
GRANT NUMBER 0107-MON(SF)

GRANT AGREEMENT
(Special Operations)

(Western Regional Road Corridor Development Project - Phase I)

between

MONGOLIA

and

ASIAN DEVELOPMENT BANK

DATED 18 April 2008

GAS:MON 39265

GRANT AGREEMENT (Special Operations)

GRANT AGREEMENT dated 18 April 2008 between MONGOLIA (the "Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Recipient has applied to ADB for a grant for the purposes of the Project described in Schedule 1 to this Grant Agreement; and

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

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (the "Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. The definitions set forth in the Grant Regulations are applicable to this Grant Agreement unless the context requires otherwise. In addition, the following terms have the following meanings:

- (a) "aimag" means a province in the Recipient's territory;
- (b) "Category III" means the road category based on the Mongolian Highway Design Standard (CNR 21-01-00);
- (c) "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;
- (d) "DOR" means the Department of Roads of MRTT or any legal successor or assignee thereto;
- (e) "EIA" means the environmental impact assessment for the Project;
- (f) "EMP" means the environmental management plan;

(g) “Goods” means equipment and materials to be financed out of the proceeds of the Grant; and including related services such as transportation, insurance, installation, commissioning, and initial maintenance, but excluding consulting services;

(h) “HIV/AIDS” means human immunodeficiency virus/acquired immunodeficiency syndrome;

(i) “MOF” means the Ministry of Finance of the Recipient or any legal successor or assignee thereto;

(j) “MRTT” means the Recipient’s Ministry of Roads, Transport and Tourism;

(k) “PIU” means the Project Implementation Unit as described in paragraph 3 of Schedule 4 to this Grant Agreement;

(l) “Phase II” means the improvement of the Western Regional Road Corridor excluding the Project road;

(m) “PRC” means the People’s Republic of China;

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

(o) “Procurement Plan” means the procurement plan for the Project dated 7 January 2008 and agreed between the Recipient and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(p) “Project area” means the Project road, aimags, and soum centers along the Project road;

(q) “Project Executing Agency” for the purposes of, and within the meaning of, the Grant Regulations, means MRTT, or any legal successor or assignee thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(r) “Project facilities” means the facilities to be improved, rehabilitated or provided under the Project;

(s) “Project road” means the section of the Western Regional Road Corridor to be improved under the Project as described in Schedule 1 to this Grant Agreement;

(t) “PSC” means the Project Steering Committee as described in paragraph 2 of Schedule 4 to this Grant Agreement;

(u) “Russia” means the Russian Federation;

(v) “SEIA” means the summary EIA;

(w) “soum” means a local administrative subdivision of the Recipient;

(x) “STI” means socially transmitted infection;

(y) "Western Regional Road Corridor" means the road corridor connecting Yarant at the PRC border to Ulaanbaishint at the Russia border via Hovd and Baiyan-Olgii aimags;

(z) "Western Region" means the western region of the Recipient;

(aa) "Western Region Development Plan" means the plan approved by the Recipient's government on 28 September 2005 for soums and aimag centers along the Project road; and

(bb) "Works" means construction or civil works to be financed out of the proceeds of the Grant, including services such as drilling, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources on terms and conditions set forth in this Grant Agreement an amount of Thirty Seven Million Six Hundred Thousand Dollars (\$37,600,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement.

Section 3.02. 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 among different categories of such Goods, Works, consulting services and other items of expenditure shall be in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient 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 Grant shall be procured in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Withdrawals from 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 Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 October 2012 or such other date as may from time to time be agreed between the Recipient and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement.

Section 4.02. (a) The Recipient shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Grant proceeds and compliance with the financial covenants of this Grant Agreement as well as on the use of the procedures for imprest account/statement of expenditures), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Recipient shall enable ADB, upon ADB's request, to discuss the Recipient's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Recipient 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 Recipient unless the Recipient shall otherwise agree.

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

ARTICLE V

Effectiveness

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

ARTICLE VI

Miscellaneous

Section 6.01. The Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

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

For the Recipient

Ministry of Finance
Government Building – 2
Negdsen Undestnii gudamj – 5/1
Ulaanbaatar – 210646
Mongolia

Facsimile Number:

(976) 11-262272.

