Financing Agreement

(Enhanced Road Access Project)

between

INDEPENDENT STATE OF SAMOA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated November 4, 2013
FINANCING AGREEMENT

AGREEMENT dated NOVEMBER 4, 2013, entered into between INDEPENDENT STATE OF SAMOA ("Recipient") and INTERNATIONAL DEVELOPMENT ASSOCIATION ("Association"). The Recipient and the Association hereby agree as follows:

ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.

1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

ARTICLE II — FINANCING

2.01. The Association agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a grant in an amount equivalent to thirteen million three hundred thousand Special Drawing Rights (SDR 13,300,000) ("Financing"), to assist in financing the project described in Schedule 1 to this Agreement ("Project").

2.02. The Recipient may withdraw the proceeds of the Financing in accordance with Section IV of Schedule 2 to this Agreement.

2.03. The Maximum Commitment Charge Rate payable by the Recipient on the Unwithdrawn Financing Balance shall be one-half of one percent (1/2 of 1%) per annum.

2.04. The Payment Dates are January 15 and July 15 in each year.

2.05. The Payment Currency is Dollars.
ARTICLE III — PROJECT

3.01. The Recipient declares its commitment to the objective of the Project. To this end, the Recipient shall cause the Project to be carried out by the LTA in accordance with the provisions of Article IV of the General Conditions and the Project Implementation Agreement.

3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Recipient and the Association shall otherwise agree, the Recipient shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.

ARTICLE IV — REMEDIES OF THE ASSOCIATION

4.01. The Additional Event of Suspension consists of the following, namely that the LTA's Legislation has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the LTA to perform any of its obligations under the Project Implementation Agreement.

4.02. The GOA Grant Agreement has failed to enter into effect within twelve (12) months after the effectiveness of this Agreement.

4.03. The Additional Event of Acceleration consists of the following, namely that the event specified in Section 4.01 of this Agreement occurs and is continuing for a period of sixty (60) days after notice of the event has been given by the Association to the Recipient.

ARTICLE V — EFFECTIVENESS; TERMINATION

5.01. The Additional Condition of Effectiveness consists of the following, namely that the Project Implementation Agreement has been executed on behalf of the Recipient and the LTA.

5.02. The Additional Legal Matter consists of the following, namely that the Project Implementation Agreement has been duly authorized or ratified by the Recipient and the LTA and is legally binding upon the Recipient and the LTA in accordance with its terms.

5.03. The Effectiveness Deadline is the date one hundred twenty (120) days after the date of this Agreement.
5.04. For purposes of Section 8.05 (b) of the General Conditions, the date on which the obligations of the Recipient under this Agreement (other than those providing for payment obligations) shall terminate is twenty (20) years after the date of this Agreement.

ARTICLE VI — REPRESENTATIVE; ADDRESSES

6.01. The Recipient’s Representative is its Minister of Finance.

6.02. The Recipient’s Address is:

Ministry of Finance
Private Bag
Apia
Independent State of Samoa

Facsimile:

+685-21312

6.03. The Association’s Address is:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable: Telex: Facsimile:
INDEVAS 248423 (MCI) 1-202-477-6391
AGREED at SYDNEY, AUSTRALIA, as of the day and year first above written.

INDEPENDENT STATE OF SAMOA

By

Authorized Representative

Name: LEMALU SAMAN TATE SIMI
Title: HIGH COMMISSIONER

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

Authorized Representative

Name: FRANZ R DREES-GRASS
Title: COUNTRY DIRECTOR, EACNF
SCHEDULE 1

Project Description

The objective of the Project is to restore key road sector assets damaged by extreme weather events and enhance the climate resilience of critical roads and bridges in the Recipient’s territory.

The Project consists of the following parts:

Part 1: Road and Bridge Reconstruction

Repair roads and bridges damaged by TCE and upgrade, rehabilitate and/or reconstruct existing road sector assets to higher standards to strengthen their resilience to climate change and extreme weather events.

