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LOAN NUMBER 2533-KGZ (SF)

GRANT NUMBER 0153-KGZ (SF)

FINANCING AGREEMENT  
(Special Operations)

(CAREC Transport Corridor 1 [Bishkek-Torugart Road] Project 2)

between

KYRGYZ REPUBLIC

and

ASIAN DEVELOPMENT BANK

DATED 5 AUGUST 2009

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FAS:KGZ 42399

**FINANCING AGREEMENT  
(Special Operations)**

FINANCING AGREEMENT dated 5 August 2009 between KYRGYZ REPUBLIC (hereinafter called the "Beneficiary") and ASIAN DEVELOPMENT BANK (hereinafter called "ADB").

WHEREAS

(A) the Beneficiary has applied to ADB for a loan and a grant for the purposes of financing the Project described in Schedule 1 to this Financing Agreement; and

(B) ADB has agreed to provide a loan and a grant to the Beneficiary from ADB's Special Funds resources upon the terms and conditions hereinafter set forth.

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 January 2006 (hereinafter called 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"; and

(b) The term "Beneficiary", wherever it appears in the Loan Regulations, shall be substituted by the term "Beneficiary" 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 (hereinafter called 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"; and

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

Section 1.03. Unless the context requires otherwise, each of the definitions set forth in the Loan Regulations and the Grant Regulations is applicable to this

Financing Agreement. In addition, the following terms shall have the meanings respectively defined below:

- (a) "CAREC" means Central Asia Regional Economic Cooperation;
- (b) "Consulting Guidelines" means ADB's *Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers* dated February 2007, as amended from time to time;
- (c) "EMP" means an environmental management plan;
- (d) "Goods" means equipment and materials to be financed out of the proceeds of the Loan and/or the Grant; and including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;
- (e) "HIV/AIDS" means the human immunodeficiency virus and the acquired immune deficiency syndrome;
- (f) "IEE" means an initial environmental examination;
- (g) "Km" means a place indicated by a particular kilometer number marker on the Bishkek-Torugart Road, and "km" means kilometers;
- (h) "Loan Disbursement Handbook" means ADB's *Loan Disbursement Handbook* dated January 2007, as amended from time to time;
- (i) "Master Plan" means the transport sector master plan currently being developed under the CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project, Grant Number 0123-KGZ(SF), financed by ADB;
- (j) "MOF" means the Ministry of Finance of the Beneficiary, and any successor thereto;
- (k) "MOTC" means the Ministry of Transport and Communications of the Beneficiary, and any successor thereto;
- (l) "Part" means a part of the Project as described in Schedule 1 to this Financing Agreement;
- (m) "PIU" means the project implementation unit, as more fully described in paragraph 2 of Schedule 5 to this Financing Agreement, established within MOTC and designated by the Beneficiary to implement the Project;
- (n) "PPMS" means a project performance management system, as described in paragraph 4 of Schedule 5 to this Financing Agreement;
- (o) "Procurement Guidelines" means ADB's *Procurement Guidelines* dated February 2007, as amended from time to time;

(p) "Procurement Plan" means the procurement plan for the Project dated 22 May 2009 and agreed between the Beneficiary and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(q) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations and the Grant Regulations means MOTC, which is responsible for the overall implementation of the Project;

(r) "Project Facilities" means the facilities to be constructed and the equipment to be procured pursuant to this Financing Agreement; and

(s) "Works" means construction or civil works to be financed out of the proceeds of the Loan and the Grant, 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 and the Grant**

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

- (a) a loan in various currencies equivalent to eighteen million four hundred ninety two thousand (SDR 18,492,000) (hereinafter called the "Loan"); and
- (b) a grant in the amount of twenty two million Dollars (\$22,000,000) (hereinafter called 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 expenditures of the Project.

(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 expenditures of the Project.

Section 2.03. (a) The Beneficiary 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 the first Principal 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 January and 15 July in each year.

Section 2.05. The Beneficiary 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.

Section 2.06. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Section 4.03(a) and 4.04 of the Loan Regulations shall be Dollar.

### **ARTICLE III**

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

Section 3.01. The Beneficiary 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, Works, consulting 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, 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 the Beneficiary 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 and the Grant shall be procured in accordance with the provisions of Schedule 4 to this Financing Agreement.

