



MINISTRY OF ENERGY AND WATER

CONTRACT FOR CONSULTANT'S SERVICES Time-Based

Panj-Amu River Basin Sector Project
Selection of Consulting Services for:
Implementation Support Consultancy
(ISC)

Grant No. 0506/0507-AFG

Contract No. NPA/MEW/96/CS-1553/QCBS

between

Ministry of Energy and Water and
the Ministry of Agriculture, Irrigation and Livestock

and

Sheladia Associates, Inc., USA, Lead
NIRAS Finland Oy, Finland, Sub-Consultant
NIRAS, Denmark, Sub-Consultant

Dated: June 2018



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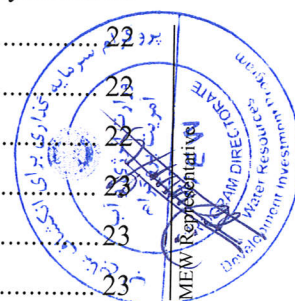
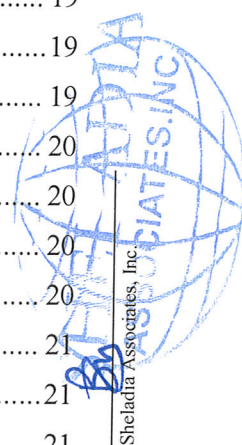
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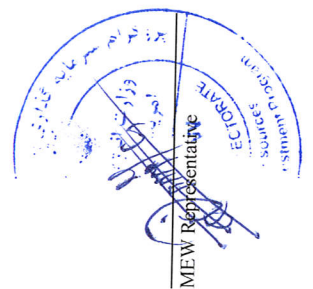
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Preface

1. The standard Contract form consists of four parts: the Form of Contract to be signed by the Client and the Consultant, the General Conditions of Contract (GCC), including Attachment 1 (Bank's Policy – Corrupt and Fraudulent Practices); the Special Conditions of Contract (SCC); and the Appendices.
2. The General Conditions of Contract, including Attachment 1, shall not be modified. The Special Conditions of Contract that contain clauses specific to each Contract intend to supplement, but not over-write or otherwise contradict, the General Conditions.



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I. Form of Contract**TIME-BASED**

This CONTRACT (hereinafter called the "Contract") is made the 25 ^{June} day of the month of **December, 2017**, between, on the one hand, **the Ministry of Energy and Water MEW) and the Ministry of Agriculture, Irrigation and Livestock (MAIL)** (hereinafter called the "Client") and, on the other hand, **Sheladia Associates, Inc., USA, Lead in association with NIRAS Finland Oy, Finland and NIRAS, Denmark, as Sub-Consultants** (hereinafter called the "Consultant").

WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the "Services");
- (b) the Consultant, having represented to the Client that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
- (c) the Client has received a grant from the Asian Development Bank: toward the cost of the Services and intends to apply a portion of the proceeds of this grant to eligible payments under this Contract, it being understood that (i) payments by the Bank will be made only at the request of the Client and upon approval by the Bank; (ii) such payments will be subject, in all respects, to the terms and conditions of the grant agreement, including prohibitions of withdrawal from the grant account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by the decision of the United Nations Security council taken under Chapter VII of the Charter of the United Nations; and (iii) no party other than the Client shall derive any rights from the grant agreement or have any claim to the grant proceeds;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - (a) The General Conditions of Contract (including Attachment 1 "Bank Policy – Corrupt and Fraudulent Practices);
 - (b) The Special Conditions of Contract
 - (c) Appendices:

Appendix A: Terms of Reference

Appendix B: Key Experts

Appendix C: Remuneration Cost Estimates

Appendix D: Other Expenses, Provisional Sums and Contingency Cost Estimates

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Appendix E: Form of Advance Payments Guarantee

In the event of any inconsistency between the documents, the following order of precedence shall prevail: the Special Conditions of Contract; the General Conditions of Contract, including Attachment 1; Appendix A; Appendix B; Appendix C and Appendix D; Appendix E. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.

2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract, in particular:
- (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract and shall not exceed the maximum amount agreed for **US\$ 4,654,062 and AFN 21,207,943** inclusive of Indirect Local Taxes.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

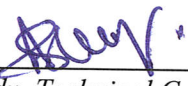
For and on behalf of the **Ministry of Energy and Water (MEW)**


Mohammad Gul "Khulmi", Deputy Minister (MEW), Acting Minister of Energy and Water

For and on behalf of the **Ministry of Agriculture, Irrigation and Livestock (MAIL)**

Nasir Ahmad Durrani, Minister (MAIL)


For and on behalf of **Sheladia Associates, Inc., USA, Lead in association with NIRAS Finland Oy, Finland and NIRAS, Denmark as Sub-Consultants**


Avula Srinivasula Reddy, Technical Coordinator (Sheladia Associates, Inc.)



