
GRANT NUMBER 0767-FSM(SF)

GRANT AGREEMENT
(Special Operations)
(Chuuk Water Supply and Sanitation Project)

between

FEDERATED STATES OF MICRONESIA

and

ASIAN DEVELOPMENT BANK

DATED 04 DECEMBER 2020

FSM 53284

GRANT AGREEMENT (Special Operations)

GRANT AGREEMENT dated 04 December 2020 between FEDERATED STATES OF MICRONESIA ("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 Chuuk Public Utility Corporation ("CPUC"), and for this purpose the Recipient will make available to CPUC 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 CPUC;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All the provisions of ADB's Special Operations Grant Regulations, dated 1 January 2017 ("Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

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

"Project Agreement" means the project agreement of even date herewith between ADB and CPUC, as such agreement may be amended from time to time; and such project agreement includes all schedules to the Project Agreement; and

(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 "CPUC".

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 described in the Procurement Regulations and set out in the Procurement Plan, and to be financed out of the proceeds of the Grant;
- (b) "CPUC" means Chuuk Public Utility Corporation established pursuant to the Chuuk Public Utility Corporation Act of 1996, or any successor thereto acceptable to ADB;
- (c) "DOFA" means the Department of Finance and Administration of the Recipient;
- (d) "EMP" the environmental management plan for the Project, including any update thereto, incorporated in the IEE;
- (d) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (e) "GAP" means the Gender Action Plan prepared for the Project, including any update thereto, and approved between the Recipient and ADB;
- (f) "Goods" means equipment and materials as set out in the Procurement Plan and to be financed out of the proceeds of the Grant, including any related Nonconsulting Services such as transportation, insurance, installation, commissioning, training, and initial maintenance;
- (g) "IEE" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;
- (h) "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 described in the Procurement Regulations and set out in the Procurement Plan, and to be financed out of the proceeds of the Grant;
- (k) "PAM" means the project administration manual for the Project dated 6 October 2020 and agreed between the Recipient and ADB, as updated from time to time in accordance with the respective administrative procedures of the Recipient and ADB;
- (l) "Procurement Plan" means the procurement plan for the Project dated 6 October 2020 and agreed between the Recipient and ADB, as updated from time to time in accordance with the Procurement Policy, the Procurement Regulations, and other arrangements agreed with ADB;

- (m) "Procurement Policy" means ADB's Procurement Policy - Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (n) "Procurement Regulations" means ADB's Procurement Regulations for ADB Borrowers - Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (o) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means DOFA, or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
- (p) "Project facilities" means the facilities or assets to be constructed, rehabilitated, improved, upgraded or financed under the Project;
- (q) "RP" means the resettlement plan for the Project, including any update thereto, prepared and submitted by the Recipient 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 the EMP and the RP (as applicable), including any corrective and preventative actions;
- (s) "Services" means Consulting Services and Nonconsulting Services;
- (t) "SPS" means ADB's Safeguard Policy Statement (2009);
- (u) "Subsidiary Financing Agreement" means the Subsidiary Financing Agreement between the Recipient and CPUC referred to in Section 3.01 of this Grant Agreement; and
- (v) "Works" means construction or civil works as set out in the Procurement Plan and to be financed out of the proceeds of the Grant, including any related Nonconsulting Services and project related services that are provided as part of a single responsibility or turnkey contract.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources an amount of twelve million seven hundred sixty thousand Dollars (\$12,760,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall, through the Project Executing Agency, make the proceeds of the Grant available to CPUC under the Subsidiary Financing Agreement upon terms and conditions satisfactory for the purpose of carrying out the Project, and shall, through the Project Executing Agency, cause CPUC to apply such proceeds exclusively to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement and the Project Agreement.

Section 3.02. The proceeds of the Grant shall be allocated and withdrawn in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, the Recipient shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Grant in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Withdrawals from the Grant Account in respect of Goods, Works and Consulting Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Works and Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and
- (b) Goods, Works and Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2028 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 and the Project 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, Works and Services, and any relevant records and documents.

Section 4.04. The Recipient shall take all actions which shall be necessary on its part to enable CPUC 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 Financing Agreement in such a manner as to protect the interests of the Recipient and ADB and to accomplish the purposes of the Grant.

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

ARTICLE V

Effectiveness

Section 5.01. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of the Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

ARTICLE VI

Termination

Section 6.01. The Grant Agreement and all obligations of the parties thereunder shall terminate on a date 30 years after the date of this Agreement.

ARTICLE VII

Miscellaneous

Section 7.01. The Secretary of Finance and Administration of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Department of Finance and Administration
P.O. Box PS 158
Palikir, Pohnpei, FM 96941
Federated States of Micronesia

For ADB


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

Facsimile Numbers:

(632) 8636-2444
(632) 8636-2293.

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.

