

27 November 2015

Hon. Maatia Toafa
Minister of Finance and Economic Development
Funafuti
Tuvalu

Dear Minister,

**Project Design Advance for Preparation of the Outer Island Maritime Infrastructure Project
Grant Number: PDA 6003-TUV (Special Operations)
Project Number: 48484-003**

Tuvalu ("Recipient") through its letter dated 17 June 2015 ("PDA Request") has formally requested the Asian Development Bank ("ADB") for financial assistance under ADB's Project Design Facility for preparation of the Outer Island Maritime Infrastructure Project ("Ensuing Project").

In response to the above request, ADB has agreed to provide project design advance ("PDA") in the form of a grant ("PDA Grant") from ADB's Special Funds resources in an amount not exceeding two million Dollars (\$2,000,000) on the terms and conditions set forth in this letter agreement and the attachments hereto ("PDA Grant Agreement), for the purpose of the preparation project ("PDA Project") as described below.

The PDA Project shall comprise:

- (i) Detailed engineering design including geotechnical and hydrographical surveys for the Ensuing Project;
- (ii) Assistance to the government for its procurement of civil works for the Ensuing Project, including preparation of bidding documents, organizing bidding processes, bid evaluation and contracting; and
- (iii) Assistance to the government for its project management in supervising the detailed engineering design consultant and coordinating with government agencies and outer island communities.

The Recipient acknowledges and agrees that no provision of this PDA Grant Agreement and the Project Administration Manual for the PDA Project, as initially agreed upon between the Recipient and ADB and set forth as Attachment 3 to this PDA Grant Agreement ("Initial PDA PAM"), constitutes or implies a commitment or legal obligation on the part of ADB to provide financial assistance for the Ensuing Project.

According to ADB's Public Communication Policy 2011 ("PCP") on disclosure and exchange information, this PDA Grant Agreement and the Initial PDA PAM will be publicly disclosed on the ADB website once this PDA Grant Agreement has been signed by both parties. If ADB is advised that this PDA Grant Agreement and/or the Initial PDA PAM contains information or data sensitive or confidential nature falling within the exceptions to presumed disclosure under the PCP, this PDA Grant Agreement and/or the Initial PDA PAM will be disclosed after removing such information.

The Recipient is requested to confirm its agreement to the terms and conditions of this PDA Grant Agreement by having an authorized representative countersign the two original counterparts of this PDA Grant Agreement in the space indicated below. Please retain one signed original counterpart for your records, and return one signed original counterpart to ADB.

Thank you.

Yours sincerely,



Robert Jauncey
Regional Director

The Recipient hereby agrees to the terms and conditions of this PDA Grant Agreement and confirms that this PDA Grant Agreement and the Initial PDA PAM do not contain information or data that falls within the PCP exceptions.

On behalf of Tuvalu



Name: Hon. Maatia Toafa

Title: Minister

Date: 3rd December 2015

Attachment 1: Terms and Conditions

Attachment 2: Allocation Table

Attachment 3: Initial PDA PAM

Terms and Conditions

ARTICLE I

Grant Regulations; Definitions

Section 1.01. The provisions of the Special Operations Grant Regulations Applicable to Grants Made by ADB from its Special Funds Resources, dated 7 February 2005 ("Grant Regulations") Grant, are hereby made applicable to this PDA Grant Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) The term "Grant", whenever it appears in the Grant Regulations as a defined term or as part of a defined term, shall be substituted by the term "PDA Grant".

(b) The term "Project", wherever it appears in the Grant Regulations as a defined term or as part of a defined term, shall be substituted by the term "PDA Project".

Section 1.02. Wherever used in this PDA Grant Agreement, the several terms defined in the Grant Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this PDA Grant Agreement have the following meanings:

(a) "Allocation Table" means the table showing the allocation of the PDA Grant proceeds to items of expenditure under the PDA Project, and the withdrawal percentage for disbursement for each such item of expenditure from the PDA Grant proceeds, as set forth in Attachment 2 of this PDA Grant Agreement;

(b) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(c) "Consulting Services" means the consulting services to be financed out of the proceeds of the PDA Grant;

(d) "Goods" means equipment and materials to be financed out of the proceeds of the PDA Grant under a contract for Consulting Services;

(e) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);

(f) "MCT" means the Ministry of Communication and Transport of the Recipient;

(g) "PDA PAM" means the initial PDA PAM as set forth in Attachment 3 to this PDA Grant Agreement, as updated from time to time in accordance with the respective administrative procedures of the Recipient and ADB;

(h) "PDA Project Executing Agency" within the meaning of the Grant Regulations means MCT or any successor thereto acceptable to ADB, which is responsible for the carrying out of the PDA Project;

(i) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time); and

(j) "Procurement Plan" means the procurement plan for the PDA Project Incorporated in the PDA PAM, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB.

ARTICLE II

The PDA Grant

Section 2.01. ADB agrees to make available to the recipient from ADB's Special Funds resources an amount of two million Dollars (\$2,000,000).

Section 2.02. (a) Except as provided in subsection (b) hereinafter, the PDA Grant Closing Date for the purposes of Section 8.02 of Grant Regulations shall be 31 July 2017, or such other date as may from time to time be agreed between the Recipient and ADB.

