
GRANT NUMBER 0017-TIM (SF)

GRANT AGREEMENT
(Special Operations)
(Road Sector Improvement Project)

between

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

and

ASIAN DEVELOPMENT BANK

DATED 20 JANUARY 2006

GAS:TIM 38618

**GRANT AGREEMENT
(Special Operations)**

GRANT AGREEMENT dated 20 January 2006 between DEMOCRATIC REPUBLIC OF TIMOR-LESTE ("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) "bio-engineering" means, in the context of the Project, the use of vegetation, terracing and the construction of efficient drainage systems for the purpose of stabilizing road embankments and slopes, and includes tree-planting with deep-rooted species to reduce the risk of shallow slides and debris flow;

(b) "CARE Timor-Leste" means the branch of CARE Australia operating in Timor-Leste, the CARE International network forming one of the world's largest independent international emergency relief and development assistance NGOs;

(c) "EIRP-2" means the second emergency infrastructure rehabilitation project supported by a grant from the Trust Fund for East Timor (Grant No. 8198-TF ETM), said grant being the subject of a Grant Agreement between the United Nations Transitional Administration in East Timor and ADB dated 18 May 2002;

(d) "HIV/AIDS" means the human immunodeficiency virus/acquired immunodeficiency syndrome;

(e) "IEE" means the initial environmental examination for the Project completed in July 2005;

(f) "MPW" means the Recipient's Ministry of Public Works, and any successor thereto;

(g) "NGO" means a nongovernment organization;

(h) "PMU" means the project management unit for the Project, being more particularly referred to in paragraphs 2 and 3 of Schedule 5 to this Grant Agreement;

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

(j) "Project facilities" means the facilities to be rehabilitated and restored under the Project.

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 ten million dollars (\$10,000,000).

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 and 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 goods and services and other items of expenditure 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 and services to be financed out of the proceeds of the Grant shall be procured in accordance with the provisions of Schedule 3 and Schedule 4 to this Grant Agreement.

Section 3.04. Withdrawals from the Grant Account in respect of goods and services shall be made only on account of expenditures relating to

- (a) goods which are produced in and supplied from and services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and
- (b) goods and 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 2008 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 5 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 ninety (90) 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 Planning and 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

Palacio do Governo
Ministry of Planning and Finance
Edificio 5, 1º Andar
Dili, Timor-Leste

Facsimile Number:
+670 332 1339

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) 636-2446.

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.

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

By 
SIBTAIN FAZAL HALIM
Authorized Representative

ASIAN DEVELOPMENT BANK

By 
HARUHIKO KURODA
President

SCHEDULE 1

Description of the Project

Outputs and Scope

1. The Project will produce the following outputs: (i) rehabilitation and improvement of approximately 123 kilometers (km) of core network roads; (ii) labor-intensive routine road maintenance of 45 km; (iii) sound and sustainable road maintenance policies; (iv) an efficient bidding and contracting system for engaging communities in road maintenance through local small contractors; (v) improved project management, supervision and monitoring; and (vi) identification of modalities to ensure community-based, gender-inclusive rehabilitation and maintenance of rural feeder roads.
2. The scope of the Project includes:
 - (i) rehabilitation to fair conditions of three road sections: (a) Oeleu-Zumalai (35.9 km), (b) Aituto-Same (30.8 km), and (c) Viqueque-Uatucarbau (55.8 km), including base strengthening, resurfacing, slope protection and stabilization, and improvement of drainage systems and shoulders;
 - (ii) routine maintenance of the road section Iliomar-Lospalos (45 km) using labor-intensive methods; interventions will include patching, improvement of side drains, culvert repair and shoulder improvement, construction of lined drains, and bio-engineering; and
 - (iii) community empowerment initiatives, to involve: (a) identification of community-based and gender-inclusive modalities for rehabilitation and maintenance of rural feeder roads adjacent to the Project roads, (b) HIV/AIDS prevention and road safety awareness programs along the Project roads, and (c) monitoring of the employment targets for women.
3. The Project will include the provision of consulting services for Project management, construction supervision, establishment of road maintenance policies, road maintenance training and supervision, and socioeconomic impact monitoring.
4. The Project is expected to be completed by 31 December 2007.

