
GRANT NUMBER 0762-KIR(SF)

GRANT AGREEMENT
(Special Operations)
(South Tarawa Renewable Energy Project)

between

REPUBLIC OF KIRIBATI

and

ASIAN DEVELOPMENT BANK

DATED 21 DECEMBER 2020

KIR 49450

**GRANT AGREEMENT
(Special Operations)**

GRANT AGREEMENT dated 21 December 2020 between REPUBLIC OF KIRIBATI ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Recipient has applied to ADB for a grant for the purposes of the Project described in Schedule 1 to this Grant Agreement;

(B) the Project will be carried out by the Recipient's Ministry of Finance and Economic Development ("MFED") and implemented by Public Utilities Board ("PUB"), and for this purpose the Recipient will make available to PUB the proceeds of the grant provided for herein upon terms and conditions satisfactory to ADB;

(C) by a grant agreement of even date herewith between the Recipient and ADB acting as implementing entity of the Strategic Climate Fund ("SCF Grant Agreement"), ADB has agreed to make available to the Recipient a grant, administered by ADB, from the Strategic Climate Fund in the amount of three million seven hundred thousand Dollars (\$3,700,000) for the purposes of cofinancing the Project;

(D) by a grant agreement of even date herewith between the Recipient and ADB ("New Zealand Grant Agreement"), ADB has agreed to make available to the Recipient a grant from the Government of New Zealand in an amount of two million Dollars (\$2,000,000) for the purposes of cofinancing the Project; and

(E) ADB has agreed to make a grant to the Recipient from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and PUB;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All the 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, subject, however, to the following modifications:

(a) Section 2.01(m) is deleted and the following is substituted therefor:

"Project Agreement" means the project agreement of even date herewith between ADB and PUB, as such agreement may be

amended from time to time; and such project agreement includes all schedules to the Project Agreement;

- (b) The term "Project Executing Agency" appearing in Sections 6.01(a), 8.01(c), 8.01(e), 8.01(i), 9.01(b) and 9.02(b) of the Grant Regulations shall be substituted by the term "PUB".

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) "BESS" means battery energy storage system;
- (b) "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;
- (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) "Implementing Agency" means PUB, or any successor acceptable to ADB;
- (i) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;
- (j) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (k) "MELAD" means the Recipient's Ministry of Environment, Lands, and Agricultural Development, or any successor thereto;
- (l) "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;

- (m) "PAM" means the project administration manual for the Project dated 22 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;
- (n) "Procurement Plan" means the procurement plan for the Project dated 22 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;
- (o) "Procurement Policy" means ADB's Procurement Policy – Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (p) "Procurement Regulations" means ADB's Procurement Regulations for ADB Borrowers - Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (q) "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means MFED, or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
- (r) "Project facilities" means all facilities and structures to be created as part of the Project;
- (s) "RP" means the resettlement plan for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;
- (t) "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 and the RP (as applicable), including any corrective and preventative actions;
- (u) "Services" means Consulting Services and Nonconsulting Services;
- (v) "SPS" means ADB's Safeguard Policy Statement (2009);
- (w) "Subsidiary Grant Agreement" means the agreement between the Recipient and PUB referred to in Section 3.01 of each of this Grant Agreement, the SCF Grant Agreement and the New Zealand Grant Agreement; and
- (x) "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 eight million Dollars (\$8,000,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. (a) The Recipient shall make the proceeds of the Grant available to the Implementing Agency under a Subsidiary Grant Agreement upon terms and conditions satisfactory to ADB.

(b) 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 and the Project 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. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 September 2024 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, including annual financial statements for the Project prepared by the Implementing Agency and submitted to the Project Executing Agency; (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.

Section 4.04. The Recipient shall take all actions which shall be necessary on its part to enable the Implementing Agency to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

ARTICLE V

Effectiveness

Section 5.01. The following are specified as additional conditions to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations:

- (a) the SCF Grant Agreement shall have been duly executed and delivered on behalf of the Recipient, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Grant Agreement and the New Zealand Grant Agreement) shall have been fulfilled; and
- (b) the New Zealand Grant Agreement shall have been duly executed and delivered on behalf of the Recipient, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Grant Agreement and the SCF Grant Agreement) shall have been fulfilled.

