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LOAN NUMBER 2196-TAJ (SF);

GRANT NUMBER 0023-TAJ (SF)

FINANCING AGREEMENT  
(Special Operations)

(Dushanbe-Kyrgyz Border Road Rehabilitation Project, Phase II)

between

REPUBLIC OF TAJIKISTAN

and

ASIAN DEVELOPMENT BANK

DATED 14 FEBRUARY 2006

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FAS: TAJ 38236

## **FINANCING AGREEMENT (Special Operations)**

FINANCING AGREEMENT dated 14 February 2006 between THE REPUBLIC OF TAJIKISTAN ("Tajikistan") and ASIAN DEVELOPMENT BANK ("ADB").

### WHEREAS

(A) Tajikistan has applied to ADB for a loan for the purposes of the rehabilitation of the Project Road described in Schedule 1 to this Financing Agreement;

(B) Tajikistan has applied to ADB for a grant for the purposes of the HIV/AIDS and Migration Component described in Schedule 1 to this Financing Agreement; and

(C) ADB has agreed to provide financing by making a loan and a grant to Tajikistan from ADB's Special Funds resources upon the terms and conditions hereinafter set forth and on the basis of, *inter alia*, the Report and Recommendations of the President to the Board of Directors on a Proposed Loan and Asian Development Fund Grant to the Republic of Tajikistan for the Dushanbe-Kyrgyz Border Road Rehabilitation Project, Phase II (the "Project") dated October 2005;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Loan Regulations and Grant Regulations; Definitions**

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 May 2004 (the "Loan Regulations"), are hereby made applicable to the Loan made pursuant to this Financing Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) The term "Loan Agreement", wherever it appears in the Loan Regulations, shall be substituted by the term "Financing Agreement".

(b) The term "Borrower", wherever it appears in the Loan Regulations, shall be substituted by the term "Tajikistan" as defined in the opening paragraph of this Financing Agreement.

Section 1.02. All provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (the "Grant Regulations"), are hereby made applicable to the Grant made pursuant to this Financing Agreement with the same force and effect as if they were fully set forth herein subject, however, to the following modifications:

(a) The term "Grant Agreement", wherever it appears in the Grant Regulations, shall be substituted by the term "Financing Agreement".

(b) The term "Recipient", wherever it appears in the Grant Regulations, shall be substituted by the term "Tajikistan" as defined in the opening paragraph of this Financing Agreement.

Section 1.03. The definitions set forth in the Loan Regulations and Grant Regulations are applicable to this Financing Agreement, in each case unless the context requires otherwise. In addition, the following terms have the following meanings:

- (a) "AIDS", "HIV" and "STI" mean acquired immunodeficiency syndrome, human immunodeficiency virus, and sexually-transmitted infections, respectively;
- (b) "IEE" means the initial environmental examination carried out in respect of the Project under the Project Preparatory TA 4382-TAJ: Preparing the Dushanbe-Kyrgyz Border Road Rehabilitation Project (Phase II);
- (c) "MOF" means Tajikistan Ministry of Finance and any successor thereto;
- (d) "MOH" means Tajikistan Ministry of Health and any successor thereto;
- (e) "MOT" means Tajikistan Ministry of Transport and any successor thereto;
- (f) "PIU" means the existing Project Implementation Unit established by the Government of Tajikistan within MOT under the ongoing Dushanbe-Kyrgyz Border Road Rehabilitation Project (Phase I) financed by ADB under Loan No. 2062-TAJ (SF);
- (g) "Project area" means the geographic area encompassing the Project Road;
- (h) "Project Executing Agency" for the purposes, and within the meaning, of the Loan Regulations means MOT, which is responsible for the carrying out of the Project, and for the purposes, and within the meaning, of the Grant Regulations means MOH, which is responsible for the carrying out of the HIV/AIDS and Migration Component of the Project;
- (i) "Project facilities" means the Project Road, selected rural roads in the Project area, facilities and equipment financed out of the proceeds of the Loan, and equipment and supplies financed out of the proceeds of the Grant;
- (j) "Project Road" means the central section of the Dushanbe-Kyrgyz border main road (from km 140 to km 217) and its 12-kilometer section (Karamik) adjacent to the border with the Kyrgyz Republic, as described in Schedule 1 to this Financing Agreement; and
- (k) "Somoni" means the lawful currency of Tajikistan.

## ARTICLE II

### The Loan and the Grant

Section 2.01. ADB agrees to provide to Tajikistan from ADB's Special Funds resources, on terms and conditions set forth in this Financing Agreement:

- (a) an amount in various currencies equivalent to twenty million three hundred fifty-three Special Drawing Rights (SDR20,353,000) (the "Loan"); and
- (b) an amount of five hundred thousand (\$500,000) (the "Grant").

Section 2.02. (a) The Loan proceeds shall be withdrawn from the Loan Account in accordance with the provisions of Schedule 3A to this Agreement for purposes of financing the Project expenditures of the Project, except for the HIV/AIDS and Migration Component; and

(b) The Grant proceeds shall be withdrawn from the Grant Account in accordance with the provisions of Schedule 3B to this Agreement for purposes of financing the Project expenditures under the HIV/AIDS and Migration Component of the Project.