For ADB

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

Cable Address:

ASIANBANK
MANILA

Telex Numbers:

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

Facsimile Numbers:

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

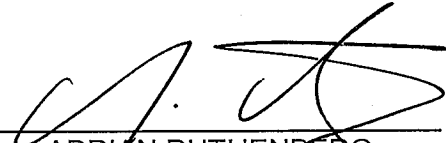
IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

MONGOLIA



By _____
ULAAN CHULTEM
Minister of Finance

ASIAN DEVELOPMENT BANK



By _____
ADRIAN RUTHENBERG
Country Director
Mongolia Resident Mission

SCHEDULE 1

Description of the Project

1. The impact of the Project is expected to be the promotion of regional transport of freight and passengers via the Western Regional Road Corridor and increased economic development and regional trade. The outcome is expected to be an efficient and safe regional transport route that is developed in the Western Region, linking Xinjiang Uygur Autonomous region in PRC and the Siberia region of Russia, by way of Hovd and Bayan-Olgii aimags of the Recipient.

2. The Project consists of the following parts:

Part A: Main Road

Improve a 431.2 kilometer (km) road between Yarant and Hovd city to meet Category III standards, with 2 lanes and a cross section consisting of carriageway widths of 3.5 meters (m) and shoulder widths of 1.5-2 m.

Part B: Maintenance Centers

- (i) Establish 3 road maintenance centers along the Project road (approximately one every 100 km); and
- (ii) Upgrade facilities at the existing maintenance center along the Project road.

Part C: Provision of Equipment

- (i) Provide equipment to the newly-established 3 road maintenance centers and to supplement the equipment of the existing road maintenance center along the Project road; and
- (ii) Provide equipments necessary to monitor environmental impact and control overloading.

Part D: Road Safety

- (i) Install guardrails, where necessary, road signs, pavement markings, rest areas, and km posts;
- (ii) Improve sight distances, providing drivers with more advance warning of obstacles in the road or approaching vehicles; and
- (iii) Enforce axle load limits for trucks traveling along the Project road to improve road safety and extend the life of the road surface.

Part E: Community Development

Undertake community development activities to improve the standard of living and reduce the poverty level in the Project area, including, but not limited to, training such as driving in order to secure truck driving jobs at recently established mines; providing drinking water wells near soum centers for easier access to clean drinking water.

Part F: HIV/ AIDS

- (i) Conduct an HIV/AIDS/STI training; and
- (ii) Conduct awareness program on HIV/AIDS/STI.

Part G: Capacity Building

- (i) Support capacity building for the Project road maintenance through (a) strengthening financial mechanism including, but not limited to, user charges for Project road maintenance, and (b) improving institutional framework and organizations for road management and technical skills of road administrators of the Recipient's central and local governments;
- (ii) Strengthen capacity of road administrators to prevent overloading issues, including, but not limited to (a) enforcement of the new overloading regulation; (b) strengthening organizations for enforcement of the regulations by MRTT inspectors with support of traffic police; (c) funding for 2 weight scales; and (d) providing training for road administrators and traffic police; and
- (iii) Assist MRTT in training its staff to gain practical experience in road construction and maintenance.

3. The Project includes the provision of consulting services. The Project is expected to be completed by 30 April 2012.

SCHEDULE 2

Allocation and Withdrawal of Grant Proceeds

General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, consulting 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 and the withdrawal percentages 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, by notice to the Recipient, (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 Recipient, 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 shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Imprest Account; Statement of Expenditures

5. (a) Except as ADB may otherwise agree, the Recipient shall establish immediately after the Effective Date, an imprest 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 and detailed arrangements agreed upon between the Recipient and ADB. The initial amount to be deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure for the first six (6) months of Project implementation, or (ii) the equivalent of \$200,000.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Recipient and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$20,000.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Western Regional Road Corridor Development Project- Phase I)				
CATEGORY				ADB FINANCING
		Amount Allocated \$		Percentage and Basis for withdrawal from the Grant Account
Number	Item	Category	Subcategory	
1	Works	32,760,000		
1A	Package 1		21,860,000	65% percent of total expenditure
1B	Package 2		10,900,000	65% percent of total expenditure
2	Equipment	600,000		
2A	Road Maintenance		250,000	100% percent of total expenditure*
2B	Other equipment		350,000	100% percent of total expenditure*
3	Community Development	150,000		100% percent of total expenditure*
4	Capacity Building and Training	160,000		100% percent of total expenditure*
5	Consulting Services	2,740,000		
5A	Construction Supervision		2,300,000	100% percent of total expenditure*
5B	Environmental Monitoring		440,000	100% percent of total expenditure*
6	Project Administration	250,000		100% percent of total expenditure*
7	Unallocated	940,000		
	Total	37,600,000		

