

GRANT AGREEMENT
(Surkhandarya Water Supply and Sanitation Project)

between

REPUBLIC OF UZBEKISTAN

and

ASIAN DEVELOPMENT BANK

DATED 20 APRIL 2009

GRANT AGREEMENT

GRANT AGREEMENT dated 20 April 2009 between THE REPUBLIC OF UZBEKISTAN (hereinafter called the Recipient) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

WHEREAS

(A) the Republic of Uzbekistan has applied to ADB for (i) a loan for the purposes of financing Component B, Component C, and Component E of the Project, as described in Schedule 1 to the Loan Agreement referred to in Recital (C) below (hereinafter called the Project); and (ii) a grant from the Multi-Donor Trust Fund under the Water Financing Partnership Facility administered by ADB for the purposes of financing Component A and Component D of the Project;

(B) the Project will be carried out by the Uzbekistan Communal Services Agency "Uzkommunhizmat" (hereinafter called UCSA), and for this purpose the Recipient will make available to UCSA the proceeds of the grant provided for herein upon terms and conditions satisfactory to ADB; and

(C) ADB has agreed to make a loan to the Republic of Uzbekistan (hereinafter called the Borrower) from ADB's Special Funds resources in the amount equivalent to Nineteen Million Three Hundred Fifty Seven Thousand Special Drawing Rights (SDR19,357,000) upon the terms and conditions set forth in the Loan Agreement of even date herewith between the Borrower and ADB; and

(D) ADB has agreed to make a grant to the Recipient from the Multi-Donor Trust Fund under the Water Financing Partnership Facility upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and UCSA;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Definitions

Section 1.01. Whenever used in this Grant Agreement, in each case unless the context otherwise require, the several terms defined in the Loan Agreement and the Loan Regulations (as so defined) have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) "Effective Date" means the date on which this Grant Agreement shall have come into force and effect pursuant to Section 6.03 of this Grant Agreement;

(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) “Grant” means the grant provided for in this Grant Agreement for the Project as defined below;

(d) “Grant Account” means the account opened or to be opened by ADB on its books in the name of the Recipient to which the amount of the Grant has been or will be credited;

(e) “Grant Closing Date” means the date specified in Section 3.05 of this Grant Agreement, after which ADB may terminate the right of the Recipient to make any withdrawals from the Grant Account, or such other date as any be agreed between ADB and the Recipient for such purpose;

(f) “Loan Agreement” means the agreement between the Borrower and ADB referred to in Recital (C) of this Grant Agreement; and

(g) “Project” for the purposes of this Grant Agreement means Component A and Component D for which ADB has agreed to make the Grant.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient a grant in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000). The Grant shall be denominated in Dollar.

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall make the proceeds of the Grant available to UCSA and shall cause UCSA to apply the proceeds of the Grant to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement and the Project Agreement.

Section 3.02. The Goods and consulting services to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant for such Goods and consulting services shall be in accordance with the provisions of Schedule 1 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 consulting services to be financed out of the proceeds of the Grant shall be procured in accordance with the provisions of Schedule 4 to the Loan Agreement.

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

- (a) Goods 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 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 withdrawal of the proceeds of the Grant shall be 30 September 2014 or such other date as may from time to time be agreed between the Recipient and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (a) The Recipient shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound applicable financial, business and development practices.

(b) In the carrying out of the Project, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 2 to this Grant Agreement.

Section 4.02. The Recipient shall make available to UCSA, promptly as needed, the funds, facilities, services and other resources which are required, in addition to the proceeds of the Grant, for the carrying out of the Project.

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.

Section 4.04. The Recipient shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.05. The Recipient shall take all action which shall be necessary on its part to enable UCSA to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.06. (a) The Recipient shall exercise its rights under this Grant Agreement in such a manner as to protect the interests of the Recipient and ADB and to accomplish the purposes of the Grant.

(b) No rights or obligations under the financing arrangements shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

ARTICLE V

Suspension and Cancellation

Section 5.01. (a) The following are specified as events for suspension of the right of the Recipient to make withdrawals from the Grant Account:

- (i) The Recipient shall have failed to perform any of its obligations under this Grant Agreement;
- (ii) ADB shall have determined, with respect to any contract to be financed in full or in part out of the proceeds of the Grant, that corrupt or fraudulent practices, as determined by ADB, were engaged in by representatives of the Recipient or any beneficiary of the Grant during the procurement of Goods and services, consultants' selection or the execution of a contract, without the Recipient having taken timely and appropriate action satisfactory to ADB to remedy the situation; or ADB shall have determined that the procurement of any Goods or services to be financed out of the proceeds of the Grant is inconsistent with the relevant procedure set out in the Grant Agreement; or
- (iii) The loan provided by ADB under the Loan Agreement shall have become liable for suspension or cancellation.

