

CONFORMED COPY

GRANT NUMBER H416-TO

Financing Agreement

(Tonga Transport Sector Consolidation Project)

between

KINGDOM OF TONGA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated July 17, 2008

GRANT NUMBER H416-TO

FINANCING AGREEMENT

AGREEMENT dated July 17, 2008, entered into between KINGDOM OF TONGA (the “Recipient”) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the “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 three million four hundred thousand Special Drawing Rights (SDR 3,400,000) (the “Grant” or the “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 Grant 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 June 15 and December 15 in each year.
- 2.05. The Payment Currency is United States Dollars.

ARTICLE III — PROJECT

- 3.01. The Recipient declares its commitment to the objectives of the Project. To this end, the Recipient shall carry out MoT's Respective Part of the Project through Ministry of Transport and cause TAL's Respective Part of the Project to be carried out by Tonga Airports Limited (the "Project Implementing Entity") in accordance with the provisions of Article IV of the General Conditions and the Project 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 is that the Project Implementing Entity's Legislation has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Project Implementing Entity to perform any of its obligations under the Project Agreement.

ARTICLE V — EFFECTIVENESS; TERMINATION

- 5.01. The Additional Conditions of Effectiveness consist of the following:
 - (a) The Subsidiary Agreement has been executed on behalf of the Recipient and the Project Implementing Entity.
 - (b) The Recipient has appointed within MoT a chief executive officer with terms of reference, qualifications and on conditions acceptable to the Association, to provide adequate Project management and oversight of the Project.
 - (c) The Project Support Team has been established and a Project manager and procurement specialist appointed within it with terms of reference, qualifications and on conditions acceptable to the Association.
- 5.02. The Additional Legal Matter is that the Subsidiary Agreement has been duly authorized or ratified by the Recipient and the Project Implementing Entity and is legally binding upon the Recipient and the Project Implementing Entity in accordance with its terms.

- 5.03. The Effectiveness Deadline is the date ninety (90) 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 the Minister of Finance.
- 6.02. The Recipient's Address is:

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

Facsimile:

+676 26-011

- 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
Washington, D.C.

248423 (MCI)

1-202-477-6391

AGREED at Washington, District of Columbia, United States of America as of the day and year first above written.

KINGDOM OF TONGA

By: /s/ 'Aisake V. Eke

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: /s/ James Adams

Authorized Representative

SCHEDULE 1

Project Description

The objective of the Project is to assist the Recipient to establish and consolidate the operations of the newly-created Ministry of Transport as a unified transport sector-policy, planning and regulatory ministry and to improve the level of compliance of the civil aviation and maritime sub sector entities with international safety and security standards.

The Project consists of the following parts:

Part A: Establishment of a Sustainable Transport Sector Policy, and Institutional and Operational Framework

Enabling the creation of a sustainable transport sector, through: (i) formulation of a transport sector national policy and planning framework; (ii) preparation of an air transport sector strategic plan; (iii) preparation of an investment plan for Fua'amotu International Airport; (iv) preparation of a medium-term investment plan for the maritime sector; and (v) developing and analyzing options for sustainable road maintenance and preparation of a road maintenance investment plan.

Part B: Compliance with Mandatory Safety and Security Standards

Carrying out reviews and strategic interventions to respond to and meet mandatory safety and security standards required under international agreements, treaties and obligations through:

- (i) reviewing and analyzing current primary aviation legislation, regulatory framework and technical guidance, and providing recommendations for the strengthening and regulatory oversight of the aviation sector;
- (ii) installation of navigational aids and equipment at Fua'amotu International Airport;
- (iii) replacement of a firefighting tender at Fua'amotu International Airport;
- (iv) replacement of security (x-ray screening) equipment and emergency power equipment at Fua'amotu International Airport;
- (v) carrying out works to improve ferry terminals including lighting and navigational equipment

(vi) provision of marine safety and environmental protection equipment at selected terminals; and

(vii) reforming the motor vehicle registry system.

Part C: Supporting the Transition towards Sustainability in the Transport Sector

Supporting the Recipient in the implementation of key initiatives identified under Part A of the Project, including: (i) supporting the preparation of the relevant legislation to implement reforms; (ii) resurfacing the inter-island ferry terminal at Nuku'alofa to improve cargo handling and passenger safety; (iii) installation of solar lighting at ferry terminals; and (iv) provision of additional safety and security equipment at airports as required.

