
GRANT NUMBER 0264 -TON (SF)

GRANT AGREEMENT
(Special Operations)

(Nuku'alofa Urban Development Sector Project)

between

KINGDOM OF TONGA

and

ASIAN DEVELOPMENT BANK

DATED 11 January 2012

TON 42394

**GRANT AGREEMENT
(Special Operations)**

GRANT AGREEMENT dated 11 January 2012 between KINGDOM OF TONGA (the "Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Recipient has applied to ADB for a grant for the purposes of the Project described in Schedule 1 to this Grant Agreement;

(B) the Recipient has also applied to ADB for a grant financed by the Government of Australia, represented by the Australian Agency for International Development ("AusAID"), in an amount equal to six million one hundred thousand Australian dollars and equivalent to approximately six million four hundred forty thousand Dollars (\$6,440,000), to be administered by ADB (the "AusAID Grant");

(C) the Project will be carried out by the Ministry of Finance and National Planning (the "Project Executing Agency" or "MOFNP") with the assistance of the Implementing Agency (as defined below), and for this purpose the Recipient will make available to the Project Executing Agency and the Implementing Agency the proceeds of the Grant provided for herein, as well as of the proceeds of the AusAID Grant, upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to (i) provide the Grant to the Recipient from ADB's Special Funds resources, and (ii) to administer the AusAID Grant, all upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (the "Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. The definitions set forth in the Grant Regulations are applicable to this Grant Agreement, unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "Anticorruption Policy" means ADB's Anticorruption Policy (1998, as amended to date);

(b) “AusAID Grant Agreement” means the grant agreement between the Recipient and ADB for provision of the AusAID Grant to the Recipient in support of the Project;

(c) “AusAID Program” means that certain project approved in 2005, financed by AusAID, and entitled the *Solid Waste Management Project for Tonga*, encompassing development of an equipment maintenance schedule at WAL;

(d) “Candidate Subproject” means each and any subproject for urban sector improvement works, including construction or civil works, to be undertaken by the Recipient under Output 4 of the Project that meets the Candidate Subproject Selection Criteria;

(e) “Candidate Subproject Selection Criteria” means the selection criteria for the Candidate Subprojects referred to in paragraph 4 of Schedule 4 to this Grant Agreement;

(f) “Consulting Guidelines” means Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2010, as amended from time to time);

(g) “Consulting Services” means the services to be financed out of the proceeds of the Grant as described in Paragraph 2 of Schedule 1 to this Grant Agreement;

(h) “EARF” means the environmental assessment and review framework prepared for the Project in accordance with the Safeguard Policy Statement and set out in Linked Document No. 15;

(i) “Environmental Management Plan” or “EMP” means the environmental management plan for the Project, including any update thereto, incorporated in the IEE;

(j) “Environmental Safeguards” means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

(k) “equipment maintenance schedule” means the plan, guidelines, policies, schedules and checklists for the operation and maintenance at the Tapuhia landfill operated by WAL, developed under the AusAID Program, and appended to the PAM;

(l) “Facility Sites” means each and any of the sites for construction, upgrading or refurbishment of urban infrastructure of the Recipient under Outputs 2, 3, or 4 of the Project in accordance with the Candidate Subproject Selection Criteria;

(m) “Gender Action Plan” or “GAP” means the gender action plan prepared for the Project and approved by the Recipient and set out in Linked Document 12 of the RRP;

(n) “Goods” means equipment and materials to be financed out of the proceeds of the Grant, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(o) “IEE” means the initial environmental examination for (i) the civil works under Outputs 2 and 3 of the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB, and (ii) each and any further initial environmental examination prepared for specific Facility Sites during the Project Implementation Period, in each case cleared by ADB;

(p) “Implementing Agency” means PUMA which is responsible for implementation of the Project and any successor thereto acceptable to ADB;

(q) “Indigenous Peoples Plan” or “IPP” means any indigenous peoples plan for the Project or any Candidate Subprojects, including any update thereto, to be prepared and submitted by the Recipient and cleared by ADB, in accordance with the Indigenous Peoples Safeguards and in the circumstances specified in Paragraph 13 of Schedule 4 of this Agreement;

(r) “Indigenous Peoples Safeguards” means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;

(s) “Involuntary Resettlement Safeguards” means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;

(t) “Linked Document” means each and any of the web-linked documents associated with and supporting the RRP, as identified in Appendix 2 of the RRP;

