

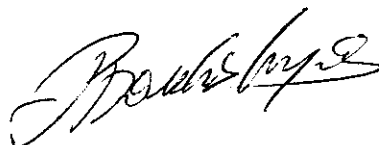
**MINUTES OF NEGOTIATIONS  
AGREED BETWEEN THE REPUBLIC OF ARMENIA AND  
THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**Yerevan, 23 September 2014**

**ARMENIA: KOTAYK SOLID WASTE MANAGEMENT PROJECT**

**1. INTRODUCTION**

- 1.1 Negotiations were held in Yerevan on 23 September 2014 for a proposed loan (the "Loan") by the European Bank for Reconstruction and Development (the "EBRD" or the "Bank") in the amount of EUR 3.5 million to the Republic of Armenia (the "Borrower"). The proceeds of the Loan would be used to improve solid waste management in the Region of Kotayk and in the Municipality of Sevan, as further described in Schedule 1 of the Loan Agreement (the "Project").
- 1.2 The Loan would be documented in an agreement to be entered into between the Republic of Armenia and the Bank (the "Loan Agreement"). In addition, there would be an agreement between the Republic of Armenia, Municipality of Hrazdan and the Bank (the "Grant Agreement"), and an agreement between Municipalities of Abovian, Byureghavan, Charentsavan, Hrazdan, Nor Hachn, Sevan, Tsakhadzor and Yeghvard (the "Project Municipalities") and the Bank (the "Project Implementation and Support Agreement"). Members of the Armenian Delegation and of the Bank Delegation are listed in Annex 1.
- 1.3 Following the negotiations, the draft text of the Loan Agreement, the Grant Agreement and the Project Implementation and Support Agreement was agreed in principle (subject to further review and approval) between the Armenian Delegation and the Bank Delegation as attached to these Minutes of Negotiations. It was explained to the Armenian Delegation that the Bank's Standard Terms and Conditions (the "STC") were an integral part of the loan documentation. The Armenian Delegation has been provided a copy of the STC.
- 1.4 It was also explained to the Armenian Delegation that the text of the Loan Agreement, the Grant Agreement and the Project Implementation and Support Agreement is subject to further review by various Bank departments and that the Project was also subject to the final approval by the Bank's Board of Directors.
- 1.5 Terms defined in the draft Loan Agreement, Grant Agreement and Project Implementation and Support Agreement shall have the same meanings when used in these Minutes. The topics recorded below were discussed.



## 2. ISSUES RAISED

The following issues were discussed:

### General

- The Armenian Delegation raised concerns that the solid waste collection fee of AMD 450, as calculated by the feasibility study consultants during project preparation, might be too high for the population, and that the project can become a financial burden for the state budget in case the state would need to subsidise the operations. The Bank Delegation explained that the legal agreements refer to *the full cost recovery tariffs for solid waste services*, while the exact amounts will be calculated by the client and the project entity, supported by consultants, during the project implementation.

### Loan Agreement


- Preamble, third paragraph, names of Project Municipalities: The Armenian Delegation mentioned that according to the solid waste sector strategy financed by the ADB, Gegharkunik marz should be added to the regional landfill constructed under Kotayk project. The Armenian Delegation suggested to remove the names of the municipalities from the Preamble of the Loan Agreement to leave flexibility for future. Sevan Municipality representative expressed a strong view that they would not sign the current agreement if the future of Gegharkunik marz is unclear.

The Bank Delegation explained that the geographic scope of the project was agreed in the Term Sheet. Sevan Municipality cannot be removed from the present project and Gegharkunik marz cannot be added at this stage. Amending the project scope to include Gegharkunik marz will require additional project preparation, and this cannot be accommodated during the present legal negotiations. The Bank proposed to start project preparation with the aim of including Gegharkunik marz as a Phase II to the present project. The Bank delegation explained that preparation of the Phase II will be quick, and the present project and proposed Phase II will be implemented partially in parallel. It was agreed to start the preparation of Phase II immediately (subject to confirmation of the Ministry of Finance), in order to complete both projects (Phase I and Phase II) at the same time if at all possible.

The Bank delegation noted that preparation and implementation of Phase II cannot be accommodated within the existing funding, hence additional loan and grant resources will need to be mobilised.