Part D: Project Implementation Support

Strengthening the capacity of MoT to implement MoT's Respective Part of the Project through the provision of Project implementation support, and technical and Project management training to staff of MoT.

SCHEDULE 2

Project Execution

Section I. Implementation Arrangements

A. Institutional Arrangements

1. The Recipient shall vest responsibility for overall coordination of the implementation of the Project in MoT. MoT shall also be specifically responsible for the implementation of MoT's Respective Part of the Project.
2. The Recipient shall cause to be established and maintained throughout Project implementation, a Project Support Team within MoT, with composition, terms of reference and qualifications acceptable to the Association, to be responsible for the day-to-day management and administrative oversight of the Project. The Project Support Team shall assist both MoT and the Project Implementing Entity with: (i) preparation of work plans and budgets; (ii) preparation of progress and impact reports under the Project; and (iii) coordinating with the Recipient, the Project Implementing Entity and the Association on matters relating to the Project. With respect to MoT's Respective Part of the Project, the Project Support Team shall, in addition, be responsible for monitoring and evaluation, financial management and reporting, procurement and disbursement functions.
3. The Recipient shall maintain throughout the period of implementation of the Project, a Project Steering Committee to be responsible for providing strategic guidance and monitoring of the Project. The Project Steering Committee shall provide guidance to MoT on Project implementation and strategy and shall facilitate the resolution of Project implementation issues.
4. The Recipient shall maintain within MoT, a Working Group throughout the period of implementation of the Project, to be responsible for providing technical oversight and guidance of implementation of the Project. The Project manager to be appointed for the Project Support Team shall act as a secretary to the Working Group.
5. TAL's Respective Part of the Project shall be implemented by Tonga Airports Limited in accordance with the Schedule to the Project Agreement.

B. Subsidiary Agreement

1. To facilitate the carrying out of TAL's Respective Part of the Project by the Project Implementing Entity, the Recipient shall make part of the proceeds of the Grant available to the Project Implementing Entity under a Subsidiary Agreement between the Recipient and the Project Implementing Entity, under terms and conditions approved by the Association, which shall include the following:

- (a) the proceeds of the Grant shall be made available by the Recipient to the Project Implementing Entity on a grant basis;
 - (b) the Project Implementing Entity shall undertake to carry out the Project with due diligence and efficiency and in accordance with appropriate management, financial, engineering and social and environmental standards acceptable to the Association, and provide, promptly as needed, the funds, facilities and other resources required for the purpose;
 - (c) the Recipient shall have the right to suspend or terminate the right of the Project Implementing Entity to the use of the proceeds of the Grant made available under the Subsidiary Agreement upon failure by the Project Implementing Entity to perform its obligations thereunder; and
 - (d) in the event that any portion of the proceeds of the Grant provided to the Project Implementing Entity is not used for Eligible Expenditures or is otherwise used in breach of this Agreement, the Project Agreement, or the Subsidiary Agreement, the Project Implementing Entity shall, upon notice from the Recipient or from the Association, refund the notified amount to the account provided in such notice.
2. The Recipient shall exercise its rights under the Subsidiary Agreement in such manner as to protect the interests of the Recipient and the Association and to accomplish the purposes of the Grant. Except as the Association shall otherwise agree, the Recipient shall not assign, amend, abrogate or waive the Subsidiary 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 through MLSNRE shall ensure that the Project is carried out in accordance with the Environmental Management Plan, and, except as the Association shall otherwise agree, the Recipient shall not amend, vary, or waive any provision of the Environmental Management Plan if, in the opinion of the Association, such amendment or waiver may materially and adversely affect the carrying out of the Project or the achievement of the objectives thereof.
- 2. The Recipient through MLSNRE shall monitor compliance with the Environmental Management Plan.

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 agreed with the Association. Each Project Report shall cover the period of one (1) calendar quarter, and shall be furnished to the Association not later than forty-five (45) days after the end of the period covered by such report.
2. For purposes of Section 4.08(c) of the General Conditions, the report on the execution of the Project and related plan required pursuant to that Section shall be furnished to the Association not later than six (6) months after the Closing Date.