Part 2: Technical Assistance

Support institutional and regulatory reforms in road management and maintenance by:

(a) revising standards for maintaining and constructing roads and bridges to be more climate resilient;
(b) updating legal and regulatory arrangements for enforcing axle load limits;
(c) strengthening the LTA’s technical capacity to effectively plan and manage the sector, including developing a bridge maintenance program; and
(d) addressing emerging priority issues that could have an impact on the Recipient’s ability to create more climate resilient road sector assets.

Part 3: Project Management

Assist the LTA to implement the Project through the provision of effective procurement, financial management, monitoring and evaluation services.
SCHEDULE 2

Project Execution

Section I.  Implementation Arrangements

A.  The Recipient shall, not later than three (3) months after the Effective Date:

1.  Establish and thereafter maintain throughout Project implementation period, a Project Management Unit (PMU) under the authority of Ministry of Finance (MOF) with responsibility for assisting the LTA in the implementation of the Project, including financial management and procurement matters, said Project Management Unit shall be endowed with powers, staffing, and terms of reference acceptable to the Association.

2.  Cause the LTA to appoint, and thereafter maintain throughout Project implementation, a Project coordinator within the LTA to administer and coordinate the implementation of the Project, and with terms of reference, experience and qualifications acceptable to the Association.

B.  Project Implementation Agreement

1.  In order to assist the Recipient in the carrying out the Project, the Recipient shall enter into an agreement, under terms and conditions satisfactory to the Association, with the LTA ("Project Implementation Agreement"), pursuant to which:

   (a)  The LTA shall be required, on behalf, and acting as agent, of the Recipient, to:

      (i)  in collaboration with the PMU, carry out the day-to-day activities of the Project with due diligence and efficiency, and in accordance with the Safeguard Instruments, so as to ensure timely implementation of the Project in accordance with the provisions of this Agreement;

      (ii) in collaboration with the PMU, prepare, in accordance with terms of reference acceptable to the Association, and furnish to the Recipient not later than thirty (30) days after the end of each semi-annual period, for incorporation in the Project Reports under Section II.A of this Schedule 2, semi-annual reports on the progress in the implementation of the Project during said period;

      (iii) maintain at all times during Project implementation period, competent and qualified staff in adequate numbers required for the implementation of the Project.
(b) Without limitation on the provisions of Section 4.03 of the General Conditions, the Recipient shall be required to provide all such resources as may be necessary for the LTA to carry out the aforesaid responsibilities.

2. The Recipient shall carry out its obligations and exercise its rights under the Project Implementation Agreement in such manner as to protect the interests of the Recipient and the Association and to accomplish the purposes of the Financing. Except as the Association shall otherwise agree, the Recipient shall not assign, amend, abrogate or waive the Project Implementation Agreement or any of its provisions.

C. Anti-Corruption

The Recipient shall ensure that the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines.

D. Safeguards.

1. The Recipient shall carry out the Project in accordance with the Safeguards Instruments.

2. The Recipient shall ensure that all assessments and Plans, prepared in accordance with the Environmental and Social Screening and Assessment Framework, are carried out in accordance with their terms.

3. The Recipient shall not amend the Safeguard Instruments without the prior written approval of the Association.

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

1. The Recipient shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of indicators acceptable to the Association. Each Project Report shall cover the period of six (6) months, and shall be furnished to the Association not later than one (1) month after the end of the period covered by such report.

2. The Recipient, through its Ministry of Finance, shall, by June 30, 2016, or such other date as the Association and the Recipient shall agree upon: (a) carry out jointly with the Association and the LTA, a mid-term review of the implementation of operations under the Project, which shall cover the progress achieved in the implementation of the Project; and (b) following such mid-term
review, act promptly and diligently to take any corrective action as shall be agreed by the Association.

B. Financial Management, Financial Reports and Audits

1. The Recipient shall maintain or cause to be maintained a financial management system in accordance with the provisions of Section 4.09 of the General Conditions.

2. Without limitation on the provisions of Part A of this Section, the Recipient shall prepare and furnish to the Association not later than forty-five (45) days after the end of each calendar quarter, interim unaudited financial reports for the Project covering the quarter, in form and substance satisfactory to the Association.