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MEW Representative


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III. Special Conditions of Contract

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(b) and 3.1	The Contract shall be construed in accordance with the law of the Islamic Republic of Afghanistan.
4.1	The language is English.
6.1 and 6.2	<p>The addresses are:</p> <p>Client : Ministry of Energy and Water, Darulaman Road, Kabul, Afghanistan, and Ministry of Agriculture, Irrigation and Livestock Kabul, Afghanistan</p> <p>Attention : Eng. Waisuddin Rahimi E-mail (where permitted): waisuddin.rahimi@gmail.com</p> <p>Consultant : Sheladia Associates, Inc. in association with NIRAS Finland Oy, Finland and NIRAS, Denmark as Sub-Consultants</p> <p>15825 Shady Grove Road Suite 100 Rockville, MD 20850 USA</p> <p>Attention : <u>Binaya Nand Singh</u> Facsimile : 301-948-7174 E-mail (where permitted): bnand@sheladia.com</p>
8.1	N/A
9.1	<p>The Authorized Representatives are:</p> <p>For the Client: Eng. Waisuddin Rahimi, P-ARBP Director</p> <p>For the Consultant: Binaya Nand Singh, Head of Agriculture and Water Resources</p>
11.1	The effectiveness conditions are the following: Date of signing of contract
12.1	Termination of Contract for Failure to Become Effective: Not applicable
13.1	<p>Commencement of Services:</p> <p>The number of days shall be ten days.</p>

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	Confirmation of Key Experts' availability to start the Assignment has been submitted to the Client in writing as a written statement signed by each Key Expert before signing of the contract.
14.1	Expiration of Contract: The time period shall be Five (5) Years
21 b.	The Client reserves the right to determine on a case-by-case basis whether the Consultant should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in Clause GCC 21.1.3 No
23.1	"Limitation of the Consultant's Liability towards the Client: (a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Client's property, shall not be liable to the Client: (i) for any indirect or consequential loss or damage; and (ii) for any direct loss or damage that exceeds <u>one (1)</u> times the total value of the Contract; (b) This limitation of liability shall not: (i) affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services; (ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the Applicable Law.
24.1	The insurance coverage against the risks shall be as follows: (a) Professional liability insurance, with a minimum coverage of should not be less than the total ceiling amount of the Contract (b) Third Party motor vehicle liability insurance in respect of motor vehicles operated in the Client's country by the Consultant or its Experts or Sub-consultants, with a minimum coverage of in accordance with the applicable law in the Client's country" (c) Third Party liability insurance, with a minimum coverage of in accordance with the applicable law in the Client's country; (d) employer's liability and workers' compensation insurance in respect of the experts and Sub-consultants in accordance with the relevant provisions of the applicable law in the Client's country, as well as, with respect to such Experts, any such life, health, accident, travel or other insurance as may be appropriate; and

	(e) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services.
27.1	None
27.2	The Consultant shall not use these feasibility studies and detailed designs for purposes unrelated to this Contract without the prior written approval of the Client.
41.2	<p>The ceiling in foreign currency or currencies is: <i>USD 4,654,062.00 (Four Million Six Hundred Fifty Four Thousand and Sixty Two US Dollar) inclusive of local indirect taxes.</i></p> <p>The ceiling in local currency is: <i>AFN 21,207,943.00 (Twenty-One Million Two Hundred Seven Thousand and Nine Hundred Forty Three Afghani) inclusive of local indirect taxes.</i></p> <p>Any indirect local taxes chargeable in respect of this Contract for the Services provided by the Consultant shall be reimbursed by the Client to the Consultant.</p>
42.3	<p>Price adjustment on the remuneration applies</p> <p>Payments for remuneration made in foreign currency shall be adjusted as follows:</p> <p>(1) Remuneration paid in foreign currency on the basis of the rates set forth in Appendix C shall be adjusted every 12 months (and, the first time, with effect for the remuneration earned in the 13th calendar month after the date of the Contract Effectiveness date) by applying the following formula:</p> $R_f = R_{fo} \times \left[0.1 + 0.9 \frac{I_f}{I_{fo}} \right]$ <p>where</p> <p>R_f is the adjusted remuneration;</p> <p>R_{fo} is the remuneration payable on the basis of the remuneration rates (Appendix C) in foreign currency;</p> <p>I_f is the official index for salaries in the country of the foreign currency for the first month for which the adjustment is supposed to have effect; and</p> <p>I_{fo} is the official index for salaries in the country of the foreign currency for the month of the date of the Contract.</p> <p>The Consultant shall state here the name, source institution, and any necessary identifying characteristics of the official index for salaries corresponding to I_f and I_{fo} in the adjustment formula for remuneration paid in foreign currency:</p> <p>امريت پروگرام</p> <p>Employment Cost Index for Private Industry Workers (not seasonally adjusted), Current Dollar, U.S. Bureau of Labor Statistics.</p>

