dollars (\$4,431,000) including two million five hundred and fifty-three thousand Dollars (\$2,553,000) out of the Loan and one million eight hundred and seventy-eight thousand Dollars (\$1,878,000) out of the Grant to SWA under the Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB.

(b) The Beneficiary shall cause SWA to apply the proceeds of the Loan and the Grant to the financing of expenditures on the Project in accordance with the provisions of this Financing Agreement and the Project Agreement.

Section 3.02. The goods and services and other items of expenditures to be financed out of the proceeds of the Loan and the Grant and the respective allocation of amounts of the Loan and the Grant among different categories of such goods and services and other items of expenditures shall be in accordance with the provisions of Schedule 3 to this Agreement, as such Schedule 3 may be amended from time to time by agreement between the Beneficiary and ADB.

Section 3.03. Except as ADB may otherwise agree, all goods and services and other items of expenditures to be financed out of the proceeds of the Loan and the Grant shall be procured in accordance with the provisions of Schedule 4 to this Agreement.

Section 3.04. Withdrawals from the Loan Account and the Grant Account in respect of goods and services shall be made only on account of expenditures relating to:

(a) goods which are produced in and supplied from, and works and consulting services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and

(b) goods, works and consulting services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations and the Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2010 or, in each case, such other date as may from time to time be agreed between the Beneficiary and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. Subject to the provisions of this Financing Agreement, all of the provisions of Article IV of the Initial Loan Agreement are hereby incorporated in this Financing Agreement by reference and shall have the same force and effect as if they were fully set forth herein.

Section 4.02. In the carrying out of the Project and operation of the Project facilities, the Beneficiary shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Financing Agreement and the Schedule to the Project Agreement.

Section 4.03. The Beneficiary shall enable ADB's representatives to inspect the Project, the goods financed out of the proceeds of the Loan and the Grant, and any relevant records and documents.

Section 4.04. The Beneficiary shall take all action which shall be necessary on its part to enable SWA to perform its obligations under the Project Agreement,

including the establishment and maintenance of tariffs as stipulated in Schedule 5 of this Financing Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Beneficiary shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Beneficiary and ADB and to accomplish the purposes of the Loan and the Grant.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

ARTICLE V

Suspension; Cancellation; Acceleration of Maturity

Section 5.01. The following are specified as additional events for suspension of the right of the Beneficiary to make withdrawals from (a) the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations, and (b) the Grant Account for the purposes of Section 8.01 (k) of the Grant Regulations:

(a) either the Beneficiary or SWA shall have failed to perform any of its respective obligations under the Subsidiary Loan Agreement;

(b) the Subsidiary Loan Agreement or any provision thereof shall have been repealed, suspended or amended in any manner which in the reasonable opinion of ADB will or may adversely affect the carrying out of the Project or the operation of the Project facilities;

(c) the Initial Loan Agreement shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date.

Section 5.02. The following are specified as additional events for acceleration of maturity of the Loan for the purposes of Section 8.07(d) of the Loan Regulations: any of the events specified in Section 5.01 of this Financing Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. The following are specified as additional conditions to the effectiveness of this Financing Agreement for the purposes of Section 9.01(f) of the Loan Regulations and Section 9.01 (e) of the Grant Regulations, respectively:

(a) the Cabinet shall have passed a resolution approving a cost recovery mechanism (the "Cost Recovery Mechanism") providing until the Closing Date for the full cost recovery of:

- (i) the investment costs and the operations and maintenance costs associated with the septic tank subcomponent (Subcomponent B(i)) through an environmental charge levied on end-users,
- (ii) the operations and maintenance costs associated with the wastewater subcomponent (Subcomponent B(ii)) through tariffs levied on end-users; and
- (iii) any shortfall of funds through the Beneficiary's budgetary allocations in the case, where the charges and tariffs levied under either of (i) or (ii) above are inadequate to meet:
 - (1) the total of debt service,
 - (2) an annual rate of return to be agreed upon between MOF and SWA,
 - (3) the amortized amount for the full recovery of the investment costs,
 - (4) the operations and maintenance costs associated with of the septic tanks subcomponent (Subcomponent B(i)), and
 - (5) the full recovery of the operations and maintenance costs associated with the wastewater subcomponent (Subcomponent B(ii));

(b) the Beneficiary shall have entered into an amendment to the Subsidiary Loan Agreement with SWA, in form and substance satisfactory to ADB and all conditions for effectiveness thereof have been met (save for the effectiveness of this Agreement).