Section 5.02. 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 25 years after the date of this Agreement.

ARTICLE VII

Miscellaneous

Section 7.01. The Minister of Finance and Economic Development 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 and Economic Development
P.O. Box 67, Bairiki
Tarawa, Kiribati

Facsimile Number:

(686) 21307

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.

REPUBLIC OF KIRIBATI

By 
ANTHONY KENNETH MCDONALD
Authorized Representative

ASIAN DEVELOPMENT BANK

By 
OLLY NOROJONO
Officer-in-Charge
Pacific Department

SCHEDULE 1

Description of the Project

1. The objective of the Project is increased generation and utilization of clean energy in South Tarawa.
2. The Project shall comprise (a) installation of solar photovoltaic and BESS in the Bonriki water reserve located in South Tarawa, including related grid integration and control systems; (b) development of a draft energy act to enable increased deployment of renewable energy; and (c) institutional capacity building for inclusive renewable energy project development and implementation, including capacity building on project management and operation and maintenance of renewable energy generation assets.
3. The Project is expected to be completed by 31 March 2024.

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

1. The table attached to this Schedule sets forth the Category of items of expenditure to be financed out of the proceeds of the Grant and the allocation of the Grant proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category of the 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.

Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table,

- (a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the 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 Grant allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Recipient, reallocate such excess amount to any other Category.

Disbursement Procedures

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

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS			
Number	Item	Total Amount Allocated for ADB Financing *	Basis for Withdrawal from the Grant Account
		(\$) Category	
1	Turnkey (solar PV, BESS, grid and auxiliary equipment, works and 1-year operation and maintenance)	8,000,000	55.4% of total expenditure claimed*
	TOTAL	8,000,000	

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

SCHEDULE 3

Execution of Project

Implementation Arrangements

1. The Recipient, acting through the Project Executing Agency, and the Implementing Agency 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.

Environment

2. The Recipient shall ensure, or cause the Implementing Agency to 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

3. The Recipient shall ensure, or cause the Implementing Agency to 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 related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Recipient relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; and (c) all measures and requirements set forth in the RP, and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

4. Without limiting the application of the Involuntary Resettlement Safeguards or the RP, the Recipient shall ensure, or cause the Implementing Agency to ensure, that no physical or economic displacement takes place in connection with the Project until:

- (a) compensation and other entitlements have been provided to affected people in accordance with the RP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the RP.

Indigenous Peoples

5. The Recipient shall ensure, or cause the Implementing Agency to ensure, that the Project does not have any indigenous peoples impacts, within the meaning of the Safeguard Policy Statement. 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

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

Safeguards – Related Provisions in Bidding Documents and Works Contracts

7. The Recipient shall ensure, or cause the Implementing Agency to 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, the EMP and the RP (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, the EMP and the RP;
- (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

8. The Recipient shall do the following, or cause the Implementing Agency to 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, the EMP and the RP, 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 or the RP promptly after becoming aware of the breach.

Prohibited List of Investments

9. The Recipient shall ensure, or cause the Implementing Agency to 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

10. The Recipient shall ensure, or cause the Implementing Agency to 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.

11. The Recipient shall strictly monitor compliance with the requirements set forth in paragraph 10 above and provide ADB with regular reports.

Gender and Development

12. The Recipient shall ensure, or cause the Implementing Agency to 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

13. The Recipient shall make available, through budgetary allocations or other means, all counterpart funds required for the timely and effective implementation of the Project, including funds required to (a) meet any additional costs arising from design changes, price escalation in construction costs or other unforeseen circumstances as required, and following consultation and agreement between the Recipient and ADB; (b) ensure the Project Executing Agency and Implementing Agency have sufficient funds to satisfy liabilities arising from any Works, Goods and/or Services contract; and (c) ensure effective and periodic operation and maintenance of the Works, both during and after completion of the Project, and in accordance with sound applicable financial, business and development practices.

