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LOAN NUMBER 2755-KGZ(SF)

LOAN AGREEMENT  
(Special Operations)

(CAREC Corridor 1 [Bishkek-Torugart Road] Project 3)

between

KYRGYZ REPUBLIC

and

ASIAN DEVELOPMENT BANK

DATED 19 SEPTEMBER 2011

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KGZ 42399

## **LOAN AGREEMENT (Special Operations)**

LOAN AGREEMENT dated 19 September 2011 between the KYRGYZ REPUBLIC ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

### **WHEREAS**

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement; and

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

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Loan Regulations; Definitions**

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

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

- (a) "CAREC" means Central Asia Regional Economic Cooperation;
- (b) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2010, as amended from time to time);
- (c) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in paragraph 2(b) of Schedule 1 to this Loan Agreement;
- (d) "EIA" means the environmental impact assessment for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (e) "EMP" means the environmental management plan for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (f) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

(g) “Goods” means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(h) “HIV/AIDS” means human immunodeficiency virus/acquired immunodeficiency syndrome;

(i) “Km” means a place indicated by a particular kilometer number marker of the Bishkek-Torugart Road and “km” means kilometers;

(j) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2007, as amended from time to time);

(k) “MOTC” means the Ministry of Transport and Communications of the Borrower, and any successor thereto;

(l) “PAM” means the project administration manual for the Project dated 2 March 2011 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(m) “Procurement Guidelines” means ADB’s Procurement Guidelines (2010, as amended from time to time);

(n) “Procurement Plan” means the procurement plan for the Project dated 2 March 2011 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(o) “Project facilities” means the facilities to be constructed and the equipment to be provided pursuant to this Loan Agreement;

(p) “Safeguards Monitoring Report” means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of and compliance with the EMP, including any corrective and preventative actions;

(q) “SPS” means ADB’s Safeguard Policy Statement (2009); and

(r) “Works” means construction or civil works to be financed out of the proceeds of the Loan, 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 Loan**

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to thirty-five million forty-one thousand Special Drawing Rights (SDR35,041,000).

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

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

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

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

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

## **ARTICLE III**

### **Use of Proceeds of the Loan**

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

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

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

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

- (a) Goods which are produced in and supplied from and Works 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 Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 March 2016 or such other date as may from time to time be agreed between the Borrower and ADB.

## **ARTICLE IV**

### **Particular Covenants**

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

Section 4.02. (a) The Borrower 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 Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for imprest account and 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 Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Borrower pursuant to subparagraph (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 Borrower unless the Borrower shall otherwise agree.

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

**ARTICLE V****Effectiveness**

Section 5.01. A date 60 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

**ARTICLE VI****Miscellaneous**

Section 6.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

**For the Borrower**

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

Facsimile Number:

(996) 312 661645

**For ADB**

Asian Development Bank  
6 ADB Avenue  
Mandaluyong City  
1550 Metro Manila  
Philippines

Facsimile Numbers:

(632) 636-2444

(632) 636-2428.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of ADB.

KYRGYZ REPUBLIC

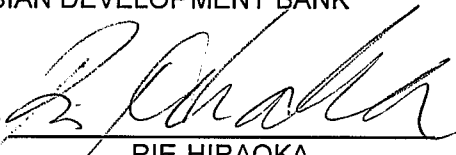
By



MELIS MAMBETJANOV  
Minister of Finance

ASIAN DEVELOPMENT BANK

By



RIE HIRAOKA  
Country Director  
Kyrgyz Resident Mission

**SCHEDULE 1****Description of the Project**

1. The objective of the Project is to improve mobility for people and goods within origins and destinations in the road corridor from Naryn to Torugart.
2. The Project shall comprise the following components:
  - (a) rehabilitating or reconstructing a road section (Km 479 to Km 539) of the Bishkek-Torugart Road to meet national Category III road standards with specific features for protecting the environment, preserving the road structure, and reducing vehicle crashes; and
  - (b) providing consultancy support for construction supervision, project management and improvement of infrastructure management skills of MOTC and other government agencies' staff responsible for long-term sustainability of the road network.
3. The Project is expected to be completed by 30 September 2015.



**SCHEDULE 2****Amortization Schedule****(CAREC Corridor 1 [Bishkek-Torugart Road] Project 3)**

<u>Date Payment Due</u>	<u>Payment of Principal (expressed in SDR) *</u>
15 July 2019	730,021
15 January 2020	730,021
15 July 2020	730,021
15 January 2021	730,021
15 July 2021	730,021
15 January 2022	730,021
15 July 2022	730,021
15 January 2023	730,021
15 July 2023	730,021
15 January 2024	730,021
15 July 2024	730,021
15 January 2025	730,021
15 July 2025	730,021
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15 January 2033	730,021
15 July 2033	730,021
15 January 2034	730,021
15 July 2034	730,021
15 January 2035	730,021
15 July 2035	730,021
15 January 2036	730,021
15 July 2036	730,021
15 January 2037	730,021
15 July 2037	730,021
15 January 2038	730,021

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

<u>Date Payment Due</u>	<u>Payment of Principal (expressed in SDR) *</u>
15 July 2038	730,021
15 January 2039	730,021
15 July 2039	730,021
15 January 2040	730,021
15 July 2040	730,021
15 January 2041	730,021
15 July 2041	730,021
15 January 2042	730,021
15 July 2042	730,021
15 January 2043	730,013
<b>Total</b>	<b><u>35,041,000</u></b>

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

### **SCHEDULE 3**

#### **Allocation and Withdrawal of Loan Proceeds**

##### General

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

##### Percentages of ADB Financing

2. Except as ADB may otherwise agree, each item of expenditure shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

##### Interest Charge

3. The amount allocated to Category 5 is for financing the interest charge on the Loan during the implementation period of the Project.