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

SCHEDULE 3

Procurement of Goods and Works, and Consulting Services

A. General

1. All Goods and Works, and consulting services, to be financed out of the proceeds of 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 Grant Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

B. Procurement of 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
Shopping

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient 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. Domestic Preference. The Recipient may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

5. National Competitive Bidding. The procedures to be followed for national competitive bidding shall be those set forth in the Public Procurement Law of Mongolia of 1 December 2005, effective since 1 February 2006, as amended (Amendment 1 dated 6 February 2007), with the clarifications and modifications described in the following paragraphs required for compliance with the provisions of the Procurement Guidelines.

- i. Applicable Procurement Procedure

Bidding shall be conducted in accordance with the Open Bidding Procedure, as defined in Chapter Two of the Public Procurement Law of Mongolia subject to the provisions stated in paragraph ii(c) below.

- ii. Participation in Bidding and Preferences

- (a) Government-owned enterprises in Mongolia shall be eligible to participate in bidding only if they can establish that they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the procuring entity, or the project executing agency or implementing agency.

Schedule 3

- (b) Prospective bidders shall be permitted to request bidding documents either in person or by mail upon submission of a written application. Bidding documents shall be sold to anyone who is willing to pay the required fee for the bidding documents, and no other conditions shall be imposed on the sale of the bidding documents. The bidding documents shall be delivered, at the prospective bidders' preference, either by hand or by mail or courier, provided that the bidder is willing to pay the mail or courier delivery charges, which should be specified in the bid invitation. Each bidder shall be allowed to purchase only one set of the bidding documents for a given tender. No limitations shall be imposed on any bidder as to the number of tenders in which it may participate during a given period of time, but the bidder's qualification (financial and technical capabilities) for award of contract(s) shall be assessed on the basis of its capacity to meet the aggregated qualifying requirements for the award of contracts for which it has submitted the lowest evaluated substantially responsive bids.
- (c) Interested foreign bidders from eligible countries shall be allowed to participate without being required to associate or form joint ventures with local bidders. Foreign bidders shall be eligible to participate in bidding under the same conditions as local bidders. Mongolian bidders and goods manufactured in Mongolia shall be given no preference over foreign bidders and goods manufactured outside Mongolia, either in the bidding process or in the evaluation of bids.
- (d) Prior registration shall not be a requirement for any bidder to participate in bidding.
- (e) Pre-qualification of contractors shall not be required, except in the case of large or complex works and with the prior written concurrence of ADB.

iii. Advertising

Invitations to bid shall be advertised in the Mongolian national language in at least one widely circulated national daily newspaper and freely accessible, nationally-known website in accordance with Article 21.1 of the Public Procurement Law of Mongolia. Bidding of NCB contracts estimated at (i) \$500,000 or more for Goods and related services, and (ii) \$1,000,000 or more for Works shall be advertised concurrently with the general procurement notices on ADB's website.

iv. Standard Bidding Documents

Standard bidding documents, acceptable to ADB, shall be used. The bidding documents shall provide clear instructions on how bids should be submitted, how prices should be offered, and the place and time for submission and opening of bids. Bidders shall be allowed to submit bids by hand, by mail or by courier.

v. Qualification Criteria and Evaluation Criteria

- (a) Qualification criteria shall be clearly specified in the bidding documents, and all criteria so specified, shall be used to determine whether a bidder is qualified. The evaluation of the bidder's qualifications should be conducted separately from the technical and commercial evaluation of the bid. When post qualification is applied, the assessment of bidders' qualifications shall be carried out only after the preliminary and detailed evaluation of bids has been completed by the executing agency/implementing agency and, in doing so, the qualifications of the bidder who has submitted the lowest evaluated substantially responsive bid shall be assessed first. The evaluation of a bidder's qualifications shall only take into account the bidder's capacity and resources to perform the contract, in particular its experience and past performance on similar contracts, capabilities with respect to personnel, equipment and construction or manufacturing facilities and financial position. In carrying out the post-qualification assessment, the executing agency/implementing agency shall exercise reasonable judgment in requesting, in writing, from a bidder only missing factual or historical supporting information related to the bidder's qualifications and shall provide a reasonable time period (that is, a minimum of 7 days) to the bidder to provide his response.
- (b) Evaluation criteria to be used in the evaluation of bids shall be clearly specified in the bidding documents, and evaluation criteria other than price shall be quantified in monetary terms. All evaluation criteria so specified, shall be taken into account in bid evaluation. Merit points shall not be used in bid evaluation.