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

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

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations and the Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2014 or, in each case, such other date as may from time to time be agreed between the Beneficiary and ADB.

## **ARTICLE IV**

### **Particular Covenants**

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

Section 4.02. (a) The Beneficiary 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 imprest accounts and statement of expenditures procedures, 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 Beneficiary shall enable ADB, upon ADB's request, to discuss the Beneficiary's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Beneficiary pursuant to Section 4.02(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 Beneficiary unless the Beneficiary shall otherwise agree.

Section 4.03. The Beneficiary shall enable ADB's representatives to inspect the Project, the Goods financed out of the proceeds of the Loan and/or the Grant, and any relevant records and documents.

## **ARTICLE V**

### **Effectiveness**

Section 5.01. A date sixty (60) 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 Beneficiary is designated as representative of the Beneficiary 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 the Beneficiary

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

Facsimile Number:

(996) 312-661645

For ADB

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

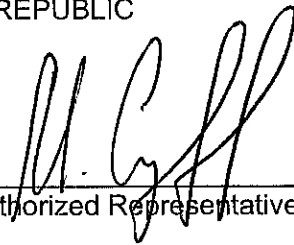
Facsimile Numbers:

(632) 636-2444

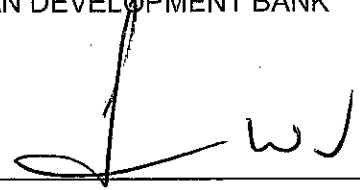
(632) 636-2428

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

KYRGYZ REPUBLIC

By  \_\_\_\_\_  
Authorized Representative

ASIAN DEVELOPMENT BANK

By  \_\_\_\_\_  
LAN WU  
Country Director  
Kyrgyz Resident Mission



## SCHEDULE 1

### Description of the Project

1. The Project aims to rehabilitate part of the Bishkek-Torugart Road, including the construction of an inspection facility for managing border-crossing passengers and freight traffic, and to establish a program to enhance the knowledge and technical skills of MOTC staff and university graduates in the transport sector.
2. The scope of the Project comprises 2 Parts:
  - Part 1: Rehabilitation of 75 km of the Bishkek-Torugart Road
    - (a) Rehabilitating the road sections from Km 365 to Km 400 and from Km 439 to Km 479 of the Bishkek-Torugart Road, with geometry and pavement structure improved to be in line with "Category 3" standards as defined under the relevant national standards of the Beneficiary;
    - (b) Improving the bridge structure at Km 388 and Km 400 of the Bishkek-Torugart Road; and
    - (c) Constructing an inspection facility at around Km 479 of the Bishkek-Torugart Road, suitable for carrying out the border-control functions of, among other things, customs, immigration, health and quarantine, and security, in order to manage the movement of international passengers and freight traffic.
  - Part 2: Enhancement of the Knowledge and Technical Skills of MOTC Staff and University Graduates in the Transport Sector

Establishing an industry-university cooperation program that shall include:

    - (a) setting up at least 5 summer internship positions at MOTC each year during the implementation period of the Project for university students seeking a career in the transport sector; and
    - (b) offering to MOTC staff and university students every year during the implementation period of the Project at least 2 short courses, each with maximum 1 month duration, in the fields of transportation engineering and project management.
3. The Project is expected to be completed by 31 December 2013.

## SCHEDULE 2

### Amortization Schedule (CAREC Transport Corridor 1 [Bishkek-Torugart Road] Project 2)

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 July 2017	385,250
15 January 2018	385,250
15 July 2018	385,250
15 January 2019	385,250
15 July 2019	385,250
15 January 2020	385,250
15 July 2020	385,250
15 January 2021	385,250
15 July 2021	385,250
15 January 2022	385,250
15 July 2022	385,250
15 January 2023	385,250
15 July 2023	385,250
15 January 2024	385,250
15 July 2024	385,250
15 January 2025	385,250
15 July 2025	385,250
15 January 2026	385,250
15 July 2026	385,250
15 January 2027	385,250
15 July 2027	385,250
15 January 2028	385,250
15 July 2028	385,250
15 January 2029	385,250
15 July 2029	385,250
15 January 2030	385,250
15 July 2030	385,250
15 January 2031	385,250
15 July 2031	385,250
15 January 2032	385,250
15 July 2032	385,250
15 January 2033	385,250
15 July 2033	385,250
15 January 2034	385,250
15 July 2034	385,250
15 January 2035	385,250
15 July 2035	385,250
15 January 2036	385,250
15 July 2036	385,250
15 January 2037	385,250
15 July 2037	385,250

