
GRANT NUMBER 0490-AFG(SF)

GRANT AGREEMENT
(Special Operations)

(Preparation of Central Asia Regional Economic Cooperation Corridors 5 and 6
(Salang Corridor) Project)

between

ISLAMIC REPUBLIC OF AFGHANISTAN

and

ASIAN DEVELOPMENT BANK

DATED 24 Sep. 2016

AFG 49229

**GRANT AGREEMENT
(Special Operations)**

GRANT AGREEMENT dated 24 Sep 2016 between ISLAMIC
REPUBLIC OF AFGHANISTAN ("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 Afghanistan Infrastructure Trust Fund ("AIF") for a grant of fifteen million nine hundred twenty thousand Dollars (\$15,920,000) ("AIF Grant") to be administered by ADB, for the purposes of cofinancing expenditures under the Project;

(C) by a grant agreement between the Recipient and ADB ("AIF Grant Agreement"), ADB has agreed to make the proceeds of the AIF Grant available to the Recipient upon the terms and conditions set forth therein; 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 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.

Section 1.02. Wherever used in this Grant Agreement, the several terms defined in the Grant Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Grant Agreement have the following meanings:

(a) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(b) "Consulting Services" means the services to be financed out of the proceeds of the Grant and the AIF Grant as described in paragraph 2 of Schedule 1 to this Grant Agreement;

(c) "Ensuing Project" means the proposed Central Asia Regional Economic Cooperation Corridors 5 and 6 (Salang Corridor) Project under which the Salang Corridor will be upgraded and rehabilitated;

(d) "Goods" means equipment and materials to be financed out of the proceeds of the Grant and the AITF Grant, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(e) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);

(f) "PAM" means the project administration manual for the Project dated 16 June 2016 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;

(g) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);

(h) "Procurement Plan" means the procurement plan for the Project dated 16 June 2016 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;

(i) "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means the Ministry of Finance of the Borrower or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project; and

(j) "SPS" means ADB's Safeguard Policy Statement (2009).

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources an amount of fifteen million four hundred fifty thousand Dollars (\$15,450,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. 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.

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

- (a) Goods which are produced in and supplied from and Consulting 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 and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2020 or such other date as may from time to time be agreed between the Recipient and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement.

Section 4.02. (a) The Recipient shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Grant proceeds, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) The Recipient shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Recipient's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of the Recipient, unless the Recipient shall otherwise agree.

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

ARTICLE V

Suspension

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

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

ARTICLE VI

Effectiveness

Section 6.01. The following is specified as an additional condition to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations: the execution and delivery of the AITF Grant Agreement on behalf of the Recipient shall have been duly authorized or ratified by all necessary governmental action and all the conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Grant Agreement) shall have been fulfilled.

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

Section 6.03. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of this Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. 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 7.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Ministry of Finance
Pashtonistan Watt
Kabul
Afghanistan

Facsimile Number:

(93-20) 210-2838.

For ADB

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

Facsimile Numbers:

(63-2) 636-2444
(63-2) 636-2428.

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.

ISLAMIC REPUBLIC OF AFGHANISTAN

By 

EKLIL AHMAD HAKIMI
Minister
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 

THOMAS PANELLA
Country Director
Afghanistan Resident Mission

SCHEDULE 1**Description of the Project**

1. The objective of the Project is to complete the feasibility study, detailed engineering design and procurement actions for the Ensuing Project.
2. The Project shall comprise the following outputs:
 - a. **Completion of the Feasibility Studies for Three Alignment Options:** This output comprises undertaking feasibility studies, including cost estimates, technical, financial, economic, social and environmental analysis for the Ensuing Project; and
 - b. **Completion of the Detailed Engineering Design, Procurement Documentation, Project and Safeguard Documentation:** This output comprises undertaking detailed engineering design; detailed cost estimates; preparation of environmental and social safeguards planning documents for the Ensuing Project; and advance procurement actions, including preparation of bidding documents for the Ensuing Project.
3. The Project is expected to be completed by 30 June 2020.

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 or Subcategory 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, 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 (Preparation of Central Asia Regional Economic Cooperation Corridors 5 and 6 (Salang Corridor) Project)			
Number	Item	Total Amount Allocated for ADB Financing (\$) Category	Basis for Withdrawal from the Grant Account
1	Consulting Services	11,950,000	44% of total expenditure claimed
2	Unallocated	3,500,000	
	Total	15,450,000	

SCHEDULE 3**Procurement of Goods and Consulting Services****General**

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

Goods

4. Goods shall be procured on the basis of International Competitive Bidding.

Consulting Services

5. Except as set forth in the paragraph below, the Recipient shall apply Quality- and Cost-Based Selection for Consulting Services.
6. The Recipient shall recruit individual consultants for high-level advisory support, resolution of highly technical matters and provision of specialist services in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

7. (a) The Recipient shall ensure that all Goods 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 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.
8. 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

9. 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.

10. In the case of a contract for Goods, which is subject to ADB's prior review, the Recipient shall seek ADB's prior approval of any modification or waiver of the terms and conditions of the contract, including:

- (a) granting an extension of the stipulated time for completion of a contract for a period of 1 month or more, or which is likely to require an extension of the Grant Closing Date; and
- (b) increases in aggregate of the original price by more than 5% (for the avoidance of doubt, such increase shall take into account any previous change under such contract).

11. In the case of a contract for Goods, which is subject to ADB's post review, ADB shall review the required contract modification or waiver and respond to the Recipient as soon as practicable, but not later than 1 month after the receipt of the required document.

12. The Recipient shall provide to ADB copies of all time extensions, modifications or waivers to the contracts (including change orders) within 1 month following amendment of the contract.

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.

Counterpart Funds

2. The Recipient shall make available through budgetary allocations or other means, all counterpart funds required for the timely and effective implementation of the Project including any funds required to meet additional costs arising from contractual variations, price adjustments or other unforeseen circumstances.

No Commitment for Ensuing Project

3. The Recipient acknowledges and agrees that no provision of this Grant Agreement constitutes or implies a commitment or legal obligation on the part of ADB to provide financial assistance for the Ensuing Project.

Safeguards

4. The Recipient shall ensure that the Project does not have any environmental, indigenous peoples or involuntary resettlement impacts, all within the meaning of the 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 the SPS.

Prohibited List of Investments

5. 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.

Governance and Anticorruption

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

7. The Recipient, the Project Executing Agency and the 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 agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.