

---

GRANT NUMBER 0414-NAU (SF)

GRANT AGREEMENT  
(Special Operations)

(Electricity Supply Security and Sustainability Project)

between

NAURU

and

ASIAN DEVELOPMENT BANK

DATED 9 FEBRUARY 2015

---

NAU 46455

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

GRANT AGREEMENT dated 9 February 2015 between NAURU ("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 (the "Project");

(B) by an agreement of even date herewith (Grant No. 0424-NAU [EF]) ("EU Grant Agreement"), ADB has agreed to make the proceeds of a grant from the European Union ("EU Grant") available to the Recipient in an amount equivalent to approximately two million seven hundred thousand Dollars (\$2,700,000) for the purposes of cofinancing expenditures under the Project;

(C) the Project will be carried out by the Nauru Utilities Corporation ("NUC"), and for this purpose the Recipient will make available to NUC the proceeds of the grant provided for herein, as well as the proceeds of the EU Grant, upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a grant ("Grant", and together with the EU Grant, "Grants") 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 NUC;

NOW THEREFORE the parties agree as follows:

### **ARTICLE I**

#### **Grant Regulations; Definitions**

Section 1.01. All the provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 ("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(16) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement of even date herewith between ADB and NUC.

(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 "NUC".

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 as described in paragraph 3 of Schedule 1 to this Grant Agreement;

(c) “DSC” means project design and supervision consultant;

(d) “EMP” or “Environmental Management Plan” 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) “Goods” means equipment and materials to be financed out of the proceeds of the Grants, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(g) “Grant” means the grant described in recital (D) hereinabove;

(h) “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;

(i) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2012, as amended from time to time);

(j) “MOF” means the Ministry of Finance of the Recipient or any successor thereto acceptable to ADB;

(k) “MW” means megawatt;

(l) “NUC” means the Nauru Utilities Corporation, established and operating under the Nauru Utilities Corporation Act (2011) of the Recipient, or any successor thereto acceptable to ADB;

(m) “PAM” means the project administration manual for the Project dated 5 September 2014 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 the Project Management Unit to be set up within NUC for the implementation of the Project;

(o) “Procurement Guidelines” means ADB’s Procurement Guidelines (2013, as amended from time to time);

(p) “Procurement Plan” means the procurement plan for the Project as included in the PAM, 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 MOF or any successor thereto acceptable to ADB;

(r) “Project Implementing Agency” for the purposes of the Project means NUC or any successor thereto;

(s) “Safeguard Policy Statement” or “SPS” means ADB’s Safeguard Policy Statement (2009);

(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, including any corrective and preventative actions;

(u) “Subsidiary Grant Agreement” means the agreement between the Recipient and NUC referred to in Section 3.01(a) of this Grant Agreement and in Section 3.01(a) of the EU Grant Agreement; and

(v) “Works” means construction or civil works to be financed out of the proceeds of the Grants, 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 two million Dollars (\$2,000,000).

## **ARTICLE III**

### **Use of Proceeds of the Grant**

Section 3.01. (a) The Recipient shall make the proceeds of the Grants available to NUC 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 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. 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.

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2016 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. The Recipient shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.03. ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

Section 4.04. The Recipient shall take all actions which shall be necessary on its part to enable NUC 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.

Section 4.05. (a) The Recipient shall exercise its rights under the Subsidiary Grant Agreement in such a manner as to protect the interests of the Recipient and ADB and to accomplish the purposes of the Grants.

(b) No rights or obligations under the Subsidiary Grant Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

## **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 or NUC shall have failed to perform any of its obligations under the EU Grant Agreement; and

(b) the Recipient or NUC shall have failed to perform any of its obligations under the Subsidiary Grant Agreement.

## **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 EU 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: the EU Grant Agreement has been duly executed and delivered, and all conditions precedent to its effectiveness, other than a condition requiring the effectiveness of this Grant Agreement, have been fulfilled, or arrangements satisfactory to ADB have been made for the fulfillment thereof within a period of time satisfactory to ADB.