Schedule 2

15 January 2038	385,250
15 July 2038	385,250
15 January 2039	385,250
15 July 2039	385,250
15 January 2040	385,250
15 July 2040	385,250
15 January 2041	385,250
<b>Total</b>	<b>18,492,000</b>

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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 (as shown in Attachment hereto) sets forth the Categories of Goods, Works, 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 to each such Category (hereinafter called the "Table 3A"). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table 3A 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 3A shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table 3A.

Interest Charge

3. The amount allocated to Category 3 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 3A,

(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 Beneficiary, (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 Beneficiary, reallocate such excess amount to any other Category.

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds for financing Goods, Works, consulting services and other items of expenditures shall be disbursed in accordance with the Loan Disbursement Handbook.

Imprest Accounts; SOE

6. (a) Except as ADB may otherwise agree, the Beneficiary shall establish immediately after the Effective Date an imprest account exclusively for the utilization of the Loan proceeds at a commercial bank acceptable to ADB, which shall be administered by MOTC. The imprest account established hereunder for the Loan proceeds shall be separate from the imprest account established for the utilization of the Grant proceeds. All imprest accounts hereunder shall be established, managed, replenished and liquidated in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Beneficiary and ADB. The currency of the imprest account for the Loan process shall be Dollar. The maximum amount to be deposited by ADB into the imprest account for the Loan proceeds at any given time shall not exceed the lower of (i) the estimated 6 month's expenditure to be paid out of such imprest account, or (ii) 10% of the Loan amount.

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

Retroactive Financing

7. Withdrawals from the Loan Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Financing Agreement in connection with eligible civil works and consulting services, subject to a maximum amount equivalent to 20% of the Loan Amount.

TABLE 3A

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS</b>				
<b>(CAREC Transport Corridor 1 [Bishkek-Torugart Road] Project 2)</b>				
<b>CATEGORY</b>				<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Amount Allocated SDR</b>		<b>Percentage and Basis for Withdrawal from the Loan Account</b>
		<b>Category</b>	<b>Subcategory</b>	
1	Civil Works	14,529,000		46 percent of total expenditure
2	Consulting Services	1,123,000		
2A	Project Management		925,000	51 percent of total expenditure
2B	Capacity Development		198,000	46 percent of total expenditure
3	Financing Charges	661,000		100 percent of amount due
4	Unallocated	2,179,000		
	Total	18,492,000		

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

1. The table attached to this Schedule (as shown in Attachment hereto) sets forth the Categories of Goods, Works, consulting services and other items of expenditure 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 3B"). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table 3B 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 3B shall be financed out of the proceeds of the Grant on the basis of the percentages set forth in the Table 3B.

Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table 3B,

(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, by notice to the Beneficiary, (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, by notice to the Beneficiary, reallocate such excess amount to any other Category.

Disbursement Procedures

4. Except as ADB may otherwise agree, the Grant proceeds for financing Goods, Works, consulting services and other items of expenditures shall be disbursed in accordance with the Loan Disbursement Handbook.

Imprest Accounts; SOE

5. (a) Except as ADB may otherwise agree, the Beneficiary shall establish immediately after the Effective Date an imprest account exclusively for the utilization of the Grant proceeds at a commercial bank acceptable to ADB, which shall be administered by MOTC. The imprest account established hereunder for the Grant proceeds shall be separate

from the imprest accounts established for the utilization of the Loan proceeds. All imprest accounts hereunder shall be established, managed, replenished and liquidated in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Beneficiary and ADB. The currency of the imprest account for the Grant proceeds shall be Dollar. The maximum amount to be deposited by ADB into the imprest account for the Grant proceeds at any given time shall not exceed the lower of (i) the estimated 6 month's expenditure to be paid out of such imprest account, or (ii) 10% of the Grant amount.

