
GRANT NUMBER 0775 -TUV(SF)
[Additional to Grant No. 0511-TUV(SF),
Grant No. 0512-TUV(SF),
Grant No. 0513-TUV(EF),
Grant No. 0603-TUV(SF)]

GRANT AGREEMENT
(Special Operations)

(Outer Island Maritime Infrastructure Project – Second Additional Financing)

between

TUVALU

and

ASIAN DEVELOPMENT BANK

DATED 13 JANUARY 2021

TUV 48484

GRANT AGREEMENT (Special Operations)

GRANT AGREEMENT dated 13 January 2021 between TUVALU ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by the grant agreements dated 11 April 2017 between the Recipient and ADB (individually "Initial Grant Agreement" and collectively "Initial Grant Agreements"), ADB agreed to make grants to the Recipient from (i) ADB's Special Funds resources in an amount of \$8,300,000; (ii) the Disaster Response Facility of ADB's Special Funds resources in an amount of \$3,000,000, and (iii) the Global Environment Facility, administered by ADB, in an amount of \$500,000, all for the purposes of the project described in Schedule 1 to the Initial Grant Agreement;

(B) by a grant agreement dated 20 September 2018 between the Recipient and ADB ("First Additional Grant Agreement"), ADB agreed to make an additional grant to the Recipient from ADB's Special Funds resources in an amount of \$15,420,000, for the purposes of the project, as described in Schedule 1 to the First Additional Grant Agreement;

(C) the Recipient has applied to ADB for an additional grant for the purposes of the project, as described in Schedule 1 to this Grant Agreement ("Project"); and

(D) ADB has agreed to make a grant to the Recipient from ADB's Special Funds resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All provisions of ADB's Special Operations Grant Regulations, dated 1 January 2017 ("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. Wherever used in this 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 Grant Agreement have the following meanings:

- (a) "Consulting Services" means consulting services as described in the Procurement Regulations and set out in the Procurement Plan, and to be financed out of the proceeds of the Grant;

- (b) "DOE" means the Recipient's Department of Environment, or any successor thereto;
- (c) "EMP" means the environmental management plan for the Project, including any update thereto, incorporated in the IEE;
- (d) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (e) "GAP" means the gender action plan prepared for the Project, including any update thereto, and agreed to between the Recipient and ADB;
- (f) "Goods" means equipment and materials as set out in the Procurement Plan and to be financed out of the proceeds of the Grant, including any related Nonconsulting Services such as transportation, insurance, installation, commissioning, training, and initial maintenance;
- (g) "IEE" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;
- (h) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (i) "Nonconsulting Services" means nonconsulting services as described in the Procurement Regulations and set out in the Procurement Plan, and to be financed out of the proceeds of the Grant;
- (j) "PAM" means the project administration manual for the Project dated 13 October 2020 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;
- (k) "Procurement Plan" means the procurement plan for the Project dated 13 October 2020 and agreed between the Recipient and ADB, as updated from time to time in accordance with the Procurement Policy, the Procurement Regulations, and other arrangements agreed with ADB;
- (l) "Procurement Policy" means ADB's Procurement Policy – Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (m) "Procurement Regulations" means ADB's Procurement Regulations for ADB Borrowers - Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (n) "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means the Recipient's Ministry of Finance or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

- (o) "Project facilities" means the facilities to be improved, constructed or provided under the Project;
- (p) "SPS" means ADB's Safeguard Policy Statement (2009);
- (q) "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 (as applicable), including any corrective and preventative actions;
- (r) "Services" means Consulting Services and Nonconsulting Services; and
- (s) "Works" means construction or civil works as set out in the Procurement Plan and to be financed out of the proceeds of the Grant, including any related Nonconsulting Services and project related services that are provided as part of a single responsibility or turnkey contract.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources an amount of twenty million Dollars (\$20,000,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall cause the proceeds of the Grant to be applied exclusively to the financing of expenditures on 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, the items of expenditure to be financed out of the proceeds of the Grant in accordance with the provisions of Schedule 3 to this Grant Agreement.

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

- (a) Goods which are produced in and supplied from and Works and 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, Works and 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 30 June 2026 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 3 to this Grant Agreement.

Section 4.02. (a) The Recipient shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards 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 auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Grant proceeds, and a management letter (which sets out the deficiencies in the internal control of the 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 the 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 Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) The Recipient shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Recipient's financial affairs where they relate to the 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 officer of the Recipient, unless the Recipient shall otherwise agree.

Section 4.03. The Recipient shall enable ADB's representatives to inspect the Project, the Goods, Works and Services, and any relevant records and documents.

ARTICLE V

Effectiveness

Section 5.01. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of this Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

ARTICLE VI

Termination

Section 6.01. The Grant Agreement and all obligations of the parties thereunder shall terminate on a date 50 years after the date of this Agreement.

ARTICLE VII

Miscellaneous

Section 7.01. 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 7.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Ministry of Finance
Government Building
Funafuti, Tuvalu

Facsimile Number:

(688) 20210

For ADB

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

Facsimile Numbers:

(632) 8636-2444
(632) 8636-2446.

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 as of the day and year first above written and to be delivered at the principal office of ADB.