Section 2.03. (a) Tajikistan shall pay to ADB an interest charge at the rate of one percent (1%) per annum during the grace period, and one and one-half percent (1.5%) per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to payment of the first principal amount of the Loan on the payment date in accordance with the amortization schedule set forth in Schedule 2 to this Financing Agreement.

Section 2.04. The interest charge and any other charge on the Loan shall be payable semiannually on 15 May and 15 November in each year.

Section 2.05. Tajikistan shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Financing Agreement.

### **ARTICLE III**

#### **Use of Proceeds of the Loan and the Grant**

Section 3.01. Tajikistan shall cause the proceeds of the Loan and the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Financing Agreement.

Section 3.02. The goods and services and other items of expenditure to be financed out of the proceeds of the Loan and the Grant and the respective allocation of amounts of the Loan and the Grant among different categories of such goods and services and other items of expenditure shall be in accordance with the provisions of Schedule 3A and Schedule 3B, respectively, to this Financing Agreement, as such Schedule 3A and Schedule 3B may be amended from time to time by agreement between Tajikistan and ADB.

Section 3.03. Except as ADB may otherwise agree, all goods and services to be financed out of the proceeds of the Loan and the Grant shall be procured in accordance with the provisions of Schedule 4 and Schedule 5 to this Financing Agreement.

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

- (a) goods which are produced in and supplied from and services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and
- (b) goods and services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations and the Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2009 or, in each case, such other date as may from time to time be agreed between Tajikistan and ADB.

## **ARTICLE IV**

### **Particular Covenants**

Section 4.01. In the carrying out of the Project and operation of the Project facilities, Tajikistan shall perform, or cause to be performed, all obligations set forth in Schedule 6 to this Financing Agreement.

Section 4.02. (a) Tajikistan shall (i) maintain, or cause to be maintained, separate accounts for the Project, including separate accounts for the Loan and the Grant; (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 the Grant proceeds and compliance with the financial covenants of this Financing 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) Tajikistan shall enable ADB, upon ADB's request, to discuss Tajikistan's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by Tajikistan pursuant to Section 4.02(a) hereof, 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 Tajikistan unless Tajikistan shall otherwise agree.

Section 4.03. Tajikistan shall enable ADB's representatives to inspect the Project, the goods financed out of the proceeds of the Loan and the Grant, and any relevant records and documents.

## **ARTICLE V**

### **Effectiveness**

Section 5.01. A date ninety (90) days after the date of this Financing Agreement is specified for the effectiveness of the Financing Agreement for the purposes of Section 9.04 of the Loan Regulations and Section 9.04 of the Grant Regulations.

## **ARTICLE VI**

### **Miscellaneous**

Section 6.01. The Minister of Finance of the Republic of Tajikistan is designated as representative of Tajikistan for the purposes of Section 11.02 of the Loan Regulations and Section 11.02 of the Grant Regulations.

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

For Tajikistan

Ministry of Finance of the Republic of Tajikistan  
3, Akademika Rajabovikh Street  
734025, Dushanbe, Tajikistan

Facsimile Numbers:

+992 372 213764  
+992 372 214205  
+992 372 216796

For ADB

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

Facsimile Numbers:


(632) 636-2444  
(632) 636-2426.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Financing 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 TAJIKISTAN

By   
Authorized Representative

ASIAN DEVELOPMENT BANK

By   
HARUHIKO KURODA  
President

## SCHEDULE 1

### Description of the Project

#### Objectives

1. The objective of the Project is to increase trade in the region and economic growth in the Project area. The outcome of the Project will be improved and sustainable regional and national road networks.

#### Scope

2. The Project scope includes:

- (a) rehabilitation and improvement of the two-lane central and border sections of the Dushanbe-Kyrgyz Border Road and certain rural roads adjacent thereto including:
  - (i) minor pavement repairs and drainage improvements on the km 140-150 section the Project Road;
  - (ii) rehabilitation of varying degree and complexity on the km 150-200 section of the Project Road;
  - (iii) pavement, drainage, structural, and road-safety rehabilitation and improvement on the km 200-217 section of the Project Road within the existing road alignment (no geometric changes);
  - (iv) improvement of the 12-km section of the Project Road adjacent to the Tajikistan-Kyrgyz border; and
  - (v) improvement of approximately 60 km of rural roads in the Project area.
- (b) procurement of road maintenance equipment and vehicle weighing systems;
- (c) consulting services for project management and supervision, auditing services, and training MOT Accounting Department; and
- (d) consulting services on HIV/AIDS and STIs prevention, migration, and other social and environmental impacts, including capacity development for local governments and NGOs, behavior change and communication for local communities and risk groups, and clinical support through provision of HIV testing kits and STI treatment packages (the "HIV/AIDS and Migration Component").

Components (a), (b), and (c) above will be financed from the proceeds of the Loan, and the HIV/AIDS and Migration Component described in (d) above will be financed by the Grant.

