
GRANT NUMBER 0570-REG(SF)

GRANT AGREEMENT
(Special Operations)
(Improving Internet Connectivity for Micronesia Project)

between

REPUBLIC OF KIRIBATI

and

ASIAN DEVELOPMENT BANK

DATED 2 MAY 2018

REG 50348

**GRANT AGREEMENT
(Special Operations)**

GRANT AGREEMENT dated 2 May 2018 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 Bwebweriki Net Limited ("BNL"), and for this purpose the Recipient will make available to BNL the proceeds of the grant provided for herein upon terms and conditions satisfactory to ADB; and

(C) 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 BNL;

NOW THEREFORE the parties hereto 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, 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 BNL, 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)(i), 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 "BNL".

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) "BNL" means the Bwebweriki Net Limited established under the laws and regulations of Kiribati with registered address at Nanikai, South Tarawa, Republic of Kiribati;
- (b) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers (2013, as amended from time to time);
- (c) "CUA" means Capacity Use Agreement between BNL and SXC;
- (d) "EA" or the "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means Ministry of Finance and Economic Development or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
- (e) "EMP" or "Environmental Management Plan" means each and any of the environmental management plans for the Project, including any update thereto, incorporated in an IEE;
- (f) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (g) "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;
- (h) "IA" or the "Project Implementing Agency" for the purposes of, and within the meaning of, the Grant Regulations means BNL or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
- (i) "IEE" or "Initial Environmental Examination" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;
- (j) "LPA" means Landing Party Agreement between BNL and SXC;
- (k) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (l) "MPA" means the Master Purchase Agreement between BNL and SXC;
- (m) "PAM" means the project administration manual for the Project dated 18 January 2018 and agreed between the Recipient, the EA, the IA and ADB, as updated from time to time in accordance with the respective administrative procedures of the Recipient and ADB;
- (n) "PPMS" means project performance monitoring system;
- (o) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);

- (p) "Project facilities" means the facilities to be improved, rehabilitated, modernized, constructed, operated and/or maintained, and the equipment to be installed and maintained under the Project;
- (q) "Safeguards Monitoring Report" means each report prepared and submitted by the Recipient through the IA to ADB that describes progress with implementation of, and compliance with, the EMP, including any corrective and prevention actions;
- (r) "SPS" or "Safeguard Policy Statement" means ADB's Safeguard Policy Statement (2009);
- (s) "Subsidiary Grant Agreement" means the agreement between the Recipient and BNL described in Section 3.01(a) of this Grant Agreement;
- (t) "SXC" means Southern Cross Cable Company; and
- (u) "Works" means construction or civil works to be financed out of the proceeds of the Grant, including services such as drilling or mapping, 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-one million and six hundred thousand Dollars (\$21,600,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall:

- (a) make the proceeds of the Grant available to BNL as a grant under the Subsidiary Grant Agreement upon terms and conditions satisfactory to ADB; and
- (b) cause BNL to apply such proceeds 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. (a) Except as ADB may otherwise agree, the Recipient shall cause all items of expenditure financed out of the proceeds of the Grant to be used exclusively in the carrying out of the Project; and

(b) 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. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Recipient and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 3.04. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2022 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. 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.

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

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: the execution and delivery of the Subsidiary Grant Agreement on behalf of the Recipient and BNL, in form and substance satisfactory to ADB, shall have become legally binding upon the Recipient and BNL in accordance with its terms.

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

Miscellaneous

Section 6.01. 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 6.02. 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
PO Box 67, Bairiki
Tarawa, Kiribati

For ADB

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

Facsimile Numbers:

+63 2 636-2444
+63 2 636-2388.

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 

TEUEA TOATU
Minister of Finance

ASIAN DEVELOPMENT BANK

By 

STEPHEN P. GROFF
Vice-President

SCHEDULE 1**Description of the Project**

1. The objective of the Project is to improve telecommunications in Micronesia.
2. The Project shall comprise:
 - (a) financing of the MPA, LPA and CUA between BNL and SXC; and
 - (b) support for PMU costs.
3. The Project is expected to be completed by 30 June 2022.

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 Grant shall be disbursed on the basis of the withdrawal percentage for each item of expenditure 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, in consultation with, and 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, in consultation with, and 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.

Retroactive Financing

5. 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, subject to a maximum amount equivalent to 20% of the Grant amount.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Improving Internet Connectivity for Micronesia Project)			
Number	Item	Total Amount Allocated for ADB Financing (\$) Category	Basis for Withdrawal from the Grant Account
1	SXC Contracts	20,000,000	100% of total expenditure claimed*
2	Project Management Unit	500,000	100% of total expenditure claimed
3	Unallocated	1,100,000	
	TOTAL	\$21,600,000	

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

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 Consulting Guidelines, respectively.
2. All terms used in this Schedule and not otherwise defined in this Grant Agreement shall have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Procurement for Goods and Works

3. (a) The Recipient shall have selected SXC in a transparent manner through procedures acceptable to ADB.

(b) The Recipient and BNL shall cause SXC to apply its own procedures for procurement of Goods and Works, provided such procedures are applied in a transparent manner, preferably through competitive bidding procedures.

Consulting Services

4. The Recipient shall apply quality- and cost-based selection for Consulting Services.
5. The Recipient shall recruit the individual consultants for procurement specialist in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

6. (a) The Recipient and BNL shall cause SXC to 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 and BNL shall cause SXC to 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.

SCHEDULE 4

Execution of Project; Financial Matters

Implementation Arrangements

1. The Recipient, the EA and the IA 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.
2. (a) The Recipient and IA shall ensure that towards smooth implementation of the Project, grievances if any from stakeholders, relating to any project implementation or use of funds are addressed effectively and efficiently.