Section 6.02. The following are specified as additional matters, for the purposes of Section 9.02(d) of the Loan Regulations and Section 9.02 of the Grant Regulations, to be included in the opinion or opinions to be furnished to ADB: (i) that the Financing Agreement, the amendment to the Subsidiary Loan Agreement and the Project Agreement have each been duly authorized or ratified and executed and delivered on behalf of the Beneficiary and the SWA, respectively, and (ii) that the amendment to the Subsidiary Loan Agreement is in accordance with applicable laws and is binding upon the parties in accordance with its terms, subject only to the effectiveness of this Agreement.

Section 6.03 A date ninety (90) days after the date of this Agreement is specified for the effectiveness of this Agreement for the purposes of Section 9.04 of the Loan Regulations and Section 9.04 of the Grant Regulations.

ARTICLE VII

Delegation of Authority

Section 7.01. The Beneficiary hereby designates SWA its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02 and 3.05 of this Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Loan Regulations, and Sections 5.01, 5.02, 5.03 and 5.04 of the Grant Regulations.

Section 7.02. Any action taken or any agreement entered into by SWA pursuant to the authority conferred under Section 7.01 of this Agreement shall be fully binding on the Beneficiary and shall have the same force and effect as if taken by the Beneficiary.

Section 7.03. The authority conferred on SWA under Section 7.01 of this Agreement may be revoked or modified by agreement between the Beneficiary and ADB.

ARTICLE VIII

Miscellaneous

Section 8.01. The Minister of Finance of the Beneficiary is designated as representative of the Beneficiary for the purposes of Section 11.02 of the Loan Regulations and Section 11.02 of the Grant Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations and Section 11.01 of the Grant Regulations:

For the Beneficiary

Ministry of Finance
Private Bag
Apia, Samoa

Facsimile Numbers:

(685) 21312
(685) 24779.

For ADB

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

Facsimile Numbers:

(632) 636-2444

(632) 636-2445.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this 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.

INDEPENDENT STATE OF SAMOA

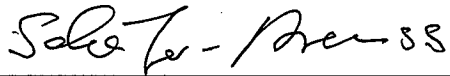
By



CEPPIE KURNIADI SUMADILAGA
Authorized Representative

ASIAN DEVELOPMENT BANK

By



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

SCHEDULE 1

Description of the Project

1. The overall objective of the Project is to improve the environment and public health in Apia through (i) improving drainage and sanitation infrastructure and capacity in urban management, (ii) reducing frequency of flooding in specific low lying areas, (iii) improving surface and groundwater quality, and (iv) promoting private sector participation in the provision of urban services.

2. **Project Scope as amended under this Financing Agreement.**

The Project Scope is hereby amended to read as follows:

Part (A): Drainage

- (i) design and channel improvement works, including de-silting, channel realignment, and bank stabilization, for: (a) approximately 900 meters of the Gasegase River down stream of the Vaimoso Bridge; (b) approximately 450m of the Asaga Stream from Fugalei Street to the confluence of the Gasegase River; and (c) 850m length of the Asaga Bypass Stream from Fugalei Street to the confluence of the Gasegase River;
- (ii) design and construction of approximately 2,570 m of pipe drains with internal diameters ranging from 450mm to 1,600mm;
- (iii) rehabilitation, including removal of debris and bank stabilization, of approximately 360m of existing open drain;
- (iv) installation of water gauging stations to monitor flood flows and provide data for hydraulic modeling and further drainage design (to be funded by the EU); and
- (v) undertaking topographical and cadastral surveys to establish correct levels in the floodplain and low-lying area and hydraulic modeling of flood flows (to be funded by the EU).

