
LOAN NUMBER 2354-AZE

LOAN AGREEMENT
(Ordinary Operations)

(Road Network Development Program, Project 1 –
Masally-Astara section of the North-South Highway)

between

REPUBLIC OF AZERBAIJAN

and

ASIAN DEVELOPMENT BANK

DATED 15 JANUARY 2008

LAL:AZE 39176

LOAN AGREEMENT

(Ordinary Operations)

LOAN AGREEMENT dated 15 JANUARY 2008 between the Republic of Azerbaijan (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

WHEREAS

(A) the Borrower has applied to ADB for a loan from its Special Funds resources for the purposes of Part 2(v) of the Project described in Schedule 1 to this Loan Agreement, and a loan from its ordinary capital resources for the purposes of Parts 2(i)-2(iv) of the Project;

(B) by an agreement of even date herewith between the Borrower and ADB (hereinafter called the Special Operations Loan Agreement), ADB has agreed to lend to the Borrower from its Special Funds resources an amount in various currencies equivalent to six million five hundred thirty five thousand Special Drawing rights (SDR 6,535,000) (hereinafter called the Special Operations Loan) upon terms and conditions set forth therein; 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 3.06 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.

(b) 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" Joint-Stock Company, a state-owned company 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) "EIA" means the environmental impact assessment carried out in respect of the Project;

(d) "GAP" means the gender action plan developed for the Project in agreement between the Borrower and ADB;

(e) "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;

(f) "Investment Program" means the Borrower's road network development program in the road subsector for 2006-2015 developed by the Road Transport Service Department of MOT in June 2006;

(g) "Manat" means the lawful currency of Azerbaijan;

- (h) "MOED" means the Ministry of Economic Development of the Republic of Azerbaijan or any successor thereof;
- (i) "MOF" means the Ministry of Finance of the Republic of Azerbaijan or any successor thereof;
- (j) "MOT" means the Ministry of Transport of the Republic of Azerbaijan or any successor thereof;
- (k) "PIU" means the Project implementation unit established within ARS to undertake day-to-day Project management and implementation functions;
- (l) "PPMS" means Project performance management system agreed between the Borrower and ADB;
- (m) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);
- (n) "Procurement Plan" means the procurement plan for the Project dated 8 August 2007 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;
- (o) "Project area" means the geographic area encompassing the Project Road;
- (p) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means MOT, or any successor thereof;
- (q) "Project facilities" means the Goods and Works, and any facilities to be rehabilitated, installed, maintained or serviced under the Project;
- (r) "Project Road" means the road as described in Schedule 1 to this Loan Agreement;
- (s) "PSC" means the Project Steering Committee established to ensure interagency coordination, provide strategic guidance on and supervise Project implementation as referenced in section 1 of Schedule 5 to this Loan Agreement; and
- (t) "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 one hundred ninety million dollars (\$190,000,000), 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.

Section 2.03. The Borrower shall pay a commitment charge of 0.35% 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. The Goods, Works and consulting services and other items of expenditure 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 and other items of expenditure 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 3.03. 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 3.04. 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 3.05. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 30 June 2010 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 and highway and road construction, and operation and maintenance road 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, 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/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 and road construction, and maintenance and operational practices.

ARTICLE V

Effectiveness

Section 5.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 10.01(f) of the Loan Regulations: the Special Operations Loan Agreement shall have been duly authorized or ratified by, and duly executed and delivered on behalf of, the Borrower, and all conditions for its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled.

Section 5.02. The following is specified as an additional matter, for the purposes of Section 10.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: the Special Operations Loan Agreement shall have been duly authorized or ratified by, and duly executed and delivered on behalf of, the Borrower, and it shall have become legally binding upon and enforceable against the Borrower in accordance with its terms, subject only to the effectiveness of this Loan Agreement.

Section 5.03. A date sixty (60) 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

Cable Address:

ASIANBANK
MANILA

Telex Numbers:


29066 ADB PH (RCA)
42205 ADB PM (ITT)
63587 ADB PN (ETPI)

Facsimile Numbers:

(632) 636-2444
(632) 636-2428

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  _____
Authorized Representative

ASIAN DEVELOPMENT BANK

By  _____
Authorized Representative

SCHEDULE 1

Description of the Project

Impact and Outcome

1. The Project will increase trade in the region and economic growth in the Project area through multiple factors, including: (i) increased mobility and accessibility to markets, jobs, and social services; (ii) greater opportunities for private sector participation in business activities; (iii) lower transport costs; (iv) increased trade flows and competitiveness; and (v) improved governance in the road subsector. The outcome of the Project will be improved and sustainable regional and national North-South road corridor.