43.1 and 43.2	<p>The Client warrants that the Client shall reimburse the Consultant for any indirect taxes, duties, fees, levies and other impositions imposed, under the applicable law in the Client's country, paid for by the Consultant in respect of:</p> <ul style="list-style-type: none"> (a) any payments whatsoever made to the Consultant, Sub-consultants and the Experts (other than nationals or permanent residents of the Client's country), in connection with the carrying out of the Services; (b) any equipment, materials and supplies brought into the Client's country by the Consultant or Sub-consultants for the purpose of carrying out the Services and which, after having been brought into such territory, will be subsequently withdrawn by them; (c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Client and which is treated as property of the Client; (d) any property brought into the Client's country by the Consultant, any Sub-consultants or the Experts (other than nationals or permanent residents of the Client's country), or the eligible dependents of such experts for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Client's country, provided that: <ul style="list-style-type: none"> (i) the Consultant, Sub-consultants and experts shall follow the usual customs procedures of the Client's country in importing property into the Client's country; and (ii) if the Consultant, Sub-consultants or Experts do not withdraw but dispose of any property in the Client's country upon which customs duties and taxes have been exempted, the Consultant, Sub-consultants or Experts, as the case may be, (a) shall bear such customs duties and taxes in conformity with the regulations of the Client's country, or (b) shall reimburse them to the Client if they were paid by the Client at the time the property in question was brought into the Client's country.
44.1	<p>The currencies of payment shall be the following:</p> <ul style="list-style-type: none"> • US Dollars (USD), and • Afghani (AFN)
45.1(a)	<p>The following provisions shall apply to the advance payment and the advance bank payment guarantee:</p> <ul style="list-style-type: none"> (1) An advance payment of 10% of the remuneration value for first 12 months of the assignment as per contract shall be made within 30 days after the Effective Date. The advance payment will be recovered by the Client in equal monthly installments against each of the Bill for the first 12 months of the Services until the advance payment has been fully set off. (2) The advance payment bank guarantee shall be in the amount and in the currency of the currency(ies) of the advance payment.

45.1(b)	The Consultant shall submit to the Client itemized statements at time intervals of every quarter
45.1(e)	The accounts are: for foreign currency: <i>Beneficiary: Sheladia Associates, Inc.</i> <i>A/C # 220004171</i> <i>Freedom Bank of Virginia</i> <i>10555 Main Street first floor faifax, VA22030, USA</i> for local currency: <i>Same as above.</i>
46.1	The interest rate is: LIBOR rate per annum + <u>2</u>%.
49.	Disputes shall be settled by arbitration in accordance with the following provisions: 1. <u>Selection of Arbitrators.</u> Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions: (a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to the Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute. (b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by the Secretary General of the Permanent Court of Arbitration, The Hague; (c) If, in a dispute subject to paragraph (b) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the Secretary General of the Permanent Court of Arbitration, The Hague, to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole

	arbitrator for that dispute.
	<p>2. <u>Rules of Procedure.</u> Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.</p> <p>3. <u>Substitute Arbitrators.</u> If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.</p> <p>4. <u>Nationality and Qualifications of Arbitrators.</u> The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a) through 1(c) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Consultant's home country or of the home country of any of their members or Parties] or of the Government's country. For the purposes of this Clause, "home country" means any of:</p> <ul style="list-style-type: none"> (a) the country of incorporation of the Consultant or of any of their members or Parties; or (b) the country in which the Consultant's or any of their members' or Parties' principal place of business is located; or (c) the country of nationality of a majority of the Consultant's or of any members' or Parties' shareholders; or (d) the country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract.
	<p>5. <u>Miscellaneous.</u> In any arbitration proceeding hereunder:</p> <ul style="list-style-type: none"> (a) proceedings shall, unless otherwise agreed by the Parties, be held in <i>Singapore</i>; (b) the <i>English</i> language shall be the official language for all purposes; and (c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.



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