
LOAN NUMBER 2433-AZE

LOAN AGREEMENT
(Ordinary Operations)

(Road Network Development Program, Project 2 –
Rehabilitation of the Ganja Bypass Road)

between

REPUBLIC OF AZERBAIJAN

and

ASIAN DEVELOPMENT BANK

DATED 15 December 2008

LAL:AZE 39176



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**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 15 December 2008 between the REPUBLIC OF AZERBAIJAN (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

WHEREAS

(A) by a framework financing agreement dated 8 August 2007 between the Borrower and ADB, ADB has agreed to provide a multitranche financing facility to the Borrower for purposes of financing projects under the Borrower's Road Network Development Program;

(B) by a periodic financing request dated 30 June 2008 submitted by the Borrower, the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement; and

(C) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001, are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications thereof (said Ordinary Operations Loan Regulations as so modified being hereinafter called the Loan Regulations):

(a) Section 3.03 is deleted and the following is substituted therefor:

Commitment Charge; Credit. (a) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(b) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the amount of the credit against the interest payable by the Borrower.



(b) Section 3.06 is deleted and the following is substituted therefor:

(a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(c) Section 3.07 is deleted and the following is substituted therefor:

(a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a

Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

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

- (a) "ARS" means AzerRoadService Open Joint-Stock Company, a state-owned company under MOT responsible for implementation of the Project;
- (b) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2007, as amended from time to time);
- (c) "EMP" means the environmental management plan included in the IEE for the Project;
- (d) "FFA" means the framework financing agreement dated 8 August 2007 between ADB and the Borrower with respect to the Facility;
- (e) "Facility" means the multitranche financing facility provided by ADB to the Borrower for purposes of financing projects under the Investment Program;
- (f) "Goods" means equipment and materials to be financed out of the proceeds of the Loan; and including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;
- (g) "IEE" means the initial environmental examination prepared for the Project, and approved by the Borrower on 14 January 2008;
- (h) "Investment Program" means the Borrower's Road Network Development Program in the road subsector for 2006-2015 developed by the MOT in June 2006;
- (i) "MOED" means the Ministry of Economic Development of the Borrower, or any successor thereof;
- (j) "MOF" means the Ministry of Finance of the Borrower, or any successor thereof;

(k) “MOT” means the Ministry of Transport of the Borrower, or any successor thereof;

(l) “PFR” means the periodic financing request submitted or to be submitted by the Borrower, for the purposes of each loan under the Facility, and for the purpose of this Loan Agreement means the periodic financing request dated 30 June 2008;

(m) “PIU” means the Project implementation unit as described in paragraph 2 of Schedule 5 to this Loan Agreement;

(n) “Procurement Guidelines” means ADB’s Procurement Guidelines (2007, as amended from time to time);

(o) “Procurement Plan” means the procurement plan for the Project dated 13 August 2008 and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(p) “Project Executing Agency” for the purposes of, and within the meaning of, the Loan Regulations means MOT, or any successor thereof;

(q) “Project road” means the road as described in Schedule 1 to this Loan Agreement; and

(r) “Works” means construction or civil works to be financed out of the proceeds of the Loan, and 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. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of fifty-five million four hundred thousand Dollars (\$55,400,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 20 years, and a grace period as defined in paragraph (c) of this Section.

(c) The term “grace period” as used in paragraph (b) 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 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest

Period equal to the sum of LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations, less a credit of 0.40% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing sixty (60) days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 March and 15 September in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

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. No consulting services are envisaged to be financed out of the proceeds of the Loan; provided, however, that in the course of Project implementation, if financing of any consulting services is requested by the Borrower and agreed by ADB, then

the description of such consulting services and the proposed method of selection shall be deemed to be incorporated herein by updating the Procurement Plan.

Section 3.03. Subject to Section 3.02 of this Loan Agreement, the Goods, Works and consulting services to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Goods, Works and consulting services shall be 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 3.04. Subject to Section 3.02 of this Loan Agreement, and except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement. ADB may refuse to finance a contract where Goods, Works or consulting services have not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 3.05. Except as ADB may otherwise agree, the Borrower shall cause all Goods, Works and consulting services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.06. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 30 April 2012 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (a) The Borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental, highway, road construction, operation, and maintenance practices.