3. The Project is expected to be completed by 30 June 2009.

## SCHEDULE 2

### Amortization Schedule (Dushanbe-Kyrgyz Border Road Rehabilitation Project, Phase II)

No.	<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
1.	15 May 2014	424,021
2.	15 November 2014	424,021
3.	15 May 2015	424,021
4.	15 November 2015	424,021
5.	15 May 2016	424,021
6.	15 November 2016	424,021
7.	15 May 2017	424,021
8.	15 November 2017	424,021
9.	15 May 2018	424,021
10.	15 November 2018	424,021
11.	15 May 2019	424,021
12.	15 November 2019	424,021
13.	15 May 2020	424,021
14.	15 November 2020	424,021
15.	15 May 2021	424,021
16.	15 November 2021	424,021
17.	15 May 2022	424,021
18.	15 November 2022	424,021
19.	15 May 2023	424,021
20.	15 November 2023	424,021
21.	15 May 2024	424,021
22.	15 November 2024	424,021
23.	15 May 2025	424,021
24.	15 November 2025	424,021
25.	15 May 2026	424,021
26.	15 November 2026	424,021
27.	15 May 2027	424,021
28.	15 November 2027	424,021
29.	15 May 2028	424,021
30.	15 November 2028	424,021
31.	15 May 2029	424,021
32.	15 November 2029	424,021
33.	15 May 2030	424,021
34.	15 November 2030	424,021
35.	15 May 2031	424,021
36.	15 November 2031	424,021
37.	15 May 2032	424,021

No.	<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
38.	15 November 2032	424,021
39.	15 May 2033	424,021
40.	15 November 2033	424,021
41.	15 May 2034	424,021
42.	15 November 2034	424,021
43.	15 May 2035	424,021
44.	15 November 2035	424,021
45.	15 May 2036	424,021
46.	15 November 2036	424,021
47.	15 May 2037	424,021
48.	15 November 2037	424,013
		20,353,000

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\* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

**SCHEDULE 3A****Allocation and Withdrawal of Loan Proceeds**General

1. The table attached to this Schedule sets forth the Categories of goods, 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 and reference to "Subcategory" or "Subcategories" in this Schedule is to a Subcategory or Subcategories of a Category.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories and Subcategories 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 Charge

3. The amount allocated to Category 4 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table and subject to paragraph 5 of this Schedule,

(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, in consultation with and by notice to, Tajikistan, (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, in consultation with and by notice to, Tajikistan, reallocate such excess amount to any other Category.

Imprest Account; Statement of Expenditures

5. (a) Except as ADB may otherwise agree, Tajikistan shall establish immediately after the Effective Date, an imprest account at a commercial bank acceptable to ADB. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's "Loan Disbursement Handbook" dated January 2001, as amended from time to time, and detailed arrangements agreed upon between Tajikistan and ADB. The initial amount to be deposited into the imprest account shall not exceed \$500,000.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures, other than for HIV/AIDS and Migration Component, and to liquidate advances provided into the imprest account, in accordance with ADB's "Loan Disbursement Handbook" dated January 2001, as amended from time to time, and detailed arrangements agreed upon between Tajikistan and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$50,000.

Condition of Withdrawals from Loan Account

6. Notwithstanding any other provision of this Financing Agreement, no withdrawals shall be made from the Loan Account until ADB is satisfied with the staffing level and qualifications of the PIU.

TABLE

**ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS**  
(Dushanbe-Kyrgyz Border Road Rehabilitation Project, Phase II)

CATEGORY				ADB FINANCING
Number	Item	Amount Allocated SDR, mln.		Percentage and Basis for Withdrawal from the Loan Account*
		Category	Subcategory	
1	Civil Works	15.316		
1A	Main road improvement (km 140-217)		14.212	80% of total expenditure
1B	Landslide mitigation and Kyrgyz Border road section improvement (Karamik, 12 km)		0.690	63% of total expenditure
1C	Rural roads improvement		0.414	60% of total expenditure
2	Maintenance and Vehicle-Weighing Equipment	0.690		100% of total expenditure
3	Consulting Services for Implementation	0.897		
3A	Project supervision		0.690	56% of total expenditure
3B	Auditing services		0.069	100% of total expenditure
3C	Strengthening MOT Accounting Department		0.138	100% of total expenditure
4	Interest Charge	0.414		100% of amount due
5	Unallocated	3.036		
	<b>Total</b>	<b>20.353</b>		

\* The total expenditures include value-added tax and customs duties, where applicable, the ADB, however, will not finance such value-added tax and customs duties.

**SCHEDULE 3B****Allocation and Withdrawal of Grant Proceeds**General

1. The table attached to this Schedule sets forth the Categories of goods, services and other items to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table and reference to "Subcategory" or "Subcategories" in this Schedule is to a Subcategory or Subcategories of a Category.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories and Subcategories listed in the Table shall be financed out of the proceeds of the Grant on the basis of the percentages set forth in the Table.