Part (B): Wastewater Management and Sanitation

- (i) Individual System Rehabilitation and Septage Collection and Treatment Program including (a) implementation of the Septic Tank Rehabilitation and Replacement Program including the provision of septage collection services and repair and replacement of septic tanks to approximately 8,000 households in the Greater Apia area; and (b) a detailed sanitary survey; and (c) a sludge treatment facility to be located at the Tafaigata landfill (to be funded by the EU); and

- (ii) CBA and SNA Sewerage System including: (a) design and construction of approximately 8,450 m of pressure sewers inclusive of all sewage pumps, training of SWA personnel for systems maintenance, and an extended defects liability period of 540 days; and (b) design, construction, and operation of a sequencing batch reactor wastewater treatment plant (WWTP) at Sogi, inclusive of effluent disinfection facilities, with an nominal treatment capacity of 1,000 m³/day.

Part (C): Capacity Building

- (i) capacity building in technical and management areas through identifying training needs and developing training programs;
- (ii) assistance for establishment and conduct of a twinning arrangement for SWA with a well-functioning wastewater utility, or similar organization;
- (iii) community awareness programs in the key areas such as (a) need for new infrastructure and new practices, including the environmental implications of unsafe sanitation and drainage practices, (b) application of good on-site planning principles and practices for sanitation and drainage, (c) on-site sanitation design, operations and maintenance, including where to seek technical assistance and advice, (d) the responsibilities of Government, households and individuals in regard to sanitation and drainage, (e) safe wastewater practices; and
- (iv) Project implementation assistance.

3. Project Components Funded under the Supplementary Financing.

The Loan and Grant made available to the Beneficiary under this Financing Agreement will finance the following items out of Parts B and C of the Project scope in paragraph 2 above:

Under Part (B): Wastewater Management and Sanitation

- (i) Individual System Rehabilitation and Septage Collection and Treatment Program: (a) Provision of approximately 500 septic tanks and their installation on residential lots in Apia's low lying areas; (b) preparation of bid documents and evaluation for the Program management contract; and (c) a detailed sanitary survey;
- (ii) CBA and SNA Sewerage System: (a) Provision of equipment, including design and construction, for approximately 8,450 m of pressure sewers inclusive of all sewage pumps, training of SWA personnel for systems maintenance, and (b) civil works and equipment (including design and construction) for a sequencing batch reactor wastewater treatment plant (WWTP) at Sogi, inclusive of effluent disinfection facilities, with an nominal treatment capacity of 1,000 m³/day.

Under Part (C): Capacity Building

- (i) Provision of assistance to the PMU, including recurrent costs,
- (ii) Provision of assistance for establishment and conduct of a twinning arrangement for SWA with a well-functioning wastewater utility, or similar organization.

4. The Project is expected to be completed by 30 June 2010.

SCHEDULE 2**Amortization Schedule****SAM Sanitation and Drainage Project – Supplementary Financing**

| Date Payment Due | Payment of Principal (expressed in SDR)* |
|------------------|---|
| 15-Nov-2016 | 35,625.00 |
| 15-May-2017 | 35,625.00 |
| 15-Nov-2017 | 35,625.00 |
| 15-May-2018 | 35,625.00 |
| 15-Nov-2018 | 35,625.00 |
| 15-May-2019 | 35,625.00 |
| 15-Nov-2019 | 35,625.00 |
| 15-May-2020 | 35,625.00 |
| 15-Nov-2020 | 35,625.00 |
| 15-May-2021 | 35,625.00 |
| 15-Nov-2021 | 35,625.00 |
| 15-May-2022 | 35,625.00 |
| 15-Nov-2022 | 35,625.00 |
| 15-May-2023 | 35,625.00 |
| 15-Nov-2023 | 35,625.00 |
| 15-May-2024 | 35,625.00 |
| 15-Nov-2024 | 35,625.00 |
| 15-May-2025 | 35,625.00 |
| 15-Nov-2025 | 35,625.00 |
| 15-May-2026 | 35,625.00 |
| 15-Nov-2026 | 35,625.00 |
| 15-May-2027 | 35,625.00 |
| 15-Nov-2027 | 35,625.00 |
| 15-May-2028 | 35,625.00 |
| 15-Nov-2028 | 35,625.00 |
| 15-May-2029 | 35,625.00 |
| 15-Nov-2029 | 35,625.00 |
| 15-May-2030 | 35,625.00 |
| 15-Nov-2030 | 35,625.00 |
| 15-May-2031 | 35,625.00 |