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

#### Retroactive Financing

6. Withdrawals from the Grant Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Financing Agreement in connection with eligible civil works and consulting services, subject to a maximum amount equivalent to 20% of the Grant Amount.



TABLE 3B

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS</b>				
<b>(CAREC Transport Corridor 1 [Bishkek-Torugart Road] Project 2)</b>				
<b>CATEGORY</b>				<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Amount Allocated</b>		<b>Percentage and Basis for Withdrawal from the Grant Account</b>
		<b>Dollar Category</b>	<b>Subcategory</b>	
1	Civil Works	18,000,000		37 percent of total expenditure
2	Consulting Services	1,300,000		
2A	Project Management		1,100,000	42 percent of total expenditure
2B	Capacity Development		200,000	38 percent of total expenditure
3	Unallocated	2,700,000		
	Total	22,000,000		

## SCHEDULE 4

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

#### A. General

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

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Beneficiary 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.

4. National Competitive Bidding. The Beneficiary and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Beneficiary's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Beneficiary and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after written approval of such change by the Beneficiary and ADB.

#### C. Selection of Consulting Services

5. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Beneficiary shall apply the Quality- and Cost-Based Selection ("QCBS") method for selecting and engaging consulting services.
6. The Beneficiary shall apply the following methods for selecting and engaging the specified consulting services, in accordance with, among other things, the Consulting Guidelines and the procedures set forth in the Procurement Plan:

For construction supervision services: QCBS, Quality-Based Selection or Single Source Selection
For project management services: Least-Cost Selection ("LCS") or Consultants' Qualifications Selection ("CQS")

For external financial audit services: LCS or CQS
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7. Subject to the prior agreement of ADB on relevant terms of reference and budget, the Beneficiary shall recruit individual consultants in accordance with relevant procedures acceptable to ADB to assist the PIU in special circumstances, handle complex issues, Project management, and/or help implement the Master Plan.

**D. Industrial or Intellectual Property Rights**

8. (a) The Beneficiary 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 Beneficiary 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 Beneficiary shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

**E. ADB's Review of Procurement Decisions**

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 Beneficiary and ADB and set forth in the Procurement Plan.

## SCHEDULE 5

### Execution of Project; Financial Matters; Other Implementation Covenants

#### A. PROJECT IMPLEMENTATION

##### Executing Agency, Project Management and Implementation

1. As the Project Executing Agency, MOTC shall have the overall responsibility for the implementation of the Project.
2. The PIU shall be responsible for managing day-to-day activities of the Project including, among other things, (a) monitoring the progress of Project implementation; (b) preparing withdrawal applications and Project progress reports; (c) maintaining Project accounts and other financial records for auditing the Project; and (d) carrying out procurement, including advance contracting activities. The Beneficiary shall ensure that 3 months before the implementation of the first Works contract under the Project commences, the capacity of the PIU is strengthened by increasing and recruiting adequate number of staff with specialization in the areas required for the Project.
3. The Beneficiary shall ensure that (a) all staff involved in implementing the Project are fully aware of, and comply with, the Beneficiary's and ADB's relevant procedures, including, but not limited to, procedures for implementation, procurement, use of consultants, disbursement, reporting, monitoring, and prevention of fraud and corruption; (b) the coordination and consultation between MOTC and other government agencies concerned during Project implementation are timely and effectively carried out; and (c) stringent oversight is maintained on all the consultants and contractors engaged under the Project so as to cause that the services and Works carried out under the relevant contracts conform to the standards and specifications required by the Project, and are of high quality.

##### Project Monitoring, Review and Evaluation

4. To monitor the progress of the Project implementation, the Beneficiary within 3 months from the Effective Date shall cause MOTC to establish and maintain a PPMS acceptable to ABD, based upon the PPMS indicators agreed upon between the Beneficiary and ADB. The Beneficiary, through MOTC, shall (a) monitor the PPMS indicators on a quarterly basis to determine the efficiency and effectiveness of the Project and its impacts, and (b) provide to ADB quarterly PPMS monitoring reports, in form and substance satisfactory to ADB, from the commencement of Project implementation until Project completion and on the third anniversary of Project completion.
5. The performance of the Project shall be reviewed at least once every year from the Effective Date. Such review shall be carried out jointly by the Beneficiary and ADB in consultation of MOTC, MOF and other relevant agencies as well as public and private representatives from the Project areas. Each such review shall focus on the Project outputs, in particular those relating to institutional, administrative, technical, environmental, and social aspects to ensure that the Project is implemented according to relevant schedule and on budget. The Project's economic viability and other aspects that may have an impact on overall performance shall be assessed after completion of the Project, or as necessary

during the implementation stage. Each such review shall also examine the relevant implementation progress and compliance with the relevant covenants specified in the Financing Agreement.