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 its 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 and Works.** All goods and works required for the Project and to be financed out of the proceeds of the Grant 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 Grant 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 the Procurement Guidelines, or Consultant Guidelines, as the case may be.

B. Particular Methods of Procurement of Goods and Works

1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods and works shall be procured under contracts awarded on the basis of International Competitive Bidding.
2. **Other Methods of Procurement of Goods and Works.** The following table specifies the methods of procurement, other than International Competitive Bidding, which may be used for goods and works. The Procurement Plan shall specify the circumstances under which such methods may be used:

Procurement Method
(a) National Competitive Bidding with the additional procedures set forth in the Annex to Schedule 2
(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 table specifies methods of procurement, other than Quality- and Cost-based Selection, which may be used for consultants’ services. The Procurement Plan shall specify the circumstances under which such methods may be used:

Procurement Method
(a) Quality-Based Selection
(b) Selection Based on Consultants’ Qualifications
(c) Least Cost Selection
(d) Selection of Individual Consultants (including on a sole-source basis in accordance with the Consultant Guidelines)

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 Grant**A. General**

1. The Recipient may withdraw the proceeds of the Grant 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 Grant ("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:

Category	Amount of the Grant Allocated (expressed in SDR)	Percentage of Expenditures to be Financed (exclusive of Taxes)
(1) Goods, works and consultants' services for the Project	3,400,000	100%
TOTAL AMOUNT	<u>3,400,000</u>	

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.
2. The Closing Date is December 31, 2011.

Section V. Other Undertakings

1. The Recipient through MoT shall no later than December 31, 2008, enter into an agreement with Ports Authority Tonga authorizing MoT to carry out improvements at Nuku'alofa domestic ferry terminal on its behalf.

**ANNEX
to
SCHEDULE 2**

Additional Procedures for National Competitive Bidding

In order to ensure economy, efficiency, transparency, and broad consistency with the provisions included in Section I of the Guidelines (as required by paragraph 3.3 of the Guidelines), goods and works for which this Schedule allows procurement under paragraphs 3.3 and 3.4 of the Guidelines, shall be procured in accordance with the following paragraphs.

Participation in Bidding

1. Government-owned enterprises in Tonga shall be eligible for bidding only if they can establish that they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the Recipient.
2. Foreign bidders shall be eligible to participate in bidding under the same conditions as national bidders. In particular, no domestic preference over foreign bidders shall be granted to national bidders in bid evaluation.

Advertising; time for bid preparation

3. Invitations to bid shall be advertised in at least one newspaper of national circulation, allowing a minimum of 30 days for the preparation and submission of bids, such 30 days to begin with the availability of the bidding documents or the advertisement, whichever is later.

Standard bidding documents

4. Until national standard bidding documents approved by the Association are available, bidding documents approved by the Association shall be used.

Bid security

5. All bidders shall provide bid security if indicated in the bidding documents. A bidder's bid security shall apply only to a specific bid.

Classification of contractors: qualification: post-qualification

6. Bidding shall not be restricted to any particular class of contractors and nonclassified or contractors shall also be eligible to bid. Qualification criteria (in case prequalification was not carried out) shall be stated in the bidding documents, and before

contract award the bidder having submitted the lowest evaluated responsive bid shall be subject to post-qualification.

Registration

7. If a registration process was required, a foreign firm determined to be the lowest evaluated responsive bidder shall be given reasonable opportunity of registering, without any let or hindrance.

Evaluation criteria

8. Evaluation criteria shall be clearly specified in bidding documents, and evaluation criteria other than price shall be quantified in monetary terms.

Bid Opening; and Bid Evaluation

9. Bidders may deliver bids, at their option, either in person or by courier service or by mail.

10. Bids shall be opened in public, immediately after the deadline for submission of bids.

11. Evaluation of bids shall be made in strict adherence to the criteria declared in the bidding documents and contracts shall be awarded to the lowest evaluated bidder.

12. No bidder shall be rejected merely on the basis of a comparison with the owner's estimate and budget ceiling without the Association's prior concurrence.