| Date Payment Due | Payment of Principal (expressed in SDR)* |
|------------------|---|
| 15-Nov-2031 | 35,625.00 |
| 15-May-2032 | 35,625.00 |
| 15-Nov-2032 | 35,625.00 |
| 15-May-2033 | 35,625.00 |
| 15-Nov-2033 | 35,625.00 |
| 15-May-2034 | 35,625.00 |
| 15-Nov-2034 | 35,625.00 |
| 15-May-2035 | 35,625.00 |
| 15-Nov-2035 | 35,625.00 |
| 15-May-2036 | 35,625.00 |
| 15-Nov-2036 | 35,625.00 |
| 15-May-2037 | 35,625.00 |
| 15-Nov-2037 | 35,625.00 |
| 15-May-2038 | 35,625.00 |
| 15-Nov-2038 | 35,625.00 |
| 15-May-2039 | 35,625.00 |
| 15-Nov-2039 | 35,625.00 |
| 15-May-2040 | 35,625.00 |
| TOTAL | 1,710,000.00 |

* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity are subject to the relevant provisions of the Special Operations Loan Regulations.

SCHEDULE 3**ALLOCATION AND WITHDRAWAL OF LOAN AND GRANT PROCEEDS**General

1. The table attached to this Schedule sets forth the Categories of goods, works and consulting services and other items of expenditure to be financed out of the proceeds of the Loan and Grant and the allocation of amounts of the Loan and Grant to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories listed in the Table shall be financed out of the proceeds of the Loan and Grant on the basis of the percentages set forth in the Table.

Interest Charge

3. The amount allocated to Category 4 in Table 3A is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. Notwithstanding the allocation of Loan and Grant proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan and Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Beneficiary, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan and Grant which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan and Grant then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Beneficiary, reallocate such excess amount to any other Category.

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds for financing Goods, Works, and consulting services and other items shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Imprest Account; Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Beneficiary shall establish immediately after the Effective Date, separate imprest accounts for the Grant and the Loan at the Central Bank of Samoa or any other bank acceptable to ADB. The imprest accounts shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Beneficiary and ADB. The currency of the imprest accounts shall be US Dollars. The initial combined amount to be deposited into the imprest accounts shall not exceed the lower of (i) the estimated expenditure to be financed from the imprest account for the first six months of Project implementation, or (ii) the equivalent of ten (10) percent of the combined Loan and Grant amount.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures for \$100,000 per contract and to liquidate advances provided into the imprest accounts, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Beneficiary and ADB. The payments in excess of SOE ceiling will be reimbursed, liquidated or replenished based on full supporting documentation process.

Retroactive Financing

7. Withdrawals from the Loan Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Agreement and up to a maximum of 20% of the Loan and Grant, in connection with (i) the Individual System Rehabilitation and Septage Collection and Treatment Program, (ii) the CBA and SNA Sewerage System and (iii) Capacity Building consulting services (as more particularly described in Schedule 1, paragraph 3, items B (i) and (ii) and (C) respectively).

TABLE 3A

| ALLOCATION AND WITHDRAWAL OF ADF LOAN PROCEEDS (Samoa Sanitation and Drainage Project Supplementary Financing) | | | |
|---|---|-----------------------------|--|
| CATEGORY | | | ADB FINANCING |
| Number | Item | Amount Allocated | Percentage and Basis for Withdrawal from the Loan Account |
| | | (SDR) | |
| 1 | Civil Works (Sogi Wastewater Treatment Plant) | 486,000.00 | 69 percent of total expenditure* |
| 2 | Equipment | 1,084,000.00 | |
| 2a | Sogi Wastewater Treatment Plant | 860,000.00 | 52 percent of total expenditure* |
| 2b | Pressure Sewerage | 224,000.00 | 20 percent of total expenditure* |
| 3 | Unallocated | 95,000.00 | Amount due |
| 4 | Financing Charges during Construction | 45,000.00 | Amount due |
| | Total | 1,710,000.00 | |

*excluding taxes and duties.