vi. Bid Opening, Evaluation and Award of Contract

- (a) Bids shall be opened in public, immediately upon the stipulated deadline for submission of bids. Bidders' representatives and the project's beneficiaries from the concerned local community who choose to attend shall be allowed to attend. The name of the bidder and total amount of each bid, including discounts, shall be read aloud and recorded in the Bid Opening Record. Bids received after the deadline for bid submission shall be rejected and returned to the bidders unopened. Immediately after completion of the bid opening proceedings, a copy of the Bid Opening Record shall be posted at a prominent location, accessible to the public, outside the office of the concerned procuring entity and shall be retained at the same location until the award of contract has been notified. A copy of the Bid Opening Record shall be promptly provided to all bidders who submitted bids.
- (b) All bids shall not be rejected or new bids invited without ADB's prior written concurrence.
- (c) No bid shall be rejected merely on the basis of a comparison with the owner's estimated cost or budget ceiling without the ADB's prior written concurrence.

Schedule 3

- (d) A bid containing material deviations from or reservations to the terms, conditions or specifications of the bidding documents shall be rejected as not substantially responsive. A bidder shall not be permitted to withdraw material deviations or reservations once bids have been opened. Bidders shall not be eliminated from detailed evaluation on the basis of non-material, minor deviations or reservations.
- (e) The evaluation of bids shall be done in strict adherence to the criteria specified in the bidding documents, and contracts shall be awarded to the qualified bidder offering the lowest evaluated and substantially responsive bid.
- (f) Bidders shall be requested to extend the validity of their bids only under exceptional circumstances and, in all such cases, the executing agency/implementing agency shall obtain ADB's approval for the extension of the bid validity period in a timely manner, and subsequently, communicate such request for extension of the validity period of the bids in writing to all bidders before the date of expiry of their bids. Bidders shall have the right to refuse to grant such an extension of the validity of their bids without forfeiting their bid securities. Bidders agreeing to extend the validity date of their bids shall also extend the validity period of their bid securities.
- (g) In the case of contracts of more than 18 months' duration, the bidding documents and the resultant contract shall provide for price adjustment, based on a formula acceptable to ADB, which shall be disclosed to the bidders in the bidding documents.
- (h) If a bidder that submitted the lowest evaluated bid refuses to accept the arithmetical corrections made by the executing agency/implementing agency during the evaluation of its bid, its bid shall be disqualified and its bid security shall be forfeited.
- (i) A bidder shall not be required, as a condition for award, to undertake obligations not specified in the bidding documents or otherwise to modify its bid as originally submitted.
- (j) There shall be no post-bidding negotiations with the lowest evaluated bidder or any other bidder. No bidder shall be required, as a condition for the award of contract, to change his bid price or otherwise materially alter his bid after it has been submitted.
- (k) A bidder declared ineligible by ADB, based on a determination by ADB that the bidder has engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing an ADB-financed contract, shall be ineligible to be awarded an ADB-financed contract during the period of time determined by ADB.

vii. Inspections of Accounts and Records

Bidding documents and contracts under national competitive bidding procedures financed by ADB shall include a provision requiring suppliers and contractors to permit ADB to inspect their accounts and records relating to the bid submission and the performance of the contract by the supplier and/or contractor, as the case may be, and to have them audited by auditors appointed by ADB, if so required by ADB.

viii. Complaints by Bidders and Handling of Complaints

Bidders' complaints shall be handled in accordance with the procedures set out in Chapter Seven of the Public Procurement Law of Mongolia.

ix. Disclosure of Decisions on Contract Awards

At the same time that notification on award of contract is given to the successful bidder, the results of the bid evaluation shall be published in a local newspaper or well-known freely accessible website identifying the bid and lot numbers and providing information on (i) name of each bidder who submitted a bid, (ii) bid prices as read out at bid opening, (iii) name of bidders whose bids were rejected and the reasons for their rejection, (iv) name of the winning bidder, and the price it offered, as well as the duration and summary scope of the contract awarded. The procuring entity/executing agency/implementing agency shall respond in writing to unsuccessful bidders who seek explanations on the grounds on which their bids were not selected.

x. ADB Member Country Restrictions

Bidders must be nationals of member countries of ADB, and offered Goods and Works must be produced in and supplied from member countries of ADB.