3. The Recipient shall have Financial Statements audited in accordance with the provisions of Section 4.09 (b) of the General Conditions. Each audit of the Financial Statements shall cover the period of one (1) fiscal year of the Recipient. The audited Financial Statements for each such period shall be furnished to the Association not later than six (6) months after the end of such period.

Section III. Procurement

A. General

1. Goods, Works and Non-consulting Services. All goods, works and non-consulting services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section.

2. Consultants’ Services. All consultants’ services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines, and with the provisions of this Section.

3. Definitions. The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Association of particular contracts, refer to the corresponding method described in Sections II and III of the Procurement Guidelines, or Sections II, III, IV and V of the Consultant Guidelines, as the case may be.
B. **Particular Methods of Procurement of Goods, Works and Non-consulting Services**

1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods, works and non-consulting services shall be procured under contracts awarded on the basis of International Competitive Bidding.

2. **Other Methods of Procurement of Goods, Works and Non-consulting Services.** The following methods, other than International Competitive Bidding, may be used for procurement of goods, works and non-consulting services for those contracts specified in the Procurement Plan: (a) National Competitive Bidding, subject to additional procedures as set out in the Attachment to Schedule 2 below; and (b) Shopping.

C. **Particular Methods of Procurement of Consultants’ Services**

1. **Quality- and Cost-based Selection.** Except as otherwise provided in paragraph 2 below, consultants’ services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection.

2. **Other Methods of Procurement of Consultants’ Services.** The following methods, other than Quality- and Cost-based Selection, may be used for procurement of consultants’ services for those contracts which are specified in the Procurement Plan: (a) Selection under a Fixed Budget; (b) Least-Cost Selection; (c) Selection based on Consultants’ Qualifications; (d) Single-source Selection of consulting firms; and (e) Single-source procedures for the Selection of Individual Consultants.

D. **Review by the Association of Procurement Decisions**

The Procurement Plan shall set forth those contracts which shall be subject to the Association’s Prior Review. All other contracts shall be subject to Post Review by the Association.

Section IV. **Withdrawal of the Proceeds of the Financing**

A. **General**

1. The Recipient may withdraw the proceeds of the Financing in accordance with the provisions of Article II of the General Conditions, this Section, and such additional instructions as the Association shall specify by notice to the Recipient (including the “World Bank Disbursement Guidelines for Projects” dated May 2006, as revised from time to time by the Association and as made applicable to this Agreement pursuant to such instructions), to finance Eligible Expenditures as set forth in the table in paragraph 2 below.
2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Financing ("Category"), the allocations of the amounts of the Grant to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount of the Grant Allocated (expressed in SDR)</th>
<th>Percentage of Expenditures to be Financed (inclusive of Taxes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Goods, civil works, non-consulting services, consultants’ services, Training and Workshops, and Incremental Operating Costs for the Project</td>
<td>13,300,000</td>
<td>100%</td>
</tr>
<tr>
<td><strong>TOTAL AMOUNT</strong></td>
<td><strong>13,300,000</strong></td>
<td></td>
</tr>
</tbody>
</table>

For the purposes of this paragraph, the terms: (i) "Training and Workshops" means all costs associated with training courses and workshops directly related to course preparation and implementation, including course or conference fees, travel and accommodation costs, per diems, costs associated with securing the services of trainers and workshop speakers, rental of training and workshop facilities, preparation and production of training and workshop materials, simultaneous interpretation and translation of documents; (ii) "Incremental Operating Costs" means the recurrent operating costs of the Project incurred by the Recipient and the LTA on account of Project implementation, monitoring, evaluation, coordination and supervision, as approved by the Association based on annual budgets acceptable to the Association, which would not have been incurred but for the Project, but excluding salaries of the Recipient’s civil servants or the LTA’s regular staff.

B. Withdrawal Conditions; Withdrawal Period

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made for payments made prior to the date of this Agreement, except that withdrawals up to an aggregate amount not to exceed SDR 1,329,000 equivalent may be made for payments made twelve (12) months prior to this date, for Eligible Expenditures.