Scope of the Project

2. The Project consists of the following:

- (i) construction of approximately 59 km of a new four-lane category I expressway between Masalli and Astara (the Project Road), divided into three subprojects:

Section A of the Project Road from km 0 to km 22.1,

Section B of the Project Road from km 22.1 to km 45.1, and

Section C of the Project Road from km 45.1 to km 58.6;

- (ii) rehabilitation of approximately 120 km local two-lane category III roads in the Project area;
- (iii) installation of a vehicle weighing station along the Project Road;
- (iv) provision of road maintenance equipment; and
- (v) project management support and consulting services for construction supervision, financial audit, social and environmental assessments, and institutional capacity development.

3. The Project is expected to be completed by 31 December 2009.

SCHEDULE 2**Amortization Schedule
(Road Network Development Program, Project 1)**

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>Period</u>	<u>Date Payment Due</u>			<u>Installment Share (expressed in Percentage)</u>
1	15	March	2012	2.50
2	15	September	2012	2.50
3	15	March	2013	2.50
4	15	September	2013	2.50
5	15	March	2014	2.50
6	15	September	2014	2.50
7	15	March	2015	2.50
8	15	September	2015	2.50
9	15	March	2016	2.50
10	15	September	2016	2.50
11	15	March	2017	2.50
12	15	September	2017	2.50
13	15	March	2018	2.50
14	15	September	2018	2.50
15	15	March	2019	2.50
16	15	September	2019	2.50
17	15	March	2020	2.50
18	15	September	2020	2.50
19	15	March	2021	2.50
20	15	September	2021	2.50
21	15	March	2022	2.50
22	15	September	2022	2.50
23	15	March	2023	2.50
24	15	September	2023	2.50
25	15	March	2024	2.50
26	15	September	2024	2.50
27	15	March	2025	2.50
28	15	September	2025	2.50
29	15	March	2026	2.50
30	15	September	2026	2.50
31	15	March	2027	2.50
32	15	September	2027	2.50
33	15	March	2028	2.50

34	15	September	2028	2.50
35	15	March	2029	2.50
36	15	September	2029	2.50
37	15	March	2030	2.50
38	15	September	2030	2.50
39	15	March	2031	2.50
40	15	September	2031	2.50
Total				<u>100.00</u>

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, services and other items 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.

Interest and Commitment Charge

3. The amount allocated to Category 4 is for financing interest and commitment charge on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charge.

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 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

5. Except as ADB may otherwise agree, the Loan proceeds for financing Goods, Works, and consulting services and other items 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.

Condition of Withdrawals from Loan Account

6. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for Works under Part 2(i) of the Project as described in Schedule 1 hereof until ADB shall have received Borrower's certification, in form and substance satisfactory to ADB, that (i) the Borrower has provided ARS by means of a transfer to a relevant project account the funds adequate in the opinion of ADB for land acquisition activities under the Project, and (ii) land and rights-of-way required for the Project are free and clear from the rights and claims of third parties and any other encumbrances.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Road Network Development Program, Project 1)			
CATEGORY			ADB FINANCING BASIS
Number	Item	Total Amount Allocated for ADB Financing \$ mln.	Percentage of ADB Financing from the Loan Account*
1	Works for Masalli–Astara Expressway Construction	114.4	100 percent of total expenditure claimed
2	Local Roads Rehabilitation	12.2	100 percent of total expenditure claimed
3	Maintenance and Vehicle-Weighing Equipment	2.0	100 percent of total expenditure claimed
4	Interest and Commitment Charge	11.2	100 percent of amounts due
5	Unallocated	50.2	
	TOTAL	190	