(b) The Recipient shall ensure that the EA and the IA complies with all the requirements and obligations on its part as included in this Grant Agreement and the Project Agreement to meet the objectives of the project in a timely and efficient manner.
3. The Recipient, the EA and the IA shall enable ADB's representatives to review and examine the Project facilities, the Goods and Works, and any relevant records and documents. The Recipient, the EA and the IA shall ensure that all contracts financed by ADB shall include provisions specifying the right of ADB to review and examine the records and accounts of the Recipient, the EA, the IA, SXC, and all contractors, suppliers, consultants, and other service providers. The Recipient, the EA and the IA shall allow and assist ADB's representatives to carry out random spot checks on the work in progress and utilization of funds for the Project, and shall ensure that all contracts financed by ADB shall include such provision.

Operational

4. The Recipient and BNL shall include specific provisions acceptable to ADB in the MPA, CPU and LPA to ensure compliance by SXC with relevant ADB policies and procedures, including those on procurement, safeguards, social dimensions, and anticorruption.

Counterpart Funds

5. The Recipient shall provide, or cause the EA and the IA to provide, as necessary, respective counterpart staff, land, facilities, and funding required for timely and effective implementation of the Project, including, without limitation, any funds required (a) to meet any shortfall in implementation of the Project; (b) to mitigate unforeseen environmental or social impacts; and (c) to meet any additional costs arising from price escalation and/or unforeseen circumstances.

Resources

6. The Recipient shall ensure that BNL shall have adequate staff, resources, and facilities to implement the Project.

Grievance Redress Mechanism

7. The Recipient shall establish and maintain, or cause BNL to establish and maintain, a grievance redress mechanism acceptable to ADB for the purpose of addressing any grievances arising out of the Project, including those from affected peoples concerning land acquisition, environment and any other social issues in a timely manner.

Safeguards and SocialSafeguards

8. The Recipient shall ensure, or cause the IA to ensure, that construction works under the Project do not involve significant adverse environmental impacts which may be classified as category A under the SPS or its related rules/manuals.

9. The Recipient shall ensure, or cause the IA to ensure, that the Project does not involve any resettlement or indigenous people risks or impacts within the meaning of the SPS.

Environment

10. The Recipient shall ensure, or cause the IA 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 and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Involuntary Resettlement and Indigenous Peoples

11. The Recipient shall ensure, or cause the IA to ensure, that the Project do not have any indigenous peoples or involuntary resettlement impacts, all within the meaning of SPS. In the event that the Project does have any such impact, the Recipient shall take steps, or cause the IA to take steps, to ensure that the preparation, design, construction, implementation and operation of the Project comply with (a) all applicable laws and regulations of the Recipient; (b) the SPS; and (c) any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Human and Financial Resources to Implement Safeguards Requirements

12. The Recipient shall ensure, or cause the IA to ensure, that private entities make available all necessary budgetary and human resources to fully implement the EMP as required.

Safeguards-Related Provisions in Bidding Documents and Works Contracts

13. The Recipient shall ensure, or cause the IA to ensure, that SXC:

- (a) comply with the measures and requirements relevant to the contractor set forth in the IEE, the RP and the EMP, and any corrective or preventative actions set forth in a Safeguard Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the IA with a written notice of any unanticipated environmental risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE, the RP, or the EMP;
- (d) adequately record the condition of roads, agricultural land the other infrastructure prior to starting to transport materials and construction; and
- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

14. The Recipient shall do, or cause the IA 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 RP or the EMP, as applicable, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
 - (a) report any breach of compliance with the measures and requirements set forth in the EMP promptly after becoming aware of the breach.

Social

15. The Recipient and the IA shall ensure, or cause SXC to ensure, that the Works contracts under the Project follow all applicable labor laws of the Recipient and that these further include provisions to the effect that the contractors (a) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction; and (b) follow and implement all statutory provisions on labor (including not employment or using children as labor, equal pay for equal work), health, safety, welfare, sanitation, and working conditions. Such contracts shall also include clauses for termination in case of any breach of the stated provisions by the contractors.

Prohibited List of Investments

16. The Recipient shall ensure, or cause the EA and the IA to ensure, that no proceeds of the Grant under the Project are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Governance and Anticorruption

17. The Recipient, the EA and the IA shall comply with ADB's Anticorruption Policy (1998, as amended to date) and (a) shall ensure that the anticorruption provisions acceptable to ADB, the Recipient, the EA and the IA are included in all bidding documents and contracts financed by ADB in connection with the Project, including provisions specifying the right of ADB to review and examine the records and accounts of BNL, SXC, and all contractors, suppliers, consultants, and other service providers as they relate to the Project, and as included in the PAM, (b) shall allow and assist ADB's representatives to carry out random spot checks on the work in progress and utilization of funds for the Project; (c) 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 (d) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation, and as included in detail in the PAM.

PPMS

18. (a) The IA shall, within 6 months of the Effective Date, establish a PPMS, in form and substance acceptable to ADB, in accordance with the performance indicators agreed with ADB.

(b) The IA shall undertake periodic performance review of the Project in accordance with the PPMS to evaluate the scope, implementation arrangements, progress and achievement of the objectives of the Project.

19. Notwithstanding the generality of Section 2.08 of the Project Agreement, the IA shall also include in the semi-annual progress reports on Project implementation, any benefit monitoring for the Project undertaken pursuant to the PPMS.

Review

20. ADB, the Recipient, the EA and the IA shall meet regularly as required to discuss the progress of the Project and any changes in the implementation arrangements or remedial measure required to be taken to achieve the objectives of the Project.