
LOAN NUMBER 3204-KGZ (SF)

GRANT NUMBER 0418-KGZ (SF)

FINANCING AGREEMENT
(Special Operations)

(CAREC CORRIDOR I [Bishkek – Torugart Road] Project 3 – Additional Financing)

between

KYRGYZ REPUBLIC

and

ASIAN DEVELOPMENT BANK

DATED 26 December 2014

KGZ 42399

**FINANCING AGREEMENT
(Special Operations)**

FINANCING AGREEMENT dated *26 December 2014* between KYRGYZ REPUBLIC ("Beneficiary") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a loan agreement (Loan No. 2755-KGZ(SF): CAREC Corridor I [Bishkek-Torugart Road] Project 3) dated 19 September 2011 between the Beneficiary and ADB ("Initial Loan Agreement"), ADB had made a loan to the Beneficiary from ADB's Special Funds resources in the amount of thirty-five million forty-one thousand Special Drawing Rights (SDR35,041,000) ("Initial Loan") for the purposes of the project described in Schedule 1 to the Initial Loan Agreement ("Project");

(B) the Beneficiary has applied to ADB for an additional loan and grant for the purposes of financing additional costs and cost overruns in respect of the Project; and

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

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations and Grant Regulations; Definitions

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made applicable to the Loan made pursuant to this Financing Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) The term "Loan Agreement", wherever it appears in the Loan Regulations, shall be substituted by the term "Financing Agreement".

(b) The term "Borrower", wherever it appears in the Loan Regulations, shall be substituted by the term "Beneficiary" as defined in the opening paragraph of this Financing Agreement.

Section 1.02. All provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 ("Grant Regulations"), are hereby made applicable to the Grant made pursuant to this Financing Agreement with the same force and effect as if they were fully set forth herein subject, however, to the following modifications:

(a) The term "Grant Agreement", wherever it appears in the Grant Regulations, shall be substituted by the term "Financing Agreement".

(b) The term "Recipient", wherever it appears in the Grant Regulations, shall be substituted by the term "Beneficiary" as defined in the opening paragraph of this Financing Agreement.

Section 1.03. Wherever used in this Financing Agreement, the several terms defined in the Loan Regulations and the Grant Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires.

ARTICLE II

The Loan and the Grant

Section 2.01. ADB agrees to provide to the Beneficiary from ADB's Special Funds resources, on terms and conditions set forth in this Financing Agreement:

- (a) a loan in various currencies equivalent to seven million two hundred fifty-eight thousand Special Drawing Rights (SDR7,258,000) ("Loan"); and
- (b) a grant in the amount of four million three hundred thousand Dollars (\$4,300,000) ("Grant").

Section 2.02. (a) The Beneficiary shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 1 to this Financing Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 July and 15 January in each year.

Section 2.04. The Beneficiary shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Financing Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

ARTICLE III

Use of Proceeds of the Loan and the Grant

Section 3.01. The Beneficiary shall cause the proceeds of the Loan and the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Financing Agreement.

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

Section 3.03. Except as ADB may otherwise agree, the Beneficiary shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan and the Grant in accordance with the provisions of Schedule 4 to the Initial Loan Agreement.

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

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

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 December 2017, and the Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2017 or, in each case, such other date as may from time to time be agreed between the Beneficiary and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Beneficiary shall perform, or cause to be performed, all obligations set forth in Schedule 5 to the Initial Loan Agreement and in Schedule 3 to this Financing Agreement.

Section 4.02. (a) The Beneficiary shall (i) maintain separate accounts and records for the Project, including separate accounts and records for the Loan and Grant; (ii) prepare annual financial statements for the Project in accordance with

accounting principles 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 international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan and Grant proceeds and compliance with the financial covenants of this Financing Agreement as well as on the use of the procedures for imprest fund(s) and statement of expenditures) 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 30 days of the date of their receipt by posting them on ADB's website.

(c) The Beneficiary shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Beneficiary'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 Beneficiary, unless the Beneficiary shall otherwise agree.

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

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following is specified as an additional event for suspension of the right of the Beneficiary to make withdrawals from (a) the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations, and (b) the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations, respectively: the Initial Loan shall have become liable for suspension or cancellation.

ARTICLE VI

Effectiveness

Section 6.01. A date 90 days after the date of this Financing Agreement is specified for the effectiveness of the Financing Agreement for the purposes of Section 9.04 of the Loan Regulations and Section 9.04 of the Grant Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. The Minister of Finance of the Beneficiary is designated as representative of the Beneficiary for the purposes of Section 11.02 of the Loan Regulations and Section 11.02 of the Grant Regulations.

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

For the Beneficiary

The Ministry of Finance
58, Erkindik Boulevard
Bishkek, 720040
Kyrgyz Republic

Facsimile Number:

(996) 312 661645.

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 Financing 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.