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

SCHEDULE 4

Provisions on Procurement and Consulting Services

A. General

1. All Goods and 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 procedures to be followed for national competitive bidding (NCB) shall be those set forth in the Borrower's Public Procurement Law of 27 December 2001, with the clarifications and modifications described in the following paragraphs required for compliance with the provisions of the Procurement Guidelines.
 - (i) Eligibility. The eligibility of bidders shall be as defined under Section I of the Procurement Guidelines; accordingly, no bidder or potential bidder should be declared ineligible for reasons other than those stated in Section I of the Procurement Guidelines. Bidders must be nationals of member countries of ADB, and offered Goods, consulting services, and Works must be produced in and supplied from member countries of ADB.
 - (ii) Prequalification. Normally, post-qualification shall be used unless explicitly provided for in the Loan Agreement/Procurement Plan. Irrespective of whether post-qualification or prequalification is used, eligible bidders (both national and foreign) shall be allowed to participate.
 - (iii) Registration and Licensing
 - (a) Bidding shall not be restricted to pre-registered/licensed firms.
 - (b) Where registration or licensing is required, bidders (i) shall be allowed a reasonable time to complete the registration or licensing process; and (ii) shall not be denied registration/licensing for reasons unrelated to their capability and resources to successfully

- perform the contract, which shall be verified through post-qualification.
- (c) Foreign bidders shall not be precluded from bidding. If a registration or licensing process is required, a foreign bidder declared the lowest evaluated bidder shall be given a reasonable opportunity to register or to obtain a license.
- (iv) Bidding Period. The minimum bidding period is twenty-eight (28) days prior to the deadline for the submission of bids.
- (v) Bidding Documents. Procuring entities should use standard bidding documents for the procurement of Goods, Works and consulting services acceptable to ADB.
- (vi) Preferences. No domestic preference shall be given for domestic bidders and for domestically manufactured Goods.
- (vii) Advertising. Invitations to bid shall be advertised in at least one widely circulated national daily newspaper or freely accessible, nationally-known website allowing a minimum of twenty-eight (28) days for the preparation and submission of bids. Bidding of NCB contracts estimated at US\$500,000 equivalent or more for Goods, or US\$1,000,000 equivalent or more for Works, shall be advertised concurrently with the general procurement notices on ADB's website.
- (viii) Bid Security. Where required, bid security shall be in the form of a bank guarantee from a reputable bank.
- (ix) Bid Opening, Bid Evaluation, and Award of Contract
- (a) Bids shall be opened in public.
- (b) Evaluation of bids shall be made in strict adherence to the criteria declared in the bidding documents and contracts shall be awarded to the lowest evaluated bidder.
- (c) Bidders shall not be eliminated from detailed evaluation on the basis of minor, non-substantial deviations.
- (d) No bidder shall be rejected on the basis of a comparison with the employer's estimate and budget ceiling without ADB's prior concurrence.
- (e) A contract shall be awarded to the technically responsive bidder that offers the lowest evaluated price, and meets the qualifying requirements. Negotiations shall not be permitted.
- (f) Splitting of award, of a single contract, among two or more bidders shall not be permitted.
- (g) Price verification shall not be applied.
- (x) Rejection of All Bids and Rebidding. Bids shall not be rejected and new bids solicited without ADB's prior concurrence.
- (xi) Disclosure of Decision on Contract Awards. At the same time that notification on award of contract is given to the successful bidder, the results of bid evaluation shall be published in a local newspaper or a well-

known freely accessible website identifying the bid and lot numbers and providing information on (i) name of each bidder who submitted a bid, (ii) bid prices as read out at bid opening, (iii) name of bidders whose bids were rejected and the reasons for their rejection, and (iv) name of the winning bidder, and the price it offered, as well as the duration and summary scope of the contract awarded. The Project Executing agency/implementing agency shall respond in writing to unsuccessful bidders who seek explanations on the grounds on which their bids are not selected.

- (xii) Participation by Government-owned enterprises. Government-owned enterprises in the Republic of Azerbaijan shall be eligible to participate as bidders only if they can establish that they are legally and financially autonomous, operate under commercial law and are not a dependent agency of the contracting authority. Furthermore, they will be subject to the same bid and performance security requirements as other bidders.
- (xiii) Right to Inspect/Audit. A provision shall be included in all NCB Works and Goods contracts financed by ADB requiring suppliers and contractors to permit ADB to inspect their accounts and records and other documents relating to the bid submission and the performance of the contract, and to have them audited by auditors appointed by ADB.
- (xiv) Fraud and corruption
 - (a) The Borrower shall reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the contract in question.
 - (b) ADB will declare a firm or individual ineligible, either indefinitely or for a stated period, to be awarded a contract financed by ADB, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, ADB-financed contract.