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**

### **Delegation of Authority**

Section 7.01. The Recipient hereby designates NUC as its agent for the purposes of taking any action or entering into any agreement required or permitted under

Sections 3.02 and 3.03 of this Grant Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Grant Regulations.

Section 7.02. Any action taken or any agreement entered into by NUC pursuant to the authority conferred under Section 7.01 of this Grant Agreement shall be fully binding on the Recipient and shall have the same force and effect as if taken by the Recipient.

Section 7.03. The authority conferred on NUC under Section 7.01 of this Grant Agreement may be revoked or modified by agreement between the Recipient and ADB.

## **ARTICLE VIII**

### **Miscellaneous**

Section 8.01. The Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

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

#### For the Recipient

Ministry of Finance  
Government Offices, Yaren District  
Republic of Nauru

Telephone Number:

+674 557-3133

Facsimile Number:

not available.

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.

NAURU

By   
\_\_\_\_\_  
ANTHONY JAMES BAKER  
Authorized Representative

ASIAN DEVELOPMENT BANK

By   
\_\_\_\_\_  
ANDREA IFFLAND  
Regional Director  
Pacific Liaison and Coordination Office

## **SCHEDULE 1**

### **Description of the Project**

1. The objective of the Project is increased reliability and lower cost of power generation in Nauru.
2. The Project shall comprise:
  - Component A: New diesel-fired generation put into service.  
  
New 2.6 – 3.0 MW diesel-fired generator installed at NUC, together with related auxiliary equipment; NUC personnel trained on the operation and maintenance of the new generator.
  - Component B: Repair and/or replacement of the existing roof and structural reinforcements of NUC's powerhouse.
  - Component C: Efficient project implementation.  
  
Assistance to NUC through the DSCs for efficient project implementation.
3. The Project includes the provision of Consulting Services to support the above stated activities.
4. The Project is expected to be completed by 30 June 2016.

## SCHEDULE 2

### Allocation and Withdrawal of Grant Proceeds

#### General

1. The table attached to this Schedule set forth the Categories of items of expenditure to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant 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 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 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 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 Withdrawal from the Grant Account

5. Notwithstanding any other provision of this Grant Agreement and except as ADB may otherwise agree, no withdrawals shall be made from the Grant Account, unless the Subsidiary Grant Agreement, in form and substance satisfactory to ADB, has been duly

authorized and ratified by, and executed and delivered on behalf of, the Recipient and NUC, and has become legally binding upon the parties thereto in accordance with its terms.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Electricity Supply Security and Sustainability Project)</b>			
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (\$)  Category</b>	<b>Basis for Withdrawal from the Grant Account</b>
1	New Generator Contract**	1,278,723	42.6% of total expenditure claimed*
2	Roof Replacement Contract**	318,723	42.6% of total expenditure claimed*
3	Design and Supervision Consultants**	176,282	42.6% of total expenditure claimed*
4	Unallocated	226,272	
	<b>Total</b>	<b>2,000,000</b>	

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

\*\*Subject to the condition for withdrawal indicated in paragraph 5 of Schedule 2 to this Grant Agreement.

### **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. 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

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of international competitive bidding.
4. The method of procurement is subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the method of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

##### Condition for Award of Contract

5. The Recipient shall not award any Works contract which involves environmental impacts until the Recipient has incorporated the relevant provisions from the EMP into the Works contract.
6. Notwithstanding any other provision of this Grant Agreement and except as ADB may otherwise agree, the Recipient shall not award the civil works contract under Component A of the Project, unless and until NUC has completed preparation of the site, to the satisfaction of ADB, for the construction and/or installation of the new diesel-generator.

##### Consulting Services

7. The Recipient shall apply the following method for selecting and engaging DSCs, in accordance with, among other things, the procedures set forth in the Procurement Plan: Fixed Budget Selection.

##### Industrial or Intellectual Property Rights

8. (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.