(b) Notwithstanding subsection (a) hereinabove, ADB shall notify the Recipient of the PDA Grant Closing Date in the event that ADB does not finance the Ensuing Project.

Section 2.03. On the PDA Grant Closing Date, the right of the Recipient to make withdrawals from the PDA Grant Account shall terminate and any unwithdrawn amount of the PDA Grant shall be cancelled.

ARTICLE III

Use of the Proceeds of the PDA Grant

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

Section 3.02. Except as ADB may otherwise agree, the proceeds of the PDA Grant shall be allocated to items of expenditure and disbursed on the basis of the withdrawal percentage for each item of expenditure, as set forth in the Allocation Table.

Section 3.03. Notwithstanding the allocation of PDA Grant proceeds and the withdrawal percentages set forth in the Allocation Table,

(a) If the amount of the PDA Grant allocated to any category appears to be insufficient to finance all agreed expenditures in that category, ADB, may, in consultation with the Recipient, (i) reallocate to such category, to the extent required to meet the estimated

shortfall, amounts of the PDA 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 PDA Grant allocated to any category appears to exceed all agreed expenditures in that category, ADB, may, in consultation with the Recipient, reallocate such excess amount to any other category.

Section 3.04. Except as ADB may otherwise agree, the PDA Grant proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Section 3.05. Except as ADB may otherwise agree, the Recipient shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the PDA Grant in accordance with the Consulting Guidelines and the Procurement Guidelines, as the case may be.

Section 3.06. Except ADB may otherwise agree, the Recipient shall apply such methods for selecting and engaging Consulting Services and for procurement of Goods as are set out in the Procurement Plan.

Section 3.07. All contracts for procurement 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.

Section 3.08. (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 or 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 subsection (a) hereinabove.

(c) 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 right or claim of any third party.

Section 3.09. Except as ADB may otherwise agree, the Recipient shall cause all items of expenditure financed out of the proceeds of the PDA Grant to be used exclusively in the carrying out of the PDA Project.

Section 3.10 Except as stipulated otherwise in this PDA Grant Agreement, 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 requirement as shall have been specified by ADB from time to time.

ARTICLE IV

Particular Covenants

Section 4.01. The Recipient shall ensure that the PDA Project is implemented in accordance with the detailed arrangements set forth in the PDA PAM. Any subsequent change to the PDA PAM shall become effective only after approval of such change by the Recipient and ADB. In the event of any discrepancy between the PDA PAM and this PDA Grant Agreement, the provision of this PDA Grant Agreement shall prevail.

Section 4.02. The Recipient shall make available, or cause the PDA Project Executing Agency to make available, promptly as needed, the funds, facilities, services as required, in addition to the proceeds of the PDA Grant, for the carrying out of the PDA Project.

Section 4.03. Whenever applicable, in the carrying out of the PDA Project, the Recipient shall ensure or shall cause the PDA Project Executing Agency to ensure, that competent and qualified consultants acceptable to ADB are employed to an extent and upon terms and conditions satisfactory to the Recipient and ADB.

Section 4.04 (a) The Recipient shall, or shall cause the PDA Project Executing Agency to, (i) maintain separate accounts and records for the PDA Project; (ii) prepare annual financial statements for the PDA Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards on auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements and use of the PDA Grant proceeds) and a management letter (which sets out the deficiencies in the internal control of the PDA Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the PDA Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting on ADB's website.

(c) The Recipient shall enable ADB, upon ADB's request, to discuss the financial statements for the PDA Project and the Recipient's financial affairs where there relate to the PDA Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and

shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized office of the Recipient, unless the Recipient shall otherwise agree.

Section 4.05. The Recipient shall enable ADB's representatives to inspect the PDA Project, the Goods and any relevant records and documents.

Section 4.06. (a) The Recipient and the PDA Project Executing Agency shall (i) comply with 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 PDA Project; and (ii) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

(b) The Recipient and the PDA Project Executing Agency shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contract, including provision specifying the right of ADB to audit and examine the records and accounts of the PDA Project Executing Agency and all suppliers, consultants, and other service providers as they relate to the PDA Project.

ARTICLE V

Effectiveness

Section 5.01. Notwithstanding the provisions of Sections 9.01 and 9.03 of the Grant Regulations, this PDA Grant Agreement shall become effective upon date of receipt by ADB of this PDA Grant Agreement duly signed by both the Recipient and ADB.

ARTICLE VI

Miscellaneous

Section 6.01. The Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Ministry of Finance and Economic Development
Government Building
Funafuti
Tuvalu

Facsimile Number:

(688)-20210

For ADB

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

Facsimile Number:

(632) 636-2446.

**Allocation and Withdrawal of PDA Grant Proceeds
(Project Design Advance for Outer Island Maritime Infrastructure Project)**

Category	Amount of Grant Allocated to the Category (\$)	Basis for Withdrawal from the Grant Account
Consulting Services	2,000,000	100 % of total expenditure claimed
Total	2,000,000	

**Project Administration Manual
(Project Design Advance for Outer Island Maritime Infrastructure Project)**

The logo for the Asian Development Bank (ADB), consisting of the letters 'ADB' in a white serif font inside a black square.

ADB

Project Design Advance
Project Administration Manual

Project Number: 48484-003
Grant Number: {PDAXXXX}
November 2015

Tuvalu: Outer Island Maritime Infrastructure Project