
GRANT NUMBER 0713-KIR(SF)

GRANT AGREEMENT
(Special Operations)

(Outer Islands Transport Infrastructure Investment Project)

between

REPUBLIC OF KIRIBATI

and

ASIAN DEVELOPMENT BANK

DATED 20 JULY 2020

KIR 53043

GRANT AGREEMENT (Special Operations)

GRANT AGREEMENT dated 20 July 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 International Development Association ("IDA") for a grant of thirty million Dollars (\$30,000,000) ("IDA Grant") for the purposes of cofinancing expenditures under the Project and by a financing agreement between the Recipient and IDA dated 22 March 2020 ("IDA Financing Agreement"), IDA has agreed to make the IDA Grant available to the Recipient;

(C) on the request of the Recipient, ADB has agreed that the procurement of Project components that are to be jointly financed by ADB and IDA will be undertaken under alternative procurement arrangements set out in the Procurement Framework Agreement between ADB and IDA dated 3 December 2018 and in furtherance of this agreement, ADB and IDA will enter into a Project Implementation Agreement ("PIA") which will apply IDA's procurement regulations and procedures for jointly financed Project components; 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 set out in the Procurement Plan, and to be financed out of the proceeds of the Grant and the IDA Grant;

- (b) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (c) "ESIA" means an initial environmental examination, within the meaning of the SPS, for a Project component, including any update thereto, prepared and submitted by the Recipient pursuant to the requirements set forth in the ESMF and cleared by ADB;
- (d) "ESMF" means the environmental assessment and review framework, within the meaning of the SPS, for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;
- (e) "ESMP" means an environmental management plan, within the meaning of the SPS, for a Project component, including any update thereto, incorporated in the ESIA;
- (f) "GAP" means the gender action plan prepared for the Project, including any update thereto, and agreed to between the Recipient and ADB;
- (g) "Goods" means equipment and materials as set out in the Procurement Plan and to be financed out of the proceeds of the Grant and the IDA Grant, including any related Nonconsulting Services such as transportation, insurance, installation, commissioning, training, and initial maintenance;
- (h) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;
- (i) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (j) "Nonconsulting Services" means nonconsulting services as set out in the Procurement Plan, and to be financed out of the proceeds of the Grant and the IDA Grant;
- (k) "PAM" means the project administration manual for the Project dated 11 May 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;
- (l) "Procurement Framework" means the World Bank Procurement Regulations for Investment Project Financing (IPF) Borrowers dated July 2016 and revised in November 2017 and August 2018 (as amended from time to time) except that if the PIA is duly terminated, it shall mean ADB's Procurement Policy - Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time) and ADB's Procurement Regulations for ADB Borrowers - Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);

- (m) "Procurement Plan" means the procurement plan for the Project dated 11 May 2020 and agreed between the Recipient and ADB, as updated from time to time in accordance with the Procurement Framework and other arrangements agreed with ADB;
- (n) "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means the Recipient's Ministry of Finance and Economic Development or any successor thereto acceptable to ADB, which is responsible for carrying out the Project;
- (o) "Project facilities" means the facilities to be improved, constructed or provided under the Project;
- (p) "Resettlement Framework" means the resettlement framework for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;
- (q) "Resettlement Plan" means a resettlement plan for a Project component, including any update thereto, prepared and submitted by the Recipient pursuant to the requirements set forth in the Resettlement Framework and cleared by ADB;
- (r) "Safeguards Monitoring Report" means each report prepared and submitted by the Recipient to ADB that describes progress with implementation of, and compliance with, each ESMP and Resettlement Plan, including any corrective and preventative actions;
- (s) "Services" means Consulting Services and Nonconsulting Services;
- (t) "SPS" means ADB's Safeguard Policy Statement (2009); and
- (u) "Works" means construction or civil works as set out in the Procurement Plan and to be financed out of the proceeds of the Grant and the IDA 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 twelve million Dollars (\$12,000,000).