C. Selection of Consulting Services

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

D. Industrial or Intellectual Property Rights

7. (a) The Recipient 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 Recipient 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.

Schedule 3

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

E. ADB's Review of Procurement Decisions

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

SCHEDULE 4

Execution of Project and Operation of Project Facilities; Financial Matters

Project Executing Agency

1. MRTT shall be the Project Executing Agency responsible for overall execution and implementation of the Project.

PSC

2. Within three (3) months of the Effective Date, the Recipient shall set up the PSC at central level. The PSC shall be chaired by the state secretary of MRTT and shall comprise representatives from the Recipient's Customs General Administration, Ministry of Foreign Affairs, Ministry of Health, MOF, MRTT, Ministry of Nature and Environment, Ministry of Social Welfare and Labor, and government of Hovd aimag. The PSC shall meet at least once in every six (6) months and review the progress of implementation and provide guidance, as necessary. ADB representative may attend the PSC meetings as an observer.

PIU

3. Immediately after the Effective Date, the Recipient shall establish a PIU under MRTT to implement activities on a day-to-day basis. A senior official of DOR shall be appointed as the Project Director to head the PIU. The Project Director shall be assisted by a full-time Project Manager and a team of qualified technical, financial and administrative staff comprising three (3) highway engineers, an accountant, and an administrative assistant.

Counterpart Financing

4. The Recipient shall ensure that all funds and resources necessary for construction, operation and maintenance, and management of the Project are provided in a timely manner. The Recipient shall take all necessary measures, including, but not limited to, the provision of additional funds, to ensure that the Project is successfully implemented, managed and operated after construction is completed.

Development of Phase II

5. The Recipient shall ensure that adequate funds are allocated to Phase II and the implementation of Phase II is started by 31 December 2010.

Construction Quality

6. The Recipient, through MRTT, shall ensure that (i) the Project road is constructed in accordance with the Recipient's national technical standards; (ii) Project construction supervision, quality control, and contract management are conducted in accordance with the Recipient's national standards and internationally accepted practices; (iii) ongoing Works under the Recipient's financing are executed in accordance with the national technical standards; and (iv) the completed sections of the Project road are adequately maintained.

Environment

7. The Recipient, through MRTT, shall ensure that (i) the Project is designed, constructed, and operated in accordance with environmental laws and regulations of the Recipient and ADB's *Environment Policy* (2002), the EIA, and SEIA; (ii) the EMP and the mitigation measures included therein, as specified in the EIA and SEIA are properly implemented; (iii) the EMP is updated at the engineering design stage, and incorporated into bidding documents and Works contracts; (iv) any adverse impact on the environment that may arise from Project implementation activities is promptly mitigated or minimized in accordance with the EMP; and (v) the implementation of the EMP, including any safety breaches, violation of environmental standards, and corrective measures taken thereto, is reported at least semiannually to ADB.

Community Development

8. The Recipient, through MRTT, shall manage and monitor community development activities proposed under the Project by the PIU and agreed by ADB.

Local Employment

9. The Recipient, through MRTT, shall cause the contractors to employ unskilled workers from local areas to maximize the employment of local poor people, including ethnic minorities, who meet the job and efficiency requirements for construction and maintenance of the Project road. The Recipient, through MRTT, shall ensure that such workers are provided with adequate on-the-job training.

Labor Standards

10. The Recipient, through MRTT, shall ensure that all the employment and labor standards provided in the applicable laws and regulations of the Recipient are complied with, and in particular, that all Works contractors engaged under the Project (i) provide timely payment of wages on at least a monthly basis; (ii) provide safe working conditions to all workers, with such requirements being included in the Works contracts and monitored by the construction supervision consultants; (iii) provide employment opportunities to women and ethnic minorities, where appropriate, and pay equal wages to the male and female employees for work of equal value; and (iv) do not employ child labor in the Project works.

Health Risks

11. The Recipient, through MRTT, in coordination with appropriate agencies identified by the Recipient, shall cause the contractors to disseminate information on the risks of STI, including HIV/AIDS, to their employees during Project implementation. MRTT shall cause appropriate agencies to disseminate similar information to transport operators and local communities living in the Project area during Project implementation and operation of the Project road. The Recipient, through MRTT, shall cause contractors to monitor health risk control.

Commercial Development

12. To ensure that the expected benefits of the Project are channeled through to the local community, the Recipient shall start implementation of the Western Region Development Plan within two (2) years after completion of the construction of the Project road.