(u) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2007, as amended from time to time);

(v) “MOECC” means the Ministry of Environment and Climate Change of the Recipient;

(w) “MOFNP” means the Ministry of Finance and National Planning of the Recipient;

(x) “MOLSNR” means the Ministry of Land Survey and Natural Resources of the Recipient;

(y) “MOT” means the Ministry of Transport of the Recipient;

(z) “National Reserve Bank of Tonga” means the central bank of the Recipient;

(aa) “NSPM” means the National Spatial Planning and Management Act bill, in the form pending before the legislature of the Recipient in September 2011 dealing with the framework for land-use planning and development;

(bb) “Output 1” means the output of the Project relating to strengthening of the policy environment for delivery of urban services in Tonga as described in the first subparagraph of paragraph 2 of Schedule 1 to this Grant Agreement;

(cc) "Output 2" means the output of the Project relating to water supply services in Nuku'alofa as described in the second subparagraph of paragraph 2 of Schedule 1 to this Grant Agreement;

(dd) "Output 3" means the output of the Project relating to solid waste disposal services in Nuku'alofa as described in the third subparagraph of paragraph 2 of Schedule 1 to this Grant Agreement;

(ee) "Output 4" means the output of the Project relating to improvement of municipal services in Nuku'alofa through Candidate Subprojects as described in the fourth subparagraph of paragraph 2 of Schedule 1 to this Grant Agreement;

(ff) "Output 5" means the output of the Project relating to raising community awareness of municipal services issues as described in the fifth subparagraph of paragraph 2 of Schedule 1 to this Grant Agreement;

(gg) "Output 6" means the output of the Project relating to Project design and supervision, and monitoring and evaluation as described in the sixth subparagraph of paragraph 2 of Schedule 1 to this Grant Agreement;

(hh) "Outputs" means each and any of Output 1 through Output 6;

(ii) "PAM" means the project administration manual for the Project dated 8 September 2011 and agreed between the Recipient and ADB, as updated from time to time in accordance with the respective administrative procedures of the Recipient and ADB;

(jj) "Planning and Urban Management Agency" or "PUMA" means the planning and management agency of the MOT;

(kk) "PMU" means the project management unit of the Recipient which will be based at PUMA;

(ll) "Policy on Gender and Development" means ADB's Policy on Gender and Development (1998);

(mm) "Procurement Guidelines" means ADB's Procurement Guidelines (2010, as amended from time to time);

(nn) "Procurement Plan" means the procurement plan for the Project dated 23 June 2011 and agreed between the Recipient and ADB, as updated from time to time in accordance with the Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(oo) "Project Executing Agency" means MOFNP which is responsible for carrying out the Project or any successor thereto acceptable to ADB;

(pp) "Project facilities" means the facilities to be constructed or improved under the Project;

(qq) "Project Implementation Consultants" means the international and national project implementation assistance consultants to be engaged for the Project as set out in the Procurement Plan;

(rr) "Project Implementation Period" means the period commencing on 1 January 2012 and terminating on 31 December 2017, or other period agreed by the Recipient and ADB;

(ss) "Project Steering Committee" or "PSC" means the project steering committee for the Project including representatives from MOFNP, MOLSNR, MOT, MOECC, TWB, WAL, PUMA, and other public enterprises as and when they become responsible for future Candidate Subprojects;

(tt) "Resettlement Plan" or "RP" means the resettlement plan for the Water Supply Subproject, including any update thereto, to be prepared and submitted by the Recipient and cleared by ADB, and any additional resettlement plan to be prepared for any Candidate Subproject or the Solid Waste Subproject in accordance with the RF, the SPS in the circumstances specified in Paragraph 12 of Schedule 4 of this Agreement;

(uu) "RF" means the resettlement framework for the Project dated 24 June 2011 prepared by the Recipient in accordance with the SPS, and approved by ADB;

(vv) "RRP" means the Report and Recommendation of the President to the Board of Directors relating to the Project;

(ww) "Safeguard Policy Statement" or "SPS" means ADB's Safeguards Policy Statement (2009);

(xx) "Safeguards Monitoring Report" means each report prepared and submitted by the Recipient to ADB that describes progress with implementation of and compliance with the EMP, including any corrective and preventative actions;

(yy) "Solid Waste Subproject" means the subproject for urban sector improvement works to be undertaken by the Recipient under Output 3 of the Project;