(b) 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. The Borrower shall make available, promptly as needed, the funds, facilities, services, land, and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project and for the operation and maintenance of the Project facilities.

Section 4.03. (a) In the carrying out of the Project, the Borrower shall cause competent and qualified consultants and contractors, acceptable to ADB, to be employed to an extent and upon terms and conditions satisfactory to the Borrower and ADB.

(b) The Borrower shall cause the Project to be carried out in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The Borrower shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

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

Section 4.05. (a) The Borrower shall (i) maintain, and cause MOT and ARS to maintain, 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 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 Section 4.05(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 4.06. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, and any relevant records and documents.

Section 4.07. The Borrower shall ensure that the Project facilities are operated, maintained and repaired in accordance with sound administrative, financial, engineering, environmental, highway, road construction, operation, and maintenance practices.

ARTICLE V

Effectiveness

Section 5.01. A date thirty (30) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 10.04 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 12.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower:

Ministry of Finance
S. Vurgun Street, 83
370022 Baku
Republic of Azerbaijan
Facsimile Number:

(994-12) 493 93 98

(994-12) 493 05 62

For ADB:

Asian Development Bank
P.O. Box 789
0980 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 and to be delivered at the principal office of ADB, as of the day and year first above written.

REPUBLIC OF AZERBAIJAN

By 

ZIYA MAMMADOV
Minister
Ministry of Transport

ASIAN DEVELOPMENT BANK

By 

FARAJ HUSEYNBEOV
Team Head
Azerbaijan Resident Mission

SCHEDULE 1

Description of the Project

1. The objective of the Investment Program is to build an adequate, efficient, safe, and sustainable road network linking the Republic of Azerbaijan domestically and internationally.
2. As a part of the Investment Program, the Project shall consist of improvement and rehabilitation of the two-lane paved Ganja bypass road of about 39 kilometers, which forms a part of the East-West highway connecting Baku to the Georgian border, and is more fully described in the PFR.
3. The Project is expected to be completed by 31 October 2011.

SCHEDULE 2

Amortization Schedule (Road Network Development Program - Project 2)

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 Sep 2012	2.500000
15 Mar 2013	2.500000
15 Sep 2013	2.500000
15 Mar 2014	2.500000
15 Sep 2014	2.500000
15 Mar 2015	2.500000
15 Sep 2015	2.500000
15 Mar 2016	2.500000
15 Sep 2016	2.500000
15 Mar 2017	2.500000
15 Sep 2017	2.500000
15 Mar 2018	2.500000
15 Sep 2018	2.500000
15 Mar 2019	2.500000
15 Sep 2019	2.500000
15 Mar 2020	2.500000
15 Sep 2020	2.500000
15 Mar 2021	2.500000
15 Sep 2021	2.500000
15 Mar 2022	2.500000
15 Sep 2022	2.500000
15 Mar 2023	2.500000
15 Sep 2023	2.500000
15 Mar 2024	2.500000
15 Sep 2024	2.500000
15 Mar 2025	2.500000
15 Sep 2025	2.500000
15 Mar 2026	2.500000
15 Sep 2026	2.500000

Schedule 2

15 Mar 2027	2.500000
15 Sep 2027	2.500000
15 Mar 2028	2.500000
15 Sep 2028	2.500000
15 Mar 2029	2.500000
15 Sep 2029	2.500000
15 Mar 2030	2.500000
15 Sep 2030	2.500000
15 Mar 2031	2.500000
15 Sep 2031	2.500000
15 Mar 2032	<u>2.500000</u>
 TOTAL	 100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

SCHEDULE 3

Allocation and Withdrawal of Loan Proceeds

General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, and consulting services to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan 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 Loan on the basis of the percentages set forth in the Table.