The Armenian Delegation suggested to use savings from the implementation of the present project to finance investments for the Gegharkunik marz. The Bank Delegation explained that the present project was prepared in 2011, so considering the time delay (inflation, change of prices, etc.) savings should not be expected. However, should there be any savings available from the implementation of the Kotayk project, such savings could be used (subject to certain conditions and applicable approvals) for new investments of Phase II to include Gegharkunik marz. The exact amount for the investments in Gegharkunik marz will be defined during the additional technical review and project preparation.

- Section 1.02 – The Armenian Delegation was concerned that the amount of the loan to be on-lent to the Project Municipalities under the Kotayk Solid Waste project will be

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exceeding the limit set by the Armenian legislation, according to which the municipalities cannot undertake loans exceeding 20 per cent of the municipal budget. The Bank Delegation clarified that the sovereign loan is provided to the Republic of Armenia, hence the Ministry of Finance and the Project Municipalities will need to assess the compliance of the Subsidiary Loan Agreement with the Armenian legislation.

- Section 2.02(e)(1) – it was agreed to leave the brackets for the first Loan Repayment Date and the last Loan Repayment Date to be filled in the execution copy of Loan Agreement before signing.
- Section 2.02(f) – The Last Availability Date shall be left in brackets to be filled in the execution copy of Loan Agreement before signing.
- Section 2.03 – The Armenian Delegation has opted not to have the Front-end Commission paid out of the Available Amount and the Borrower shall instead pay the Front-end Commission out of its own resources. Attachment to Schedule 2 should be amended accordingly.
- Section 3.01 – Upon the request of the Armenian Delegation, it was emphasized that Borrower is the Republic of Armenia and the Minister of Finance is the Borrower's Authorised Representative; and the Affirmative Project Covenants under section 3.01 relate to the Borrower.
- Section 3.01(g) – the decision was made to remove the following text “*or, if any such person (other than a natural person) or entity fails to do so, pay such charges without delay*”.
- Section 5.01(b) – the decision was made to replace Borrower with the Municipality of Hrazdan for the purposes of this subsection and amend the wording as follows: “*the Grant Agreement has been executed and delivered and all conditions precedent to its effectiveness or to the right of the Municipality of Hrazdan to make drawings thereunder (with the consent of the Borrower), except only the effectiveness of this Agreement, have been fulfilled*”.
- Section 5.01(c) [*former numbering*] – the decision was made to remove the issuance of applicable permits from Conditions Precedent to Effectiveness.
- Section 5.01(c) [*current numbering*] – it was decided to change word “shareholders” by word “founders”.
- Section 5.01(c) and Section 5.01(d) – the Armenian Delegation inquired about the composition and obligations of the Project Company and project implementation team and the Bank Delegation provided explanations accordingly.
- Section 5.01(g) [*former numbering*] – the decision was made to remove the following requirement from the Conditions Precedent to Effectiveness “*applicable law allows for full cost recovery cleaning fee*”.
  - To ensure that implementation of the present project is conducted in line with the Bank's performance requirements, the Bank suggests to include, as additional condition precedent to effectiveness in the Loan Agreement, the receipt (in each case in form and substance satisfactory to EBRD) of: a livelihood restoration plan (identifying (i) the persons eligible for compensation for economic displacement and (ii) the appropriate type/level of compensation/restoration to be made available to those same persons); and
  - supplementary environmental and social studies.



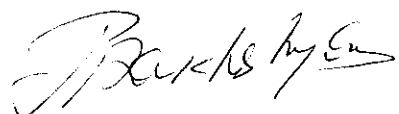
- Section 5.02(b) – it was decided to allow flexibility for those Municipalities that do not have a chief legal officer and give the following clarification “(or, if there is no chief legal officer, another authorised representative acceptable to the Bank)”.
- Section 5.02(b)(1) – it was decided to change word “ratified” by “approved”.
- Section 5.03 – it was decided to revise number of days from 120 to 180.
- Section 6.01 - address of the Ministry of Finance should be given as follows: 1 Melik-Adamyant Street, Yerevan, 0010.
- Schedule 1(3) - the date will be updated to 30 November 2017.

