
GRANT NUMBER 0081-AFG(SF)

GRANT AGREEMENT
(Special Operations)

(Road Network Development Project 1)

between

ISLAMIC REPUBLIC OF AFGHANISTAN

and

ASIAN DEVELOPMENT BANK

DATED 6 November 2007

GAS:AFG 40333

**GRANT AGREEMENT
(Special Operations)**

GRANT AGREEMENT dated 6 November 2007 between ISLAMIC REPUBLIC OF AFGHANISTAN (the "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 provide a grant to the Recipient from ADB's Special Funds resources upon the terms and conditions hereinafter set forth;

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 (the "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. The definitions set forth in the Grant Regulations are applicable to this Grant Agreement unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2007, as amended from time to time);

(b) "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;

(c) "MOF" means the Ministry of Finance of the Recipient, or any successor thereto;

(d) "MPW" means the Ministry of Public Works of the Recipient or any successor thereto;

(e) "PPMS" means the project performance management system agreed by the Recipient and ADB;

(f) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);

(g) "Procurement Plan" means the procurement plan for the Project dated 31 August 2007 and agreed between the Recipient and ADB, as updated from time to time in

accordance with the Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(h) "Project area" means the geographic area encompassing the Project Road and Project facilities;

(i) "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means the MPW, which is responsible for carrying out the Project;

(j) "Project facilities" means the Goods and Works, and any facilities to be constructed, rehabilitated and restored under the Project;

(k) "Project Management Unit or PMU" means the Project Implementation Unit established under the road component of the Emergency Infrastructure Rehabilitation and Reconstruction Project financed by ADB Loan Number 1997-AFG;

(l) "Project Road" means approximately 143 kilometers (km) of new road between Bala Murghab and Leman and related infrastructure; and

(m) "Works" means construction or civil works to be financed out of the proceeds of the Grant and Project related services, 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 on terms and conditions set forth in this Agreement an amount of one hundred seventy-six million Dollars (\$176,000,000).

ARTICLE III

Use of Proceeds of the Grant

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

Section 3.02. The Goods, Works and consulting services to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant among different categories of such Goods, Works and consulting services shall be 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, all Goods, Works and consulting services to be financed out of the proceeds of the Grant shall be procured 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 or Works 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, 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 2013 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, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Grant proceeds and compliance with the financial covenants of this Grant Agreement as well as on the use of the procedures for imprest account/statement of expenditures), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Recipient shall enable ADB, upon ADB's request, to discuss the Recipient's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Recipient pursuant to Section 4.02(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion 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 financed out of the proceeds of the Grant, and any relevant records and documents.

ARTICLE V

Effectiveness

Section 5.01. A date thirty (30) 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

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
Pashtunistan Watt
Kabul, Afghanistan

Telephone Number:

93-20 210-2838

For ADB

Asian Development Bank
P.O. Box 789
0980 Manila, Philippines

Cable Address:

ASIANBANK
MANILA

Telex Numbers:

29066 ADB PH (RCA)
42205 ADB PM (ITT)
63587 ADB PN (ETPI)

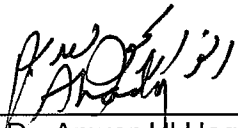
Facsimile Numbers:

(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 and to be delivered at the principle office of ADB, as of the day and year first above written.

THE ISLAMIC REPUBLIC OF AFGHANISTAN

By  _____
Dr. Anwar-ul Haq Ahady
Minister of Finance

ASIAN DEVELOPMENT BANK

By  _____
Juan Miranda
Director General
Central and West Asia Department

SCHEDULE 1

Description of the Project

Impact and Outcome

1. The Project will contribute to growth in Afghanistan's domestic and international trade through: (i) higher levels of mobility and supply of inter-city, inter-provincial and international transport services; and (ii) increased reliability of road transport through emergency and ancillary road improvements; and (iii) increased service life of regional road network. The main outcome of the Project will be a new road between Bala Murghab and Lemar and related infrastructure.

