
LOAN NUMBER 3116-AZE

PROJECT AGREEMENT
(Road Network Development Program - Project 4)

between

ASIAN DEVELOPMENT BANK

and

AZERROADSERVICE OPEN JOINT-STOCK COMPANY

DATED 5 May 2014

AZE 39176

PROJECT AGREEMENT

PROJECT AGREEMENT dated 5 May 2014 between ASIAN DEVELOPMENT BANK ("ADB") and AZERROADSERVICE OPEN JOINT-STOCK COMPANY ("ARS").

WHEREAS

(A) by a Loan Agreement of even date herewith between the Republic of Azerbaijan ("Borrower") and ADB, ADB has agreed to make to the Borrower a loan of forty five million Dollars (\$45,000,000) 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. Except as ADB may otherwise agree, ARS shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may 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.

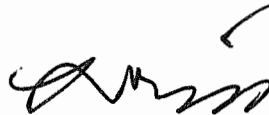
(b) ARS shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

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



OLLY NOROJONO

Resident Representative
Azerbaijan Resident Mission

AZERROADSERVICE OPEN JOINT-STOCK COMPANY

By



ZIYA MAMMADOV

Minister
Ministry of Transport

SCHEDULE

Execution of Project and Operation of Project Facilities

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 the financial management capacity of ARS 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 the reconstruction of the Project Bridges and the rehabilitation of the Project Roads comply with the technical specifications of the design, and that construction supervision, quality control, and Project management are undertaken 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 Bridges and Project Roads 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 Bridges and Project Roads are collected and managed; that inspections of the Project Bridges and Project Roads are regularly carried out; and that preventive maintenance and repair of the Project Bridges and Project Roads are undertaken as required. ARS shall ensure that sufficient funding and resources are made available for the maintenance of the Project Bridges and Project Roads.

Axle Loads

5. ARS shall maintain vehicle weighing stations along such roads as may be necessary or appropriate to ensure that there will be no axle overloading on the Project Bridges and Project Roads.

Change in Ownership and Operation

6. In the event that ARS proposes (a) any change in ownership of the Project Bridges, Project Roads or Project facilities, (b) any sale, transfer, or assignment of interest or control in the Project Bridges, Project Roads or Project facilities, or (c) a lease or other contract or other material modification of ARS's functions or authority over the implementation and operation of the Project, ARS shall, at least 6 months prior to the

implementation of such a proposal, consult with ADB and obtain its consent. ARS shall ensure that any such proposal is carried out in a legal and transparent manner.

Environment

7. 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 IEE and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement and Indigenous Peoples

8. ARS shall ensure that the Project does not have any indigenous peoples or involuntary resettlement impacts, all within the meaning of the Safeguard Policy Statement. 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 regulations of the Borrower, specifically including, insofar as land acquisition and involuntary resettlement are concerned, the Law on the Purchase of Land for Public Needs dated 20 April 2010, No. 987-IIIQ, and with the Safeguard Policy Statement.

Human and Financial Resources to Implement Safeguards Requirements

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

Safeguards – Related Provisions in Bidding Documents and Works Contracts

10. 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 IEE and the EMP (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 the Borrower with a written notice of any unanticipated environmental risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE or the EMP;
- (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

11. ARS shall:

- (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 IEE or the EMP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP promptly after becoming aware of the breach.

Prohibited List of Investments

12. 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.

Labor Standards

13. ARS shall ensure that the core labor standards and the Borrower's applicable laws and regulations are complied with during Project implementation. ARS shall include specific provisions in the bidding documents and contracts financed under the Project requiring that the contractors, other providers of goods and services and their subcontractors: (a) comply with the Borrower's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation by providing, inter alia, equal pay for men and women for work of equal value, and to the extent possible, employing women and local people, including disadvantaged people, living in the Project area, provided that the requirements for efficiency are adequately met; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women.

14. ARS shall strictly monitor compliance with the labor standards and provide ADB with regular reports.

Gender and Development

15. ARS shall ensure that the principles of gender equity consistent with ADB's Policy on Gender and Development 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 Project activities. ARS shall ensure, in coordination with the appropriate agencies, the effective implementation of measures aimed at increasing Project benefits and impacts on women in and around the Project area.

Counterpart Support

16. ARS shall be adequately staffed and equipped in a manner acceptable to ADB.

Governance and Anticorruption

17. 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.

18. 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.

19. 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.