TABLE 3B

| ALLOCATION AND WITHDRAWAL OF ADF GRANT PROCEEDS (Samoa Sanitation and Drainage Project Supplementary Financing) | | | |
|--|---|--------------------------------|---|
| CATEGORY | | | ADB FINANCING |
| Number | Item | Amount Allocated \$ | Percentage and Basis for Withdrawal from the Grant Account |
| 1 | Civil Works (Septic Tank Program) | 612,000 | 100 percent of total expenditure* |
| 2 | Equipment (Sogi Wastewater Treatment Plant) | 1,266,000 | 48 percent of total expenditure* |
| 3 | Consulting Services | 342,000 | 16 percent of total expenditure* |
| | Total | 2,220,000 | |

*excluding taxes and duties

SCHEDULE 4

Procurement of Goods and Works, and Consulting Services

A. General

1. All goods, works and consulting services to be financed out of the proceeds of the Loan and Grant shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

B. Procurement for Goods and Works

3. Except as ADB may otherwise agree, goods and works shall only be procured on the basis of the method of procurement set forth below:

International Competitive Bidding

The method of procurement is subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Beneficiary may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

4. Domestic Preference. The Beneficiary may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic works.

C. Selection of Consulting Services

5. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, the Beneficiary shall apply quality- and cost-based selection for selecting and engaging consulting services.

D. Industrial or Intellectual Property Rights

6. (a) The Beneficiary shall ensure that all goods and works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Beneficiary shall ensure that all contracts for the procurement of goods and works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

7. The Beneficiary shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

E. ADB's Review of Procurement Decisions

8. All contracts procured under international competitive bidding procedures and contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between the Beneficiary and ADB and set forth in the Procurement Plan.

SCHEDULE 5

Execution of Project and Operation of Project Facilities; Other Matters

I. IMPLEMENTATION ARRANGEMENTS

Project Executing Agency

1. In its capacity as Project Executing Agency, MOF shall have overall responsibility for implementing the Project.

Project Steering Committee

2. The PSC already established by the Beneficiary pursuant to the Initial Loan Agreement shall continue to supervise implementation of the Project. Members of the PSC shall be the chief executive officers of the MOF, MAF, MWCSO, MWTI, MNRE, and MOH, the General Manager of the Electrical Power Corporation and of SWA, a representative of SUNGO and the project management unit project managers of the WSPP.

Project Implementing Agencies

3. MWTI shall continue to be the Project Implementing Agency for Part A of the Project. SWA shall be the Project Implementing Agency for Part B and Parts C(i), (ii) and (iii) of the Project. Each Project Implementing Agency shall nominate a coordinator to assist the PMU. MOF shall be responsible for carrying out Part C(iv).

Project Management Unit

4. The PMU shall be responsible for coordinating and managing Project activities and monitoring overall Project progress. The PMU shall be assisted by coordinators from each of the Project Implementing Agencies and from PUMA. The PMU shall provide accounting and administrative services. The PMU shall also be assisted by the project implementation assistance consultants engaged under the Project working through the Project Implementing Agencies. The coordinators shall report to the PSC through the Project Manager.

II. OPERATION, MAINTENANCE, AND MANAGEMENT

Sewerage Tariffs and Environmental Charges

5. The Beneficiary shall ensure that, for each Fiscal Year starting 1 July 2009 until the Closing Date, SWA prepares, environmental charges and tariff reviews with respect to the septic tank subcomponent (Subcomponent B(i)) and the sewerage system subcomponent (Subcomponent B(ii)) sufficient to comply with the Cost Recovery Mechanism.