(zz) "Subproject" means each and any of the Solid Waste Subproject, Water Supply Subproject, and Candidate Subprojects for urban sector improvement works, including construction or civil Works, to be undertaken by the Recipient under Outputs 2 through 4 of the Project;

(aaa) "TNIIP" means the Tonga National Infrastructure Investment Plan of the Recipient;

(bbb) "TWB" means the Tonga Water Board;

(ccc) "UIDP" means the Urban Infrastructure Development Plan of the Recipient, pertaining to Nuku'alofa;

(ddd) "WAL" means Waste Authority Limited;

(eee) "Water Supply Subproject" means the subproject for urban sector improvement works to be undertaken by the Recipient under Output 2 of the Project;

(fff) "Works" means construction or civil works to be financed out of the proceeds of the Grant, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources on terms and conditions set forth in this Agreement, an amount of six million sixty thousand Dollars (\$6,060,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures in the Project in accordance with the provisions of this Grant Agreement.

Section 3.02. The proceeds of the Grant shall be allocated and withdrawn in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, the Recipient shall procure or cause to be procured items of expenditure in accordance with the applicable provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Withdrawals from the Grant Account in respect of Goods and Consulting Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from 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 and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2017 or such other date as may from time to time be agreed between the Recipient and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement.

Section 4.02. The Recipient shall enable ADB's representatives to inspect the Project and any relevant records and documents.

Section 4.03. (a) The Recipient shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial 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; (iii) furnish to ADB, as soon as available but in any event not later than six (6) months after the end of each related fiscal year, 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 financial covenants of this Grant Agreement as well as on the use of the procedures for imprest account and statement of expenditure), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Recipient shall enable ADB, upon ADB's request, to discuss the Recipient's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Recipient pursuant to subparagraph (a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Recipient unless the Recipient shall otherwise agree.

ARTICLE V

Suspension

Section 5.01. The following is specified as an additional event for suspension of the right of the Recipient to make withdrawals from the Grant Account for the purpose of Section 8.01(k) of the Grant Regulations: the AusAID Grant shall have become liable for suspension or cancellation.

ARTICLE VI**Effectiveness**

Section 6.01. The following is specified as an additional condition to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations: the AusAID Grant Agreement shall have been duly executed and delivered, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Grant Agreement) shall have been fulfilled or arrangements satisfactory to ADB shall have been made for the fulfillment thereof within a period of time satisfactory to ADB.

Section 6.02. A date ninety (90) days after the date of this Grant Agreement is specified for the effectiveness of the Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

ARTICLE VII**Miscellaneous**

Section 7.01. The Secretary, Ministry of Finance and National Planning of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Ministry of Finance and National Planning
Treasury Building
Vuna Road, Nuku'alofa
Kingdom of Tonga

Facsimile Number:

+676 24040.

For ADB

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

+63 2 636-2444
+63 2 636-2446.

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

KINGDOM OF TONGA

By 

SUNIA MANU FILI
Minister for Finance and
National Planning

ASIAN DEVELOPMENT BANK

By 

HARUHIKO KURODA
President

SCHEDULE 1

Description of the Project

1. The objective of the Project is to provide improved and sustainable urban sector development infrastructure in Nuku'alofa.

2. The Project shall comprise six Outputs:

(i) **Output 1: Strengthened Policy Environment for Delivery of Urban Services** – (a) building capacity within PUMA to develop urban planning and management policies including to implement the NSPM, if enacted, (b) supporting the Recipient in reforming TWB and WAL tariffs for recovery of O&M costs in respect of water supply and solid waste services, and (c) supporting the development and implementation of urban infrastructure asset management plans.

(ii) **Output 2: Improved Water Supply Services** – increased water production at the Mataki'eua Tongamai wellfield, increased raw water storage capacity, improved water supply network management through creation of water supply zones and bulk metering, reduction of non-revenue water, development of consumer water meter replacement policies and replacement of defective water meters, and strengthening of revenue collection, billing and management capacity at TWB.

(iii) **Output 3: Improved Solid Waste Disposal Services** – improved service delivery by WAL through (i) improvements to waste disposal operations at the Tapuhia Landfill; (ii) improving and expanding solid waste collection services; and (iii) strengthening capacity in financial management at WAL.