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 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 and Works, and any relevant records and documents.

ARTICLE V

Suspension

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

Section 6.02. 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 VII

Termination

Section 7.01. The Grant Agreement and all obligations of the parties thereunder shall terminate on a date 20 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 improve the safety and resilience of transport connectivity on four outer islands of the Recipient, being Abaiang, Nonouti, Beru, and Tabiteuea South.

2. The Project shall comprise the following parts:

Part 1: Improvement in safety of inter-island navigation

- (i) Completing hydrographic surveys and nautical charts; and
- (ii) Installing tide gauges and current meters.

Part 2: Improvement in resilience of outer island access infrastructure

- (i) Replacing defective aids to navigation, fabricating and installing new aids to navigation, and establishing a system of maintenance for the same;
- (ii) Constructing and rehabilitating outer island access infrastructure including jetties, concrete boat ramps, and shelters; and
- (iii) Providing technical support for the rehabilitation of island-crossing causeways and construction of multipurpose maritime facilities.

Part 3: Enabling environment strengthened

Providing training and support to strengthen the institutional and regulatory functions of the implementing agencies, including to identify and develop a pipeline of future sector investments.

3. The Project is expected to be completed by 30 June 2026.

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.

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	10,500,000	46.6% of total expenditure claimed
2	Goods and Consulting Services (Outer islands implementation unit)	1,500,000	30.0% of total expenditure claimed
	TOTAL	12,000,000	

SCHEDULE 3

Execution of Project; Financial Matters

Implementation Arrangements

1. The Recipient and the Project Executing 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.

Procurement

2. The Recipient and the Project Executing Agency shall ensure that:
 - (a) the procurement of Goods, Works and Services is carried out in accordance with the Procurement Framework;
 - (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 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 will not award any Works contract which involves environmental impacts until:
 - (a) the Recipient's Ministry of Environment, Lands and Agricultural Development has granted final approval of the respective ESIA; and
 - (b) the Recipient has incorporated the relevant provisions from the respective ESMP into the Works contract.
4. The Recipient will not award any Works contract which involves involuntary resettlement impacts, until the Recipient has prepared and submitted to ADB the final Resettlement Plan for the Project site based on the Project's detailed design and obtained ADB's clearance of such Resettlement Plan.

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; (c) the ESMF; (d) all measures and requirements set forth in the respective ESIA and ESMP, 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; (c) the Resettlement Framework; and (d) all measures and requirements set forth in the respective Resettlement Plan, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

7. Without limiting the application of the Involuntary Resettlement Safeguards, the Resettlement Framework or the respective Resettlement Plan, 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 Resettlement Framework and the respective Resettlement Plan; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the Resettlement Framework and the respective Resettlement Plan.

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.

Human and Financial Resources to Implement Safeguards Requirements

9. The Recipient shall make available necessary budgetary and human resources to fully implement each ESMP, the Resettlement Framework and each Resettlement Plan.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

10. 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 respective ESIA, ESMP, Resettlement Framework and Resettlement Plan (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 respective ESIA, ESMP, Resettlement Framework or Resettlement Plan;
- (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

11. 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 any ESIA, EMP, Resettlement Framework or Resettlement Plan, 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 any ESMP, Resettlement Framework or Resettlement Plan promptly after becoming aware of the breach.

Prohibited List of Investments

12. 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

13. 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.

14. The Recipient shall strictly monitor compliance with the requirements set forth in paragraph 13 above and provide ADB with regular reports.

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; 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

16. 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 for: (a) compensation costs for safeguard impacts; (b) mitigation of unforeseen environmental and social impacts; and (c) any additional costs arising from design changes, financing gaps, or construction or installation costs.

17. The Recipient shall ensure the allocation and availability of a sufficient budget or subsidy, on an annual basis, for the operations and maintenance of Project facilities and ensure that the Project facilities are included in an asset management information system established to account for the assets of the Recipient.

Governance and Anticorruption

18. 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.

19. 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.