(b) The right of the Recipient to make withdrawals from the Grant Account shall continue to be suspended in whole or in part, as the case may be, until the event which gave rise to such suspension shall have, in the reasonable opinion of ADB, ceased to exist or until ADB shall have notified the Recipient that the right to make withdrawals has been restored in whole or in part, whichever is the earlier.

Section 5.02. (a) If (i) the right of the Recipient to make withdrawals from the Grant Account shall have been suspended with respect to any amount of the Grant for a continuous period of 30 days; or (ii) at any time ADB determines, after consultation with the Recipient, that any amount of the Grant will not be required for the purposes of the Project; or (iii) by the date specified in the Grant Agreement as the Grant Closing Date, an amount of the Grant shall remain unwithdrawn from the Grant Account; or (iv) at any time ADB determines, with respect to any contract to be financed in full or in part out of the proceeds of the Grant, that corrupt or fraudulent practices, as determined by ADB, were engaged in by representatives of the Recipient or any beneficiary of the Grant during

the procurement of Goods and services, consultants' selection or the execution of a contract, without the Recipient having taken timely and appropriate action satisfactory to ADB to remedy the situation; or (v) at any time, ADB determines that the procurement of any Goods or services to be financed out of the proceeds of the Grant is inconsistent with the procedure set out in the Grant Agreement, ADB may by notice to the Recipient terminate the right of the Recipient to make withdrawals with respect to such amount. Upon the giving of such notice, such amount of the Grant shall be cancelled.

(b) After consultation with ADB, the Recipient may by notice to ADB cancel any amount of the Grant which the Recipient shall not have withdrawn prior to the giving of such notice.

Section 5.03. Notwithstanding any cancellation or suspension, all the provisions of this Grant Agreement shall continue in full force and effect except as specifically provided in this Article.

ARTICLE VI

Effectiveness

Section 6.01. The following are specified as conditions to the effectiveness of this Grant Agreement:

(a) the execution and delivery of this Grant Agreement on behalf of the Recipient have been authorized by all necessary government action;

(b) the execution and delivery of the Loan Agreement on behalf of the Borrower have been authorized by all necessary government action;

(c) the execution and delivery of the Project Agreement on behalf of UCSA have been authorized by all necessary government and corporate action; and

(d) the Subsidiary Loan Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Borrower and UCSA and shall have become fully effective and legally binding upon such parties in accordance with its terms, subject only to the effectiveness of the Loan Agreement.

Section 6.02. The Recipient shall furnish, or cause to be furnished, to the ADB an opinion or opinions satisfactory to ADB of counsel acceptable to ADB showing:

(a) on behalf of the Recipient that the Grant Agreement has been duly authorized, and executed and delivered on behalf of, the Recipient and is legally binding upon the Recipient in accordance with its terms;

(b) on behalf of the Borrower that the Loan Agreement has been duly authorized, and executed and delivered, on behalf of the Borrower, and has become effective and is legally binding upon the Borrower in accordance with its terms;

(c) on behalf of UCSA that the Project Agreement has been duly authorized, and executed and delivered, on behalf of UCSA, has become effective and is legally binding upon UCSA in accordance with its terms; and

(d) on behalf of the Borrower and UCSA, that the Subsidiary Loan Agreement has been duly authorized by, and executed and delivered on behalf of, the Borrower and UCSA and is legally binding upon such parties in accordance with its terms, subject only to the effectiveness of the Loan Agreement

Section 6.03. (a) Except as ADB and the Recipient shall otherwise agree, the Grant Agreement shall come into force and effect on the date upon which ADB dispatches to the Recipient notice of its acceptance of the evidence required by Section 6.01 and Section 6.02;

(b) If, before the Effective Date, any event shall have occurred which would have entitled ADB to suspend the right of the Recipient to make withdrawals from the Grant Account if the Grant Agreement had been effective, ADB may postpone the dispatch of the notice referred to in paragraph (a) of this Section until such event shall have ceased to exist.

Section 6.04. If this Grant Agreement shall not have come into force and effect by a date sixty (60) days after the date of this Grant Agreement, this Grant Agreement, and all obligations of the parties thereunder shall terminate, unless ADB, after consideration of the reasons for the delay, shall establish a later date for the purposes of this Section. ADB shall promptly notify the Recipient of such later date.

