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LOAN NUMBER 3512-FIJ

GRANT NUMBER 0531-FIJ(EF)

PROJECT AGREEMENT

(Urban Water Supply and Wastewater Management Investment Program – Project 1)

between

ASIAN DEVELOPMENT BANK

and

WATER AUTHORITY OF FIJI

DATED 16 OCTOBER 2017

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FIJ 49001

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 16 October 2017 between ASIAN DEVELOPMENT BANK ("ADB") and WATER AUTHORITY OF FIJI ("WAF").

### **WHEREAS**

(A) by a Loan Agreement and an Externally Financed Grant Agreement ("Agreements"), each of even date herewith, between Republic of Fiji ("Beneficiary") and ADB, ADB has agreed to make to the Beneficiary a loan ("Loan") of forty-two million one hundred nine thousand Dollars (\$42,109,000) and a grant from GCF ("Grant", and together with the Loan, "Financings") of thirty one million forty thousand Dollars (\$31,040,000) on the respective terms and conditions set forth in the Agreements, but only on the condition that the proceeds of the Financings be made available to WAF and that WAF agrees to undertake certain obligations towards ADB set forth herein;

(B) WAF, in consideration of ADB entering into the Loan Agreement with the Beneficiary, has agreed to undertake the obligations set forth herein;

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 Agreements and in the Loan Regulations and Grant Regulations (each, as so defined) have the respective meanings therein set forth.

## **ARTICLE II**

### **Particular Covenants**

Section 2.01. (a) WAF 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, WAF shall perform all obligations set forth in the Agreements to the extent that they are applicable to WAF, and all obligations set forth in the Schedule to this Project Agreement.

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

Section 2.03. (a) In the carrying out of the Project, WAF 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, WAF shall procure all items of expenditures to be financed out of the proceeds of the Financings in accordance with the provisions of Schedule 4 to the Loan 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 Beneficiary and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. WAF shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. WAF 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) WAF 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, WAF 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. WAF shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Financings, 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 WAF shall cooperate fully to ensure that the purposes of the Financings will be accomplished.

(b) WAF 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 accomplishment of the purposes of the Financings.

(c) ADB and WAF 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, WAF and the Financings.

Section 2.08. (a) WAF shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Financings 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 WAF; and (v) any other matters relating to the purposes of the Financings.

(b) Without limiting the generality of the foregoing, WAF 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, WAF 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 WAF of its obligations under this Project Agreement and the accomplishment of the purposes of the Financings.

Section 2.09. (a) WAF 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 use of the Financings 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 end of each related fiscal year, 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, WAF 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 on the financial statements ; and (iv) furnish to ADB, no later than 1 month after approval by the relevant 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) WAF shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and WAF's financial affairs where they relate to the Project with the auditors appointed pursuant to subsections (a)(iii) and (c) 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 WAF, unless WAF shall otherwise agree.

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

Section 2.11. (a) WAF 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) WAF 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) WAF 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, WAF 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, WAF finance the expenditures of the Project in accordance with the provisions of the Agreements 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. WAF shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of the Water Authority of Fiji Promulgation 2007, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. WAF shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

### **ARTICLE III**

#### **Effective Date; Termination**

Section 3.01. This Project Agreement shall come into force and effect on the later of the dates on which the respective Agreements come into force and effect. ADB shall promptly notify WAF of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which both Agreements shall have terminated in accordance with their respective 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 Loan 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.

#### For WAF

Water Authority of Fiji  
Manohan Building, Wainivula Road, Nasinu  
GPO Box 1272  
Suva, Fiji

Facsimile Number:

(679) 334 - 3285.

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 Loan Agreement by or on behalf of WAF may be taken or executed by its Chairman or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) WAF 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.