(iv) **Output 4: Improvement of Other Municipal Services** – subprojects for improvement of municipal services within Nuku'alofa through the implementation of selected high priority urban infrastructure subprojects (with at least one subproject to include a sanitation subcomponent) identified in the UIDP and TNIIP and satisfying the Candidate Subproject Selection Criteria.

(v) **Output 5: Community Awareness** – raising community awareness of municipal services issues such as planning and development consent requirements, household responsibilities for managing solid waste (reduce, recycle, reuse), and public health benefits of safe waste handling and disposal.

(vi) **Output 6: Project Management and Monitoring** – which will involved provision of project management services for project design and supervision, monitoring, reporting, quality and cost control, screening and preparation of resettlement plans and initial environmental evaluations for Subprojects, and contract administration services.

The Project will finance Consulting Services relating to Outputs 1-3 and 5-6.

3. The Project is expected to be completed by 30 June 2017.

SCHEDULE 2**Allocation and Withdrawal of Grant Proceeds**General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table).

Percentages of ADB Financing

2. Except as ADB may otherwise agree, each item of expenditure shall be financed out of the proceeds of the Grant on the basis of the percentages set forth in the Table.

Reallocation

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

(a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the 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 Grant allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Recipient, reallocate such excess amount to any other Category.

Disbursement Procedures

4. Except as ADB may otherwise agree, the Grant proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Direct Payment

5. For Consulting Services, Works, and equipment, a direct payment procedure shall be used in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Recipient and ADB.

Imprest Account and Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Recipient shall establish immediately after the Effective Date an imprest account at the National Reserve Bank of

Tonga. The imprest account shall be established, managed, replenished and liquidated in accordance with the Loan Disbursement Handbook, and detailed arrangements agreed upon between the Recipient and ADB. The imprest account shall only be used for the purposes of the Project. The currency of the imprest account shall be the Dollar. The ceiling for the imprest account shall not exceed the lower of (i) the estimated expenditure to be financed from the imprest account for 6 months of Project implementation, or (ii) the equivalent of 10% of the Grant amount.

(b) The statement of expenditures procedure may be used for reimbursement of eligible expenditures, and to liquidate advances provided into the imprest account, in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Grant and ADB. Any individual payment to be reimbursed or liquidated under the statement of expenditures procedure shall not exceed the equivalent of \$100,000.

Condition for Withdrawals from Grant Account

7. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from the Grant Account in respect of civil works, equipment and materials, and land acquisition until the firm supplying the Project Implementation Consultants shall have been engaged.

8. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from the Grant Account in respect of the Water Supply Subproject until TWB shall have commenced a program for replacement of faulty water meters with use of existing stocks of functioning meters, satisfactory to ADB.

9. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from the Grant Account in respect of the Solid Waste Subproject until (i) a new chief executive officer shall have been selected and appointed to WAL pursuant to a transparent selection procedure, satisfactory to ADB; and (ii) WAL shall have recommenced the equipment maintenance schedule developed pursuant to the AusAID Program.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Nuku'alofa Urban Development Sector Project)				
CATEGORY				ADB FINANCING
Number	Item	Total Amount Allocated for ADB Financing (\$)		Percentage and Basis for Withdrawal from the Grant Account
		Category	Subcategory	
1	Civil Works ¹	1,401		
1A	Water Supply Subproject ^{1, 2}		905	48.5% of total expenditure claimed*
1B	Solid Waste Subproject ^{1, 3}		196	48.5% of total expenditure claimed*
1C	Other Municipal Subprojects		300	48.5% of total expenditure claimed*
2	Equipment and Materials	1,890		48.5% of total expenditure claimed*
3	Land Acquisition	115		48.5% of total expenditure claimed*
4	Consulting Services	1,283		48.5% of total expenditure claimed*
5	Unallocated	1,371		
	Total	6,060		

* Exclusive of taxes and duties imposed within the territory of the Recipient.

¹ Withdrawals from the Grant Account in respect of Categories 1, 2, and 3 are subject to the condition set forth in Schedule 2, paragraph 7.

² Withdrawals from the Grant Account in respect of Category 1A are subject to the condition set forth in Schedule 2, paragraph 8.

³ Withdrawals from the Grant Account in respect of Category 1B are subject to the condition set forth in Schedule 2, paragraph 9.

SCHEDULE 3

Provisions on Procurement and Consulting Services

General

1. The procurement of Goods and Consulting Services 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 Grant Agreement have the meanings provided in the Procurement Guidelines and/or Consulting Guidelines, as applicable.

