
GRANT NUMBER 0084-KGZ(SF)

GRANT AGREEMENT
(Special Operations)
(CAREC Regional Road Corridor Improvement Project)

between

KYRGYZ REPUBLIC

and

ASIAN DEVELOPMENT BANK

DATED 31 OCTOBER 2007

LAS:KGZ 39676

GRANT AGREEMENT (Special Operations)

GRANT AGREEMENT dated 31 October 2007 between KYRGYZ REPUBLIC (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;

(B) the Government of the Recipient has also applied to ADB for technical assistance ("Technical Assistance") for the purpose of developing a cross border agreement, and ADB has agreed to provide a regional Technical Assistance grant for developing a cross border agreement among the governments of the Recipient, Tajikistan, and People's Republic of China ("PRC") in an amount up to the equivalent of five hundred thousand Dollars (\$500,000); and

(C) 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 hereto 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) "CAREC" means Central Asia Regional Economic Cooperation;
- (b) "CBA" means a cross border agreement as described in paragraph 9 of Schedule 4 to this Grant Agreement;
- (c) "Component" means each of Component A, Component B, and Component C as further described in paragraph 2 of Schedule 1 to this Grant Agreement;
- (d) "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);

- (e) "DEPs" means road maintenance depots under MOTC;
- (f) "IEE" means the initial environmental examination prepared by the Recipient for the Project and agreed by ADB;
- (g) "HIV/AIDS" means human immunodeficiency virus/acquired immunodeficiency syndrome;
- (h) "MOF" means the Ministry of Finance of the Recipient and any successor thereto acceptable to ADB;
- (i) "MOTC" means the Ministry of Transport and Communications of the Recipient and any successor thereto acceptable to ADB;
- (j) "PBM" means performance-based management;
- (k) "PIU" means the Project Implementation Unit for the Project as described in paragraph 2 of Schedule 4 to this Grant Agreement;
- (l) "PLUADs" means road maintenance departments under MOTC;
- (m) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);
- (n) "Procurement Plan" means the procurement plan for the Project dated 19 September 2007 and agreed between the Recipient and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;
- (o) "Project Executing Agency" means, for the purposes of, and within the meaning of, the Grant Regulations, MOTC, which is responsible for carrying out Component A and Component B of the Project; and SCC, which is responsible for carrying out Component C of the Project;
- (p) "Project facilities" means the facilities to be improved, rehabilitated or provided under the Project;
- (q) "Project Road" means the section of the Road Corridor to be improved under the Project, as described in Schedule 1 to this Grant Agreement;
- (r) "Road Corridor" means the road corridor from the Kyrgyz - PRC border at Irkeshtam to the Kyrgyz- Tajik border at Karamik;
- (s) "SCC" means the State Customs Committee of the Recipient and any successor thereto acceptable to ADB;
- (t) "Strategy" means the Recipient's Road Maintenance Strategy developed under the ADB-financed TA No. 4705-KGZ;

(u) "Working Group" means the working group established by the Recipient for the purposes of CBA; 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 provide to the Recipient from ADB's Special Funds resources an amount of twenty-five million six hundred thousand Dollars (\$25,600,000).

Section 2.02. The Grant proceeds shall be withdrawn from the Grant Account in accordance with the provisions of Schedule 2 to this Grant Agreement for the purposes of financing the Project expenditures under Component A and Components B (i) and B (ii) of the Project.

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 Works, consulting services and other items of expenditure to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant among different categories of such Works, consulting services, and other items of expenditures 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 Works, consulting services and other items of expenditure to be financed out of the proceeds of the Grant shall be procured in accordance with the provisions of Schedule 2 to this Grant Agreement.

Section 3.04. Withdrawals from the Grant Account in respect of Works, consulting services and other items of expenditure shall be made only on account of expenditures relating to

(a) 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) 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 withdrawals from the Grant Account for the purposes of Section 8.02 of the Grant Regulations shall be 30 September 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 six (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 and the Works financed out of the proceeds of the Grant, and any relevant records and documents.