Reallocation

3. Notwithstanding the allocation of Grant proceeds set forth in the Table,

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

(b) if the amount of the Grant then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, in consultation with and by notice to, Tajikistan, reallocate such excess amount to any other Category.

Condition of Withdrawals from Grant Account

4. Notwithstanding any other provision of this Financing Agreement, no withdrawals shall be made from the Grant Account until a civil works or consultancy services contract (other than for the HIV/AIDS and Migration Component) has been awarded under the Project.

**TABLE**

**ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS**  
(Dushanbe-Kyrgyz Border Road Rehabilitation Project, Phase II)

CATEGORY				ADB FINANCING
Number	Item	Amount Allocated \$'000		Percentage of Total*
		Category	Subcategory	
1	Consulting services	347		100% of total expenditure
2	Equipment, Goods and Materials	73		100% of total expenditure
3	Workshops, Seminars, Training, and Campaigns	30		100% of total expenditure
4	Surveys and Administrative Support	22		100% of total expenditure
5	Contingencies	28		
	<b>Total</b>	<b>500</b>		

\* The total expenditures include value-added tax and customs duties, where applicable, the ADB, however, will not finance such value-added tax and customs duties.

## **SCHEDULE 4**

### **Procurement**

1. Except as ADB may otherwise agree, the procedures referred to in the following paragraphs of this Schedule shall apply in the procurement of goods and services to be financed out of the proceeds of the Loan and the Grant. In this Schedule and the Attachment hereto, the term "goods" includes equipment and materials; the term "services" does not include consulting services.
2. Procurement of goods and services shall be subject to the provisions of the "Guidelines for Procurement under Asian Development Bank Loans" dated November 2004 (hereinafter called the "Guidelines for Procurement"), as amended from time to time, which have been furnished to Tajikistan.
3. Procurement of goods and services shall be made without any restriction against, or preference for, any particular supplier or contractor or any particular class of suppliers or contractors, except as otherwise provided in paragraphs 6, 7 and 8 below.

#### International Competitive Bidding

4. (a) Each civil works contract estimated to cost the equivalent of more than \$1,000,000 and each supply contract for equipment or materials estimated to cost the equivalent of more than \$500,000 shall be awarded on the basis of international competitive bidding as described in Chapter II of the Guidelines for Procurement. Bidders for civil works contracts shall be prequalified before bidding.

(b) For contracts to be awarded on the basis of international competitive bidding, there shall be submitted to ADB, as soon as possible, and in any event not later than 90 days before the issuance of either the first prequalification invitation or the first invitation to bid for the Project, a General Procurement Notice (which ADB will arrange to publish separately) in such form and detail and containing such information as ADB shall reasonably request. ADB shall be provided the necessary information to update such General Procurement Notice annually as long as any goods and works remain to be procured on the basis of international competitive bidding.

(c) For contracts to be awarded on the basis of international competitive bidding, procurement actions shall be subject to review by ADB in accordance with the procedures set forth in Chapter IV of the Guidelines for Procurement. Each draft prequalification invitation and each draft invitation to bid, to be submitted to ADB for approval under such procedures, shall reach ADB at least 21 days before it is issued and shall contain such information as ADB shall reasonably request to enable ADB to arrange for the separate publication of such invitation.

### International Shopping

5. (a) Each supply contract for equipment or materials estimated to cost the equivalent of \$500,000 or less (other than minor items) shall be awarded on the basis of international shopping as described in Chapter III of the Guidelines for Procurement.

(b) Each draft invitation to bid and related bid document shall be submitted to ADB for approval before they are issued.

(c) Notwithstanding paragraph 3.03(b) of the Guidelines for Procurement, any award of contract shall be subject to prior ADB approval.

### Direct procurement

6. Notwithstanding paragraph 5 above, HIV testing kits, STI treatment packages, office equipment, and education materials required for the HIV/AIDS and Migration Component under the Project, and estimated to cost, in the aggregate, the equivalent of \$100,000 or less, may also be procured directly from the manufacturers or their agents. Prior to such procurement, a list of individual items to be procured, an estimate of their costs, an indication of potential sources of supply and any related documents shall be submitted to ADB for approval. After award, three copies of each contract for such items shall be furnished to ADB.

### Domestic Preference

7. In comparing bids under international competitive bidding, a margin of preference may be provided, at the option of Tajikistan and in accordance with the provisions of the Attachment to this Schedule, for

(a) goods manufactured in the territory of Tajikistan, provided that the bidder offering such goods shall have established to the satisfaction of Tajikistan and ADB that the domestic value added equals at least 20 percent of the ex-factory bid price of such goods; and

(b) civil works to be carried out by eligible domestic contractors, as defined by ADB.

### Local procurement

8. Civil works contracts estimated to cost the equivalent of \$1,000,000 or less for rehabilitation of the 12-km Kyrgyz border section of the Project Road and rural roads in the Project area may be awarded on the basis of local competitive bidding among prequalified contractors in accordance with the standard procurement procedures of Tajikistan and acceptable to ADB.