Procurement of Goods

3. Except as ADB may otherwise agree, Goods shall only be procured on the basis of the methods of procurement set forth below:
 - (a) International Competitive Bidding;
 - (b) National Competitive Bidding; and
 - (c) Local Shopping.
4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the methods of procurement or threshold values with prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

National Competitive Bidding

5. The Recipient and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Recipient's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Recipient and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Recipient and ADB.

Advance Action

6. Prior to the date of this Grant Agreement, ADB approved advance action for Consulting Services under the Project up to, but not including, contract signing, in respect of Consulting Services to be financed by ADB. Notwithstanding approval of such advance action, the Recipient shall ensure that Consulting Services are carried out in accordance with the provisions of this Grant Agreement.

Selection of Consulting Services

7. Except as ADB may otherwise agree, and except as set forth in the Procurement Plan, the Recipient shall apply quality- and cost-based selection for selecting and engaging Consulting Services. The Recipient has requested ADB to carry out selection

of the Project Implementation Consultants on its behalf. The Consultants shall be selected in accordance with the detailed arrangements set out in the PAM.

Industrial or Intellectual Property Rights

8. (a) The Recipient shall ensure that all Goods 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 Recipient shall ensure that all contracts for the procurement of Goods contain appropriate representations, warranties and, if appropriate, indemnities from the supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

9. The Recipient 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.

ADB's Review of Procurement Decisions

10. Contracts procured under international competitive bidding procedures, national competitive bidding procedures and contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Recipient and ADB and set forth in the Procurement Plan.

Conditions for Award of Contract

11. The Recipient shall not award, and shall not permit the Project Executing Agency or Implementing Agency to award, any contracts financed under the Project for Output 6 of the Project, unless and until the bill entitled "National Spatial Planning and Management Act" pending in the legislature as of September 2011 shall have been enacted by the legislature of the Recipient and shall have entered into force in accordance with the proclamation of the King of Tonga.

12. The Recipient shall not award and shall not permit the Project Executing Agency to award any Works contract under the Water Supply Subproject, the Solid Waste Subproject or any Candidate Subproject which involves environmental impacts until:

- (a) MOECC has granted the final approval of the IEE updated for the relevant Facility Site; and
- (b) the Recipient has incorporated the relevant provisions from the EMP into the Works contract.

13. The Recipient shall not award and shall not permit the Project Executing Agency to award any Works contract involving involuntary resettlement impacts under the Water Supply Subproject, until the Recipient has prepared and submitted to ADB the final RP based on the relevant detailed design and obtained ADB's clearance of such RP. The Recipient shall not award and shall not permit the Project Executing Agency to award any Works contract involving involuntary resettlement impacts under the remaining Outputs of the

Project, if pursuant to the RF an RP is required to be prepared therefor, until the Recipient has prepared and submitted to ADB the final RP based on the relevant detailed design and obtained ADB's clearance of such RP.

14. The Recipient shall not award, and shall ensure that the Project Executing Agency shall not award, any Works contract which involves impacts on indigenous peoples; provided however that in the event that Works in respect of any Facility Site are later determined to potentially involve any impacts on indigenous peoples, as determined under the Safeguard Policy Statement, no Works contract shall be awarded until the Recipient has prepared and submitted to ADB a final IPP and obtained ADB's clearance of such IPP.

Commencement of Works Contracts

15. The Recipient shall ensure that, subsequent to award of any Works contract under the Project for the Solid Waste Subproject, no construction activities shall be undertaken, and no land shall be handed over to the contractor, unless and until the proposed sites for community waste bins in the concerned peri-urban villages have been approved by ADB.

SCHEDULE 4

Execution of Project and Other Matters

Implementation Arrangements

1. The Recipient and the Project Executing Agency shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Recipient and ADB. In the event of any discrepancy between the PAM and this Grant Agreement, the provisions of this Grant Agreement shall prevail.

2. The Recipient shall ensure that no later than 3 months after the Effective Date, the Project Executing Agency shall have established the PMU. The Recipient shall ensure that the PMU employs sufficient staff for the duration of the Project with the requisite expertise in the field of project management, financial management, engineering, construction supervision, procurement, construction and equipment inspection and testing, and environmental and social safeguards implementation. The Recipient shall keep the PMU equipped with the necessary office space, facilities (including telecommunications), equipment, support staff and management information systems for the entire duration of the Project. The Recipient shall endeavor to assign the same persons to key positions in the PMU for periods of at least three consecutive years.