ARTICLE V

Effectiveness

Section 5.01. A date sixty (60) 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
58, Erkindik Boulevard
Bishkek, 720040
Kyrgyz Republic

Facsimile Number:

(996) 312-661645.

For ADB

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

Cable Address:

ASIANBANK
MANILA

Telex Numbers:

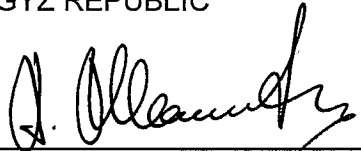
29066 ADB PH (RCA)
42205 ADB PM (ITT)
63587 ADB PN (ETPI)

Facsimile Numbers:

(632) 636-2444
(632) 636-2424.

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 principal office of ADB, as of the day and year first above written.

KYRGYZ REPUBLIC

By 
Authorized Representative

ASIAN DEVELOPMENT BANK

By 
Juan Miranda
Director General
Central and West Asia Department

SCHEDULE 1

Description of the Project

1. The Project will contribute to reducing transport costs and fostering regional trade and cooperation among the Recipient, Tajikistan, PRC, and other countries in Central Asia. The outcome of the Project will be improved access to regional markets and social services.

2. The Project consists of the following components:

(a) Component A. Road Improvement

- (i) Improve approximately 142 kilometers (km) of the two-lane road from the Sary-Tash to Kyrgyz -Tajik border at Karamik (the "Project Road"), through the rehabilitation and partial reconstruction of existing bituminous pavement and gravel pavement, slope rehabilitation and protection measures, installation of drainage systems and road safety measures; and
- (ii) replace four (4) seriously deteriorated bridges, repair eight (8) bridges, and construct one (1) new bridge.

(b) Component B. Road Maintenance Improvement

- (i) Assist MOTC in introducing institutional reforms, developing and implementing the road maintenance privatization and outsourcing program, designing, preparing, and administering performance-based maintenance (PBM) contracts;
- (ii) provide a training program to private sector contractors in best international contracting practices, bid preparation for performance and/or output-based road maintenance contracts, and contract management and execution; and
- (iii) execute PBM contracts, on a pilot basis, for approximately 500 km of roads along the Road Corridor and other corridors directly linked to it.

(c) Component C. Border Infrastructure Development

Construct and rehabilitate the Irkeshtam customs border post.

3. The Project also includes the provision of consulting services. The Project is expected to be completed by 31 March 2013.

SCHEDULE 2

Allocation and Withdrawal of Grant Proceeds

General

1. The table attached to this Schedule sets forth the Categories of expenditures 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.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories 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 the 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 Works, consulting services and other items of expenditures shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), 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 a commercial bank acceptable to ADB. 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 Dollar.

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 to be financed from the imprest account, or (ii) the equivalent of ten (10) percent of the Grant amount.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures of the Project 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. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$50,000.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (CAREC Regional Road Corridor Improvement Project)			
CATEGORY			ADB FINANCING
Number	Item	Amount Allocated \$ Category	Percentage and Basis for Withdrawal from the Grant Account
1	Works	20,000,000	100 percent of expenditure claimed*
2	Consulting Services	2,600,000	100 percent of expenditure claimed*
3	Unallocated	3,000,000	
	Total	25,600,000	

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

SCHEDULE 3

Procurement of Works and Consulting Services

A. General

1. All 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 of Works

3. Except as ADB may otherwise agree, all Works shall only be procured on the basis of the following method of procurement:

International Competitive Bidding

The method of procurement is 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.

4. Domestic Preference. The Recipient may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

C. Selection of Consulting Services

5. Quality- and Cost-Based Selection. 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.
6. Individual Consultants. The Recipient shall recruit individual consultants for road maintenance support in accordance with ADB's procedures for recruitment of individual consultants.

D. Industrial or Intellectual Property Rights

7. (a) The Recipient shall ensure that all Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other 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 Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor 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.

E. ADB's Review of Procurement Decisions

9. 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.

