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LOAN NUMBER 2562 - KAZ

LOAN AGREEMENT  
(Ordinary Operations)

(CAREC Transport Corridor 1 [Zhambyl Oblast Section] [Western Europe – Western PRC  
International Transit Corridor] Investment Program - Project 2)

between

REPUBLIC OF KAZAKHSTAN

and

ASIAN DEVELOPMENT BANK

DATED 3 DECEMBER 2009

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LAL:KAZ 41121

## **LOAN AGREEMENT (Ordinary Operations)**

LOAN AGREEMENT dated 3 December 2009 between the REPUBLIC OF KAZAKHSTAN (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

### WHEREAS

(A) by a framework financing agreement dated 13 January 2009 between the Borrower and ADB, ADB has agreed to provide a multitranche financing facility pursuant to the terms thereunder, to the Borrower for purposes of financing projects under the Borrower's Investment Program for the Zhambyl Oblast Section of the CAREC Transport Corridor 1 (hereinafter called the Investment Program);

(B) by a periodic financing request dated 17 August 2009, as further amended on 28 August 2009, submitted by the Borrower, the Borrower has applied to ADB for a loan for the purposes of the Project that is described in Schedule 1 to this Loan Agreement and forms part of the Investment Program; and

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

NOW THEREFORE the parties hereto agree as follows:

## **ARTICLE I**

### **Loan Regulations; Definitions**

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

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

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

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

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

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

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

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

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

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan

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

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

(a) "CAREC Transport Corridor 1" means the Western Europe–Western PRC International Transit Corridor running from Khorgos at the border with the PRC, through Almaty and Shymkent, to the western border with the Russian Federation;

(b) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2007, as amended from time to time);

(c) "COR" means the Borrower's Committee of Roads under MOTC and any successor thereto;

(d) "EARF" means the Environmental Assessment and Review Framework agreed between the Borrower and ADB and incorporated by reference in Schedule 5 to the FFA;

(e) "EIA" means the environmental impact assessment prepared for the Project by the Borrower and agreed by ADB;

(f) "EMP" means the environment management plan incorporated in the EIA;

(g) "Facility" means the multitranche financing facility provided by ADB to the Borrower for purposes of financing projects under the Investment Program;

(h) "FFA" means the framework financing agreement dated 13 January 2009 between ADB and the Borrower with respect to the Facility;

(i) "Investment Program" has the meaning given thereto in recital (A) of this Loan Agreement;

(j) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2007, as amended from time to time);

(k) "km" means kilometer;

(l) "LARF" means the Land Acquisition and Resettlement Framework agreed between the Borrower and ADB and incorporated by reference in Schedule 5 to the FFA;

- (m) "LARP" means a land acquisition and resettlement plan for the Project;
- (n) "Loan 2503-KAZ" means the Loan Agreement between the Borrower and ADB dated 30 March 2009;
- (o) "MOF" means the Borrower's Ministry of Finance and any successor thereto;
- (p) "MOTC" means the Borrower's Ministry of Transport and Communications;
- (q) "PFR" means the periodic financing request submitted or to be submitted by the Borrower, for the purposes of each loan under the Facility, and for the purpose of this Loan Agreement means the periodic financing request dated 17 August 2009, as further amended on 28 August 2009;
- (r) "PMC-ADB" means the Project Management Consultant team to be established under Loan 2503-KAZ;
- (s) "PRC" means the People's Republic of China;
- (t) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);
- (u) "Procurement Plan" means the procurement plan for the Project dated 28 September 2009 and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;
- (v) "Project", as generally defined under the Loan Regulations, means the Project described in Schedule 1 to this Loan Agreement;
- (w) "Project Area" means Zhambyl oblast of the Borrower;
- (x) "Project Executing Agency" or "EA" for the purposes of, and within the meaning of, the Loan Regulations means MOTC and any successor thereto, which is responsible for the carrying out of the Project;
- (y) "Project facilities" means the facilities to be constructed or provided under the Project;
- (z) "Project Road" means sections of the CAREC Transport Corridor 1 between km 310.5 to km 389.4 in the Project Area to be reconstructed under the Project;
- (aa) "Oblast" means an administrative unit of the Borrower; and
- (bb) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

## ARTICLE II

### The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of one hundred eighty seven million Dollars (\$187,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

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

(c) The term "grace period" as used in paragraph (b) of this Section means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of LIBOR and 0.60% per annum as provided by Section 3.02 of the Loan Regulations, less a credit of 0.40% per annum as provided by Section 3.03 of the Loan Regulations.