(a) For the first contract to be awarded on the basis of local competitive bidding, prequalification, selection and engagement of contractors shall be subject to the approval of ADB. As soon as the bids received have been evaluated, the proposal for award of contract shall be submitted to ADB for approval. For this purpose, ADB shall be furnished with three copies of (i) an account of the public opening of bids; (ii) a summary and evaluation of the

bids; (iii) the proposal for award; and (iv) a draft contract or a draft letter of acceptance. Promptly after each contract is awarded, ADB shall be furnished with three copies of the contract as executed.

(b) For the subsequent contracts, bid evaluation and award of contracts shall be subject to post review by ADB.

#### Industrial or Intellectual Property Rights

9. (a) Tajikistan shall ensure that all ADB-financed goods and services 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) Tajikistan shall ensure that all ADB-financed contracts for the procurement of goods and services 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.

Preference for Domestically Manufactured Goods

1. In the procurement of goods through international competitive bidding, goods manufactured in the territory of Tajikistan may be granted a margin of preference in accordance with the following provisions, provided that the bidder shall have established to the satisfaction of Tajikistan and ADB that the domestic value added equals at least 20 percent of the ex-factory bid price of such goods. The 20 percent domestic value added applies to the total ex-factory bid price of the goods and not only to one item in a list.

- (a) For application of domestic preference, all responsive bids shall first be classified into the following three categories:

Category I -- bids offering goods manufactured in the territory of Tajikistan which meet the minimum domestic value added requirement;

Category II -- bids offering other goods manufactured in the territory of Tajikistan; and

Category III -- bids offering imported goods.

- (b) The lowest evaluated bid of each category shall then be determined by comparing all evaluated bids in each category among themselves, without taking into account customs duties and other import taxes levied in connection with the importation, and sales and similar taxes levied in connection with the sale or delivery, pursuant to the bids, of the goods.
- (c) Such lowest evaluated bids shall next be compared with each other and if, as a result of this comparison, a bid from Category I or Category II is found to be the lowest, it shall be selected for the award of contract.
- (d) If, however, as a result of the comparison under subparagraph (c) above, the lowest bid is found to be from Category III, it shall be further compared with the lowest evaluated bid from Category I. For the purpose of this further comparison only, an upward adjustment shall be made to the lowest evaluated bid price of Category III by adding either
- (i) the amount of customs duties and other import taxes which a nonexempt importer would have to pay for the importation of the goods offered in such Category III bid; or
  - (ii) 15 percent of the CIF bid price of such goods if the customs duties and import taxes referred to above exceed 15 percent of the CIF bid price.

- (e) If, after such further comparison, the Category I bid is determined to be the lowest, it shall be selected for the award of contract; if not, the lowest evaluated bid from Category III shall be selected for the award.

2. (a) Bidders applying for the preference shall provide evidence necessary to establish the eligibility of a bid for the preference, including the minimum domestic value added.

(b) The bidding documents shall clearly indicate the preference to be granted, the information required to establish the eligibility of a bid for the preference claimed, and the procedures to be followed in the comparison of bids, all as set forth above.

Preference for Domestic Contractors

3. In the selection of civil-works contractors, single-responsibility turnkey (including design-build) contractors or supply-and-installation contractors where the CIF cost of goods to be used for or in the permanent works under such contracts is less than 60 percent of the total cost of such works, eligible domestic contractors, as defined below, through international competitive bidding may be granted a margin of preference in accordance with the following provisions.

- (a) For application of domestic preference, all responsive bids shall first be classified into the following two categories:

Category I -- bids offered by domestic contractors and joint ventures eligible for the preference in accordance with the applicable criteria as set forth in paragraph 6 below; and

Category II -- bids offered by other contractors.

- (b) The lowest evaluated bid of each category shall then be determined by comparing all evaluated bids in each category among themselves.
- (c) Such lowest evaluated bids shall next be compared with each other and if, as a result of this comparison, a bid from Category I is found to be the lowest, it shall be selected for the award of contract.
- (d) If, however, as a result of the comparison under subparagraph (c) above, the lowest bid is found to be from Category II, it shall be further compared with the lowest evaluated bid from Category I. For the purpose of this further comparison only, an upward adjustment shall be made to the lowest evaluated bid price of Category II by adding an amount equal to seven-and-one-half percent of the bid price. If, after such comparison, the Category I bid is determined to be the lowest, it shall be selected for the award of contract; if not, the lowest evaluated bid from Category II shall be selected.

4. (a) To be eligible for the preference set forth in paragraph 3 above, domestic contractors must meet the following criteria:

- (i) firms are registered in the territory of Tajikistan;
- (ii) firms have majority ownership by nationals of Tajikistan; and
- (iii) firms will not subcontract more than 50 percent of the total value of their work to foreign contractors.

(b) A joint venture between a domestic contractor and its foreign partner shall be eligible for the preference only if it meets the following criteria:

- (i) the domestic partner(s) is individually eligible for the preference according to the criteria stated above;
- (ii) the domestic partner(s) would not qualify for the contract works on technical or financial grounds without the foreign participation; and
- (iii) the domestic partner(s) will, under the arrangements proposed, carry out at least 50 percent of the contract works measured in terms of value.