2. The Closing Date is April 30, 2019.
Attachment
to
SCHEDULE 2

Additional Procedures for National Competitive Bidding

The procurement procedure to be followed for National Competitive Bidding shall be the Open Competitive Bidding procedure (public tendering) set forth in the Guidelines for Government Procurement and Contracting: Goods and Works (GWG), dated June 2008, provided, however, that such procedure shall be subject to the provisions of Section I and Paragraphs 3.3 and 3.4 of the “Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers” (January 2011) (the “Procurement Guidelines”) and the following additional provisions:

Eligibility

1. Eligibility to participate in a procurement process for and to be awarded an Association financed contract shall be as defined under Section I of the Procurement Guidelines; accordingly, no bidder or potential bidder shall be declared ineligible for contracts financed by the Association for reasons other than those provided in Section I of the Procurement Guidelines. Foreign bidders shall be eligible to participate in bidding under the same conditions as national bidders. No domestic preference shall be granted in bid evaluation on the basis of bidder’s nationality, origin of goods or services, and/or preferential programs.

Advertising; time for bid preparation

2. Invitations to bid shall be advertised in at least one newspaper of national circulation or the official gazette, or on a widely used website or electronic portal with free national and international access. Prospective bidders shall be given at least thirty (30) days from the date of publication of the invitation to bid or the date of availability of the bidding documents, whichever is later, to prepare and submit bids.

Standard bidding documents

3. Bidding documents acceptable to the Association shall be used, and shall be prepared so as to ensure economy, efficiency, transparency, and broad consistency with the provisions of Section I of the Procurement Guidelines.

Registration of contractors

4. Registration shall not be used to assess bidders’ qualifications. A foreign bidder shall not be required to register as a condition for submitting its bid, and a foreign bidder
recommended for contract award shall be given a reasonable opportunity to register, with the reasonable cooperation of the Recipient, prior to contract signing.

**Bid Submission, Bid Opening and Bid Evaluation**

5. Bidders may submit bids, at their option, either in person or by courier service or by mail. All bidding for goods and works shall be carried out through a one-envelope procedure. Bids shall be opened in public, immediately after the deadline for submission of bids. Evaluation of bids shall be made in strict adherence to the evaluation criteria specified in the bidding documents. Evaluation criteria other than price shall be quantified in monetary terms. Merit points shall not be used, and no minimum point or percentage value shall be assigned to the significance of price, in bid evaluation. A bidder shall not be eliminated from detailed evaluation on the basis of minor, non-substantial deviations.

6. Qualification criteria shall be clearly specified in the bidding documents. All criteria so specified, and only such specified criteria, shall be used to determine whether a bidder is qualified. Qualification shall be assessed on a “pass or fail” basis, and merit points shall not be used. Such assessment shall be based entirely upon the bidder’s or prospective bidder’s capability and resources to effectively perform the contract, taking into account objective and measurable factors, including: (i) relevant general and specific experience, and satisfactory past performance and successful completion of similar contracts over a given period; (ii) financial position; and where relevant (iii) capability of construction and/or manufacturing facilities.

7. In the procurement of goods and works where pre-qualification is not used, the qualification of the bidder who is recommended for award of contract shall be assessed by post qualification, applying the qualification criteria stated in the bidding documents.

8. No bids shall be rejected on the basis of comparison with the cost estimates without the Association’s prior written concurrence.

**Rejection of All Bids and Re-bidding**

9. All bids (or the sole bid if only one bid is received) shall not be rejected, the procurement process shall not be cancelled, and new bids shall not be solicited without the Association’s prior written concurrence.

**Currency of bid and currency of payment**

10. The bidder may express the bid in the currency set forth in the bidding documents. The payment of the contract price shall be made in the currency or currencies of bid.
Fraud and Corruption

11. The bidding document and contract as deemed acceptable by the Association shall include provisions stating the Association’s policy to sanction firms or individuals, found to have engaged in fraud and corruption as defined in the Procurement Guidelines.