C. Conditions for Award of Contract

- 6. The Borrower shall not award any Works contracts financed under the Loan until:
 - (a) the corresponding initial environmental examination or environmental impact assessment has been approved by ADB; and
 - (b) Resettlement Plan has been approved by ADB.

D. Selection of Consulting Services

- 7. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.

E. Industrial or Intellectual Property Rights

8. (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.

9. 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.

F. ADB's Review of Procurement Decisions

10. 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

I. IMPLEMENTATION ARRANGEMENTS

Project Steering Committee and Executing Agency

1. A project steering committee (PSC) shall be established with representation from the Cabinet of Ministers, Ministry of Economic Development, Ministry of Finance, MOT, ARS, and PIU amongst others. PSC will ensure interagency coordination, provide guidance and supervise Project implementation. PSC will be chaired by a Deputy Minister of Transport and shall meet at least semiannually to review implementation progress and provide approvals and guidance as necessary. MOT shall be the Project Executing Agency responsible for overall Project supervision and execution, and shall be assisted by ARS, as implementing agency, responsible for daily management of the Project.

Project Implementation Unit

2. The joint PIU, established within ARS for the ongoing road sector projects financed by ADB, World Bank and EBRD, shall implement the Project. The PIU will comprise ARS staff and externally contracted staff to supplement limited human resources in ARS.

Project Management Support

3. In the interest of providing continuity for Project management, the PIU director shall serve in the position throughout the Project implementation period, except in case of gross dereliction of duties or such other serious cause, provided that such a determination is made through due process. MOT, through ARS shall provide the PIU with adequate office space and support services in a form satisfactory to ADB throughout the implementation period. MOT, through ARS shall ensure that, upon completion of the Project, PIU staff is integrated to implement future projects or subprojects financed by ADB.

Counterpart Funding

4. MOF shall provide, on a timely basis, all counterpart funds, staff, land and other resources necessary for reconstruction, rehabilitation, operations, maintenance, and management of the Project facilities. MOT shall ensure that ARS can successfully implement the Project as described in Schedule 1, and operate and maintain Project facilities upon completion.

II. PROJECT COVENANTS

Construction Quality

5. MOT shall cause ARS to ensure that the Works financed under the Project comply with technical specifications of the design. MOT through ARS shall ensure that construction supervision, quality control, and project management are performed according to internationally accepted standards and practices.

Change in Ownership and Operation

6. In the event that (i) any change in ownership of the Project Road or Project facilities, (ii) any sale, transfer, or assignment of interest or control in the Project Road or Project facilities, or (iii) any lease or other contract or other modification of MOT's or ARS's functions and authority over operation and maintenance of the Project Road or Project facilities, is anticipated, MOT shall ensure that ADB's consent is obtained at least six months prior to the implementation of such a plan. MOT shall ensure that any such changes shall be carried out in a legal and transparent manner.

Road Maintenance

7. MOT shall ensure that ARS develops in consultation with ADB, and MOT shall approve, a road maintenance plan for the fiscal years 2008-2015 by 30 September 2008, which will (i) establish a system for efficient planning and prioritization of road maintenance works; (ii) provide funding modalities to finance the maintenance of relevant roads acceptable to ADB, (iii) develop or adopt adequate road maintenance standards and prepare relevant road maintenance planning and operational manuals; and (iv) provide training to strengthen the capacity of local maintenance units. MOT shall ensure that a road maintenance program covering the country's road network is implemented.

8. Prior to the completion of the Works, MOT shall have used its best efforts to enter into maintenance concession with a private sector entity for at least 20 km of local roads along the Project Road. MOT shall cause ARS to submit the bidding documents and the concession framework to ADB by the end of 2008.

Road Safety

9. MOT shall ensure that at least six months prior to the opening for operation of the Project Road: (i) a plan, acceptable to ADB, for ensuring safe operation of road infrastructure facilities, is developed and implemented; and the Borrower acting through relevant government authorities shall ensure that (ii) traffic police patrols the Project road and enforces the national laws and regulations. MOT shall ensure appropriate safety enforcement measures on the Project road and shall cause ARS to monitor the accident rate and traffic volume after commencement of the operation of the Project Road.

10. The Borrower acting through relevant government agencies shall provide strict border control and road patrol to prevent trafficking of humans, wildlife, endangered species, and illegal substances on the Project Road.

Axle Loads

11. MOT shall ensure that ARS establishes vehicle weighing stations within the Project Road to control the axle overloading and institute appropriate procedures and regulations to enforce the axle load control by the completion of the Project.