##### Reallocation

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

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

##### Disbursement Procedures

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

##### Imprest Account and Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower 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 the Loan Disbursement Handbook, and detailed arrangements agreed upon between the Borrower and ADB. The imprest account shall only be used for the purposes of the Project. The currency of the imprest account shall be Dollar. The ceiling for the imprest account shall not exceed the lower of (i) the estimated expenditure to be financed from the imprest account for the first 6 months of Project implementation, or (ii) the equivalent of 10% of the Loan amount.

(b) The statement of expenditures procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account, in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the statement of expenditures procedure shall not exceed the equivalent of \$50,000.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS</b> <b>(CAREC Corridor 1 [Bishkek – Torugart Road] Project 3)</b>			
CATEGORY			ADB FINANCING
Number	Item	Total Amount Allocated for ADB Financing (SDR) Category	Percentage and Basis for Withdrawal from the Loan Account
1	Works (design-build)	28,670,000	82% of total expenditure claimed
2	Project Management	956,000	90% of total expenditure claimed
3	Construction Supervision and Environmental Management	2,293,000	90% of total expenditure claimed
4	Training/Conference/ Workshops for Skills Development	510,000	80% of total expenditure claimed
5	Interest Charge	637,000	100% of amounts due
6	Unallocated	1,975,000	
	<b>Total</b>	<b>35,041,000</b>	

## **SCHEDULE 4**

### **Procurement of Goods, Works and Consulting Services**

#### General

1. The procurement of Goods, Works and Consulting Services 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 Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

#### Procurement of 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:
  - (a) International Competitive Bidding; and
  - (b) 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 Borrower 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.

#### Domestic Preference

5. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding 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.

#### Selection of Consulting Services

6. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.
7. The Borrower shall apply the following method for selecting and engaging the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan: Consultants' Qualifications Selection for project management support.
8. The Borrower shall recruit the individual consultants for project management support in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

9. (a) The Borrower 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 Borrower 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 Borrower 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.

ADB's Review of Procurement Decisions

11. 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 Borrower and ADB and set forth in the Procurement Plan.

12. Before granting an extension of the stipulated time for completion of a contract for Goods or Works, or before agreeing to any modification or waiver of the terms and conditions of such contract, including issuing any change order or orders under such contract, the Borrower shall seek ADB's no objection to the proposed extension, modification, or change order. If ADB determines that the proposal would be inconsistent with the provisions of this Loan Agreement and/or the Procurement Plan, it shall promptly inform the Borrower and state the reasons for its determination. A copy of all amendments to the contract shall be furnished to ADB for its record.

## **SCHEDULE 5**

### **Execution of Project and Financial Matters**

#### Implementation Arrangements

1. The Borrower shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

#### Environment

2. The Borrower shall ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the EIA, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

#### Social Safeguards

3. The Borrower shall ensure that the Project does not have any indigenous peoples or involuntary resettlement impacts, all within the meaning of SPS. In the event that the Project does have any such impact, the Borrower shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and the principles and requirements set forth in Chapter V, Appendix 2, Appendix 3, and Appendix 4 (as applicable) of the SPS.

#### Human and Financial Resources to Implement Safeguards Requirements

4. The Borrower shall make available necessary budgetary and human resources to fully implement the EMP.

#### Execution of Works Contracts

5. The Borrower shall ensure that contractors do not commence any Works until the updated EIA, including the EMP, has been revised based on the refined road alignment and environmental baseline survey and cleared by ADB.

#### Safeguards – Related Provisions in Bidding Documents and Works Contracts

6. The Borrower shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to: (a) comply with the measures relevant to the contractor set forth in the EIA, the EMP, and any corrective or preventative actions set forth in Safeguards Monitoring Reports; (b) make available a budget for all such environmental and social measures; (c) provide the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the EIA



and the EMP; (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

#### Safeguards Monitoring and Reporting

7. The Borrower shall:

- (a) submit Safeguards Monitoring Reports to ADB semi-annually during construction and annually during Project operation, and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the EIA and the EMP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) starting the middle of the first construction season, engage qualified and experienced external experts or qualified NGOs under a selection process and terms of reference acceptable to ADB, to verify information produced through the Project monitoring process, and facilitate the carrying out of any verification activities by such external experts.

#### Labor and Health Standards

8. The Borrower shall ensure that specific provisions are included in the bidding documents to ensure that Works contractors: (a) comply with core labor standards, applicable laws and regulations of the Borrower and incorporate workplace occupational safety norms; (b) do not differentiate pay between men and women for work of equal value; (c) do not employ child labor in the construction and maintenance activities; (d) eliminate forced or compulsory labor; (e) eliminate employment discrimination; (f) allow for freedom of association; (g) to the extent possible, maximize employment of local people for project construction purposes provided that the requirements for job and efficiency are adequately met; and (h) disseminate information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of the contractors engaged under the Project and to members of the local communities surrounding the Project.

#### Illegal Trafficking

9. The Borrower shall undertake adequate measures to detect and prevent trafficking of humans, wildlife, endangered species, and illegal substances on the Bishkek-Torugart Road.

Counterpart Support

10. Without limiting the generality of Section 6.06 of the Loan Regulations, the Borrower shall ensure that all funds and resources required for implementation of the Project are allocated and provided on a timely basis in accordance with the financing plan agreed for the Project.

Governance and Anticorruption

11. The Borrower shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

12. The Borrower shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.