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

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 1 April and 1 October in each year.

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

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

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

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

### **ARTICLE III**

#### **Use of Proceeds of the Loan**

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

Section 3.02. The Works and consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Works and consulting services shall be in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

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

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all Works and consulting services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 30 June 2015 or such other date as may from time to time be agreed between the Borrower and ADB.

### **ARTICLE IV**

#### **Particular Covenants**

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

(b) In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. The Borrower shall make available, promptly as needed, the funds, facilities, services, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project and for the operation and maintenance of the Project facilities.

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

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

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

Section 4.05. (a) The Borrower shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than six (6) months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Borrower pursuant to Section 4.05(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Borrower unless the Borrower shall otherwise agree.

Section 4.06. The Borrower shall enable ADB's representatives to inspect the Project and Project facilities financed out of the proceeds of the Loan, and any relevant records and documents.

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



## **ARTICLE V**

### **Effectiveness**

Section 5.01. A date sixty (60) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

## **ARTICLE VI**

### **Miscellaneous**

Section 6.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

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

#### For the Borrower

Ministry of Finance  
11 Pobedy Avenue  
Astana 010000  
Republic of Kazakhstan

Facsimile Number:

+7 (7172) 717785.

#### For ADB

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

Facsimile Numbers:

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

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

REPUBLIC OF KAZAKHSTAN

By 

Authorized Representative

BOLAT BIDAQHMETOVICH ZHAMISHEV

Minister of Finance

ASIAN DEVELOPMENT BANK

By 

XIAOYU ZHAO

Vice President (Operations 1)

## **SCHEDULE 1**

### **Description of the Project**

1. The objective of the Investment Program is to contribute to the Borrower's sustainable economic development.
2. As a part of the Investment Program, the Project aims to develop efficient transport system in the Project Area through reconstruction of the Project Road. The Project shall consist of select contract packages, as more fully described in the PFR.
3. The Project is expected to be completed by 31 December 2014.

**SCHEDULE 2****Amortization Schedule****(CAREC Transport Corridor 1 [Zhambyl Oblast Sections] [Western Europe – Western PRC International Transit Corridor] Investment Program – Project 2)**

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

<u>Sequence</u>	<u>Date Payment Due</u>	<u>Installment Share (Expressed as a %)</u>
-		
1	1 Apr 2015	2.500000
2	1 Oct 2015	2.500000
3	1 Apr 2016	2.500000
4	1 Oct 2016	2.500000
5	1 Apr 2017	2.500000
6	1 Oct 2017	2.500000
7	1 Apr 2018	2.500000
8	1 Oct 2018	2.500000
9	1 Apr 2019	2.500000
10	1 Oct 2019	2.500000
11	1 Apr 2020	2.500000
12	1 Oct 2020	2.500000
13	1 Apr 2021	2.500000
14	1 Oct 2021	2.500000
15	1 Apr 2022	2.500000
16	1 Oct 2022	2.500000
17	1 Apr 2023	2.500000
18	1 Oct 2023	2.500000
19	1 Apr 2024	2.500000
20	1 Oct 2024	2.500000
21	1 Apr 2025	2.500000
22	1 Oct 2025	2.500000
23	1 Apr 2026	2.500000
24	1 Oct 2026	2.500000
25	1 Apr 2027	2.500000
26	1 Oct 2027	2.500000
27	1 Apr 2028	2.500000

<u>Sequence</u>	<u>Date Payment Due</u>	<u>Installment Share (Expressed as a %)</u>
-		
28	1 Oct 2028	2.500000
29	1 Apr 2029	2.500000
30	1 Oct 2029	2.500000
31	1 Apr 2030	2.500000
32	1 Oct 2030	2.500000
33	1 Apr 2031	2.500000
34	1 Oct 2031	2.500000
35	1 Apr 2032	2.500000
36	1 Oct 2032	2.500000
37	1 Apr 2033	2.500000
38	1 Oct 2033	2.500000
39	1 Apr 2034	2.500000
40	1 Oct 2034	2.500000
	<b>Total</b>	<b>100.000000</b>

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

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

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

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

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately

prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

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

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

1. The table attached to this Schedule sets forth the Categories of Works and consulting services to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table.)