#### Auditing and Reporting

6. Without any prejudice to the provisions of (a) Section 4.02 of the Financing Agreement, (b) the Loan Regulations, and (c) the Grant Regulations, the Beneficiary shall ensure that all entities involved in Project implementation, including MOTC and the PIU, maintain separate records and accounts for the utilization of the respective proceeds of the Loan and the Grant. In addition to the requirements set forth in Section 6.05 of the Loan Regulations and Section 6.04 of the Grant Regulations, the Beneficiary shall cause MOTC to prepare, and submit to ADB (a) within 20 days after each quarter, a quarterly report, and (b) within 30 days after each year, an annual report, each on the implementation status and progress of the Project. Each of such reports shall be submitted in such form and in such details as ADB shall reasonably require.

#### Consultation

7. The Beneficiary shall ensure that consultations with the residents and officials in the Project areas are regularly conducted on matters of social and cultural significance during the Project implementation period.

### **B. FINANCIAL MATTERS**

#### Counterpart Funding

8. The Beneficiary shall ensure that all funds and other resources required for implementing the Project are provided on a timely basis in accordance with the financing plan agreed for the Project.

#### Services, Operation and Maintenance

9. The Beneficiary shall ensure that (a) all relevant government entities coordinate with each other to maintain regular and quality services on the road sections under Part 1 of the Project during and after rehabilitation; (b) sufficient funds for the operation and maintenance of all the Works under Part 1 of the Project after their completion are allocated and made available on a timely basis; and (c) the aforesaid operation and maintenance are carried out in accordance with applicable standards and best international practices.

#### Funding for Rehabilitation of Remaining Sections of the Bishkek-Torugart Road

10. The Beneficiary shall ensure that funding is made available to rehabilitating the remaining sections of the Bishkek-Torugart Road to allow rapid and uninterrupted flow of international passenger and freight traffic.

**C. OTHER IMPLEMENTATION COVENANTS**Illegal Trafficking and Border Control

11. The Beneficiary shall ensure that concrete and rigorous measures to detect and prevent illegal trafficking of humans, wildlife, endangered species, and controlled substances on the Bishkek-Torugart Road are fully implemented, and shall inform ADB of any incidents and action taken to prevent such incidents. In particular, the Beneficiary shall ensure that (a) appropriate measures for controlling and monitoring the transportation of passengers and goods on the road section between the inspection facility constructed under the Project at Km 479 of the Bishkek-Torugart Road and the border control facility constructed under ADB-financed CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project, Grant Number 0123-KGZ(SF), at Torugart are designed and implemented on a timely basis; and (b) such road section is rigorously patrolled at all time.

Anti-corruption

12. The Beneficiary shall comply with, and shall cause MOTC, any and all other government offices, organizations and entities involved in implementing the Project to comply with, ADB's *Anticorruption Policy* (1998, as amended to date) and ADB's policy relating to *Enhancing the Asian Development Bank's Role in Combating Money Laundering and the Financing of Terrorism* (2003). The Beneficiary (a) acknowledges ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; (b) agrees to cooperate, and to cause MOTC, any and all other government offices, organizations and entities involving in implementing the Project to cooperate, fully with any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation; (c) agrees to refrain, and cause MOTC, any and all other government offices, organizations and entities involving in implementing the Project to refrain, from engaging in money laundering activities or financing of terrorism; and (d) shall allow, and cause MOTC, any and all other government offices, organizations and entities involving in implementing the Project to allow, ADB to investigate any violation or potential violation of the aforesaid undertakings concerning combating money laundering and financing of terrorism.

13. Without limiting the generality of the preceding paragraph, the Beneficiary shall: (a) ensure that MOTC conducts periodic inspections on the contractors' activities related to fund withdrawals and settlements; and (b) ensure, and cause MOTC to ensure, that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of all contractors, suppliers, consultants and other service providers as they relate to the Project.