9. 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

10. 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 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.
2. The Recipient shall ensure that the PMU, established as part of the NUC, is provided with such staff and resources as necessary for the efficient implementation of the Project.
3. The Recipient and the Project Executing Agency shall ensure that to the extent possible under the prevailing laws of the Recipient, the staff members who will receive training under the Project will be retained in their current positions and will not be transferred unnecessarily, so that the Project can benefit from their skills.

#### Environment

4. The Recipient shall ensure, or cause the Project Executing Agency and Project 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.

#### Indigenous Peoples and Involuntary Resettlement

5. The Recipient shall ensure that the Project does 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 all steps required to ensure that the Project complies with the applicable laws and regulations of the Recipient and with SPS.

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

6. The Recipient shall make available, or cause the Project Executing Agency to make available, necessary budgetary and human resources to fully implement the EMP.

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

7. The Recipient shall ensure, or cause the Project Executing Agency and Project 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 and the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental measures;
- (c) provide the Recipient with a written notice of any unanticipated environmental or resettlement risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE and the EMP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

#### Safeguards Monitoring and Reporting

8. The Recipient shall do the following or cause the Project Executing Agency and the Project Implementing Agency to 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 IEE and the EMP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP promptly after becoming aware of the breach.

#### Labor Standards

9. The Recipient shall ensure that the bidding documents under the Project will include specific provisions to comply with all: (a) applicable labor laws and core labor standards on (i) prohibition of child labor as defined in national legislation for construction and maintenance activities, (ii) equal pay for equal work for equal value regardless of gender, ethnicity or caste, and (iii) elimination of forced labor; and (b) requirement to disseminate information on sexually transmitted diseases including HIV/AIDS to employees and local communities surrounding the project areas.

Counterpart Support

10. The Recipient and the Project Executing Agency shall make available all counterpart funds required for timely and effective implementation of the Project, including any funds required to meet additional costs arising from unforeseen circumstances.

Operation & Maintenance

11. For each of 2016 and 2017, the Recipient shall ensure that sufficient funds are allocated and released to NUC on a timely basis to provide funds for environmental monitoring.

12. For each of 2016 and 2017, the Recipient shall ensure that sufficient funds are allocated and released to NUC on a timely basis to provide funds for the operation and maintenance support from the generation unit vendor.

Reform Measures

13. The Recipient and the Project Executing Agency shall undertake a review of the following sector-wide policy reform areas: (a) restructuring of the size and form of subsidy to NUC, whether direct financial or in-kind, including fuel subsidy; (b) revision of retail electricity tariff to reflect NUC's cost of power generation and service delivery; (c) identification of financially disadvantaged households and targeted provision of subsidy to those households for basic electricity service; (d) mechanism to improve electricity tariff collection efficiency, including installation and refurbishment of consumer meters; and (e) corporate governance restructuring of NUC with the goal of commercial viability and serving shareholder interests.

14. The Recipient shall ensure, and shall cause the Project Executing Agency and the Project Implementing Agency to ensure, that bulk meters are installed and operationalized for each of the generation units at the powerhouse and for the main distribution feeder lines.

15. The Recipient shall ensure, and shall cause the Project Executing Agency and the Project Implementing Agency to ensure, that a system for the following is put in place and operationalized: (a) accurate accounting of NUC's electricity generation; (b) accounting of NUC's self-consumption of electricity; (c) accurate accounting of NUC's fuel consumption for electricity generation; and (d) measurement of NUC's fuel consumption efficiency for electricity generation.

Governance and Anticorruption

16. The Recipient, the Project Executing Agency, and the Project 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.

17. The Project Executing Agency and the Project 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 agency and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

18. The Recipient, the Project Executing Agency, and the Project Implementing Agency shall announce the Project and business opportunities associated with the Project on their websites. Such announcements, when dealing with contracts awarded, shall at least disclose (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. The Project Executing Agency shall designate an officer at the PMU as contact point for queries and complaints with regard to procurement and consulting services recruitment and other implementation activities.