FEDERATED STATES OF MICRONESIA

By 
EUGENE AMOR
Secretary
Department of Finance and
Administration

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 efficiency, climate change and disaster resiliency, and sustainability of safe water supply and sanitation in Chuuk State.
2. The Project shall comprise:
 - (a) provision of continuous and safe water supplies, including (i) installation of new water supply connections for at least 1,000 households; (ii) construction of approximately 10 kilometers of new water mains and expansion of the water supply networks; (iii) development of a new surface water intake on the Wichen River with an associated 1,000 m³/day water treatment plant; (iv) recommissioning of deep wells and development of new deep wells in the Wichap-Epinup area; (v) connection of deep wells to centralize water reservoirs and construction of a booster station at Sapuk; and (vi) installation and replacement of customer meters with prepaid water meters, installation or real-time network monitoring equipment, and repair or replacement of leaking water mains;
 - (b) provision of effective, efficient and safe sanitation, including (i) development and implementation of a wastewater inflow and infiltration management program; (ii) construction of approximately 2.8 kilometers of sewage pipes; (iii) rehabilitation of 2 sewage pumping stations and 11 sewage grinder stations, and (iv) connecting at least 750 households to the sewer system, and (iv) provision of support for the regular desludging of onsite station facilities; and
 - (c) provision of support for strengthening the financial and technical sustainability of CPUC through (i) water supply and sewerage system operator training programs and asset management training programs and (ii) implementation of a new tariff framework.
3. The Project is expected to be completed by 31 December 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 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 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 until the Recipient shall have certified that the Subsidiary Financing Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered, and that all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Grant Agreement) shall have been fulfilled.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS			
Number	Item	Total Amount Allocated for ADB Financing (\$)	Basis for Withdrawal from the Grant Account
		Category	
1	Goods, Works and Services	12,760,000	100% of total expenditure claimed*
	TOTAL	12,760,000	

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

SCHEDULE 3

Execution of Project; Financial Matters

Implementation Arrangements

1. The Recipient shall, through the Project Executing Agency, ensure, or cause CPUC to 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 shall ensure, or shall cause CPUC to ensure, that:
 - (a) the procurement of Goods, Works and Services is carried out in accordance with the Procurement Policy and the Procurement Regulations;
 - (b) Goods, Works and Services shall be procured based on the detailed arrangements set forth in the Procurement Plan, including the procurement and selection methods, the type of bidding documents, and ADB's review requirements. The Recipient may modify the detailed arrangements set forth in the Procurement Plan only with the prior agreement of ADB, and such modifications must be set out in updates to the Procurement Plan; 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 shall not award any Works contracts which involve environmental impacts until:
 - (a) the Environment Protection Agency of the Recipient has granted the final approval of the IEE; and
 - (b) CPUC has incorporated the relevant provisions from the EMP into the Works contract.
4. 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.

Environment

5. The Recipient shall ensure, and shall cause CPUC to ensure, that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Recipient relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

6. The Recipient shall ensure, and shall cause CPUC to ensure, that all land and all rights of-way required for the Project are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with: (a) all applicable laws and regulations of the Recipient relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; and (c) all measures and requirements set forth in the RP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

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

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

Indigenous Peoples

8. The Recipient shall ensure, and shall cause CPUC to ensure, that the Project does not have any impacts on indigenous peoples, all within the meaning of ADB's Safeguard Policy Statement (2009). 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 ADB's SPS.

Human and Financial Resources to Implement Safeguards Requirements

9. The Recipient shall make available, or cause CPUC to make available, necessary budgetary and human resources to fully implement the EMP and the RP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

10. The Recipient shall ensure or cause CPUC to ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE, the EMP and the RP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report;

- (b) make available a budget for all such environmental and social measures;
- (c) provide the Recipient with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP and the RP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

11. The Recipient shall do the following or cause CPUC to do the following:
- (a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
 - (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP and the RP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
 - (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP and the RP promptly after becoming aware of the breach.

Prohibited List of Investments

12. The Recipient shall ensure, and shall cause CPUC to ensure, that no proceeds of the Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor Standards, Health and Safety

13. The Recipient shall ensure, and shall cause CPUC to ensure, that the core labor standards and the Recipient's applicable laws and regulations are complied with during Project implementation. The Recipient shall cause CPUC to 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, or shall cause CPUC to, 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, or shall cause CPUC to ensure, that (a) the GAP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for implementation of the GAP; and (d) progress on implementation of the GAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

Counterpart Support

16. The Recipient shall allocate adequate counterpart financing and staffing for the Project. In addition to the foregoing, the Recipient shall ensure that CPUC has sufficient funds to satisfy its liabilities arising from any Works, Goods and/or Services contract.

Financial Management

17. The Recipient shall ensure and shall cause the CPUC to ensure that the Financial Management Action Plan which provides for specific actions and timelines as set out in the PAM is implemented in accordance with its terms in close coordination with ADB.

Financial Covenants

18. The Recipient shall ensure, and cause CPUC to ensure, that (a) CPUC's operating ratio for water supply operations in fiscal year (FY) 2024 and each year thereafter does not exceed 0.6 and (b) CPUC's operating ratio for sewerage operations in fiscal year (FY) 2024 and each year thereafter does not exceed 0.95. For the purpose of this paragraph, the term "operating ratio" means the ratio of operating expenses, plus cost of goods sold, to net sales.

Operations and Maintenance

19. The Recipient shall ensure and shall cause CPUC to ensure that adequate funding for operations and maintenance of Project facilities are provided during and after Project completion.

Change in Ownership

20. In the event that Recipient or CPUC plans to: (a) make any change in the ownership of the Project facilities or CPUC; (b) sell, transfer or assign CPUC's direct or indirect interest in the Project facilities; or (c) lease or contract out, or otherwise modify CPUC's responsibilities for construction, operation and maintenance of the Project facilities, the Recipient shall at least 6 months prior to implementation of such transaction, consult with ADB and obtain ADB's consent. The Recipient shall also ensure that such transaction is

implemented in a transparent manner and in compliance with all applicable laws and regulations of the Recipient.

Governance and Anticorruption

21. The Recipient, the Project Executing Agency and CPUC 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.

22. The Recipient, the Project Executing Agency and CPUC 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.