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GRANT NUMBER 0652-KIR(SF)

GRANT AGREEMENT  
(Special Operations)  
(South Tarawa Water Supply Project)

between

REPUBLIC OF KIRIBATI

and

ASIAN DEVELOPMENT BANK

DATED 6 NOVEMBER 2020

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KIR 49453

## **GRANT AGREEMENT (Special Operations)**

GRANT AGREEMENT dated 6 NOVEMBER 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 Recipient has also applied to the World Bank for a grant of twelve million nine hundred sixty thousand Dollars (\$12,960,000) ("WB Grant") for the purposes of cofinancing expenditures under the Project, and the World Bank intends to make the WB Grant available to the Recipient under a grant agreement to be entered into between the Recipient and the World Bank ("WB Grant Agreement");

(C) the Recipient has also applied to the Green Climate Fund ("GCF") for a grant in the amount of twenty-eight million six hundred thirty thousand Dollars (\$28,630,000) ("GCF Grant") for the purposes of cofinancing expenditures under the Project;

(D) by a grant agreement of even date herewith between the Recipient and ADB ("GCF Grant Agreement"), ADB, acting in its capacity as an accredited entity of GCF in accordance with the Accredited Master Agreement dated 17 August 2017 ("AMA") and the Funded Activity Agreement dated 21 September 2020 ("FAA") between GCF and ADB, has agreed to provide the GCF Grant to the Recipient; 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;

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 Guidelines” means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);
- (b) “Consulting Services” means the services to be financed out of the proceeds of the Grant and the GCF Grant for the activities described in paragraph 2 of Schedule 1 to this Grant Agreement;
- (c) “Desalination Plants” means collectively (i) a 3,500 cubic meter per day desalination plant at Betio, South Tarawa; and (ii) a 2,500 cubic meter per day desalination plant at Mckenzie, South Tarawa;
- (d) “EMP” means the environmental management plan for the Project, including any update thereto, incorporated in the IEE;
- (e) “Environmental Safeguards” means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (f) “ESIA” means the environmental and social impact assessment for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;
- (g) “GAP” means the gender action plan prepared for the Project, including any update thereto, and agreed to between the Recipient and ADB;
- (h) “Goods” means equipment and materials to be financed out of the proceeds of the Grant, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;
- (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) “MFED” means the Recipient’s Ministry of Finance and Economic Development, or any successor thereto;
- (l) “MISE” means the Recipient’s Ministry of Infrastructure and Sustainable Energy or any successor thereto;
- (m) “PAM” means the project administration manual for the Project dated 21 February 2019 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) “PMU” means project management unit;

- (o) “Procurement Guidelines” means ADB’s Procurement Guidelines (2015, as amended from time to time);
- (p) “Procurement Plan” means the procurement plan for the Project dated 21 February 2019 and agreed between the Recipient and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;
- (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) “PUB” means the Public Utilities Board;
- (s) “RF” means the resettlement framework for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;
- (t) “RP” means the resettlement plan for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;
- (u) “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;
- (v) “SPS” means ADB’s Safeguard Policy Statement (2009);
- (w) “Water Supply Network” means the water supply distribution network in South Tarawa;
- (x) “WASH” means water, sanitation, and hygiene; and
- (y) “Works” means construction or civil works as set out in the Procurement Plan to be financed out of the proceeds of the Grant and the GCF Grant, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

## **ARTICLE II**

### **The Grant**

Section 2.01. ADB agrees to make available to the Recipient from ADB’s Special Funds resources an amount of thirteen million Dollars (\$13,000,000).

### **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. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2027 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 4 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 and Works, and any relevant records and documents.