Project Scope

2. The Project consists of the following:
- (a) construction of a new road totaling approximately 143 km between Bala Murghab and Leman;
 - (b) ancillary and emergency rehabilitation and improvement Works, including those on various sections of the Andkhoy-Qaisar road;
 - (c) routine and periodic maintenance Works on at least 1,000 km of regional roads for a minimum of three years by private contractors under performance-based contracts; and
 - (d) MPW's capacity development.
3. The Project is expected to be completed by 31 December 2012.

SCHEDULE 2

Allocation and Withdrawal of Grant Proceeds

General

1. The table attached to this Schedule sets forth the Categories of Goods, Works and consulting services to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table and reference to "Subcategory" or "Subcategories" in this Schedule is to a Subcategory or Subcategories of a Category.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories and Subcategories listed in the Table shall be financed out of the proceeds of the Grant on the basis of the percentages 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 then 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 for financing Goods, Works and consulting services shall be disbursed in accordance with ADB's *Loan Disbursement Handbook* (2007), as amended from time to time.

Imprest Account; Statement of Expenditures

5. (a) Except as ADB may otherwise agree, the Recipient shall establish immediately after the Effective Date, an imprest account at Da Afghanistan Bank. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's *Loan Disbursement Handbook* and detailed arrangements agreed upon between the Recipient and ADB. The currency of the imprest account shall be in Dollars. The initial amount to be deposited into the imprest account shall not exceed the lower of: (i) the

estimated expenditure for the first six months of Project implementation; or (ii) the equivalent of ten (10) percent of the Grant amount.

(b) The statement of expenditures procedure may be used for reimbursement of eligible expenditures for Goods, Works and consulting services, and to liquidate advances provided into the imprest account, in accordance with ADB's *Loan Disbursement Handbook* and detailed arrangements agreed upon between the Recipient and ADB.

Retroactive Financing

6. Withdrawals from the Grant Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Grant Agreement in connection with items to be retroactively financed, subject to a maximum amount equivalent to 20 percent of the Grant amount.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Road Network Development Project 1)				
CATEGORY				ADB FINANCING
Number	Item	Amount Allocated		Percentage and Basis for Withdrawal from the Grant Account
		Category	Subcategory	
1	Total Works	\$148,000,000		
1A	Construction Component		\$108,000,000	100 percent of total expenditure*
1B	Maintenance Component		\$20,000,000	100 percent of total expenditure*
1C	Ancillary And Emergency Works		\$20,000,000	100 percent of total expenditure*
2	Equipment (Management Information System)	\$1,000,000		100 percent of total expenditure*
3	Consulting Services	\$7,000,000		100 percent of total expenditure*
4	Unallocated	\$20,000,000		
	Total	\$176,000,000		

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

SCHEDULE 3

Procurement of Goods and Works, and Consulting Services

A. General

1. All Goods and Works, and consulting services, to be financed out of the proceeds of the Grant shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Grant Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

B. Procurement for Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:

International Competitive Bidding (ICB)
National Competitive Bidding (NCB)
Shopping

4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.
5. Domestic Preference. The Recipient may grant a margin of preference in the evaluation of bids under ICB in accordance with paragraphs 2.55(a) and 2.56 of the procurement Guidelines for domestically manufactured Goods and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.
6. National Competitive Bidding. No procurement activity may be undertaken under NCB until ADB and the Recipient have agreed in writing on any necessary modifications or clarifications to Recipient's laws and regulations on state (public) procurement to ensure consistency with ADB's Procurement Guidelines. Such modifications or clarifications shall be subsequently reflected in the Procurement Plan and are hereby incorporated by reference to this Grant Agreement.

C. Selection of Consulting Services

7. Quality-Based Selection. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Recipient shall apply quality-based selection for selecting and engaging consulting services.
8. The Recipient shall recruit individual consultants in accordance with ADB's procedures for recruiting individual consultants for, amongst other matters, contract

administration, technical review of the designs, assessment of environmental and social safeguard measures, implementation and coordination of reengineering activities, preparing reports for submission to ADB.

