
GRANT NUMBER 0555-AFG(SF)

GRANT AGREEMENT
(Special Operations)
(Qaisar-Dari Bum Road Project)

between

ISLAMIC REPUBLIC OF AFGHANISTAN

and

ASIAN DEVELOPMENT BANK

DATED 01 August 2018

AFG 37075

**GRANT AGREEMENT
(Special Operations)**

GRANT AGREEMENT dated 01 August 2018 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; and

(B) ADB has agreed to make a grant to the Recipient from ADB's Special Funds resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

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

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

- (a) "Consulting 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 subparagraphs 2(c) to 2(f) of Schedule 1 to this Grant Agreement;
- (c) "EMP" means 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) "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, but excluding Consulting Services;

- (f) "IEE" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;
- (g) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;
- (h) "LARP" means the land acquisition and resettlement plan 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 (2017, as amended from time to time);
- (j) "MOF" means the Ministry of Finance of the Recipient or any successor thereto;
- (k) "MPW" means the Ministry of Public Works of the Recipient or any successor thereto;
- (l) "PAM" means the project administration manual for the Project dated 11 October 2017 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;
- (m) "PMO" means the Program Management Office established at the MPW to implement transport sector-related programs and projects, including the Project;
- (n) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);
- (o) "Procurement Plan" means the procurement plan for the Project dated 11 October 2017 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;
- (p) "Project area" means the geographic area encompassing the Project Road and the Project facilities;
- (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, which is responsible for the carrying out of the Project;

- (r) "Project facilities" means the equipment, materials, supplies and facilities provided, rehabilitated or reconstructed or to be provided, rehabilitated or reconstructed under the Project;
- (s) "Project Road" means the road section identified in subparagraph 2(a) of Schedule 1 to this Grant Agreement;
- (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 and the LARP (as applicable), including any corrective and preventative actions;
- (u) "SPS" means ADB's Safeguard Policy Statement (2009); and
- (v) "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, 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 three hundred thirty million Dollars (\$330,000,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall cause the proceeds of the Grant to be applied exclusively to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement.

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

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

Section 3.04. 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 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, Works and Consulting 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 2023 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 Works, and any relevant records and documents.

ARTICLE V

Effectiveness

Section 5.01. 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 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

Ministry of Finance
Pashtonistan Watt
Kabul, Afghanistan

Facsimile Number:

(93-20) 210-3259.

For ADB

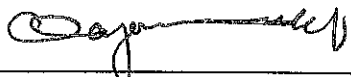
Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636-2428.

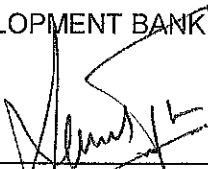
IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of ADB.

ISLAMIC REPUBLIC OF AFGHANISTAN

By 

MOHAMMAD HUMAYON QAYOUMI
Authorized Representative

ASIAN DEVELOPMENT BANK

By 

SAMUEL TUMWA
Country Director
Afghanistan Resident Mission

SCHEDULE 1**Description of the Project**

1. The objective of the Project is development of an efficient and reliable road network in northwestern Afghanistan.
2. The Project shall comprise:
 - (a) construction of an approximately 151 km two-lane road section from Qaisar to Dari Bum as part of the Recipient's national ring road, including appropriate drainage structures and highway safety features;
 - (b) construction and/or installation of roadside infrastructure facilities for approximately 60 local communities, including rural access roads, culverts, small-scale irrigation schemes, schools and clinics;
 - (c) provision of support for project management and construction supervision;
 - (d) provision of support for PMO operation;
 - (e) provision of support for institutional development of MPW, including (i) development of national transportation codes, manuals and standards, (ii) development of the capacity of MPW's survey, design and construction departments, and (iii) establishment of the national institution for certification of engineers; and
 - (f) provision of support for disaster reduction and climate change adaptation in the road sector, including (i) climate change and disaster risk assessment for the road sector, (ii) probabilistic flood risk management for the Project Road, (iii) review of current road design standards and recommendations for strengthening resilience, and (iv) trainings for MPW, PMO and local contractors on integrating climate change and disaster risk considerations into road design and construction.
3. The Project is expected to be completed by 31 December 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 the Grant shall be allocated to items of expenditure, and disbursed on the basis of the withdrawal percentage for each item of expenditure, as set forth in the Table.

Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table,

- (a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Grant which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and
- (b) if the amount of the Grant allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Recipient, reallocate such excess amount to any other Category.

Disbursement Procedures

4. Except as ADB may otherwise agree, the Grant proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS			
Number	Item	Total Amount Allocated for ADB Financing (\$) Category	Basis for Withdrawal from the Grant Account
1	Works, Goods and Consulting Services	330,000,000	100% of total expenditure claimed
	TOTAL	330,000,000	

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. Except as ADB may otherwise agree, Goods and Works 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 and Works

4. Goods and Works shall be procured on the basis of procurement methods set forth below:
 - (a) International Competitive Bidding; and
 - (b) National Competitive Bidding.

National Competitive Bidding

5. The Recipient and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Recipient's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Recipient and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Recipient and ADB.