(c) Contractors applying for the preference shall be required to provide, as part of the data for qualification, necessary information, including details of ownership, for determining whether, according to the applicable criteria, a particular firm or group of firms qualifies for the preference.

5. The bidding documents shall clearly indicate the preference to be granted, the information required to establish the eligibility of firms for the preference claimed, and the procedures to be followed in the comparison of bids, all as set forth above. Bidders applying for the preference shall provide such additional information in support of such eligibility as may be requested by Tajikistan and ADB.

## SCHEDULE 5

### Consultants

1. The services of international and domestic consultants shall be utilized in the carrying out of the Project, particularly with regard to:

- (a) Construction supervision, monitoring and evaluation, and financial management;
- (b) Auditing services;
- (c) Training in international accounting systems; and
- (d) HIV/AIDS and Migration Component.

The terms of reference of the consultants shall be as determined by agreement between ADB and Tajikistan.

2. The selection, engagement and services of the consultants shall be subject to the provisions of this Schedule and the provisions of the "Guidelines on the Use of Consultants by Asian Development ADB and Its Borrowers" dated January 2005 (hereinafter called the Guidelines on the Use of Consultants), as amended from time to time, which have been furnished to Tajikistan and MOT.

3. The consultants shall be selected and engaged as a firm by Tajikistan using the quality-and-cost-based selection (QCBS) method in accordance with the following procedures.

(a) Invitation for technical and financial proposals. The invitation to submit technical and financial proposals (hereinafter called the Request for Proposals or RFP) and all related documents shall be approved by ADB before they are issued. For this purpose, three copies of the draft RFP, the names of consultants to be short-listed, the proposed criteria for evaluation of both proposals, a draft consultancy contract, and other related documents shall be submitted to ADB. A period of at least 45 days shall be allowed for submission of both proposals. A copy of the final RFP as issued, together with all related documents, shall be furnished to ADB for information promptly after issuance. The validity period for the technical and financial proposals as provided in the RFP shall usually not exceed three months from the date specified for submission of the technical and financial proposals. The approval of ADB shall be obtained for any request to extend such validity period. Except as ADB may otherwise agree, the validity period, including any extensions, shall not exceed a maximum total period of six months. If the contract is not signed within the validity period in accordance with the Guidelines on the Use of Consultants, the selection shall be invalid and the selection and engagement process as provided in this paragraph shall be followed again.

(b) Evaluation and scoring of technical proposals. Immediately after the technical proposals have been evaluated and scored, approval of ADB shall be obtained to the evaluation and scoring of the technical proposals. For this purpose, ADB shall be furnished with three copies of the technical proposals.

(c) Public opening of financial proposals. The financial proposals of the firms whose technical proposals meet the minimum qualifying technical score shall be opened publicly after adequate notice is given to such firms or their representatives to attend the opening of the financial proposals.

(d) Evaluation and scoring of financial proposals and ranking of technical and financial proposals. After the financial proposals have been evaluated and scored, the ranking of the technical and financial proposals shall be made. Before negotiations are started with the first-ranked consultants, approval of ADB shall be obtained to the evaluation and scoring of the financial proposals and the ranking of the technical and financial proposals. For this purpose, ADB shall be provided with three copies of (i) the evaluation and scoring of the financial proposals and (ii) the ranking of the technical and financial proposals.

(e) Execution of contract. After the conclusion of negotiations but before the signing of the contract, ADB shall be furnished with the contract as negotiated for approval. Promptly after the contract is signed, ADB shall be furnished with three copies of the signed contract. If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

(f) Intellectual Property Rights. Tajikistan 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

## SCHEDULE 6

### Execution of Project and Operation of Project Facilities; Financial Matters

#### I. IMPLEMENTATION ARRANGEMENTS

##### Project Executing Agencies

1. (a) MOT, as the Project Executing Agency, shall be responsible for overall execution and coordination of the Project.

(b) MOH shall be the Executing Agency responsible for implementing the HIV/AIDS and Migration Component of the Project.

##### Project Implementation

2. (a) Tajikistan shall ensure that the Minister or a Deputy Minister of MOT, or other similarly high-ranking officer of MOT acceptable to ADB, shall be responsible for overall Project management and supervision.

(b) The Executive Director of the existing PIU shall be responsible for day-to-day Project management, including (i) monitoring the progress of Project implementation, (ii) preparing withdrawal applications and project progress reports, (iii) maintaining project accounts and completing loan financing records for auditing the Project.

(c) Tajikistan shall also ensure that at all times throughout the Project implementation the PIU shall be adequately staffed with professional and clerical personnel with experience and expertise in financial accounting, road engineering, construction supervision, and contract administration.

(d) Tajikistan shall ensure that the Minister or a Deputy Minister of MOH, or other similarly high ranking officer of MOH acceptable to ADB, shall be responsible for implementation of the HIV/AIDS and Migration Component and its coordination with Project activities.

(e) Tajikistan shall also ensure that at all times throughout the Project implementation MOH and National HIV/AIDS Center are adequately staffed with professional and clerical personnel with experience and expertise in disease prevention and otherwise have all resources necessary for carrying out the HIV/AIDS and Migration Component.