D. Industrial or Intellectual Property Rights

9. (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.

10. 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.

E. ADB's Review of Procurement Decisions

11. All 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.

F. Procurement of Bitumen from Non-member Countries

12. Notwithstanding the provisions of Section 3.04(a) of this Grant Agreement, bitumen may be procured for Works under the Project from non-member countries of ADB.

SCHEDULE 4

Execution of Project and Operation of Project Facilities; Financial Matters

Implementation Arrangements

1. MPW shall be the Project Executing Agency, with its Deputy Minister (Technical) as the focal person. The Deputy Minister (Technical) shall be responsible for inter-ministerial coordination, as well as for overall supervision of the Project. The PMU shall: (i) serve as the administrator of the Project; and (ii) be responsible for engagement of contractors and consulting services financed from the Grant and obtaining the necessary approvals from MPW, MOF, and ADB in a timely manner. The Recipient shall, and shall cause the PMU to, be strengthened with additional staff and remain functional for the duration of the Project.

2. The Recipient shall, and shall cause MPW to, appoint, in consultation with ADB, a Project Director to head the PMU. The Project Director shall be charged with day-to-day management of the Project and undertaking periodic on-site reviews of the Project. The Project Director shall be supported by: (i) at least four full-time project managers with experience in contract administration and/or design and maintenance (each project manager shall be responsible for no more than two civil works and two supervision contracts); (ii) two full-time financial management specialists; and (iii) at least one full-time procurement and contracts specialist, one environment specialist, one social development specialist, one IT specialist and one professional translator-interpreter. Additionally, the Recipient shall, and shall cause MPW to, assign two engineers on a quarterly basis to the PMU for training by the PMU staff in project design and management, each for a period of three months.

Capacity Development and Institutional Reform

3. The Recipient shall, and shall cause MPW to, adopt a management information system for planning, budgeting, performance monitoring, financial management of the road network within 24 months of the Effective Date as part of its public service reforms.

Governance

4. The Recipient shall, and shall cause MPW to, monitor continuously and evaluate periodically through technical audits the Good, Works and consulting services procured under the Project to ensure that their designs, conduct, and outputs, as the case may be, are in accordance with the relevant national, regional, and international standards, criteria, best practices, and agreements, and in compliance with ADB's policies.

Security

5. The Recipient shall undertake its best efforts to provide adequate security for the smooth and uninterrupted implementation of the Project. The Recipient shall also ensure that: (i) Works contracts require an action plan for adequate security and smooth and uninterrupted implementation of the Project; (ii) the cost of implementing the action plan is included in the budget for such Works; and (iii) the action plan is fully implemented.

Construction Quality

6. The Recipient shall ensure that: (i) the Project facilities rehabilitated or constructed under the Project comply with technical specifications of the design; and (ii) construction, supervision, quality control and project management are performed according to internationally accepted standards and practices.

Maintenance

7. The Recipient shall allocate from the budget and make promptly available sufficient funds for adequate maintenance of the Project Road and the Project facilities as may be necessary in addition to the maintenance component of the Project during Project implementation and in each fiscal year thereafter.

Change in Ownership and Operation

8. In the event that: (i) any change in ownership of any Project facility; (ii) any sale, transfer, or assignment of interest or control in any Project facility, or (iii) any lease or other contract or other modification of the MPW's functions and authority over operation and maintenance of any such Project facility, is anticipated, the Recipient shall obtain ADB's consent at least six months prior to the implementation of such a plan and shall ensure that any such changes will be carried out in a legal and transparent manner.

Anticorruption

9. The Recipient shall: (i) undertake necessary measures to create and sustain a corruption-free environment; (ii) ensure that its anticorruption laws and regulations and ADB's *Anticorruption Policy* (1998, as amended to date), are strictly enforced and are being complied with during Project implementation, including ensuring that relevant provisions of ADB's *Anticorruption Policy* are included in all bidding documents for the Project; (iii) facilitate in ADB's exercise of its right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; (iv) ensure that MPW conducts periodic inspections on the contractors' activities related to fund withdrawals and settlements; and (v) ensure that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of MPW and all contractors, suppliers, consultants and other service providers as they relate to the Project.