Procurement

14. The Recipient shall ensure, or cause the Implementing Agency to ensure, that:
- (a) the procurement of Goods, Works and Services is carried out in accordance with the Procurement^a 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;
 - (c) Goods, Works and Services may also be procured under the Project from non-member countries of ADB; and
 - (d) (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.

Conditions to Award of Contract

15. The Recipient shall ensure, or cause the Implementing Agency to ensure, that no Works contract which involves environmental impacts is awarded until:
- (a) MELAD has granted the final approval of the IEE; and
 - (b) the Implementing Agency has incorporated the relevant provisions from the EMP into the Works contract.

16. The Recipient shall ensure, or cause the Implementing Agency to ensure, that no Works contract which involves involuntary resettlement impacts is awarded until the Recipient has prepared and submitted to ADB the final RP based on the Project's detailed design, and obtained ADB's clearance of such RP.

Financial Covenants

17. (a) The Recipient shall cause the Implementing Agency to achieve an operating expense ratio of no greater than 1.0 for the financial year ending 31 December 2022 and each financial year thereafter.

(b) For the purpose of subparagraph (a) hereinabove, "operating expense ratio" means the ratio of total operating expense to total operating revenues; "operating revenue" means revenues from sales of electricity; and "operating expense" means operating expenses including expenses attributable to operation and maintenance, depreciation and, to the extent possible, debt service requirements in excess of depreciation.

18. (a) The Recipient shall cause the Implementing Agency to achieve day sales outstanding of no more than:

- (i) 100 for the financial year ending 31 December 2021;
- (ii) 90 for the financial year ending 31 December 2022; and
- (iii) 50 for the financial year ending 31 December 2023 and each financial year thereafter.

(b) For purpose of subparagraph (a) hereinabove, "day sales outstanding" means the average number of days required for collection of payment following sale of electricity, calculated by dividing the amount of accounts receivable for each financial year by the total value of credit sales during the same financial year, and multiplying the result by the number of days in the period measured.

19. The Recipient shall, by no later than 31 December 2022, finalize a plan for the payment of direct subsidies to the Implementing Agency to promote its self-sustainability and ensure its ability to meet core cash flow needs. Such plan shall provide the framework for the allocation of annual subsidies to the Implementing Agency to enable it to achieve an annual ratio of operating expenses to revenue of no greater than 1.0.

20. The Recipient shall cause the Implementing Agency, by no later than 31 December 2022, to establish an audit committee of its board of directors, with formal terms of reference developed in accordance with internationally-accepted corporate governance practices, and to which the internal audit function of the Implementing Agency shall report.

21. The Recipient shall ensure that (a) payments to the Implementing Agency for duly invoiced services are paid in a timely manner, and (b) arrears in payments by the Recipient to the Implementing Agency do not exceed 1 year.

Tariff Adjustments

22. For the financial year ending 31 December 2021 and each financial year thereafter, the Recipient shall cause the Implementing Agency to submit annual petitions for tariff revisions, in accordance with national tariff policies and regulations, and ensure such tariff petitions take into consideration (a) the minimum tariff level to cover basic operating costs, debt service and capital replacement; (b) available data concerning affordability to users and users' willingness to pay; (c) recent tariff escalations; and (d) the outcome of public consultations undertaken by the Implementing Agency as part of its tariff assessment and application process.

23. The Recipient shall ensure that the tariffs determined for the Implementing Agency are adequate to cover its operating costs, maintenance, depreciation and financing costs. The

Recipient shall, and shall cause the Implementing Agency to, (a) make continuous efforts to rationalize tariffs to achieve full cost recovery, in accordance with national tariff policies and regulations; and (b) undertake a periodic review of tariffs and fees, including an assessment of their impact on poor and vulnerable populations.

Governance and Anticorruption

24. The Recipient, the Project Executing Agency and the Implementing Agency 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.

25. The Recipient, the Project Executing Agency and the Implementing Agency 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.