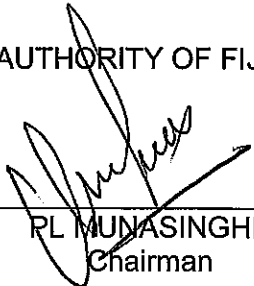
Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action 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   
STEPHEN P. GROFF  
Vice President (Operations 2)

WATER AUTHORITY OF FIJI

By   
PL MUNASINGHE  
Chairman



**SCHEDULE****Execution of Project; Financial Matters**Operational Covenants

1. WAF shall do the following:
  - (a) obtain a water discharge permit from the MOE for operation of the Kinoya wastewater treatment plant from February 2018 which shall be renewed upon the expiry date;
  - (b) by the Effective Date, (i) complete an aquarating assessment, including independent auditing by the International Water Association appointed auditors and will implement the recommendations to improve delivery of services and management efficiency; (ii) institute a grievance redress mechanism to address technical and (environmental and social) safeguard issues associated with WAF operations; (iii) enhance staff capacity at the managerial level through DBO contracting and twinning programs with international service utilities, and technical staff capacity through a training program; and (iv) conduct communications outreach programs at WAF service centers on water, hygiene and sanitation practices, tariff payments, and infrastructure improvement plans;
  - (c) by the Effective Date, (i) build capacity to effectively review business plans, tariff proposals, monitor operations and performance with regards service standards, and use regulatory tools; and (ii) initiate aggressive leakage detection and technical losses reduction programmes in the Greater Suva Area to eliminate water that is lost or unaccounted for in the WAF system;
  - (d) by 31 December 2021, develop, and thereafter implement, a year round program for preventative and routine maintenance of the facilities to be financed under the Project in accordance with acceptable international standards (which shall be included in the Design-Build-Operate contracts under the Project);
  - (e) by 31 December 2017, (i) prepare a 3-year strategic plan with annual operations plan focusing on measures to reduce non-revenue water, optimize energy usage, improve human resource management, and enhance revenues through improved billing and collection; and (ii) introduce a DBO contract arrangement for system operation and maintenance;
  - (f) by 31 December 2018, (i) prepare and implement an integrated data management system; and (ii) formulate water safety plans to protect the quantity and quality of water at the intakes for the water sources;
  - (g) by 31 August 2018, (i) develop improved regulatory tools and systems that include a business planning framework (asset management,

operational, commercial and financing plan), regulatory accounting guidelines, tariff design and modeling, performance monitoring and control, and legal procedures; and (ii) formulate draft water catchment management plans; and

- (h) by 30 June 2020, develop and implement a strategy to treat and dispose sludge from Kinoya, but until then, provide a safe way for its current disposal, such as at the Naboro land fill or similar.

#### Financial Management Covenants

2. WAF shall do the following:

- (a) by 31 July 2018, (i) conduct a review of its internal controls environment and develop recommendations for improvement, and within 3 months thereafter implement such recommendations; and (ii) strengthen its internal audit unit by preparing and implementing an annual workplan and budgeting adequate resources to fulfilment of its mandate;
- (b) by 31 December 2017, recognize its billing revenues in accordance with International Financial Reporting Standards;
- (c) by 31 July 2019, value its property, plant and equipment in a manner acceptable to the Borrower's Auditor-General;
- (d) by 31 July 2018, (i) develop accounting policies and procedures and a procurement and inventory management system consistent with international best practice in the water supply and wastewater management sector, and codify these in accounting and procurement / inventory management manuals which thereafter shall be kept up to date; and (ii) resolve all substantive external audit issues pending as of the Effective Date, and thereafter resolve within 3 months of the date of the relevant auditors' letter any substantive external audit issues raised in such letter;
- (e) by 31 December 2021, strengthen asset management to (i) provide water supply of suitable quality, frequency, and pressure; and (ii) provide adequate sanitation service coverage, and safe treatment and disposal of domestic sewage and industrial effluent;
- (f) continue to apply satisfactory reconciliation procedures of the general ledger against the sub-ledger; and
- (g) continue to provide training for its finance officers and constant mentoring by its Chief Financial Officer, Manager Finance and accountants, so as to ensure that the former are able to adequately manage its Chart of Accounts.