10.

SCHEDULE 4

Execution of Project and Operation of Project Facilities; Financial Matters

Project Executing Agencies

1. MOTC as the Project Executing Agency (EA) shall be responsible for carrying out Component A and Component B of the Project. SCC as the Project EA shall be responsible for carrying out Component C of the Project.

Implementation Arrangements

2. A project implementation department for the transport sector investment projects set up within MOTC according to Order No. 68 dated 9 April 2007 (“the Department”) shall serve as PIU for this Project. The PIU shall be responsible for the day-to-day implementation of the Project including, among other things, (a) monitoring the progress of Project implementation; (b) preparing withdrawal applications and Project progress reports; (c) maintaining Project accounts and completing financial records for auditing the Project; and (d) carrying out procurement, including advance contracting activities for Road Corridor improvements. The director of the Department shall be responsible for the day-to-day supervision of implementation activities. The existing staff of the Department shall continue to support the Project. In addition, professional staff with adequate expertise and experience in road engineering, construction supervision, procurement, and social and environmental monitoring shall be recruited prior to the mobilization of Works contracts, if needed.

3. The Recipient shall ensure that the day-to-day implementation of Component C is carried out by the project management office set up under the ADB-financed Regional Customs Modernization and Infrastructure Development Project (Loan No. 2113-KGZ [SF]).

4. The Recipient shall ensure that Component B(iii) of the Project is implemented by MOTC’s Road Department with the assistance of an institutional advisor to be recruited under the Project in close coordination with the PIU. The bidding process for PBM contracts shall start in the second year of Project implementation. PBM contracts will be tendered to domestic private contractors in accordance with the Recipient’s internal competitive bidding process. PBM contracts shall be implemented within four (4) years. All roads included in PBM shall undergo periodic maintenance in the first year and routine/recurrent maintenance in the remaining years. The PIU shall provide necessary coordination and support to the Road Department in carrying out procurement of contracts, and reporting on the implementation of PBM contracts. The Road Department shall provide inputs for the PIU’s quarterly reports to be submitted to ADB, MOTC, and MOF.

5. The Recipient shall ensure effective coordination and consultation among Project EAs, implementing agencies, and other government agencies concerned during Project implementation.

Counterpart Funding

6. Without limiting the generality of Section 6.06 of the Grant Regulations, the Recipient shall allocate and make available, in a timely manner, all funds and resources necessary for the implementation of the Project in accordance with the agreed financing plans for the Project, and for the operation and maintenance of the Project facilities. With regard to PBM contracts under the Project, the counterpart funding shall be made available entirely through annual allocations to MOTC's regular road maintenance budget during 2009-2013.

Maintenance Financing

7. The Recipient shall ensure that

(a) actual expenditures on maintenance (including emergency maintenance, but excluding rehabilitation and construction) for roads under MOTC jurisdiction increase at the same rate as increases of the national budgets during 2008-2010; and

(b) there is a separate budget item within the overall MOTC's budget for the improvement and maintenance of the Project Road, and starting in 2012, annual allocations for the road maintenance in the amount of \$200,000 equivalent (plus inflation since 2007) are made and funds released to MOTC in a timely manner.

Cross-Border Agreement

8. The Recipient shall take all actions required from its side to enable the conclusion and effective implementation of CBA by no later than 31 December 2010. In particular, the Recipient shall engage in consultations and enter into protocols, agreements and other arrangements with the governments of Tajikistan and PRC and their agencies, and issue decisions and regulations, all as required under the CBA and aimed at facilitating cross-border traffic between the three countries taking into account the recommendations of the Technical Assistance. To this end, the Recipient shall ensure that consultations of the Working Group with its counterparts are held at least once a year during Project implementation. The Recipient shall bear the costs of organizing and attending the consultation meetings.

9. CBA shall include, among other things, provisions concerning (a) the facilitation of border crossing formalities; (b) cross-border movement of people; (c) cross-border movement of goods; (d) requirements of the admittance of road vehicles; (e) exchange of commercial traffic rights; (f) infrastructure; and (g) miscellaneous and final provisions.

