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LOAN NUMBER 3144-AZE

PROJECT AGREEMENT

(Second Road Network Development Investment Program – Project 2)

between

ASIAN DEVELOPMENT BANK

and

AZERROADSERVICE OPEN JOINT-STOCK COMPANY

DATED 29 DECEMBER 2014

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AZE 45389

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 29 December 2014 between ASIAN DEVELOPMENT BANK (“ADB”) and the AZERROADSERVICE OPEN JOINT-STOCK COMPANY (“ARS”), a state-owned company under the Ministry of Transport of the Republic of Azerbaijan (“Borrower”).

### **WHEREAS**

(A) by a Loan Agreement of even date herewith between the Borrower and ADB, ADB has agreed to make to the Borrower a loan of two hundred fifty million Dollars (\$250,000,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the loan be made available to ARS and that ARS agrees to undertake certain obligations towards ADB set forth herein; and

(B) ARS, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

## **ARTICLE I**

### **Definitions**

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

## **ARTICLE II**

### **Particular Covenants**

Section 2.01. (a) ARS shall carry out the Project with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project and operation of the Project facilities, ARS shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to ARS, and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. ARS shall make available, promptly as needed, and on terms and conditions acceptable to ADB, the funds, facilities, services, land and other resources as required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, ARS shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, ARS shall procure all items of expenditures to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to the Loan Agreement. ADB may refuse to finance a contract where any such item has 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 2.04. ARS shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. ARS 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 2.05. (a) ARS shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, ARS undertakes to insure, or cause to be insured, the Goods to be imported for the Project against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. ARS shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and ARS shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) ARS shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and ARS shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, ARS and the Loan.

Section 2.08. (a) ARS shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the items of expenditure financed out of such proceeds; (iii) the

Project; (iv) the administration, operations and financial condition of ARS; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, ARS shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after physical completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, ARS shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by ARS of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) ARS shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements for the Project audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement as well as on the use of the procedures for imprest fund(s) and statement of expenditures and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the close of the fiscal year to which they relate, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) In addition to annual audited financial statements referred to in subsection (a) hereinabove, ARS shall (i) provide its annual financial statements prepared in accordance with national accrual-based financing reporting standards acceptable to ADB; (ii) have its financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; and (iii) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements in the English language and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(d) ARS shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and ARS and its financial affairs where they relate to the Project

with the auditors appointed by ARS pursuant to subsections (a)(iii) and (c) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of ARS, unless ARS shall otherwise agree.

Section 2.10. ARS shall enable ADB's representatives to inspect the Project, the Goods and Works and any relevant records and documents.

Section 2.11. (a) ARS shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its operations.

(b) ARS shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

(c) ARS shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 2.12. ARS shall ensure that any sale, lease or other disposal of any of its assets will not prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, ARS shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. ARS shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its constitutional documents, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. ARS shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

## **ARTICLE III**

### **Effective Date; Termination**

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement comes into force and effect. ADB shall promptly notify ARS of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

## ARTICLE IV

### Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

#### For ADB

Asian Development Bank  
6 ADB Avenue  
Mandaluyong City  
1550 Metro Manila  
Philippines

Facsimile Numbers:

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

#### For ARS

Azeryolservis OJSC  
72/4 Uzeyir Hajibayov Street  
AZ1010, Baku  
Azerbaijan

Facsimile Number:

(99412) 498-9606.

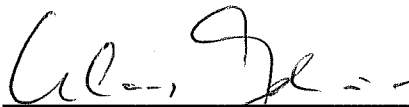
Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of ARS may be taken or executed by its Chairman or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) ARS shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

Section 4.03. No delay in exercising, or omission to exercise, any right, power, or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

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

ASIAN DEVELOPMENT BANK

By   
KLAUS GERHÆUSSER  
Director General  
Central and West Asia Department  
Authorized Representative

AZERROADSERVICE OPEN JOINT-  
STOCK COMPANY

By   
ZIYA MAMMADOV  
Minister  
Ministry of Transport

## SCHEDULE

### Execution of Project; Financial Matters

#### Implementation Arrangements

1. ARS shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the FAM. Any subsequent change to the FAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the FAM and the Loan Agreement, the provisions of the Loan Agreement shall prevail.
2. ARS shall ensure that its financial management capacity is strengthened, and its accounting systems are improved by undertaking the measures and carrying out the activities set out in the FAM.

#### Construction Quality

3. ARS shall ensure that: (a) the Project facilities comply with the technical specifications of the design; and (b) construction, supervision, quality control and project management are performed according to internationally accepted standards and practices.

#### Road Maintenance

4. ARS shall continue to implement the road maintenance plan for 2008 to 2015 developed under the loan agreements for project 1 under the Facility (Loan No. 2354-AZE) (Loan No. 2355-AZE(SF)). ARS shall implement the road maintenance plan for 2015 to 2022 to be developed under the loan agreement for project 1 under the Second Facility (Loan No. 2921-AZE). ARS shall ensure that the Project Road and Project facilities are maintained according to the standards adopted under the road maintenance plans and, to this end, that adequate data on the condition and use of the Project facilities and the Project Road are collected and managed; that inspections of the Project Road and Project facilities are regularly carried out; and that preventive maintenance and repair of the Project Road and the Project facilities are undertaken as required. ARS shall ensure that sufficient funding and resources are made available for the maintenance of the Project Road and the Project facilities.

#### Road Safety

5. ARS shall develop an implementation plan for road safety strategy and mainstreaming of road safety audit and improvements on a national basis satisfactory to ADB by 31 December 2017.
6. ARS shall ensure monitoring of the accident rate and traffic volume on road infrastructure facilities, including the Project Road and implement appropriate safety enforcement measures.