### **Project Implementation and Support Agreement**

- Section 1.02 – Project Entity’s Authorised Representative should be defined as Mayors of the Project Municipalities. Hence, the wording remains as “means, in respect of a Project Municipality, its Mayor”.
- Section 3.01 – wording “*furnish to the bank*” will be added.
- Section 4.01(j) – request was made by the Armenian Delegation to explain the rationale behind the compensation based on performance for the public service contract.
- Section 4.01(k) – the Armenian Delegation requested that tendering requirement be removed. The Armenian Delegation emphasized that municipal services are performed by municipal companies at a lower price and with higher quality than what the private sector could offer. The Bank suggested to revise wording in such way that the Project Municipalities will still perform a tender but it will not be considered breach of covenant if they do not award tender in case no interest is shown from private operators or if the private sector offers represent worse terms than those offered by the municipal company. Hence instead of “award tender”, the Bank proposed the following wording: “*invite private operators, through open tendering, to bid for all waste collection services*“. The Ministry of Territorial Administration proposed the following wording: “*invite private and municipal operators, through open tendering, to bid for all waste collection services*”.
- Section 4.01(l) – the proposal was made to replace *closure* of existing landfills with *stop operating*. Following internal discussions, the Bank can accept the following wording: *stop operating and close in a manner acceptable to the Bank*.
- Schedule 1 and Schedule 2 – Upon request of the Armenian Delegation, it was emphasized that schedules 1 and 2 are still subject to changes during implementation.

### **Grant Agreement**

- Replace *Armenia* with *the Republic of Armenia* in the legal agreements.
- Section 1.01 Definitions:
  - Ministry means the Ministry of Finance of the Republic of Armenia.
  - Recipient’s Authorised Representative means the Mayor of the Municipality of Hrazdan. The Armenian Delegation inquired why Hrazdan municipality is the only signatory to the Grant Agreement from the Project Municipalities. The request was made to amend wording and empower Project Municipalities for decision-making. However, the Bank Delegation provided extensive clarification on the disbursement process and noted that funds are transferred directly to the contractors, without reaching the budget of Hrazdan Municipality. The Armenian Delegation agreed that the Grant Agreement will be signed by the Mayor of Hrazdan.

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- Section 3.08 – the Bank Delegation emphasized the importance of donor visibility, which is highly prioritised by the EU.
- Section 4.02 – was decided to remove wording “(and, where applicable, shall procure that each of the Project Municipalities shall)”.
- Section 5.01(a)(4) – a request was made to remove this clause since Project Municipalities are not party to the Grant Agreement. The Bank delegation explained that they are still beneficiaries so non-performance of obligations should leave the Bank the option to suspend disbursements.
- Section 5.05(b) – the Armenian Delegation suggested to take out reference to Section 5.01(a)(4), since Hrazdan Municipality cannot refund all or any portion of the Grant Financing if Project Municipalities fail to perform obligations. The Bank Delegation provided explanation and it was decided to leave the existing wording.
- The Ministry of Finance proposed to add a clause of Force Major in the agreement, with the following wording: *In case of war, force major or other public emergency, or in cases threatening its national security the Recipient may take measures derogating from its obligations under the Grant Agreement to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.* Following internal discussions, the Bank Delegation advised that the Bank could not accept the proposed *force majeure* provision. More specifically, the Bank’s standard terms and conditions, which govern the loan, do not provide for a *force majeure* carve-out. Accordingly, since the Bank should use the same care in respect of the loan and the grant, the Bank cannot incorporate a *force majeure* carve-out in the grant agreement.

A number of other minor changes, clarifications and corrections were agreed and are incorporated directly into the attached drafts of the Loan Agreement and Project Agreements.

### 3. OTHER ISSUES

#### **Additional Matters**

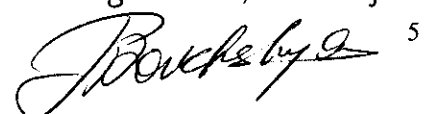
- Inclusion of Gegharkunik marz or exclusion of Sevan Municipality from the Project Municipalities: the parties expressed willingness to start preparation of Phase II investments immediately, subject to approval from the Ministry of Finance. The exact amount for Gegharkunik marz will be defined during the feasibility study.