Transparency and Good Governance

14. The Beneficiary shall disclose to the public, and update annually, the current status of the road fund enacted by the Beneficiary in 1998 (including any subsequent modification thereto), its annual financial statement and future plans through local media and on the websites of MOF and MOTC respectively. The Beneficiary shall ensure that MOTC discloses (a) its annual financial statement regarding the funds that it receives from the central government budget, and (b) the status and implementation progress of all donor-

funded investment projects concerning the road sector. In particular, the Beneficiary shall cause MOTC to disclose on its website information on how the proceeds of the Loan and the Grant are used respectively. For each contract financed under the Project, the Beneficiary shall also cause MOTC to disclose on its website information on, among others: (a) the list of participating bidders; (b) name of the winning bidder; (c) basic details on bidding procedures and procurement methods adopted; (d) the amount of contract awarded; (e) the list of Goods/services, including consulting services, procured; and (f) the intended and actual utilization of the proceeds of the Loan and/or the Grant, as the case may be, under each contract.

#### Environment

15. The Beneficiary shall ensure that Part 1 of the Project is designed, carried out, maintained and monitored in accordance with (a) the Beneficiary's relevant laws and regulations, (b) the requirements of ADB's *Environment Policy* (2002), and (c) the EMP for the Project, including the mitigation measures and monitoring requirements arising from the implementation of the environmental assessment and review procedures outlined in the IEE prepared under the Project. If there is any discrepancy between the Beneficiary's relevant laws and regulations, and the requirements of ADB's *Environment Policy* (2002), ADB's requirements shall apply. The Beneficiary shall also ensure that (a) all Works contracts include requirements to comply with the environmental mitigation measures contained in the IEE and the EMP; and (b) all Works contractors are supervised to ensure compliance with the requirements of the IEE and the EMP.

#### Land Acquisition and Resettlement

16. The Beneficiary shall ensure that the implementation of the Project is carried out on state-owned land and within existing rights-of-way and does not trigger any application of ADB's *Policy on Involuntary Resettlement* (1995). If, however, any land acquisition and resettlement are determined to be required for the Project after the commencement of the Project implementation, the Beneficiary shall ensure that a relevant land acquisition and resettlement plan is prepared, and implemented upon receiving ADB's approval, in accordance with the Beneficiary's relevant laws and regulations, and the requirements of ADB's *Policy on Involuntary Resettlement* (1995). If there is any discrepancy between the Beneficiary's relevant laws and regulations, and the requirements of ADB's *Policy on Involuntary Resettlement* (1995), ADB's requirements shall apply. In this connection, the Beneficiary shall ensure that no Works contract is awarded for the relevant component of the Project requiring land acquisition and resettlement until such time as the land and/or rights-of-way required for the execution of any Works for such component of the Project have been obtained by MOTC, and subsequently provided to the relevant contractor, in each case, free and clear from any encumbrances and in compliance with the provisions of the relevant land acquisition and resettlement plan.

#### Equal Opportunities

17. The Beneficiary shall ensure that there is no gender, racial, or other forms of discrimination with regard to employment, salary, payment of compensation for land acquisition or resettlement, and other business opportunities arising from the Project.

Labor

18. The Beneficiary shall ensure that the contractors and consultants engaged under the Project are required to provide maximum possible opportunities for employment of the Project area residents. The Beneficiary shall also ensure that each of the Works contractors of the Project complies with all applicable labor, health, and safety laws and regulations of the Beneficiary. In particular, the Beneficiary shall cause MOTC to ensure that each of the Works contracts under the Project: (a) contains provisions prohibiting use of child labor, employment of illegal immigrants, and differentiation in wages between male and female workers for work of equal value; (b) includes mandatory provisions requiring contractors and consultants to provide healthy, safe and secure working conditions as well as adequate medical, life and disability insurance for employees; and (c) has a requirement to conduct periodic awareness campaigns on sexually transmitted diseases and HIV/AIDS for employees as well as service providers during relevant contract period. The Beneficiary shall further ensure that all contractors and their employees observe local protocols concerning acceptable behavior toward the local population.