Project Performance Management System

10. The Recipient shall, and shall cause MPW to, establish within six months of the Effective Date a Project performance management system (PPMS) acceptable to ADB to monitor the progress of the Project in achieving its outcome and outputs. The PPMS shall contain baseline values of indicators, targets and milestones according to the expected impacts, outcomes, outputs and activities identified in the design and monitoring framework and other relevant indicators agreed between MPW and ADB.

Midterm Review

11. The Recipient and ADB shall jointly review implementation of the Project at least once a year. The reviews shall identify any problems or constraints encountered and

assess the need for modification of project scope, implementation and financing arrangements. Project objectives shall be measured against the performance indicators agreed between the Recipient and ADB. The framework for assessing the implementation milestones shall include: (i) implementation status; (ii) MIS functionality and quality; (iii) physical progress and disbursements related to the implementation schedule; (iv) status of compliance with Project covenants; (v) achievement of the Project's development objectives; (vi) progress of policy reforms; and (vii) the need for any changes in the project scope to achieve Project impact. The results of the reviews, including an evaluation of the progress made in relation to the targets set, shall be discussed by the relevant parties and if required, appropriate corrective measures shall be formulated to ensure successful Project implementation and achievement of the Project outputs.

Environment

12. The Recipient shall ensure that road and related infrastructure created under the Project are designed, constructed, and operated in accordance with the initial environmental examination, the applicable laws and regulations, ADB's *Environment Policy* (2002). Prior to commencement of any physical works on the Project Road, the Recipient shall, and shall cause MPW to: (i) minimize any adverse environmental impacts by measures and monitoring program detailed in the environmental management plan that will have been prepared; and (ii) monitor implementation of the environmental management plan and report performance in every second quarterly report to ADB.

Land Acquisition and Resettlement

13. The Recipient shall ensure that: (i) the resettlement plan is updated promptly upon finalization of the detailed technical design; (ii) the updated resettlement plan is disclosed to affected people and submitted to ADB for review and approval, and (iii) land acquisition and resettlement activities are carried out promptly and efficiently in a legal and transparent manner following the updated resettlement plan agreed with ADB in accordance with applicable laws and regulations and ADB's *Involuntary Resettlement Policy* (1995). The Recipient shall also ensure that physical works on the Project Road do not commence unless: (i) the de-mining agency has certified that the construction site in question has been cleared; (b) the updated resettlement plan has been approved by ADB and disclosed to the public; and (c) the compensation program has been fully implemented in accordance with the updated resettlement plan. The Recipient shall, and shall cause MPW to, ensure that implementation progress of the resettlement plan is monitored, evaluated, and reported to ADB as specified in the resettlement plan.

Gender and Development, Health and Labor

14. The Recipient shall ensure compliance with all applicable laws and regulations for healthcare and labour and take necessary steps to encourage women living in the Project area to participate in Project related activities. The Recipient shall, and shall cause MPW to, in consultation with local governments and communities, and nongovernment organizations, ensure independent monitoring of the social impacts of the Project throughout its implementation. In this respect, MPW shall ensure that all civil works contractors: (i) comply with all applicable laws and regulations for healthcare and labour; (ii) use their best efforts to employ women and local people, including disadvantaged people, living in the vicinity of the Project; (iii) disseminate information at worksites on the risks of sexually transmitted infections for those employed during construction; (iv) provide equal pay to men and women

for work of equal type; (v) provide safe working conditions for male and female workers; and (vi) abstain from child labor. Contracts for Works related to the Project shall include specific clauses on these requirements and compliance shall be strictly monitored by MPW during implementation.

15. The Recipient shall ensure that relevant government agencies provide strict border controls and road patrols to prevent trafficking of humans, wildlife, endangered species, and illegal substances on the Project Road.