Counterpart Support

3. The Recipient shall provide all counterpart funds, land and facilities required for timely and effective implementation of the Project, including, without limitation, any funds required (a) to meet any shortfall between cost and revenues for the operation and maintenance of the facilities created or rehabilitated under the Project, (b) to mitigate unforeseen environmental and social impacts, and (c) to meet additional costs arising from design changes, price escalation in construction costs and/or unforeseen circumstances. The Recipient shall make the resources thus required available on an annual basis for each fiscal year.

Candidate Subproject Selection Criteria and Approval Process for Candidate Subprojects

4. The Recipient and the Project Executing Agency shall ensure that all Candidate Subprojects are selected and approved in accordance with the Candidate Subproject Selection Criteria set out in the PAM, including without limitation, the requirement of undergoing a feasibility study, which will address technical analysis and description, rationale, scope and components, cost estimates and financing plan, implementation arrangements, financial and economic analysis, environment impact assessment, and social and poverty impact assessment. Each feasibility study will be submitted initially for review and approval by ADB. After ADB has endorsed the feasibility study, the PMU will submit the feasibility study to the PSC for final review and approval.

5. The Recipient shall ensure that all documents forming the basis for screening, selection and processing of Subprojects are made available to ADB upon request and are kept available for such purposes for a minimum period of five years from the date of the project completion report for the Project.

6. The Recipient will ensure that the Project facilities shall be constructed, upgraded or refurbished in accordance with the agreed technical design specifications and that construction supervision, quality control, and contract management are implemented in accordance with internationally accepted standards.

Sustainability Undertakings; Recurrent Funding

7. For the duration of the Project Implementation Period and subsequently, the Recipient shall ensure that (i) TWB continues its program for replacement of faulty water meters as part of the overall operation and maintenance plan at TWB, and (ii) WAL continues the equipment maintenance schedule developed pursuant to the AusAID Program. Within six months prior to the end of the Project Implementation Period, the Recipient will have developed and adopted polices for ongoing operation and maintenance, including recurrent funding, for all of the Project facilities, in a form satisfactory to ADB.

8. Within nine months after the Effective Date, the Recipient shall consider, develop and adopt a set of recommendations to reduce consumers' costs in using solid waste services, and to reduce and managing or restructuring on a long term basis the indebtedness of WAL, whether through an elimination of the consumption tax on such services (for a limited time or permanently) or through a combination of other measures with substantially the same effect, and shall submit the relevant proposals to the legislature for adoption.

Environment

9. The Recipient shall ensure and shall cause the Project Executing Agency to ensure that preparation, design, construction, implementation, operation and decommissioning of the Water Supply Subproject, the Solid Waste Subproject, and the Candidate Subprojects comply with (a) all applicable laws and regulations of the Recipient relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in (x) the IEEs, the EMP, in relation to the Water Supply Subproject and the Solid Waste Subproject, and (y) the EARF in relation to the Candidate Subprojects and (d) any corrective or preventative actions set forth in a Safeguards Monitoring Report.

10. In case of any discrepancies between the Recipient's environmental laws, regulations, and procedures and ADB's requirements, the Safeguard Policy Statement shall prevail. The Recipient shall ensure through PUMA that no construction work of any kind under the Project shall be commenced until all applicable environmental clearances have been obtained and that all the above requirements are incorporated in the bidding documents and civil works contracts to ensure compliance.

Land Acquisition; Resettlement

11. The Recipient shall ensure or cause the Project Executing Agency to ensure that all land and all rights-of-way required for the Water Supply Subproject, the Solid Waste Subproject or any Candidate Subproject are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Recipient relating to land acquisition and involuntary resettlement;

(b) the Involuntary Resettlement Safeguards; (c) the RF; and (d) all measures and requirements set forth in the relevant RP, including any RP that is required to be prepared subsequent to the date of this Grant Agreement pursuant to the SPS and the RF, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

12. Without limiting the application of the Involuntary Resettlement Safeguards, the RF or the relevant RP, the Recipient shall ensure or cause the Project Executing Agency to ensure that no physical or economic displacement takes place in connection with the Project, the Water Supply Subproject, the Solid Waste Subproject, or any Candidate Subprojects until:

- (a) compensation and other entitlements have been provided to affected people in accordance with the relevant RP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the relevant RP.