Road Maintenance Strategy

10. The Recipient shall, by 31 December 2008, develop a detailed time-bound action plan for the implementation of the Strategy, including (a) necessary regulatory and legislative amendments enabling the restructuring of MOTC, Department of Roads, PLUADS, and commercialization and privatization of DEPs during 2007-2010; and (b) adequate procedures and monitoring system for effective collection and utilization of road user charges.

Vehicle Weighing

11. The Recipient shall ensure that static vehicle weighing systems for the sections of national highways rehabilitated under the ADB-financed Southern Transport Corridor Road Rehabilitation Project (Loan No. 2106-KGZ [SF]) shall be installed and made operational by 31 December 2010.

Construction Quality

12. The Recipient shall ensure that (a) improvement of the Project Road is carried out in accordance with the design and technical specifications of the road improvement; and (b) construction supervision, quality control, and contract management are in accordance with internationally accepted standards and practices.

Road Safety

13. The Recipient shall ensure that appropriate road safety measures such as pavement markings, warning signs, traffic signs and signals, communications facilities, hazard barriers, and traffic monitoring facilities are installed according to design specifications and adequately maintained after Project completion.

Environment

14. The Recipient shall ensure that Project activities are carried out in accordance with the environmental laws and regulations of the Recipient, ADB's *Environment Policy* (2002), and the IEE and the summary IEE ("SIEE"). The Recipient shall ensure the implementation of all environmental mitigation measures and the monitoring program set out in the IEE and SIEE.

Land Acquisition and Resettlement

15. The Recipient shall ensure that the implementation of the Project is carried out on state-owned land and within existing rights-of-way and does not trigger ADB's *Involuntary Resettlement Policy* (1995).

Gender, Local Labor; Health Risks and Prevention

16. The Recipient shall ensure that specific provisions are included in the bidding documents to ensure maximized local employment and equal employment opportunities for men and women without wage discrimination in accordance with ADB's *Policy on Gender and Development* (1998).

17. The Recipient shall ensure that all civil works contracts include provisions requiring contractors to (a) comply with applicable labor, health and sanitation laws and regulations; (b) provide appropriate working conditions, including as appropriate, accommodation for construction workers at campsites during the construction period; (c) abstain from child labor for construction and maintenance works; and (d) conduct an information and education campaign on sexually transmitted diseases and HIV/AIDS for construction workers as part of the health and safety program at camp sites during the construction period. The Recipient shall also develop linkages with national HIV/AIDS

prevention or control programs in a timely manner so that the HIV/AIDS prevention activities required under the Project are properly carried out.

18. The Recipient shall ensure that specific clauses are included in the bidding documents on these undertakings and compliance is strictly monitored during Project implementation.

Illegal Trafficking

19. The Recipient shall undertake adequate measures to detect and prevent trafficking of humans, wildlife, endangered species, and illegal substances on the Project Road.

Transparency, Governance and Anticorruption

20. The Recipient shall 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 MOTC, all contractors, consultants, and other service providers as they relate to the Project. In furtherance of the principles of transparency, accountability and anticorruption, the Recipient shall enhance and further develop the MOTC's web-site to provide the public with information on the Project, including, among other things, information on procurement activities, list of participating bidders and/or consultants, names of the winning bidders and/or consultants, basic details on bidding and/or recruitment procedures adopted, amounts of the contracts awarded, the lists of goods and/or services purchased, and their intended use.

Review

21. The Recipient and ADB shall carry out a midterm review (a) in 2009, for Component A and Component C, and (b) in 2011, for Component B of the Project. The reviews shall focus on Project outputs and milestone activities, particularly those relating to institutional, administrative, organizational, technical, environmental, resettlement, and social aspects. The Project's economic viability and other relevant aspects that may have an impact on Project performance shall be assessed. The reviews shall examine the implementation progress for the policy reforms and compliance with assurances specified in this Grant Agreement.