## **ARTICLE V**

### **Suspension**

Section 5.01. The following are specified as additional events for suspension of the right of the Recipient to make withdrawals from the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations:

- (a) the Recipient has failed to perform one or more of its obligations under the GCF Grant Agreement or the WB Grant Agreement; or
- (b) the GCF Grant or the WB Grant has become liable for suspension or cancellation for any reason whatsoever.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following is specified as an additional condition to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations: the GCF Grant Agreement shall have been duly executed and delivered, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Grant Agreement) shall have been fulfilled or arrangements satisfactory to ADB shall have been made for the fulfillment thereof within a period of time satisfactory to ADB.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(c) of the Grant Regulations, to be included in the opinion or opinions to be furnished to ADB: that the GCF Grant Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Recipient, and is legally binding upon the Recipient in accordance with its terms.

Section 6.03. 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 VII**

### **Termination**

Section 7.01. The Grant Agreement and all obligations of the parties thereunder shall terminate on a date 15 years after the date of this Agreement.

## **ARTICLE VIII**

### **Miscellaneous**

Section 8.01. 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 8.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

#### For the Recipient

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

#### For ADB


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

Facsimile Numbers:

(632) 636-2444  
(632) 636-2388.

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   
LEAH GUTIERREZ  
Director General  
Pacific Department



**SCHEDULE 1****Description of the Project**

1. The objective of the Project is to increase access of the Recipient's population to safe and climate-resilient water supplies.
2. The Project shall comprise:
  - (a) the design and construction of the Desalination Plants and rehabilitation of the Water Supply Network to minimize leakages and add new metered household connections to the Water Supply Network;
  - (b) the operation and maintenance of the Desalination Plants and rehabilitated Water Supply Network for a period of five years after completion of the Desalination Plants and rehabilitation of the Water Supply Network, respectively, and the provision of consulting support to MISE and PUB in key result areas, vocational training and operations and maintenance of the Desalination Plants and Water Supply Network;
  - (c) implementation of a comprehensive and intensive five-year WASH and climate change awareness program; and
  - (d) provision of consulting support for the PMU.
3. The Project is expected to be completed by 30 June 2027.

## SCHEDULE 2

### Allocation and Withdrawal of Grant Proceeds

#### General

1. The table attached to this Schedule sets forth the Categories 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.

#### Condition for Withdrawals from Grant Account

5. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from the Grant Account for the Water Supply until the WB Grant Agreement has been duly executed and delivered, and all conditions precedent to its effectiveness have been fulfilled or arrangements satisfactory to ADB have been made for the fulfilment thereof within a period of time satisfactory to ADB.

**TABLE**

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS</b>			
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (\$)</b>	<b>Basis for Withdrawal from the Grant Account</b>
		<b>Category</b>	
1	Water Supply***	8,222,000	22% of total expenditure claimed*
2	Consulting Services	3,857,000	61.94% of total expenditure claimed*
3	Unallocated**	921,000	
	<b>TOTAL</b>	<b>13,000,000</b>	

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

\*\*Includes physical and price contingencies.

\*\*\*Subject to the condition for withdrawal described in paragraph 5 of Schedule 2.

### **SCHEDULE 3**

#### **Procurement of Goods, Works and Consulting Services**

##### General

1. The procurement of Goods, Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. Except as ADB may otherwise agree, Goods and Works shall be procured and Consulting Services shall be selected and engaged only on the basis of the procurement method and the selection methods set forth below. These methods are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the procurement method and the selection methods or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.
3. All terms used in this Schedule and not otherwise defined in this Grant Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

##### Goods and Works

4. Goods and Works shall be procured on the basis of procurement method set forth herein: International Competitive Bidding.

##### Conditions for Award of Contract

5. The Recipient shall not award any Works contracts which involves environmental impacts until:
  - (a) the Recipient's Ministry of Environment, Land and Agricultural Development has granted the final approval of the ESIA; and
  - (b) the Recipient has incorporated the relevant provisions from the EMP into the Works contract.
6. The Recipient shall not award any Works contract which involves involuntary resettlement impacts, 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.