TUVALU

By 
ANTHONY KENNETH MCDONALD
Authorized Representative

ASIAN DEVELOPMENT BANK

By 
LEAH C. GUTIERREZ
Director General
Pacific Department

SCHEDULE 1

Description of the Project

1. The objective of the Project is to improve maritime transfer operations in Nanumaga, Nui, Niutao and Nukulaelae, anchored on a transport master plan, with a view to promoting fisheries and tourism.
2. The Project shall comprise (a) the construction of a small-scale harbor in Nui, including a wharf, a navigation channel, a boat ramp, a passenger terminal, a cargo shed, and shoreline reclamation; and (b) the provision of construction supervision and project management support for ship replacement.
3. The Project is expected to be completed by 31 December 2025.

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

1. The table attached to this Schedule sets forth the items of expenditure to be financed out of the proceeds of the Grant ("Table").

Basis for Withdrawal from the Grant Account

2. Except as ADB may otherwise agree, the proceeds of the 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 Table.

Disbursement Procedures

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

Retroactive Financing

4. Withdrawals from the Grant Account may be made to finance eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Grant Agreement in connection with Consulting Services, subject to a maximum amount equivalent to 20% of the Grant amount.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS			
Number	Item	Total Amount Allocated for ADB Financing (\$)	Basis for Withdrawal from the Grant Account
		Category	
1	Works and Consulting Services	20,000,000	100% of total expenditure claimed*
	TOTAL	20,000,000	

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

SCHEDULE 3**Execution of Project; Financial Matters**Implementation Arrangements

1. The Recipient 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.

Procurement

2. The Recipient shall ensure that:
- (a) the procurement of Goods, Works and Services is carried out in accordance with the Procurement Policy and the Procurement Regulations;
 - (b) Goods, Works and Services shall be procured based on the detailed arrangements set forth in the Procurement Plan, including the procurement and selection methods, the type of bidding documents, and ADB's review requirements. The Recipient may modify the detailed arrangements set forth in the Procurement Plan only with the prior agreement of ADB, and such modifications must be set out in updates to the Procurement Plan; and
 - (c) (i) all Goods and Works procured and Services obtained (including 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; and (ii) all contracts for the procurement of Goods, Works and Services contain appropriate representations, warranties and, if appropriate, indemnities from the contractor, supplier, consultant or service provider with respect to the matters referred to in this subparagraph.
3. The Recipient shall not award any Works contracts which involves environmental impacts until:
- (a) the DOE has granted its written approval of the environmental assessment report, which is equivalent to the IEE cleared by ADB; and
 - (b) the Project Executing Agency has incorporated the relevant provisions of the EMP and any conditions of the written approval of the DOE into the Works contract.

Environment

4. The Recipient shall ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities 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 the IEE, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

5. The Recipient shall ensure that the Project does not have any involuntary resettlement impacts, within the meaning of the SPS. In the event that the Project does have any such impact, the Recipient shall ensure that all land acquisition and resettlement activities are implemented in compliance with all applicable laws and regulations of the Recipient relating to land acquisition and involuntary resettlement and with the SPS.

Indigenous Peoples

6. The Recipient shall ensure that the Project does not have any indigenous peoples impacts, within the meaning of the SPS. In the event that the Project does have any such impact, the Recipient shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Recipient and with the SPS.

Human and Financial Resources to Implement Safeguards Requirements

7. The Recipient shall make available necessary budgetary and human resources to fully implement the EMP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

8. The Recipient shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE and the EMP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the Recipient 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 IEE and the EMP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and

- (e) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

9. The Recipient shall 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 IEE and the EMP, 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 EMP promptly after becoming aware of the breach.

Prohibited List of Investments

10. The Recipient shall ensure that no proceeds of the Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor Standards, Health and Safety

11. The Recipient shall ensure that the core labor standards and the Recipient's applicable laws and regulations are complied with during Project implementation. The Recipient shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Recipient's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women.

12. The Recipient shall strictly monitor compliance with the requirements set forth in paragraph 11 above and provide ADB with regular reports.

Gender and Development

13. The Recipient shall ensure that (a) the GAP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for implementation of the GAP; and (d) progress on implementation of the GAP, including progress

toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

Counterpart Support

14. The Recipient shall ensure that all land and all rights-of-way required for the Project are made available to the Works contractor in accordance with the schedule agreed under the Works contract.

15. The Recipient shall make available through budgetary allocations or other means all counterpart funds required for timely and effective implementation of the Project, including funds to mitigate unforeseen environmental and social impacts, and to meet additional costs arising from design changes, price escalation in construction or installation costs or other unforeseen circumstances. In addition to the foregoing, the Recipient shall ensure that the Project Executing Agency and any implementing agency has sufficient funds to satisfy its liabilities arising from any Works, Goods and/or Services contract.

Operation and Maintenance

16. The Recipient shall undertake regular and periodic maintenance of the Project facilities in accordance with the operation and maintenance plan prepared for the Project, and make adequate resources available, through budgetary allocations or otherwise, for this purpose.

Governance and Anticorruption

17. The Recipient, the Project Executing Agency, and the implementing agencies shall (a) 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 Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

18. The Recipient, 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 executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.