##### Counterpart Funding

3. Tajikistan shall, on a timely basis, provide all funds and resources necessary for the rehabilitation, operation and maintenance of the entire Dushanbe-Kyrgyz Border road in accordance with the financing plan agreed for the Project. Tajikistan shall cause MOF to take all necessary measures to enable MOT to implement the Project successfully and operate and maintain the Project Road after completion. Before the end of each year Tajikistan shall furnish ADB a public investment program for the succeeding year demonstrating availability of funds necessary for the Project.

## II. ROAD MAINTENANCE ISSUES

### Financing of Maintenance of Road Network

4. (a) Tajikistan shall allocate and make available on a timely basis sufficient funds for the rehabilitation and maintenance of the Project Road.

(b) Without limiting the generality of the foregoing, Tajikistan shall annually allocate at least the amount equivalent to US\$90,000 (plus inflation since 2005) for maintenance of the rehabilitated sections of the Project Road after the handover of these sections by the contractor.

(c) Tajikistan shall ensure that the rural roads rehabilitated under the Project are adequately maintained in accordance with applicable standards.

(d) Tajikistan shall ensure that actual annual expenditures for road maintenance (including emergency maintenance, but excluding rehabilitation and new construction) for roads under MOT jurisdiction will be increased at least at the same rate as increases in the overall national budget during 2008–2009.

(e) Tajikistan shall (i) ensure that details of actual road maintenance expenditures are included in every other quarterly progress report to be submitted by MOT to ADB, (ii) have such expenditures audited annually in accordance with appropriate auditing standards by independent auditors acceptable to ADB, and (iii) furnish such audited statements of expenditures to ADB within nine (9) months from the end of the fiscal year.

### Pilot Road Maintenance Tenders

5. Tajikistan shall ensure that pilot tenders for maintenance of two completed sections of the Dushanbe-Khulyab road (rehabilitated under Loan 1819-TAJ (SF): Road Rehabilitation Project) are carried out by 31 December 2007 and 31 December 2008 (in succession) using a competitive tendering process open to public- and private-sector entities in Tajikistan.

### Vehicle Weighing

6. Prior to 31 December 2006, Tajikistan shall ensure adoption of new legislation and/or issue decrees regarding regulations and procedures for vehicle weighing, in particular, specifying the maximum permissible vehicle axle loads, and requiring offloading of excess weight from vehicles exceeding the specified limits.

7. Tajikistan shall cause MOT to install and make fully operational static vehicle weighing systems, according to legislation and national standards, for the sections of the national highway rehabilitated under (i) Loan 1819-TAJ(SF): Road Rehabilitation Project by 30 June 2007; (ii) Loan 2062-TAJ(SF): Dushanbe-Kyrgyz Border Road Rehabilitation Project (Phase I) by the time of handover of the road by the contractor; and (iii) the Dushanbe-Kyrgyz Border Road Rehabilitation Project (Phase II) by the time of handover of the road by the contractor.

### III. OTHER ISSUES

#### MOT Institutional Development

8. Tajikistan shall cause MOT to have each of its (i) Road Planning and Assessment Unit under the Road Department, and (ii) Economic Policy Division, fully operational by 31 December 2006, including filling of all authorized staff positions (within MOT's overall authorized staffing level) and provision of adequate office facilities and a sufficient number of computers.

9. Tajikistan shall ensure that by 31 December 2006 MOT reaches an agreement with the Tajikistan Transport Institute under MOT on a plan for implementing training programs for MOT staff.

#### Construction Quality

10. Tajikistan shall ensure that (i) the Project Road is rehabilitated in accordance with the technical specifications of the design; and (ii) construction supervision, quality control and contract management are performed in accordance with internationally acceptable standards.

#### Road Safety

11. To ensure safety in the Project area during Project implementation and after Project completion, Tajikistan shall ensure that MOT installs appropriate road safety facilities, such as pavement marking, warning signs, traffic signs and signals, communication facilities, hazard barriers, and traffic monitoring facilities.

12. Tajikistan shall cause MOT to strengthen its existing Transport Safety and Security Unit, including adopting procedures for incorporating Road Safety Audits in the design stage of all road projects, filling of all authorized staff positions and providing adequate office facilities and a sufficient number of computers, by 31 December 2006.

#### Environmental Considerations

13. Tajikistan shall ensure that:

(a) the Project Road is designed, rehabilitated, maintained and operated in accordance with relevant national and local government environmental laws, regulations, rules, and procedures, and in conformity with the ADB *Environment Policy* (2002);

(b) the contractors implement the recommendations made in the Initial Environmental Examination (IEE), and translate the environmental management plan (EMP) in the IEE into a contract-specific EMP;

(c) any adverse environmental impacts arising from the Project are minimized by implementing the mitigation measures, environmental monitoring program, and other recommendations presented in the IEE; and

(d) MOT submits to ADB an annual report on environmental performance in form and substance satisfactory to ADB during Project implementation.