Conditions for Award of Contract

6. The Recipient shall not award any Works contract which involves environmental impacts until:
 - (a) ADB and, if required, the National Environmental Protection Agency (NEPA) of the Recipient have each granted the final approval of the IEE (prepared based on the detailed design) and, if required, NEPA has issued a certificate of compliance,
 - (b) the IEE (prepared based on the detailed design) has been publicly disclosed; and

- (c) the Recipient has incorporated the relevant provisions from the EMP into the Works contract.

7. The Recipient shall not award any Works contract involving involuntary resettlement impacts until the Recipient has prepared and submitted to ADB the final LARP based on the Project's detailed design, and obtained ADB's clearance of the LARP.

Consulting Services

8. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Recipient shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

9. The Recipient shall recruit the individual consultants for providing support to the PMO and all community development-related activities in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

10. (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.

11. 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

12. 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.

13. In the case of a contract for Goods or Works, 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).

14. In the case of a contract for Goods or Works, 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.

15. 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 and Operation of Project Facilities; Financial Matters

Implementation Arrangements

1. The Recipient 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.

Construction Quality

2. The Recipient shall ensure that: (a) the Project facilities comply with the technical specifications of the design; and (b) construction, supervision, quality control and project management are performed according to internationally accepted standards and practices.

Security

3. The Recipient shall ensure that adequate security (including demining measures where required) is provided for the smooth and uninterrupted implementation of the Project.

4. Without limitation to the requirement set forth in paragraph 3 above, the Recipient shall ensure that: (a) each bidding document and contract for Works requires the contractor to develop and fully implement (through the engagement of a suitably qualified subcontractor) a security plan to ensure smooth and uninterrupted implementation of the Project; and (b) the cost of developing and implementing such security plan is included in the bid price submitted by contractors for such Works.

Counterpart Support

5. The Recipient shall make available on a timely basis all necessary financial, technical and human resources necessary for implementation of the Project, including the LARP and the EMP.

Maintenance

6. The Recipient shall allocate from the budget and make promptly available sufficient funds for adequate maintenance of roads including the Project Road and the Project facilities as may be necessary during implementation and in each fiscal year thereafter, and shall ensure that such facilities are operated and maintained in accordance with sound practices, including by way of awarding of performance-based maintenance contracts to competent contractors.

Policy Dialogue

7. The Recipient shall ensure that: (a) ADB is kept informed of the policies and programs of the Recipient for the transport sector, including those under discussion with other multilateral and bilateral agencies and those that may materially affect the economic viability of the Project; and (b) ADB is given an opportunity to comment on any proposed new transport sector policies or programs.

Environment

8. The Recipient shall ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Recipient relating to environment, health and safety; (b) the Environmental Safeguards; 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 Resettlement

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

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

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

11. The Recipient shall ensure that no emergency legal provisions shall be invoked that allow the Recipient to take possession of land without making in advance any compensation payments and the fulfillment of all entitlements other than compensation payments in accordance with the LARP. The Recipient shall meet unforeseen obligations in excess of budget estimates.

Indigenous Peoples

12. The Recipient shall ensure that the Project does not have any indigenous peoples impacts within the meaning of the Safeguard Policy Statement. 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 the Safeguard Policy Statement.

Human and Financial Resources to Implement Safeguards Requirements

13. The Recipient shall make available necessary budgetary and human resources to fully implement the EMP and the LARP.

Safeguard-Related Provisions in Bidding Documents and Works Contracts

14. The Recipient shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE, the EMP and the LARP (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 LARP;
- (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.

Safeguard Monitoring and Reporting

15. The Recipient shall do the following:

- (a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP and the LARP, 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 or the LARP promptly after becoming aware of the breach.

Prohibited List of Investments

16. 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.

Health and Labor Standards

17. The Recipient shall ensure that the core labor standards and the Recipient's applicable laws and regulations are complied with during Project implementation. The Recipient shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Recipient's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women.

18. The Recipient shall strictly monitor compliance with the requirements set forth in paragraph 17 above and provide ADB with regular reports.

Gender and Development

19. The Recipient shall ensure that the principles of gender equality aimed at increasing Project benefits and impact on women in the Project area are followed during implementation of the Project. These include (a) equal pay to men and women for work of equal value; (b) enabling working conditions for women workers; and (c) taking necessary actions to encourage women living in the Project area to participate in the design and implementation of Project activities.

Governance and Anticorruption

20. The Recipient 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.

21. The Recipient 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.

22. The Recipient shall allow and facilitate ADB's representatives to carry out spot and random checks on: (a) the flow of funds and their use for the Project; and (b) Project work-in-progress.

23. The Recipient shall appoint dedicated staff from the agency that deals with anti-corruption efforts to monitor implementation of the Project in accordance with the mandate of the agency.

24. The Recipient shall cause MPW to maintain a website for the Investment Program which shall include updated information on the Project. Such information shall reflect the performance of the Project, business opportunities, bidding process and guidelines, outcome of biddings and summary progress reports of the Project.