SCHEDULE 2

Allocation and Withdrawal of Grant Proceeds

General

1. The table attached to this Schedule sets forth the Categories of goods, services and other items to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant to each Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category of 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 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.

Imprest Account

4. Except as ADB may otherwise agree, the Recipient shall establish, immediately after the Effective Date, an imprest account at a domestic commercial bank in Dili. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's "Loan Disbursement Handbook" dated January 2001, as amended from time to time, and detailed arrangements agreed upon between the Recipient and ADB. The initial amount to be deposited into the imprest account shall not exceed \$1,000,000.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Road Sector Improvement Project)				
CATEGORY				ADB FINANCING
Number	Item	Amount Allocated		Percentage
		\$		
		Category	Subcategory	
1	Civil Works	6,990,000		
1A	Aituto - Same		1,683,000	76
1B	Viqueque - Uatucarbau		1,032,000	76
1C	Oeleu - Zumalai		3,971,000	76
1D	Iliomar - Lospalos		304,000	61
2	Consulting Services	1,525,000		100*
3	Community Empowerment Initiative	560,000		100*
4	Unallocated	925,000		
	Total	\$10,000,000		

* Exclusive of local taxes

SCHEDULE 3

Procurement

1. Except as ADB may otherwise agree, the procedures referred to in the following paragraphs of this Schedule shall apply in the procurement of goods and services to be financed out of the proceeds of the Grant. In this Schedule and the Attachment hereto, the term "goods" includes equipment and materials; the term "services" does not include consulting services.

2. Procurement of goods and services shall be subject to the provisions of the "Guidelines for Procurement under Asian Development Bank Loans" dated November 2004 (hereinafter called the Guidelines for Procurement), as amended from time to time, which have been furnished to the Recipient.

3. Procurement of goods and services shall be made without any restriction against, or preference for, any particular supplier or contractor or any particular class of suppliers or contractors, except as otherwise provided below.

Local Competitive Bidding

4. All civil works contracts may be awarded on the basis of local competitive bidding among contractors in accordance with the standard procurement procedures of the Project Executing Agency and acceptable to ADB. For all contracts to be awarded on the basis of local competitive bidding, selection and engagement of contractors shall be subject to the approval of ADB. As soon as the bids received have been evaluated, the proposal for award of contract shall be submitted to ADB for approval. For this purpose, ADB shall be furnished with three copies of (i) an account of the public opening of bids; (ii) a summary and evaluation of the bids; (iii) the proposal for award; and (iv) a draft contract or draft letter of acceptance. Promptly after each contract is awarded, ADB shall be furnished with three copies of the contract as executed.

Industrial or Intellectual Property Rights

5. (a) The Recipient shall ensure that all ADB-financed goods and services 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 ADB-financed contracts for the procurement of goods and services 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.

SCHEDULE 4**Consultants**

1. The services of consultants shall be utilized in the carrying out of the Project, particularly with regard to:

- (a) engineering design and preparation of bidding documents;
- (b) construction supervision;
- (c) road maintenance (to include formulation of policies, training and supervision);
- (d) project management;
- (e) socioeconomic monitoring and evaluation;
- (f) financial auditing; and
- (g) community empowerment initiatives.

The terms of reference of all consultants shall be as determined by agreement between ADB and MPW.

2. The selection, engagement and services of the consultants shall be subject to the provisions of this Schedule and the provisions of the "Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers" dated January 2005 (hereinafter called the Guidelines on the Use of Consultants), as amended from time to time, which have been furnished to MPW.