Tolling

12. MOT shall ensure that at least six months prior to the opening for operation of the Project Road, ARS shall have provided ADB with the MOT-endorsed framework and definitive action plan for establishing tolling roads along any Borrower's expressway road financed by

ADB. MOT shall cause ARS to review and inform ADB by mid 2010 of any significant difficulties in establishing tolls on expressway roads under the Borrower's laws and regulations.

Vehicle Emissions

13. MOT shall ensure that at least six months prior to the opening for operation of the Project Road, ARS shall have provided ADB with the Borrower's emission standards and the penalties for infringement of such standards. The Borrower shall ensure through the relevant agencies that the said vehicle emission standards are enforced.

Environment

14. MOT shall ensure that the Project and all Project facilities are developed, conducted, implemented and maintained in accordance with its applicable laws and regulations and ADB's Environment Policy (2002).

15. MOT shall ensure that an environmental impact assessment (EIA) is prepared for the Project in accordance with its applicable laws and regulations and ADB's Environment Policy, and that such EIA is approved by ADB and Azerbaijan's Ministry of Ecology and Natural Resources and is adhered to during design, construction and operation phases of the Project.

16. MOT shall ensure that the environmental management plan (EMP) is implemented in accordance with its terms, and that all recommendations of the EMP are incorporated in the bidding documents, Works contracts and consultant's contracts to ensure compliance.

17. MOT shall ensure that: (a) ARS monitors the implementation of EMPs by the contractor; (b) Works and consulting services contracts include specific provisions for EMPs' preparation, implementation and monitoring, (c) mitigation measures in EMPs are adequately implemented by the contractors, and (d) adequate budgetary allocation for these activities are timely provided. MOT shall also ensure that ARS timely submits semi-annual monitoring reports on EMPs implementation to ADB.

Land Acquisition and Resettlement

18. The Borrower acting through relevant government authorities shall ensure that all land and rights-of-way required for the Project are made available free and clear from any and all rights and claims of third parties and any other encumbrances whatsoever in a timely manner and that land acquisition and resettlement are carried out pursuant to the Resettlement Plan (RP) as agreed with ADB, in conformity with (i) Borrower's applicable laws and regulations, (ii) ADB's Involuntary Resettlement Policy (1995).

19. MOT shall cause ARS to ensure that within 3 months of the effective date of this Loan Agreement, the PIU shall have engaged an independent agency or consultant, acceptable to ADB and the Borrower, to conduct monitoring and evaluation of the resettlement process and impacts. Reports of such independent monitoring shall be submitted to ADB on a quarterly basis.

20. MOT shall ensure that contractors commence the Works only after the Resettlement Plan has been implemented in accordance with its terms.

Social, Gender Development, Health and Other Issues

21. MOT shall ensure that an independent monitoring of the social impacts throughout implementation of the Project is conducted, in consultation with local governments and beneficiaries.

22. MOT shall ensure that all Works contractors (i) comply with all applicable labor laws, (ii) use their best efforts to maximize employment of women and local people, including disadvantaged and affected persons, living in the Project area, (iii) disseminate information at worksites on health safety for those employed during construction, (iv) provide equal pay to men and women for work of equal type, (v) provide safe working conditions and separate culturally appropriate facilities for male and female workers, (vi) do not use forced or involuntary labor, and (vii) do not use labor of children and minors below age 16. Bidding documents and Works contracts for the Project shall include specific clauses on these undertakings. MOT shall ensure that the PIU and Construction Supervision Consultant monitor and report compliance with these provisions throughout Project implementation.

23. MOT shall ensure that the GAP is developed within six (6) months of the Effective Date, and is fully implemented in a timely manner over the Project period, and that adequate resources are allocated for this purpose. The GAP shall: (a) ensure women's representation in management and dispute resolution bodies of resettled communities, (b) integrate women's needs in the design and operation of Project outputs; (c) establish targets for women's participation in training, construction and maintenance, and other Project activities; and (d) ensure women's effective involvement in the monitoring and evaluation of the Project. MOT shall ensure that ARS with assistance of Project management consultants develops a field manual on GAP implementation and conducts training for Project staff. Gender-related indicators shall be included in PPMS and sex-disaggregated data shall be collected and monitored. MOT shall ensure that GAP implementation is closely monitored and reported to ADB semiannually.