6. The Beneficiary shall ensure that SWA designs and implements (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 accordance with the Cost Recovery Mechanism approved by the Cabinet for the relevant Fiscal Year.

7. The Beneficiary shall ensure that the impact of any user tariffs and environmental charges on the poor is reviewed before such changes are levied and appropriate measures, to be designed in consultation with ADB introduced to protect the basic living standards of the poor. The Beneficiary shall further ensure that (a) provision of community service obligations by SWA for both water and wastewater services and Government funding for such community service obligations are annually approved in accordance with procedures established under the Public Bodies Act; and, (b) sufficient budget funds for community service obligations are allocated and disbursed in a timely manner.

Private Sector Participation

8. The Beneficiary shall ensure that SWA actively explores 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.

Land Acquisition and Resettlement

9. The Beneficiary shall ensure that the LARP is monitored and updated in compliance with (a) the relevant laws and regulations of the Beneficiary, and (b) ADB's *Involuntary Resettlement Policy* (1995), it being agreed by the Beneficiary that, in case of any discrepancy between the Beneficiary's laws and regulations, and ADB's policy, the ADB policy requirements shall apply.

Labor, Health and Safety Laws

10. The Beneficiary 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

11. The Beneficiary shall ensure that (a) all Project facilities are designed, constructed, operated, maintained and monitored in compliance with the Beneficiary's applicable environmental laws and regulations, and ADB's *Environment Policy* (2002), it being agreed by the Beneficiary that, in case of any discrepancy between the Beneficiary's laws and regulations, and ADB's Environment Policy, the ADB policy requirements shall apply; and (b)

the IEE is updated and submitted to ADB for clearance, and corresponding approval from the relevant Beneficiary authorities is obtained should there be changes in the Project design that would cause significant environmental impacts that are not included in the scope of the current IEE.

12. In accordance with the EMP, the Beneficiary, through the PMU, shall cause (a) the contractors engaged under the works contracts to 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 to (i) closely monitor compliance of the contractors with the environmental impact mitigation and monitoring requirements and reporting requirements, and (ii) provide the PMU with the necessary assistance to improve its oversight of components (A)(iv)-(v) and (B)(i)(c) which will be carried out through EU Financing.

13. The Beneficiary shall ensure that the consultants, contractors and staff recruited for the EU-financed component coordinate closely with those recruited under this Financing Agreement.

Gender and Employment

14. The Beneficiary shall take all reasonable and necessary steps to encourage women living in Apia to participate in the implementation of the Project, including but not limited to, advertising job opportunities in women community centers, making public radio announcements informing women where to apply for a job and publishing newspaper advertisements stressing that women are encouraged to apply. The Beneficiary shall ensure that the PMU, as well as 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. In any instance where compensation for land acquired for the Project is paid, the Beneficiary shall ensure that such compensation is paid into a bank account opened and kept in the joint name of the husband and wife, where relevant.

Governance

15. The PMU shall ensure that Project staff (including the PMU staff, 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.

16. The Beneficiary shall, and shall cause SWA to, comply with ADB's *Anticorruption Policy* (1998). The Beneficiary and SWA agree: (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

17. Within six months prior to the Project completion date, the Beneficiary and SWA, through the PMU, shall have confirmed maintenance plans for the physical components constructed under the Project, including budget and implementation arrangements, and submit them to ADB for review and concurrence.

EU Financing

18. The Beneficiary shall ensure that the Project Safeguard Documents are applied to the entire Project, including the EU-financed portions of the Project (as identified in Schedule 1). The Beneficiary shall further ensure that all EU representatives, agents, staff, consultants and contractors are aware and familiar with the Project Safeguard Documents. The Beneficiary shall keep ADB informed on a quarterly basis on the progress in implementing the Project Safeguard Documents of the Project, including with respect to components (A)(iv)-(v) and (B)(i)(c), which will be carried out through EU Financing.

SWA Management

19. The Beneficiary 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

20. The Beneficiary shall identify a well-functioning wastewater utility (or similar organization) and enter into a twinning arrangement acceptable to ADB with such utility 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.