KYRGYZ REPUBLIC

By 
Authorized Representative
Olga Savrova
Minister of Finance

ASIAN DEVELOPMENT BANK

By 
Authorized Representative
Kie Hiraoaka
Country Director
EYRM, ADB

SCHEDULE 1**Amortization Schedule****(CAREC Corridor I [Bishkek-Torugart Road] Project 3 – Additional Financing)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 January 2023	151,208
15 July 2023	151,208
15 January 2024	151,208
15 July 2024	151,208
15 January 2025	151,208
15 July 2025	151,208
15 January 2026	151,208
15 July 2026	151,208
15 January 2027	151,208
15 July 2027	151,208
15 January 2028	151,208
15 July 2028	151,208
15 January 2029	151,208
15 July 2029	151,208
15 January 2030	151,208
15 July 2030	151,208
15 January 2031	151,208
15 July 2031	151,208
15 January 2032	151,208
15 July 2032	151,208
15 January 2033	151,208
15 July 2033	151,208
15 January 2034	151,208
15 July 2034	151,208
15 January 2035	151,208
15 July 2035	151,208
15 January 2036	151,208
15 July 2036	151,208
15 January 2037	151,208
15 July 2037	151,208
15 January 2038	151,208
15 July 2038	151,208
15 January 2039	151,208
15 July 2039	151,208
15 January 2040	151,208
15 July 2040	151,208
15 January 2041	151,208
15 July 2041	151,208
15 January 2042	151,208
15 July 2042	151,208
15 January 2043	151,208

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 July 2043	151,208
15 January 2044	151,208
15 July 2044	151,208
15 January 2045	151,208
15 July 2045	151,208
15 January 2046	151,208
15 July 2046	151,224
TOTAL	7,258,000

* The arrangements for payment of each maturity are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

SCHEDULE 2

Allocation and Withdrawal of Loan and Grant Proceeds

General

1. The tables attached to this Schedule set forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the Grant. Table 1 sets forth the allocation of the Loan proceeds to each such Category. Table 2 sets out the allocation of the Grant proceeds to each such Category (Reference to "Category" in this Schedule is to a Category or Subcategory of Table 1 and Table 2, respectively.)

Basis for Withdrawal from the Loan and Grant Account

2. Except as ADB may otherwise agree, the proceeds of the Loan and the Grant shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in Table 1 and Table 2, respectively.

Interest Charge

3. The amount allocated to Category 3 of Table 1 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. Notwithstanding the allocation of the Loan proceeds and the Grant proceeds and the withdrawal percentages set forth in Table 1 and Table 2, respectively,

- (a) if the amount of the Loan or the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Beneficiary, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan or 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 Loan or the Grant then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Beneficiary, reallocate such excess amount to any other Category.

Disbursement Procedures

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

TABLE 1

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (CAREC Corridor I [Bishkek-Torugart Road] Project 3 – Additional Financing)			
Number	Item	Total Amount Allocated for ADB Financing (SDR) Category	Basis for Withdrawal from the Loan Account
1	Works (Design-Build)	4,825,000	51.3% of total expenditure claimed
2	Consulting Services (Construction Supervision)	484,000	90% of total expenditure claimed
3	Interest Charge	135,000	100% of amount due
4	Unallocated	1,814,000	
	Total	7,258,000	

TABLE 2

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (CAREC Corridor I [Bishkek-Torugart Road] Project 3 – Additional Financing)			
Number	Item	Total Amount Allocated for ADB Financing (\$) Category	Basis for Withdrawal from the Grant Account
1	Works (Design-Build)	4,300,000	30.7% of total expenditure claimed
	Total	4,300,000	

SCHEDULE 3

Execution of Project; Financial Matters

1. Save for the provisions set forth in this Schedule, the Beneficiary shall continue to ensure that the Project is implemented in accordance with Schedule 5 to the Initial Loan Agreement and the detailed arrangements set forth in the PAM. The following provisions replace a number of the provisions from Schedule 5 to the Initial Loan Agreement with effect from the Effective Date of this Financing Agreement.

2. Paragraph 3 of Schedule 5 to the Initial Loan Agreement shall be revised to read as follow:

“3. (a) The Beneficiary 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 (i) all applicable laws and regulations of the Beneficiary relating to land acquisition and involuntary resettlement; (ii) the Involuntary Resettlement Safeguards; and (iii) all measures and requirements set forth in the Resettlement Plan (“RP”), and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

(b) Without limiting the application of the Involuntary Resettlement Safeguards or the RP, the Beneficiary shall ensure that no physical or economic displacement takes place in connection with the Project until:

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

(c) The Beneficiary shall ensure that the Project does not have any indigenous peoples impact within the meaning of SPS. In the event that the Project does have such impact, the Beneficiary shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Beneficiary and the principles and requirements set forth in Chapter V, Appendix 3 and 4 (as applicable) of the SPS.”

3. Paragraph 7 of Schedule 5 to the Initial Loan Agreement shall be revised to read as follow:

“7. The Beneficiary shall do the following:

- (a) submit Safeguards Monitoring Reports to ADB semiannually during construction and annually during Project operation, 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 EIA, the EMP or 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) continue to engage qualified and experienced external experts or qualified NGOs under a selection process and terms of reference acceptable to ADB, to verify information produced through the Project monitoring process, and facilitate the carrying out of any verification activities by such external experts.”

4. A new paragraph 11 of Schedule 5 to the Initial Loan Agreement shall be inserted to read as follows:

“11. The Borrower shall allocate and make available to MOTC on a timely basis sufficient funds for the operation and maintenance of roads. MOTC shall prioritize the allocation on a timely basis sufficient funds for the operation and maintenance of the road section reconstructed or rehabilitated under the Project.”

5. Paragraphs 11 and 12 of Schedule 5 to the Initial Loan Agreement shall be renumbered as paragraphs 12 and 13, respectively.