Percentages of ADB Financing

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

Reallocation

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

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

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

Disbursement Procedures

4. Except as ADB may otherwise agree, the Loan proceeds for financing Works and consulting services shall be disbursed in accordance with the ADB's Loan Disbursement Handbook.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (CAREC Transport Corridor 1 [Zhambyl Oblast Sections] [Western Europe – Western PRC International Transit Corridor] Investment Program - Project 2)</b>			
<b>CATEGORY</b>			<b>ADB FINANCING BASIS</b>
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing \$ '000 Category</b>	<b>Percentage of ADB Financing from the Loan Account</b>
1	Works	166,000	85 percent of total expenditure claimed
2	Consulting Services	4,000	100 percent of total expenditure claimed*
3	Unallocated	17,000	
	Total	187,000	

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



## SCHEDULE 4

### Procurement of Works and Consulting Services

#### A. General

1. All Works and consulting services to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

#### B. Procurement of Works

3. Except as ADB may otherwise agree, Works shall only be procured on the basis of the methods of procurement set forth below:

International Competitive Bidding
National Competitive Bidding

4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the method of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in the updates to the Procurement Plan.
5. National Competitive Bidding. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower 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 Borrower and ADB.

#### C. Selection of Consulting Services

6. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, the Borrower shall cause the EA to apply quality- and cost-based selection for selecting and engaging consulting services for construction supervision. The Borrower may modify the method of consultant selection or scope of their services with the prior agreement of ADB, and modifications must be set out in the updates to the Procurement Plan.

#### D. ADB's Review of Procurement Decisions

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

**E. Industrial or Intellectual Property Rights**

8. (a) The Borrower shall cause the EA to ensure that all Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall cause the EA to ensure that all contracts for the procurement of Works contain appropriate representations, warranties and, if appropriate indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

9. The Borrower shall cause the EA to 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 5

### Execution of Project and Operation of Project Facilities

#### I. IMPLEMENTATION ARRANGEMENTS

1. The Borrower has designated MOTC as the Project Executing Agency and COR as the implementing agency for the Project.
2. The Project Director appointed by MOTC shall be responsible for the day-to-day implementation of the Project. The Project Director shall be assisted by the MOTC staff responsible for road engineering, financial, legal and procurement matters. The PMC-ADB shall be set up to support the Project Director in the following areas: project management, procurement, finance, administration, evaluation, monitoring and reporting, and due diligence for subsequent projects.
3. The Borrower shall ensure that (a) adequate MOTC staff is assigned to assist the Project Director for the entire duration of the Project; and (b) construction supervision consultants are mobilized by MOTC prior to commencement of the Works.

#### II. OPERATIONAL COVENANTS

##### Counterpart Funds

4. Without limiting the generality of Section 4.02 of this Loan Agreement, the Borrower shall make available all counterpart funds required for timely and effective implementation of the Project through annual budget allocations to MOTC, and shall ensure that necessary resources thus required are released in a timely manner. The Borrower shall ensure that MOTC includes the updated funding requirements for implementation of the Project in its annual development programs.

##### Construction Quality

5. The Borrower shall cause MOTC to ensure that the Project is carried out in accordance with the applicable technical specifications and design, and that the construction supervision, quality control and Project management are performed in accordance with applicable standards and best international practices.

##### Road Safety

6. The Borrower shall cause MOTC to (a) ensure that all Works contracts include a contractor's obligation to comply with road safety measures; and (b) monitor the accident rate and traffic volume during the operation of the Project Road.

##### Environment

7. The Borrower shall cause MOTC to ensure (a) that the design, construction, and operation and maintenance of the Project facilities are carried out in accordance with ADB's *Environment Policy* (2002), the Borrower's environmental laws and regulations, the EARF, the

cumulative environmental impact assessment prepared for the Investment Program and agreed with ADB, and the EIA; and (b) potential adverse environmental impacts arising from the Project are minimized by implementing all mitigation and monitoring measures as presented in the EMP.

8. The Borrower shall cause MOTC to further ensure that (a) the EMP is updated prior to issuance of any notice to proceed; (b) sufficient resources are made available to implement, monitor, and record the implementation of the EMP; (c) semi-annual environmental reports are prepared and submitted to ADB within three (3) months of the end of each period covered; (d) the reports include, *inter alia*, a review of progress made on the implementation of the EMP, problems encountered and remedial measures taken; (e) the detailed engineering design and the Works contracts under the Project incorporate applicable environmental measures identified in the EIA and the EMP; and (f) contractors are supervised to ensure compliance with the requirements of the EIA and the EMP.