Rejection of Bids

13. Rebidding shall not be carried out without the Association's prior concurrence.

Extension of the validity of bids

14. In exceptional circumstances, the procuring entity may, before the expiration of bid validity, request all bidders in writing to extend the validity of their bids. In such a case, bidders shall not be requested nor permitted to amend the price or any other condition of their bid. Bidders shall have the right to refuse to grant such an extension without forfeiting their bid security, but bidders granting such an extension shall be required to provide a corresponding extension of their bid security.

No post-bidding; negotiations

15. There shall be no post-bidding negotiations between the procuring entity and the lowest or any other bidder.

Inspection and Auditing

16. Each contract financed from the proceeds of a Grant shall provide that the contractors shall permit the Association, at its request, to inspect their accounts and records relating to the performance of the contract and to have said accounts and records audited by auditors appointed by the Association.

Conflict of Interest

17. Contractors that have a business or family relationship with a senior member of the project implementing agency's staff may not be awarded a contract, unless the conflict of interest stemming from this relationship has been resolved in a manner satisfactory to the Association throughout the process of evaluation of the bids and the execution of the contract.

APPENDIX**Definitions**

1. “Anti-Corruption Guidelines” means the “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006.
2. “Category” means a category set forth in the table in Section IV of Schedule 2 to this Agreement.
3. “Consultant Guidelines” means the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” published by the Bank in May 2004 and revised in October 2006.
4. “Environmental Management Plan” means the Recipient’s Environmental Management Plan dated April 18, 2008 which sets out: (i) key principles for social and environmental management of activities under the Project; (ii) procedures to screen and process activities for significant social and environmental impacts and to assist in mitigating impacts; (iii) procedures to ensure that these principles and procedures are properly applied; and (iv) guidelines for capacity building and monitoring.
5. “General Conditions” means the “International Development Association General Conditions for Credits and Grants”, dated July 1, 2005 (as amended through October 15, 2006).
6. “Ministry of Finance and National Planning” means the Recipient’s Ministry of Finance and National Planning or any successor thereto.
7. “MLSNRE” means the Recipient’s Ministry of Lands, Survey, Natural Resources and Environment or any successor thereto.
8. “MoT” means the Recipient’s Ministry of Transport or any successor thereto.
9. “MoT’s Respective Part of the Project” means Part A(i), (ii), (iv) and (v), Part B (i), (v), (vi) and (vii), Part C(i), (ii) and (iii) and Part D of the Project as described in Schedule 1 to this Financing Agreement.
10. “Part” means a part of the Project as described in Schedule 1 to this Agreement.
11. “Ports Authority Tonga” means the entity established and operating within the Recipient’s territory pursuant to the Ports Authority Act of 2000 and referred to in Section V(1) of Schedule 2 to this Agreement.

12. “Procurement Guidelines” means the “Guidelines: Procurement under IBRD Loans and IDA Credits” published by the Bank in May 2004 and revised in October, 2006.
13. “Procurement Plan” means the Recipient’s procurement plan for the Project, dated April 22, 2008 and referred to in paragraph 1.16 of the Procurement Guidelines and paragraph 1.24 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.
14. “Project Implementing Entity” means Tonga Airports Limited.
15. “Project Implementing Entity’s Legislation” means the Public Enterprises Act of 2002.
16. “Project Steering Committee” means the Committee comprising representatives of key stakeholders in the transport sector chaired by the Minister of Finance, referred to in Section I.A(3) of Schedule 2 to this Agreement.
17. “Project Support Team” means the team to be appointed within MoT for purposes of overseeing the implementation of the Project, as such team is referred to in Section I.A(2) of Schedule 2 to this Agreement.
18. “Subsidiary Agreement” means the agreement referred to in Section I.B of Schedule 2 to this Agreement pursuant to which the Recipient shall make part of the proceeds of the Grant available to the Project Implementing Entity.
19. “TAL’s Respective Part of the Project” means Part A(iii), Part B(ii), (iii) and (iv), and Part C(iv) of the Project as described in Schedule 1 to this Financing Agreement.
20. “Tonga Airports Limited” or “TAL” means the entity established and operating within the Recipient’s territory pursuant to the Public Enterprises Act of 2002 and the Companies Act 1995, and is the Project Implementing Entity for the Project.
21. “Working Group” means the group within MoT chaired by the deputy secretary (policy and planning) in MoT, referred to in Section I.A(4) of Schedule 2 to this Agreement.