3. The consultants referred to in subparagraphs 1(a), 1(b) and 1(c) above shall be selected and engaged either as a single firm, or as two firms, in both cases by the PMU using the quality-and-cost-based selection (QCBS) method. In the event that two firms are engaged, the firm engaged to provide construction supervision shall be the same firm that provides the road maintenance services. Selection and engagement of the firm/s shall be in accordance with the following procedures:

(a) Invitation for technical and financial proposals. The invitation to submit technical and financial proposals (hereinafter called the Request for Proposals or RFP) and all related documents shall be approved by ADB before they are issued. For this purpose, three copies of the draft RFP, the names of consultants to be short-listed, the proposed criteria for evaluation of both proposals, a draft consultancy contract, and other related documents shall be submitted to ADB. A period of at least 45 days shall be allowed for submission of both proposals. A copy of the final RFP as issued, together with all related documents, shall be furnished to ADB for information promptly after issuance. The validity period for the technical and financial proposals as provided in the RFP shall usually not exceed three months from the date specified for submission of the technical and financial proposals. The approval of ADB shall be obtained for any request to extend such validity period. Except as ADB may otherwise agree, the validity period, including any extensions, shall not exceed a maximum total period of six months. If the contract is not signed within the validity period in accordance with the Guidelines on the Use of Consultants, the selection shall be invalid and the selection and engagement process as provided in this paragraph shall be followed again.

(b) Evaluation and scoring of technical proposals. Immediately after the technical proposals have been evaluated and scored, approval of ADB shall be obtained to the evaluation and scoring of the technical proposals. For this purpose, ADB shall be furnished with three copies of the technical proposals.

(c) Public opening of financial proposals. The financial proposals of the firms whose technical proposals meet the minimum qualifying technical score shall be opened publicly after adequate notice is given to such firms or their representatives to attend the opening of the financial proposals.

(d) Evaluation and scoring of financial proposals and ranking of technical and financial proposals. After the financial proposals have been evaluated and scored, the ranking of the technical and financial proposals shall be made. Before negotiations are started with the first-ranked consultants, approval of ADB shall be obtained to the evaluation and scoring of the financial proposals and the ranking of the technical and financial proposals. For this purpose, ADB shall be provided with three copies of (i) the evaluation and scoring of the financial proposals and (ii) the ranking of the technical and financial proposals.

(e) Execution of contract. After the conclusion of negotiations but before the signing of the contract, ADB shall be furnished with the contract as negotiated for approval. Promptly after the contract is signed, ADB shall be furnished with three copies of the signed contract. If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

4. (a) The consultants referred to in sub-paragraphs 1(d), 1(e) and 1(f) above shall be selected and engaged as individual consultants.

(b) In the case of those individual consultants whose services are required for the staffing and operating of the PMU and who are already engaged under the EIRP-2 project under contracts entered into with the Recipient's former Ministry of Transport, Communications and Public Works, new contracts may be negotiated by MPW. Before any such contract is signed with said consultants, three copies of the relevant draft contract as negotiated shall be furnished to ADB for approval. Promptly after each contract is signed, ADB shall be furnished with three copies of the signed contract. If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

(c) All other individual consultants shall be selected and engaged on behalf of MPW by the PMU in accordance with the following procedures:

- (i) a list of the candidates together with their qualifications and their ranking and a draft contract shall be furnished to ADB for approval before the selection of consultants;
- (ii) promptly after the contract is signed, ADB shall be furnished with the evaluation of the candidates and a brief justification for the selection, together with three copies of the signed contract; and

- (iii) if any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

5. With regard to the consultancy services referred to in subparagraph 1(g) above, these may be carried out by CARE Timor-Leste pursuant to an agreement to be entered into with the prior approval of ADB.

SCHEDULE 5

Execution of Project; Financial and Other Matters

Project Executing Agency

1. MPW, as the Project Executing Agency, shall be responsible for overall execution and coordination of the Project.

Project Management Unit

2. The Recipient, through MPW, shall maintain the PMU established under the EIRP-2 project and shall provide office accommodation for the PMU.

3. The PMU shall (i) handle the bidding process; (ii) manage contracts; (iii) monitor Project progress; (iv) prepare withdrawal applications; (v) prepare Project progress reports and a Project completion report; (vi) maintain Project accounts and complete Grant financial records for auditing; and (vii) monitor the socioeconomic impacts of the Project. The PMU shall ensure that two resident engineer offices staffed with a team of international and domestic consultants are established in Baucau and Maliana to oversee construction supervision and environmental monitoring, and to ensure quality. To the extent possible, the PMU shall involve MPW's regional offices at Baucau, Maliana and Same in the implementation of the Project.