Reallocation

3. 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 then 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

4. Except as ADB may otherwise agree, the Loan proceeds for financing Goods, Works, and consulting services shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Statement of Expenditures

5. The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$100,000.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Road Network Development Program - Project 2)			
CATEGORY			ADB FINANCING BASIS
Number	Item	Total Amount Allocated for ADB Financing \$ Category	Percentage of ADB Financing from the Loan Account
1	Works	45,100,000	82 percent of total expenditure claimed*
2	Unallocated	10,300,000	
	Total	55,400,000	

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

SCHEDULE 4

Procurement of Goods and Works, and Consulting Services

A. General

1. All Goods, Works and consulting services to be financed out of the proceeds of the Loan 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.

B. Procurement for 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:

International Competitive Bidding
National Competitive Bidding

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.
5. National Competitive Bidding. The Borrower and ADB shall ensure that national competitive bidding for the procurement of Goods and Works shall conform to the provisions of the Public Procurement Law of December 27, 2001 with the clarifications and modifications described in the Procurement Plan. Any subsequent change to the agreed clarifications and modifications shall become effective only after written approval of such change by the Borrower and ADB.

C. Selection of Consulting Services

6. In the event ADB finances any consulting services under the Project, then except as otherwise agreed by ADB and set forth in the Procurement Plan, the Borrower shall apply quality- and cost-based selection for selecting and engaging such consulting services.

D. Industrial or Intellectual Property Rights

7. (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.

8. 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.

E. ADB's Review of Procurement Decisions

9. All contracts procured under international competitive bidding procedures and contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

SCHEDULE 5

Execution of Project and Operation of Project Facilities; Financial Matters

Implementation Arrangements

1. The MOT, as the Project Executing Agency, shall be responsible for the supervision and execution of the Project, and shall be assisted by ARS, who shall be responsible for the implementation of the Project.
2. The joint PIU, established within ARS for ongoing road projects financed by ADB and other multilateral development banks, shall handle the day-to-day implementation activities. The PIU shall comprise the ARS staff and a team of externally contracted qualified technical, safeguards, financial, and support staff. The PIU, headed by a Project director, shall report to the chairman of ARS, who shall oversee the Project.
3. The Facility steering committee, established with representation from the Cabinet of Minister's Office, MOED, MOF, MOT, ARS, and the PIU Project director, shall coordinate and monitor the Project. The steering committee, chaired by the deputy minister of transport, shall meet semiannually to ensure interagency coordination, review implementation progress, and provide approvals and guidance as necessary.

Construction Quality

4. The MOT shall, through ARS, ensure that the construction of the Project road complies with technical specifications of the design, and that the construction supervision, quality control, and Project management are undertaken according to internationally accepted standards and practices.

Road Maintenance

5. The MOT shall ensure that sufficient funding and resources are made available for implementation of the road maintenance plan for 2008-2015 that is developed under ADB's loan No. 2354-AZE: Road Network Development Program, Project 1.

Road Safety

6. The MOT shall implement appropriate safety enforcement measures in respect of the Project road and, through ARS, monitor the accident rate and traffic volume after commencement of the operation of the Project road.

Axle Loads

7. The MOT shall, through ARS, establish vehicle weighing stations along the Project road to control the axle overloading and formulate appropriate procedures and regulations to enforce the axle load controls.

Vehicle Emissions

8. The MOT shall, through the relevant agencies, enforce the vehicle emission standards that are developed under ADB's loan No. 2354-AZE: Road Network Development Program, Project 1.

Environment

9. The MOT shall ensure that (i) the Project road, and the facilities and structures, under the Project are designed, constructed, and operated in accordance with all applicable laws and regulations of the Republic of Azerbaijan, ADB's *Environment Policy* (2002), and the IEE; (ii) any adverse environmental impacts are minimized by implementing the mitigation measures and the monitoring program set out in the EMP; (iii) implementation of the EMP and any violation of the environmental standards are reported to ADB semiannually in accordance with the IEE; (iv) the EMP is incorporated in the bidding documents and bill of quantities, and made a part of the civil works contracts; and (v) ARS monitors the implementation of the EMP by the contractors.

Land Acquisition and Resettlement

10. The MOT shall ensure that (i) the Project does not require any land acquisition or involuntary resettlement; (ii) in the event land acquisition or involuntary resettlement becomes necessary in course of Project implementation, it shall be promptly and efficiently carried out in accordance with the resettlement framework attached to the FFA, and in compliance with the applicable laws and regulations of the Republic of Azerbaijan, and ADB's *Involuntary Resettlement Policy* (1995); and (iii) all land needed temporarily during construction is leased by the contractors from willing lessors.