Indigenous Peoples

13. The Recipient and Project Executing Agency shall ensure that the Project (including the Water Supply Subproject, the Solid Waste Subproject, and the Candidate Subprojects) shall not have adverse impacts on indigenous peoples and that all Outputs shall be implemented in a culturally appropriate and participatory manner to meet the needs of various peoples of the country. If any impact is anticipated, the Recipient and the Project Executing Agency shall ensure that an IPP is prepared in accordance with the Safeguard Policy Statement.

Human and Financial Resources to Implement Safeguards Requirements

14. The Recipient shall make available and cause the Project Executing Agency to make available necessary budgetary and human resources to fully implement the EMP(s), the EARF, the RF, the RP(s) and the IPP(s) (if any), as applicable.

Prohibited List of Investments

15. The Recipient shall ensure that no proceeds of the Grant or AusAID Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the Safeguard Policy Statement.

Gender

16. The Recipient shall ensure that the Project Executing Agency implements the GAP in a timely manner over the entire Project Implementation Period, and that adequate resources are allocated for this purpose. In particular, the Recipient shall ensure that (i) a mid level female planner is engaged as a member of PUMA for at least 2 years, (ii) by 2015, women represent 50% of the participants in general meetings of TWB and WAL; (iii) at least 20% of labor on contracts for civil Works under Output 4 of the Project are women, (iv) by 2015 at least 20% of mid-level staff and above of TWB, WAL, PUMA and MOFNP are women and at least 30% of senior urban planning and management positions are held by women, and (v) sex-disaggregated data are gathered for all Project activities throughout the Project Implementation Period. The Recipient shall conduct training on GAP implementation

for all staff involved in the Project. The Recipient shall ensure that implementation of the GAP is closely monitored, and progress is reported to ADB.

Labor Standards

17. The Recipient shall ensure or cause the Project Executing Agency to ensure that Works contracts follow all applicable labor laws of the Recipient and that these further include provisions to the effect that contractors (i) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction; (ii) follow and implement all statutory provisions on labor (including not employing or using children as labor, equal pay for equal work), health, safety, welfare, sanitation, and working conditions; and (iii) maximize employment of women and local poor and disadvantaged persons for construction purposes, provided that the requirements for efficiency are adequately met. Such contracts shall also include clauses for termination in case of any breach of the stated provisions by the contractors.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

18. The Recipient shall ensure or cause the Project Executing Agency to ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures and requirements relevant to the contractor set forth in the IEEs, the EMPs, the RPs and any IPP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set out in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the PMU with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEEs, the EMPs, the RPs or any IPP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

19. The Recipient shall do the following or shall cause the Project Executing Agency to do the following:

- (a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEEs, the EMPs, the RPs or any IPP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMPs, the RPs or any IPP promptly after becoming aware of the breach.

Governance and Anticorruption

20. The Recipient, the Project Executing Agency, and the Implementing Agencies shall (i) ensure that the Project is carried out in compliance with all applicable anticorruption regulations of the Recipient and ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; (ii) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation; and (iii) ensure that all relevant staff actively participate in the training in Recipient's anticorruption regulations and ADB's Anticorruption Policy.

21. The Project Executing Agency and the Implementing Agencies shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the Project Executing and Implementing Agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

Development Coordination

22. The Recipient shall keep ADB informed of discussions with other multilateral, bilateral and national aid agencies that may have implications for the implementation of the Project. The Recipient shall provide ADB with an opportunity to comment on any resulting policy reform and/or investment proposals, and shall take into account ADB's views before finalizing and implementing any such proposals.

Project Website

23. No later than 2 months after the Effective Date, the Recipient through the Project Executing Agency shall create a website dedicated to the Project and accessible to the public, to disclose key Project-related information, including (i) costs, (ii) safeguards, (iii) procurement such as the list of participating bidders, name of the winning bidder, basic details on bidding procedures adopted, amount of contract awarded, and the list of goods/services procured, (iv) implementation information, and (v) expected service levels. The Recipient shall make public information about selection of consultants and award of civil Works through publication in national newspapers.

Project Monitoring

24. No later than 3 months after the Effective Date, the Project Executing Agency shall establish a project performance management system satisfactory to ADB in accordance with the detailed arrangements set forth in the PAM, pursuant to which periodic monitoring reports, including the Safeguards Monitoring Reports, shall be submitted to ADB in accordance with the PAM.