#### Land Acquisition and Resettlement

9. The Borrower shall cause MOTC to ensure that the Project is carried out in accordance with the Borrower's applicable laws and regulations, ADB's Policy on Involuntary Resettlement (1995), the LARF and the LARP including, *inter alia*, the following provisions:

- (a) the LARP shall be disclosed to affected persons in accordance with the LARF;
- (b) the LARP shall be submitted to ADB for review and clearance prior to award of any Works contract;
- (c) all land and rights of way required by the Project shall be acquired and made available in a timely manner;
- (d) all compensation and resettlement assistance shall be provided to affected persons prior to their displacement and dispossession and the compensation program of the LARP shall be fully implemented prior to issuing any notice to proceed;
- (e) efficient grievance redressal mechanisms shall be in place to assist affected persons resolve queries and complaints if any, in a timely manner;
- (f) adequate staff and resources shall be made available for supervising and monitoring the implementation of the LARP. An external monitoring agency, acceptable to ADB, shall carry out external monitoring and evaluation of the LARP and shall report the results to ADB at the start and completion of the LARP implementation process; and
- (g) if during implementation of the LARP, any changes to the location, land alignment of roads, or additional environmental and/or resettlement impacts are identified, the LARP shall be updated and prior approval by ADB and the relevant government agencies shall be obtained before further implementation of the LARP.

Execution of Contracts for Works

10. The Borrower shall cause MOTC to ensure that, subsequent to award of the Works contracts, no notice to proceed is issued to contractors for the respective sections or parts of the Project Road until the applicable provisions of the LARP (including, in particular, the provision on the timely payment of compensations to affected persons), the EIA, and the updated EMP have been complied with.

Labor, Gender, Health, and Social Protection

11. The Borrower shall cause MOTC to ensure that (a) the Works contracts incorporate provisions to the effect that contractors shall (i) comply with applicable core labor standards, labor laws and incorporate applicable workplace occupational safety norms; (ii) not differentiate payment between men and women for work of equal value; (iii) not employ child labor in the construction and maintenance activities; and (iv) to the extent possible, maximize employment of local poor and disadvantaged persons for project construction purposes, provided that the requirements for job and efficiency are adequately met; and (b) disseminate information on the risks of sexually transmitted diseases, including human immunodeficiency virus/acquired immunodeficiency syndrome, to the employees of the Works contractors under the Project and to members of the local communities surrounding the Project Road.

Anticorruption

12. The Borrower shall comply with ADB's *Anticorruption Policy* (1998, as amended to date). The Borrower, consistent with its commitment to good governance, accountability and transparency, agrees that ADB has the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project, and the Borrower shall 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. In addition, the Borrower shall cause MOTC to (a) conduct periodic inspections on the contractors' activities related to fund withdrawals and settlements; (b) 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; (c) ensure that the construction supervision consultant verifies the contractors' payment certificates in accordance with working drawings and contract specifications; and (d) ensure that the anticorruption action plan developed for the Investment Program and agreed with ADB is implemented.

Financial Management System

13. The Borrower shall cause MOTC to ensure that, by 30 April 2010, a financial management system of MOTC has been established and became operational, including the establishment of an automated accounting system with capacity to record and report on an annual basis project transactions and generate interim financial reports.

Project Performance Monitoring System

14. The Borrower shall cause MOTC to establish a project performance monitoring system within six (6) months of the Effective Date and collect baseline data for performance monitoring. The key indicators and assumptions outlined at the impact and outcome levels in

the Project design and monitoring framework will be the primary data required for analysis.

Project Review

15. The Borrower shall cause MOTC to submit to ADB: (a) quarterly progress reports within two (2) weeks of the end of each quarter covered, and (b) other performance and monitoring reports to be submitted to ADB on a semi-annual basis. A joint mid-term review shall be carried out two (2) years after the Effective Date. The mid-term review shall focus on the engineering, environmental and social safeguards of the Project, compliance with loan covenants and the undertakings set out in the FFA. The review will allow for any necessary mid-course corrections to ensure successful implementation and the achievement of objectives of the Project and the Investment Program.