Counterpart Financing

4. Without limiting the generality of Section 6.05 of the Grant Regulations, the Recipient shall make available on a timely basis \$2.5 million from its ordinary budgetary allocations as counterpart financing to ensure completion of the Project.

Progress Reports

5. Without limiting the generality of Section 6.04 of the Grant Regulations, the Recipient, during the implementation period of the Project, shall submit to ADB, through the PMU, quarterly progress reports on the Project, and a Project completion report within three months after physical completion of the Project.

Rehabilitation Quality

6. The Recipient, through the PMU, shall ensure that the Project facilities are rehabilitated in accordance with the design technical specifications, and that construction supervision, quality control, and contract management are carried out in accordance with internationally accepted standards.

Road Maintenance Policy

7. Six months before the completion of the Project, the Recipient, assisted by the road maintenance consultant to be engaged under the Project, shall establish maintenance policies for the road sector and Project roads, including budget and implementation arrangements, and submit them through the PMU to ADB for review.

Environment

8. The Recipient, through the PMU, shall ensure that (i) the IEE is reviewed and updated at the engineering design stage; (ii) the Project complies with the environmental management plan incorporated in the updated IEE, all applicable national environmental laws, regulations and guidelines, and ADB's Environmental Policy (2002); (iii) the environment management plan in the IEE is reflected as part of bidding documents and civil work contracts; (iv) any adverse environmental impacts arising from the Project are minimized by implementing the agreed mitigating measures; and (v) environmental monitoring is done properly by the construction supervision team.

Project Performance Monitoring and Evaluation

9. The Recipient, through the PMU acting with the assistance of international and local consultants engaged for this purpose under the Project, shall monitor and evaluate Project impacts. The Recipient shall discuss and agree with ADB the indicators and baseline data to be prepared by these consultants prior to the commencement of civil works, and shall ensure that these consultants monitor and compare the data during Project implementation and at Project completion. The Recipient, through the PMU, shall submit monitoring and evaluation reports to ADB one month after the completion of the consultants' field work. Without limiting the generality of the above, the indicators and baseline data shall to the extent possible make full use of gender-disaggregated data and information.

Labor Laws

10. The Recipient, through the PMU, shall ensure that civil works contractors comply with all applicable labor laws and related international treaty obligations and do not employ child labor for rehabilitation and maintenance activities.

Road Safety

11. The Recipient shall ensure that MPW installs appropriate road safety facilities during Project implementation, including pavement markings, traffic signs and signals, warning signs, and hazard barriers.

Land Acquisition and Resettlement

12. The Recipient shall ensure that all rehabilitation works carried out under the Project are undertaken within existing rights-of-way. In the event of any unforeseen resettlement, the Recipient shall inform ADB and prepare a resettlement plan or plans according to relevant laws and regulations, and ADB's Policy on Involuntary Resettlement (1995). The PMU shall ensure that no construction of civil works commences until ADB has reviewed and approved the resettlement plan/s.

Gender and Development

13. The PMU shall (i) encourage local contractors to employ 30% of women in road rehabilitation and labor-intensive maintenance of selected national roads (including at least 75% of bio-engineering activities); (ii) provide for equal pay to men and women for work of equal type in accordance with national laws and international treaty obligations; and (iii) provide safe working conditions for both male and female workers. Specific provisions to this effect shall be included in the bidding documents. The PMU shall be responsible for monitoring the employment targets for women by reviewing periodically the payroll statements of the construction contractors through the engagement of CARE Timor-Leste. The PMU shall reflect progress in achieving the employment targets for women in the Project progress reports and Project completion report.

Health Risks

14. The PMU shall ensure that all civil works contractors engaged under the Project participate in the HIV/AIDS prevention and road safety program to be funded under the Project in the construction campsites. In addition, the PMU shall ensure that similar information on the risk of transmission of HIV/AIDS and other sexually transmitted diseases is disseminated to local communities in the corridor of influence, in coordination with national agencies working on this issue. The PMU shall include specific provisions to this effect in civil works contracts, and shall strictly monitor compliance through CARE Timor-Leste.