### Land Acquisition and Resettlement

14. Tajikistan through MOT shall ensure that land acquisition and resettlement are carried out promptly and efficiently following the short resettlement plan agreed with ADB, in line with applicable laws and the ADB *Policy on Involuntary Resettlement* (1995).

15. Tajikistan shall ensure that (i) the Short Resettlement Plan (SRP) is implemented in accordance with its terms, (ii) all land and rights-of-way required by the Project are made available in a timely manner, (iii) the provisions of the SRP, including compensation and entitlements for affected persons, will be implemented in accordance with all applicable government laws and regulations and the ADB *Policy on Involuntary Resettlement*, (iv) compensation and resettlement assistance are given to the affected people prior to dispossession and displacement; (v) counterpart funds for land acquisition and resettlement activities are provided in a timely manner, (vi) any obligations in excess of the SRP budget estimate are met, and (vii) the affected persons will be at least as well off as they would have been in the absence of the Project.

16. MOT shall also ensure that (i) adequate staff and resources are committed to supervising and monitoring the implementation of the SRP and providing quarterly reports on such implementation to ADB, (ii) an independent agency acceptable to ADB is contracted to carry out investigations to monitor progress semi-annually and to evaluate results through annual survey updates for two years after completion of resettlement, and forward reports to ADB and MOT simultaneously, (iii) data is disaggregated by gender and monitoring will focus on gender impacts and vulnerable groups, and (iv) a summary of government audits of resettlement disbursements and expenditures is provided to ADB in form and substance satisfactory to ADB.

17. Tajikistan shall ensure that MOT updates the SRP, including the local road component, (i) upon completion of detailed design, including rehabilitation plans for seriously affected villages, and prior to commencement of land acquisition; (ii) upon the completion of the detailed measurement survey for the Project Road, as described in the SRP, and prior to the commencement of civil works, submit any modifications to ADB for its concurrence prior to award of contracts; and (iii) as necessary to reflect any significant material changes in project scope or other causes, and submit any such changes to ADB for its approval. MOT shall disclose each updated SRP to affected persons.

18. Tajikistan shall cause MOT to (i) ensure that civil works contractor specifications include requirements to comply with the SRP and entitlements for permanent and temporary impacts to affected persons, (ii) supervise the contractors to ensure compliance with requirements of the SRP, applicable law, and the ADB *Policy on Involuntary Resettlement*, and (iii) ensure that (a) any land acquisition carried out for the rural roads component of the Project will also be implemented in accordance with the SRP and (b) adequate resettlement compensation funds are available and properly utilized.

### Employment

19. Tajikistan through MOT shall:

- (a) encourage the use of local labor and local materials in Project works;
- (b) ensure that men and women receive equal pay for work of equal type.

(c) ensure that civil works contractors (i) comply with applicable labor legislation, (ii) maximize employment for the affected persons with equal access to women, including disadvantaged women, and (iii) abstain from child labor in construction, rehabilitation, and maintenance activities.

#### Gender and Development

20. Tajikistan shall ensure that MOT monitors the impact of the Project on women throughout Project implementation, in consultation with local governments, local women's associations, and nongovernmental organizations. In this respect, MOT shall: (i) ensure women's participation during all phases of project implementation; (ii) encourage local contractors to increase the employment of women, including disadvantaged women, in road rehabilitation activities; and (iii) require safe working conditions for both male and female workers. Specific provisions to this effect shall be included in bidding documents and civil works contracts.

#### Health and Social Risks

21. Tajikistan through MOT shall ensure that civil works contractors engaged under the Project disseminate information (in local languages) on the risks of sexually-transmitted infections (STIs), including HIV/AIDS, in health and safety programs to all construction workers at campsites. Specific provisions to this effect shall be included in bidding documents and civil works contracts, and compliance shall be strictly monitored by MOT.

22. Tajikistan shall ensure strict border control to prevent trafficking of humans, wildlife, endangered species, and illegal substances on the Project Road.

#### Project Performance Monitoring and Evaluation

23. Tajikistan shall ensure that MOT, with the assistance of the international consultants, monitors and evaluates Project impacts in accordance with the Project Performance Management System to ensure that the Project facilities are managed effectively, and that the Project benefits are maximized. MOT shall collect the data agreed with ADB at the commencement of rehabilitation, at Project completion, 1 year from Project completion, and 3 years after Project completion

#### Anticorruption Measures

24. Tajikistan shall (i) undertake necessary measures to create and sustain a corruption-free environment, and (ii) ensure that its anticorruption laws and regulations and the ADB *Anticorruption Policy* (1998), are strictly enforced and are being complied with during Project implementation.

#### Midterm Review

25. In the year 2008, Tajikistan and ADB shall jointly carry out a midterm review of the Project. The review will focus on (i) Project impacts, particularly those relating to institutional, administrative, organizational, technical, environmental, and social aspects and poverty reduction, (ii) the Project's economic viability and other relevant aspects that may have an impact on Project performance, and (iii) the implementation progress for the policy reforms and compliance with assurances specified in the Financing Agreement.