Policy Dialogue

7. ARS shall ensure that: (a) ADB is kept informed of the policies and programs of the Borrower for the road sector, including those under discussion with other multilateral and bilateral agencies and those that may materially affect the economic viability of any motorway road financed under the Road MFFs; and (b) ADB is given an opportunity to comment on any proposed new transport sector policies or programs.

Change in Ownership and Operation

8. In the event that ARS proposes (a) any change in ownership of the Project Road or Project facilities; (b) any sale, transfer, or assignment of interest or control in the Project Road or Project facilities; or (c) a lease or other contract or other modification of its functions or authority over implementation and operation of the Project Road or Project facilities, ARS shall, at least 6 months prior to the implementation of such proposal, consult with ADB and obtain its consent. ARS shall ensure that any such proposal is carried out in a legal and transparent manner.

Financial Management

9. ARS shall ensure that its internal audit unit conducts internal audits of the PIU.

10. ARS shall ensure that (a) the PIU is adequate staffed with personnel qualified and experienced in project management and accounting and (b) the PIU staff are trained in ADB procedures and financial reporting requirements.

Environment

11. ARS shall ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health, and safety; (b) the Environmental Safeguards; (c) the EARF; and (d) all measures and requirements set forth in the respective EIA and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

12. ARS shall (a) ensure that in areas of the wetlands, construction will not be undertaken during the breeding season for birds, and additional specialized expertise will be engaged to review the design and location of culverts and wildlife and grazing animal underpasses, and (b) pilot and implement the turtle action plan outlined in the EIA and EMP.

Land Acquisition and Involuntary Resettlement

13. ARS shall ensure that all land and all rights-of-way required for the Project and all Project facilities are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement specifically including the Loans on the Purchase of Land for Public Needs dated 20 April 2010, No. 987-111Q; (b) the Involuntary Resettlement Safeguards; (c) the LARF; and (d) all measures and requirements

set forth in the respective LARP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

14. Without limiting the application of the Involuntary Resettlement Safeguards, the LARF or the LARP, ARS shall ensure that no physical or economic displacement takes place in connection with the Project until:

- (a) compensation and other entitlements have been provided to affected people in accordance with the LARP;
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the LARP; and
- (c) a due diligence report prepared by an external expert in accordance with the LARP has been cleared by ADB.

#### Indigenous Peoples

15. ARS shall ensure that the Project does not cause any impact on indigenous people within the meaning of the SPS. In the event that the Project does have any such impact, ARS shall take all steps required to ensure that the Project complies with the applicable laws and any other applicable regulations of the Borrower and the SPS.

#### Human and Financial Resources to Implement Safeguards Requirements

16. ARS shall make available necessary budgetary and human resources to fully implement the EMP and the LARP.

#### Safeguards – Related Provisions in Bidding Documents and Works Contract

17. ARS shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures and requirements relevant to the contractor set forth in the EIA, the EMP (including preparation of site specific environmental management plans for review and approval by PIU and ADB prior to commencement of construction) and the LARP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set out in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide ARS and the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the EIA, the EMP or the LARP;

- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

#### Safeguards Monitoring and Reporting

18. ARS shall do the following:

- (a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the EIA, the EMP or the LARP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;
- (c) prior to the award of the Works contract, engage qualified and experienced external expert or qualified non-governmental organizations under a selection process and terms of reference acceptable to ADB, to verify information produced through the Project monitoring process, and facilitate the carrying out of any verification activities by such external experts; and
- (d) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP or the LARP promptly after becoming aware of the breach.

#### Prohibited List of Investments

19. ARS shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

#### Health and Labor Standards

20. ARS shall ensure that all contractors: (a) comply with all laws and mandated provisions on labor, health, safety, sanitation and working conditions; (b) use their best efforts to employ women and local people negatively affected by, or living in the vicinity of, the Project; (c) disseminate information at worksites and campsites on the risks of sexually transmitted diseases and HIV/AIDS for those employed during construction; (d) are required not to differentiate between men and women's wages or benefits for work of equal value; (e) provide accommodation to construction workers at campsites during the constructions period

and ensure that all work sites and campsites are safe for all employees, service providers, the public and road users; (f) eliminate all forms of forced or compulsory labor; (g) allow freedom of association and right of assembly; and (h) abstain from engaging persons below the legally employable age in Azerbaijan.

21. ARS shall undertake concrete measures including border controls and road patrols to prevent trafficking of humans, wildlife, endangered species and illegal substances on the Project facilities.

#### Gender and Development

22. ARS shall ensure that the principles of gender equity aimed at increasing Project benefits and impacts on women in the Project area consistent with ADB's Policy on Gender and Development (1998) are followed during implementation of the Project, including (a) equal pay to men and women for work of equal value; (b) enabling working conditions for women workers; and (c) taking necessary actions to encourage women living in the Project area to participate in the design and implementation of the Project activities.

#### Governance and Anticorruption

23. ARS shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

24. ARS shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

25. ARS shall ensure that (a) all contracts are audited by an independent external auditor; (b) decisions of all procurement related matters are taken by a tendering committee composed of representatives of MEI, MOF, MOT and the State Procurement Agency as observer in accordance with the Procurement Guidelines; (c) the payment claims of all contractors are verified by the Project management consultant in accordance with contract specifications; and (d) information on the selection of consultants and contractors is disclosed through local newspapers in a timely manner.

26. ARS shall provide updated information on the Project on the websites of MOT and ARS website, including information on the performance of the Project, environmental monitoring, business opportunities, bidding process and guidelines, outcome of biddings and summary progress reports.