Inspection and Audit Rights

12. In accordance with the Procurement Guidelines, each bidding document and contract financed out of the proceeds of the Grant shall provide that bidders, suppliers and contractors, and their subcontractors, agents, personnel, consultants, service providers, or suppliers, shall permit the Association to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Association. Acts intended to materially impede the exercise of the Association’s inspection and audit rights provided for in the Procurement Guidelines constitute an obstructive practice as defined in the Guidelines.

Contract Modifications

13. With respect to contracts subject to the Association’s prior review, the Recipient shall obtain the Association’s no objection before agreeing to: (a) a material extension of the stipulated time for performance of a contract; (b) any substantial modification of the scope of services or other significant changes to the terms and conditions of the contract; (c) any variation order or amendment (except in cases of extreme urgency) which, singly or combined with all variation orders or amendments previously issued, increases the original contract amount by more than 15 percent; or (d) the proposed termination of the contract. A copy of all contract amendments shall be provided to the Association.
APPENDIX

Section I. Definitions


2. “Category” means a category set forth in the table in Section IV of Schedule 2 to this Agreement.


4. “Displaced Person” means a person who, on account of the execution of the Project, has experienced or would experience direct economic and social impacts caused by: (i) the involuntary taking of land, resulting in: (A) relocation or loss of shelter; (B) loss of assets or access to assets; or (C) loss of income sources or means of livelihood, whether or not such person must move to another location; or (ii) the involuntary restriction to access to legally designated parks and protected areas, resulting in adverse impacts on the livelihood of such persons; and “Displaced Persons” means more than one Displaced Person.

5. “EMP” means an environmental management plan, in form and substance satisfactory to the Association, prepared or to be prepared by the Recipient on the basis of the ESSAF, and giving details of measures to manage potential environmental risks and mitigate, reduce and/or offset adverse environmental impacts associated with the implementation of the Project, together with adequate institutional, monitoring and reporting arrangements capable of ensuring proper implementation of, and regular feedback on compliance with, its terms, as any such plan may be amended and/or supplemented from time to time with prior written approval of the Association.

6. “Environmental and Social Screening and Assessment Framework” or “ESSAF” means the Recipient’s Framework dated July 26, 2013 defining the set of mitigation, enhancement, monitoring, and institutional measures to be taken during implementation of the Project to eliminate any adverse environmental and social impacts, offset them, reduce them to acceptable levels, or to enhance positive impacts of the Project activities, including details of: provisions for distinct, vulnerable, social and cultural groups; and compensation, rehabilitation and resettlement assistance to Displaced Persons, as such framework may be amended from time to time with the prior written agreement of the Association published on the Association info shop website: http://info shop.worldbank.org/
on July 26, 2013, available to the public for consultation in the LTA’s premises and on the website www.lta.gov.ws, which outlines general implementation procedures, mitigation measures and monitoring procedures for environmental and social purposes under the Project, as said framework may be amended from time to time with the Association’s prior approval.


9. “GOA Grant” means an amount up to thirteen million Australian Dollars (AUD13,000,000), to be provided by the GOA to assist in financing the Project.

10. “GOA Grant Agreement” means the agreement to be entered into between the Recipient and the Association providing for the GOA Grant.

11. “LTA” means the Land Transport Authority established and operating pursuant to the LTA Legislation.


13. “Plans” means either an EMP or RAP.


15. “Procurement Plan” means the Recipient’s procurement plan for the Project, dated August 8, 2013 and referred to in paragraph 1.18 of the Procurement Guidelines and paragraph 1.25 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.

16. “Project Implementation Agreement” means the agreement referred to in Section 1.B of Schedule 2 to this Agreement.

17. “Project Management Unit” means the unit referred to Section I.A.1 of Schedule 2 to this Agreement.

18. “RAP” means the resettlement action plan, in form and substance satisfactory to the Association, prepared or to be prepared by the Recipient on the basis of the ESSAF, and giving details of the specific actions, measures and policies designed to facilitate the achievement of the objectives of the ESSAF, along with the procedural and institutional measures needed to implement such actions,
measures and policies, as such RAP may be amended from time to time with the prior written agreement of the Association.


20. “TCE” means Tropical Cyclone Evan, a tropical cyclone that hit the Recipient’s territory on December 13, 2012 causing immense damage and losses.