III. OPERATIONAL CONSIDERATIONS

Project Audit

24. MOT and ARS shall maintain separate project records and accounts adequate to identify the Works, Goods and consulting services financed from the Loan proceeds, financing resources received, expenditures incurred for the Project, and use of counterpart funds. These project accounts and related financial statements will be audited annually in accordance with sound auditing standards by an independent auditor acceptable to ADB. MOF shall ensure that annual audited reports and related financial statements are submitted to ADB within six months after the end of each fiscal year during implementation of the Project. The audit of the imprest account and statement of expenditure will be carried out as part of the regular annual audit. The auditor's opinion of the examination of the imprest account and statement of expenditure should be separately set out in the auditor's report.

25. MOF shall ensure that an annual performance audit for the Project is completed pursuant to the terms of reference to be developed by ADB. All costs incurred in connection with such performance audits shall be the Project cost.

Project Review

26. (a) ADB, MOED, MOF, MOT and ARS shall meet regularly as required to discuss the progress of the Project and any changes to implementation arrangements or remedial measures required to be undertaken towards achieving the objectives of the Project.

(b) A midterm review of the Project will be undertaken by ADB and the Borrower in 2008. The midterm review will include review of issues and any problems or weaknesses in implementation arrangements, institutional, administrative, organizational, technical, environmental, social, poverty reduction, resettlement, economic, financial, and other relevant aspects that may have an impact on the performance of the Project, and its continuing viability. The review shall also examine progress in resettlement, environment, poverty impact, and compliance with assurances in this Loan Agreement and agree on any changes needed to achieve the objectives of the Project.

Policy Dialogue

27. MOT shall ensure that ADB is informed about the Borrower's policies, strategies and programs related to the road subsector that will materially affect the financial viability of the Project.

Governance and Anticorruption

28. MOF, MOT and ARS shall follow ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB, consistent with its commitment to good governance, accountability and transparency, reserves the right to undertake directly, or through its agents, investigation of any alleged corrupt, fraudulent, collusive or coercive practices related to the project/subproject and cooperate with such investigation and extend all necessary assistance including access to all relevant books and records, and engaging independent experts who may be needed for satisfactory completion of such investigations. All costs related to such investigations shall be borne by the Project. MOT shall ensure implementation of the following measures: (i) anticorruption provisions acceptable to ADB shall be 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 agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project; (ii) all decisions relating to procurement shall be made by the Tendering Committee that comprises representatives of the MOED, MOF, MOT, and the State Procurement Agency (as observer) and other relevant agencies in accordance with ADB's Procurement Guidelines; and (iii) the Construction Supervision Consultant shall verify the contractors' invoices in accordance with working drawings and contract specifications. MOF and MOT shall also cause ARS and other involved agencies to undertake additional measures to improve governance, accountability, and transparency, including (i) independent external auditing of contracts, accounts, and financial statements; (ii) timely disclosure of information on selection of consultants and contractors through local newspapers.

Monitoring and Evaluation

29. MOT shall ensure that ARS, with the assistance of the PIU and the Construction Supervision Consultant, monitors and evaluates Project impacts to ensure that the Project facilities are managed effectively and the Project benefits are maximized. MOT shall ensure

that ARS collects the data agreed with ADB at the inception, Project completion, and 3 years after Project completion.

30. MOT shall ensure that within three months of the effective date of this Loan Agreement, ARS shall have established a Project Performance Management System (PPMS) in a form and substance acceptable to ADB, in accordance with the Project performance indicators agreed with ADB. MOT shall ensure that ARS undertakes periodic Project performance review in accordance with the PPMS to evaluate the scope, implementation arrangements, progress and achievements of objectives of the Project.

31. MOT shall ensure that ARS prepares and submits to ADB quarterly progress reports for the Project. The reports will include a description of physical progress, problems, and difficulties encountered and a summary of financial accounts that will consist of loan expenditures during the period, year to date, and total to date, and include a report on progress of the implementation of mitigation measures as specified in the contracts and EMP and measures to ensure environmentally responsible procurement.

32. MOT shall ensure that the Project Completion Report is submitted to ADB within three months following completion of the Project. It shall cover a detailed evaluation of the Project, including design, costs, contractors' and consultants' performance, social, environmental and economic impact, economic rate of return, and other details pertinent to Project performance as may be requested by ADB.