Resettlement

13. The Recipient shall ensure that the Project does not entail any land acquisition and/or resettlement. In the event of any unforeseen resettlement, (i) the Recipient shall inform ADB and prepare a resettlement plan according to its relevant laws and regulations and ADB's *Involuntary Resettlement Policy* (1995); and (ii) Works shall not start until ADB has reviewed and approved the resettlement plan.

Ethnic Minorities

14. The Recipient shall ensure that the Project does not have any adverse impact on the livelihood of nomadic herders and ethnic minorities living in the Project area. In the event of any unforeseen impact on the livelihood of nomadic herders and ethnic minorities, (i) the Recipient shall inform ADB and prepare a plan according to relevant laws and regulations, and ADB's *Policy on Indigenous Peoples* (1998); and (ii) Works shall not start until ADB has reviewed and approved the said plan.

Anticorruption Measures

15. The Recipient, through MRTT, shall ensure that ADB's *Anticorruption Policy* (1998, as amended to date) and the Recipient's anticorruption policy are followed. Consistent with its commitment to good governance, accountability and transparency, ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive, or coercive practices relating to the Project. To support these efforts, the Recipient, through MRTT, shall ensure that relevant provisions of ADB's *Anticorruption Policy* are included in the bidding documents for the Project. In particular, all contracts financed by ADB in connection with the Project shall include provisions specifying the right of ADB to audit and examine the records and accounts of MRTT and all contractors, suppliers, consultants, and other service providers as they relate to the Project. MRTT shall also ensure, in accordance with the Recipient's regulations and requirements, during Project implementation that (i) appropriate officials are resident in the Project offices for bidding, construction, and operations; (ii) an internal audit unit is established within MRTT; (iii) a two-contract system is adopted where the winner of a Works contract must also sign an anticorruption contract with the employer; and (iv) periodic inspection of contractors is undertaken to ensure that fund withdrawal and settlement procedures are followed. MRTT shall initiate liaison meetings, if necessary, to discuss warnings about or information on corrupt practices.

Control of Axle Weight of Vehicles

16. Before the opening of the Project road to public, the Recipient shall introduce necessary regulation and take necessary measures to control axle weight of vehicles on the Project road to maximum weight of 10 tons per axle, and to prevent overloaded vehicles entering the Project road after its completion.

Road User Fees and Maintenance

17. The Recipient shall ensure that all collected road user fees are directly used for the maintenance and rehabilitation of the Project road and the Project road is well maintained after its completion. In the event that road user fees collected are insufficient for the maintenance and rehabilitation of the Project road, the Recipient shall undertake maintenance work by allocating adequate funds from the Recipient's budget.

Cross Border Trade

18. The Recipient shall take necessary measures to implement harmonized cross border procedures at Yarant by 31 December 2012 and ensure that the border crossing is open to public all year around without restricting the border crossing to residents and citizens of the Recipient and PRC.

Capacity Building

19. The Recipient shall ensure that a policy and planning division is established in MRTT within two (2) years after the Effective Date.

20. The Recipient, through MRTT, shall manage and monitor capacity building activities proposed under the Project and agreed by ADB.

Project Monitoring and Evaluation

21. The Recipient, through MRTT, shall establish and use the Project performance management system (PPMS). The Recipient, through MRTT, shall monitor and evaluate the Project impacts including poverty indicators and community development activities, with the assistance of the consultants, to ensure that the Project facilities are managed effectively and the benefits, particularly to the poor, are maximized. The Recipient shall cause MRTT to (i) employ a qualified domestic institute to carry out the monitoring activities prior to Project implementation, (ii) ensure that local governments, including local statistics offices, collect the data to measure the relevant indicators prior to and during Project implementation, at completion, and annually three (3) years thereafter, with the frequency as specified, and (iii) submit to ADB the reports summarizing the key findings of monitoring.

Reporting

22. The Recipient, through MRTT, shall ensure that the companies contracted for Project road reconstruction provide monthly reports on Works performance to the supervision consultant and MRTT, who will then provide any findings to ADB based upon inspection and verification of Works performed.

Project Reviews

23. In addition to regular annual reviews, approximately twenty (20) months after the Project starts, MRTT and ADB shall carry out a midterm Project review, which shall focus on policy, institutional, administrative, organizational, technical, environmental, social, economic, financial, and other relevant factors that may have an impact on the Project's performance and its continuing viability. The review shall examine progress in reform and compliance with covenants set forth in this Grant Agreement.