ARTICLE VII

Withdrawal of Grant Proceeds

Section 7.01 Withdrawal from the Grant Account shall be made in the currency in which the Grant is denominated. The Recipient shall furnish to ADB sufficient evidence of the authority of the person authorized to sign applications for withdrawal and the authenticated specimen signature of each person.

Section 7.02. The Recipient shall furnish to ADB such documents and other evidence in support of the application for withdrawal as ADB shall reasonably request, whether before or after ADB shall have permitted any withdrawal requested in the application.

Section 7.03. Each application for withdrawal and the accompanying documents and all other evidence must be sufficient in form and substance to satisfy ADB that the Recipient is entitled to withdraw from the Grant Account the amount applied for and that the amount to be withdrawn from the Grant Account is to be used only for the purposes specified in the Grant Agreement.

Section 7.04. Payment by ADB of amounts which the Recipient is entitled to withdraw from the Grant Account shall be made to or on the order of the Recipient.

ARTICLE VIII

Delegation of Authority

Section 8.01. The Recipient hereby designates UCSA its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 7.02 and 7.03 of this Grant Agreement.

Section 8.02. Any action taken or any agreement entered into by UCSA pursuant to the authority conferred under Section 8.01 of this Grant Agreement shall be fully binding on the Recipient and shall have the same force and effect as if taken by the Recipient.

Section 8.03. The authority conferred on UCSA under Section 8.01 of this Grant Agreement may be revoked or modified by agreement between the Recipient and ADB.

ARTICLE IX

Enforceability; Failure to Exercise Rights; Arbitration

Section 9.01. (a) The rights and obligations of ADB and the Recipient under the Grant Agreement shall be valid and enforceable in accordance with their terms, notwithstanding any law of the Recipient, or political subdivision thereof, to the contrary.

(b) Neither ADB nor the Recipient shall be entitled in any proceeding under this Article to assert any claim that any provision of the Grant Agreement is invalid or unenforceable because of any provision of the Articles of Agreement Establishing the Asian Development Bank or for any other reason.

Section 9.02. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under the Grant Agreement upon any default shall impair any such right, power or remedy, or be construed to be a waiver thereof or an acquiescence in any such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

Section 9.03. (a) Any controversy between the parties to the Grant Agreement and any claim by any such party against any other such party arising under the Grant Agreement which shall not be settled by agreement of the parties shall be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

(b) The parties to such arbitration shall be ADB on the one side, and the Recipient on the other side.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by ADB; a second arbitrator shall be appointed by the Recipient; and the third arbitrator (hereinafter sometimes called the Umpire) shall be appointed by agreement of the parties or, if they shall not agree, by the President of the International Court of Justice or, failing appointment by him, by the Secretary-General of the United Nations. If either side shall fail to appoint an arbitrator, the Umpire shall appoint such arbitrator. In case any arbitrator appointed in accordance with this Section shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

(d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party or parties. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the relief sought and the name of the arbitrator appointed by the party instituting such proceeding. Within thirty (30) days after the giving of such notice, the other party or parties shall notify the party instituting the proceeding of the name of the arbitrator appointed by such other party or parties.

(e) If within sixty (60) days after the giving of the notice instituting the arbitration proceeding the parties shall not have agreed upon an Umpire, any party may request the appointment of an Umpire as provided in paragraph (c) of this Section.

(f) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(g) The law to be applied by the Arbitral Tribunal shall be public international law, the sources of which shall be taken for these purposes to include:

- (i) any relevant treaty obligations that are binding reciprocally on the parties;
- (ii) the provisions of any international conventions and treaties (whether or not binding directly as such on the parties) generally recognized as having codified or ripened into binding rules of customary law applicable to states and international institutions, as appropriate;
- (iii) other forms of international custom, including the practice of states and international institutions of such generality, consistency and duration as to create legal obligations; and
- (iv) applicable general principles of law.

(h) Subject to the provisions of this Section and except as the parties shall otherwise agree, the Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitral Tribunal shall be by majority vote.

(i) The Arbitral Tribunal shall afford to all parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such Tribunal. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to the Grant Agreement. Each party shall abide by and comply with any such award rendered by the Arbitral Tribunal in accordance with the provisions of this Section.

(j) The parties shall fix the amount of the remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amount before the Arbitral Tribunal shall convene, the Arbitral Tribunal shall fix such amount as shall be reasonable under the circumstances. Each party shall defray its own expenses in the arbitration proceedings. The costs of the Arbitral Tribunal shall be divided between and borne equally by ADB on the one side, and the Recipient on the other side. The Arbitral Tribunal shall determine any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs.

(k) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the settlement of controversies between the parties to the Grant Agreement, and any claim by either party against the other such party arising thereunder.