#### **Revised Version of the Loan Documents:**

The Bank will provide the Armenian Delegation with revised versions of the Loan Agreement, Project Implementation and Support Agreement, and Grant Agreement, in each case in both a clean copy and one marked against the version last distributed to the Borrower.

#### **EBRD approval from Board of Directors:**

The Bank Delegation confirmed that the project is expected to be submitted for approval by the Bank’s Board of Directors on 12 November 2014. The Bank Delegation and the Armenian Delegation confirmed that they intend to sign the Loan Agreement, the Project

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Implementation and Support Agreement, and the Grant Agreement in the first half of November 2014 (date to be confirmed). The Armenian Delegation will receive the necessary authorisation to sign the Loan Agreement, the Grant Agreement and the Project Implementation and Support Agreement. The Loan Agreement would be subject to ratification by the Armenian Parliament.

**Language of Legal Documentation:**

The Bank explained that the final version of the Loan Agreement, Project Implementation and Support Agreement and Grant Agreement would be executed only in the original English language version in accordance with the Bank's practice.

**Signing Location:**

It was agreed that, once the Project has been approved by the Bank's Board of Directors, the signing of the Loan Agreement would take place in Armenia, place to be determined. Expected signing date is first half of November.

**FOR THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT:**

\_\_\_\_\_  
Name:

Title:

**FOR THE REPUBLIC OF ARMENIA**

  
\_\_\_\_\_

Name: Artashes Bakhshyan

Title: Deputy Minister of the RA Ministry of Territorial Administration

**Armenian Delegation**

Artashes Bakhshyan	Deputy Minister, the RA Ministry of Territorial Administration (Head of the Negotiation Group)
Vahagn Lalayan	Head of Investment Policy Department within the Staff of the RA Ministry of Economy
Grisha Hovhannisyan	Acting Director, “Environmental project implementation unit” SA of the RA Ministry of Nature Protection
Vahagn Piliposyan	Head of Division, Division for International Treaties and Deposit, Legal Department within the Staff of the RA Ministry of Foreign Affairs
Hayser Gasparyan	Head of Division, Division for Financial Planning of Target Loan and Grant Funds Received from Overseas Sources, Budget Process Management Department within the Staff of the RA Ministry of Finance
Larisa Harutyunyan	Head of Division, Division for Cooperation with Foreign Countries and International Organizations, International Cooperation Department within the Staff of the RA Ministry of Finance
Samvel Srapyan	Head of Division, Division for Housing Stock Management and Utility Infrastructure, Housing Policy and Utility Infrastructure Department within the Staff of the RA Ministry of Urban Development
Arshavir Khachatryan	Head of Urban Development Department within the Staff of the RA Kotayk Marzpetaran (regional administration)
Stella Mkrtchyan	Chief Specialist, Operations Division, State Debt Management Department within the Staff of the RA Ministry of Finance
Marine Harutyunyan	Chief Specialist, Accounting and Service Division, State Debt Management Department within the Staff of the RA Ministry of Finance

Artashes Avagyan	Chief Specialist, Legal Consultation and Development Division, Legal Department within the Staff of the RA Ministry of Finance
Tamara Ghalayan	Leading Specialist, Division for Cooperation with Foreign Countries and International Organizations, International Cooperation Department within the Staff of the RA Ministry of Finance
Shotan Khachatryan	Head of Housing Maintenance and Utilities Division, Hrazdan Municipality, RA Kotayk Marz
Ararat Dumanyan	Secretary of Staff, Nor Hachn Municipality, RA Kotayk Marz
Manuk Hakobyan	Assistant to the Mayor, Abovyan city, RA Kotayk Marz
Misha Yeghiazaryan	Deputy Mayor of Byureghavan, RA Kotayk Marz
Hakob Shahgaldyan	Head of Charentsavan Municipality, RA Kotayk Marz
Karen Harutyunyan	Deputy Mayor of Yeghvard, RA Kotayk Marz
Hamlet Sahakyan	Deputy Mayor Sevan, RA Gegharkunik Marz

### **The Bank Delegation**

#### **Levan Sharvadze**

Principal Banker, Municipal and Environmental Infrastructure Team

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