##### Consulting Services

7. Except as set forth in the paragraph below, the Recipient shall apply Quality- and Cost-Based Selection for Consulting Services.
8. The Recipient shall recruit the individual consultants for the PMU in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

9. (a) The Recipient shall ensure that all Goods and Works 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 of any third party.

(b) The Recipient shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

10. 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 or intellectual property right or claim of any third party.

ADB's Review of Procurement Decisions

11. Contracts procured under international competitive bidding procedures and contracts 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.

## **SCHEDULE 4**

### **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 the Grant Agreement, the provisions of the Grant Agreement shall prevail.

#### Counterpart Support

2. 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 any funds required to (a) mitigate unforeseen environmental and social impacts; and (b) meet any additional costs arising from design changes, price escalations in construction or installation costs or other unforeseen circumstances.

3. The Recipient shall ensure that its Cabinet issues a resolution on an annual basis pursuant to which it shall allocate a sufficient budget or subsidy to meet any funding shortfalls for the operations and maintenance of the Desalination Plants and water supply systems in South Tarawa including the Water Supply Network.

4. The Recipient shall ensure that the Project activities, with the exception of Consulting Services provided by national consultants, are exempt from all taxes and duties imposed within the territory of the Recipient and that Works contractors and other Service providers receive a written exemption from such taxes and duties at the time of award of contract.

#### Environment

5. 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 ESIA, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

#### Land Acquisition and Involuntary Resettlement

6. 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 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 RF and the RP, and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

7. Without limiting the application of the Involuntary Resettlement Safeguards, the RF or the RP, the Recipient shall 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 RF and the final RP; and
- (b) a comprehensive income and livelihood restoration program, if required, has been established in accordance with the RF and the final RP.

#### Indigenous Peoples

8. The Recipient shall ensure that the Project does not impact indigenous peoples within the meaning of the SPS. If due to unforeseen circumstances, the Project impacts indigenous peoples, the Recipient shall take all steps necessary or desirable to ensure that the Project complies with all applicable laws and regulations of the Recipient and with the SPS.

#### Conditions for Award of Contract

9. The Recipient shall not award any Works contract which involves environmental impacts until:

- (a) the Environment and Conservation Division of the Recipient's Ministry of Environment, Lands and Agricultural Development has granted the final approval of the ESIA; and
- (b) the Recipient has incorporated the relevant provisions from the EMP into the Works contract.

10. The Recipient shall not award any Works contract which involves involuntary resettlement impacts, 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.

#### Human and Financial Resources to Implement Safeguards Requirements

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

#### Safeguards – Related Provisions in Bidding Documents and Works Contracts

12. 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 ESIA, the EMP, the RF and the final 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 impacts that arise during construction, implementation or operation of the Project that were not considered in the ESIA, the EMP, the RF and the final 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

13. The Recipient shall do the following:

- (a) submit semiannual 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 ESIA, the EMP, the RF 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, the RF or the RP promptly after becoming aware of the breach.

#### Prohibited List of Investments

14. 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.

#### Gender and Development

15. 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; (d) progress on implementation of the GAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.



Labor Standards, Health and Safety

16. The Recipient shall ensure that the core labor standards and the applicable laws and regulations of the Recipient 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 applicable labor law and regulations of the Recipient and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate against 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.

17. The Recipient shall strictly monitor compliance with the requirements set forth in paragraph 16 above and provide ADB with regular reports.

Procurement

18. The Recipient shall announce the Project and business opportunities associated with the Project on its website. The website shall disclose the following information in relation to goods and services procured for the Project: (a) the list of participating bidders; (b) the name of the winning bidder; (c) the amount of the contracts awarded; and (d) the goods and services procured. In accordance with the Procurement Guidelines, the published information for International Competitive Bidding contracts shall also include the bid prices as read out at bid opening, the reasons for rejection of unsuccessful bidders, and the duration of the awarded contract.

Governance and Anticorruption

19. The Recipient 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.

20. The Recipient 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.