(l) If within thirty (30) days after the counterparts of the award have been delivered to the parties the award shall not be complied with, any party may enter judgment upon, or institute a proceeding to enforce, the award in any court of competent jurisdiction against any other party, and may enforce such judgment by execution or may pursue any other appropriate remedy against such other party for the enforcement of the award and the provisions of the Grant Agreement. Notwithstanding the foregoing, this Section shall not authorize any entry of judgment or enforcement of the award against any party that is a member except as such procedure may be available otherwise than by reason of the provisions of this Section.

(m) Service of any notice or process in connection with any proceeding under this Section or (to the extent that such remedy shall be available) in connection with any proceeding to enforce any award rendered pursuant to this Section may be made in the manner provided in Section 10.01. The parties to the Grant Agreement waive any and all other requirements for the service of any such notice or process.

ARTICLE X

Miscellaneous

Section 10.01. Any notice or request required or permitted to be given or made under the Grant Agreement shall be in writing. Except as otherwise provided in Section 6.04 such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, facsimile or electronic mail to the party to which it is required or permitted to be given or made at such party's address specified in Section 10.02 or at such other address as such party shall have designated by notice to the party giving such notice or making such request.

Section 10.02. The following addresses are specified for the purposes of notices or requests required or permitted to be given or made under the Grant Agreement:

For the Recipient

Ministry of Finance
5, Mustaqillik Square
Tashkent 100008
Republic of Uzbekistan

Facsimile Numbers:

(998-71) 244-5643
(998-71) 233-0925.

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2391.

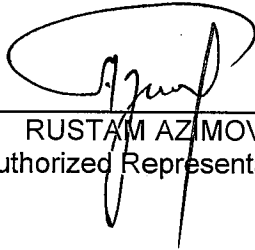
Section 10.03. Any action required or permitted to be taken, and any documents required or permitted to be executed, under the Grant Agreement, on behalf of the Recipient, may be taken or executed by the Minister of Finance of the Recipient or any person thereunto authorized in writing by him or her. Any modification of the provisions of the Grant Agreement may be agreed to on behalf of the Recipient, by written instrument executed on behalf of the Recipient by the representative so designated or any person authorized in writing by such representative; provided that, in the opinion of such representative or other person, such modification is reasonable in the circumstances and will not substantially increase the obligations of the Recipient under the Grant Agreement. ADB may accept the execution by such representative or other person of any such instrument as conclusive evidence that in the opinion of such representative or other person any modification of the provisions of the Grant Agreement effected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the Recipient thereunder.

Section 10.04. The Recipient shall furnish to ADB sufficient evidence of the authority of the person or persons who will, on behalf of the Recipient, take any action or execute any documents required or permitted to be taken or executed by the Recipient under the Grant Agreement and the authenticated specimen signature of each such person.

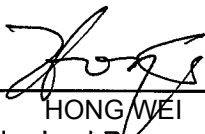
Section 10.05. This Grant Agreement may be executed in several counterparts, each of which shall be an original.

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.

REPUBLIC OF UZBEKISTAN

By  _____
RUSTAM AZIMOV
Authorized Representative

ASIAN DEVELOPMENT BANK

By  _____
HONGWEI
Authorized Representative

SCHEDULE 1

Allocation and Withdrawal of Grant Proceeds

General

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

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 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 and consulting services shall be disbursed in accordance with the Reimbursement Procedures as described in ADB's Loan Disbursement Handbook.

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 initial amount to be deposited into the imprest

account shall not exceed the lower of (i) the estimated expenditures to be financed from the imprest account for the first six (6) months of Project implementation, 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 for the Project, 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 US\$10,000.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS Surkhandarya Water Supply and Sanitation Project			
CATEGORY			ADB FINANCING
Number	Item	Amount Allocated (\$) Category	Percentage and Basis for Withdrawal from the Grant Account
1	Consulting Services (including sector strategy development, capacity development and study tours)	1,370,000	100 percent of total cost*
2	Equipment and Materials	130,000	100 percent of total cost*
	Total	1,500,000	

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

SCHEDULE 2

Execution of Project

Project Executing Agency and Project Implementing Agency

1. The Recipient shall designate UCSA as the Project Executing Agency with overall responsibility for Project coordination and implementation, and liaison with ADB and government agencies concerned. UCSA shall be directly responsible for the planning, design, and development and rehabilitation of water supply systems under the Project.

Study Tours

2. The Recipient shall ensure that candidates for study tours are selected through a transparent and competitive process following the criteria agreed with ADB. The Recipient shall also ensure that those who completed the training through the study tours will be required to share the knowledge gained in a reporting-back workshop with wider stakeholders.