Labour; Social; Gender and Development; Health

11. The MOT shall comply with ADB's *Policy on Gender and Development* (1998), and take necessary steps to encourage women living in the Project area to participate in Project implementation.

12. The MOT shall, in consultation with the local governments, local communities, and beneficiaries, ensure an independent monitoring of the social impacts throughout the implementation of the Project.

13. The MOT shall ensure that all civil works contractors (i) comply with all applicable labor laws; (ii) use their best efforts to employ women and local people, including disadvantaged people, living in the vicinity of the Project road; (iii) disseminate information at worksites on health safety for those employed during construction, and provide time for medical testing and treatment; (iv) provide equal pay to men and women for work of equal type; (v) provide safe working conditions for male and female workers; and (vi) abstain from engaging child labor. The MOT shall ensure that contracts for the Project road include specific clauses on these undertakings, and that the compliance is strictly monitored by the PIU during implementation.

Anticorruption

14. The Borrower, MOF, MOT and ARS acknowledge that ADB, consistent with its commitment to good governance, accountability and transparency, reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project, and shall (i) comply with ADB's *Anticorruption Policy* (1998, as amended to date); and (ii) cooperate with any such investigation and extend all necessary assistance, including access to all relevant books and records, and for engagement of independent experts who may be needed for satisfactory completion of such investigation.

15. The MOT 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.

16. The MOT shall ensure that (i) all contracts, Project accounts, and financial statements are audited by an independent external auditor; (ii) decisions of all procurement-related matters are taken by the Tendering Committee, which comprises representatives of the MOED, MOF, MOT, and the State Procurement Agency (as observer); (iii) all contractors' payment claims are verified in accordance with contract specifications; (iv) information on selection of contractors is disclosed through local newspapers in a timely manner; and (v) status of procurements and awards of contracts is disclosed on MOT's website in accordance with ADB's *Procurement Guidelines*.

Change in Ownership and Operation

17. In the event that the Borrower proposes (i) any change in ownership of the Project, (ii) any sale, transfer, or assignment of interest or control in the Project, or (iii) a lease or contract or otherwise material modification of MOT or ARS's functions or authority over implementation and operation of the Project, the Borrower shall, at least six (6) months prior to the implementation of such a proposal, consult with ADB and obtain its consent. The Borrower shall ensure that any such proposal is carried out in a legal and transparent manner.

Reporting

18. The MOT shall prepare and submit to ADB quarterly progress reports for the Project, which will include (i) a narrative description of progress made during the reporting period; (ii) changes in the implementation schedule; (iii) problems or difficulties encountered; and (iv) activities to be undertaken in the next reporting period.

Performance Monitoring and Evaluation

19. The MOT shall, through ARS, and with the assistance of the supervision consultant engaged under ADB loan No. 2205-AZE: East-West Highway Improvement Project, monitor and evaluate the Project impacts to ensure that the Project facilities are managed effectively and the Project benefits maximized. The MOT shall, through ARS,

collect the data agreed with ADB at the inception, on Project completion, and 3 years after Project completion.

20. Within three (3) months of the Effective Date, the MOT shall, through ARS, establish a Project performance management system in form and substance acceptable to ADB, in accordance with the Project performance indicators agreed with ADB.

21. The MOT shall, through ARS, undertake periodic Project performance review in accordance with the Project performance management system to evaluate the scope, implementation arrangements, progress and achievements of objectives of the Project and the Facility.

Project Review

22. ADB and the MOT shall meet regularly as necessary, and at least annually to review the progress under the Project. In addition, the MOED, MOF, MOT, ARS and ADB shall jointly undertake a midterm review of the Project in the year 2010, which will focus on (i) implementation progress; (ii) road subsector reform and performance; (iii) performance of consultants and contractors; (iv) status of compliance with the understandings in the FFA and the covenants in the Loan Agreement; and (v) the need for any midcourse changes in the scope or schedule of Project to ensure full achievement of its impact.