

Public Disclosure Authorized

CONFORMED COPY

CREDIT NUMBER 4615-AZ

Financing Agreement

(Second Additional Financing for the Second Highway Project)

between

REPUBLIC OF AZERBAIJAN

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated July 28, 2009

Public Disclosure Authorized

CREDIT NUMBER 4615-AZ

FINANCING AGREEMENT

Agreement dated July 28, 2009, entered into between REPUBLIC OF AZERBAIJAN (“Recipient”) and INTERNATIONAL DEVELOPMENT ASSOCIATION (“Association”) for the purpose of providing additional financing for activities related to the Original Project (as defined in the Appendix to this Agreement). The Recipient and the Association hereby agree as follows:

ARTICLE I - GENERAL CONDITIONS; DEFINITIONS

- 1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.
- 1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

ARTICLE II - FINANCING

- 2.01. The Association agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a credit in an amount equivalent to forty one million seven hundred thousand Special Drawing Rights (SDR 41,700,000) (variously, “Credit” and “Financing”) to assist in financing the project described in Schedule 1 to this Agreement (“Project”).
- 2.02. The Recipient may withdraw the proceeds of the Financing in accordance with Section IV of Schedule 2 to this Agreement.
- 2.03. The Maximum Commitment Charge Rate payable by the Recipient on the Unwithdrawn Financing Balance shall be one-half of one percent (1/2 of 1%) per annum.
- 2.04. The Service Charge payable by the Recipient on the Withdrawn Credit Balance shall be equal to three-fourths of one percent (3/4 of 1%) per annum.
- 2.05. The Payment Dates are June 15 and December 15 in each year.
- 2.06. The principal amount of the Credit shall be repaid in accordance with the repayment schedule set forth in Schedule 3 to this Agreement.

- 2.07. The Payment Currency is Dollars.

ARTICLE III - PROJECT

- 3.01. The Recipient declares its commitment to the objectives of the Project. To this end, the Recipient shall cause the Project to be carried out by the ARS in accordance with the provisions of Article IV of the General Conditions.
- 3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Recipient and the Association shall otherwise agree, the Recipient shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.
- 3.03. Without limitation upon the provisions of Section 3.01 of this Agreement, the Recipient shall:
- (a) maintain, until the completion of the Project, a Project Account in Manat on terms and conditions acceptable to the Association, to finance its counterpart contribution to the expenditures of the Project;
 - (b) make an initial deposit in Manat into the Project Account of no less than three million Dollars equivalent (\$3,000,000) within thirty (30) days of the first withdrawal under the Loan, and thereafter during each following month deposit into the Project Account the amounts required to cover the Recipient's counterpart contributions for each such quarter, as determined by the Recipient and the Association; and
 - (c) ensure that the funds deposited into the Project Account shall be used exclusively to finance the Recipient's counterpart contributions to the Project.

ARTICLE IV - REMEDIES OF THE ASSOCIATION

- 4.01. The Additional Event of Suspension consists of the following: that the Presidential Decree on the Measures to Improve Management of Transport and Road Complex (Decree No. 1992), dated February 22, 2007, or the Decree of the Cabinet of Ministers dated November 15, 2007 has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the ARS to perform any of its obligations under the Subsidiary Agreement.
- 4.02. The Additional Event of Acceleration consists of the following: that the event specified in paragraph (a) of Section 4.01 of this Agreement occurs and is

continuing for a period of sixty (60) days after notice of the event has been given by the Association to the Recipient.

ARTICLE V - EFFECTIVENESS; TERMINATION

- 5.01. The Additional Conditions of Effectiveness consist of the following:
- (a) The Subsidiary Agreement has been executed on behalf of the Recipient through the Ministries of Finance and Transport and the ARS.
 - (b) The revised Operational Manual, satisfactory to the Association, has been finalized and submitted to the Association.
 - (c) The PIU has established budgeting arrangements, satisfactory to the Association, and has hired an additional accountant with terms of reference, satisfactory to the Association.
- 5.02. The Additional Legal Matter consists of the following: that the Subsidiary Agreement has been duly authorized or ratified by the Recipient and the ARS and is legally binding upon the Recipient and the ARS in accordance with its terms.
- 5.03. The Effectiveness Deadline is the date ninety (90) days after the date of this Agreement.
- 5.04. For purposes of Section 8.05 (b) of the General Conditions, the date on which the obligations of the Recipient under this Agreement (other than those providing for payment obligations) shall terminate is twenty (20) years after the date of this Agreement.

ARTICLE VI - REPRESENTATIVE; ADDRESSES

- 6.01. The Recipient's Representative is the Minister of Finance.
- 6.02. The Recipient's Address is:

Ministry of Finance
83 Samed Vurgun Street
Baku AZ1022
Republic of Azerbaijan

Telex:

142116 BNKSL

6.03. The Association's Address is:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable:	Telex:	Facsimile:
INDEVAS Washington, D.C.	248423 (MCI)	1-202-477-6391

AGREED at Baku, Republic of Azerbaijan, as of the day and year first above written.

REPUBLIC OF AZERBAIJAN

By: /s/ Ziya Arzuman oglu Mammadov

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: /s/ Asad Alam

Authorized Representative

SCHEDULE 1

Project Description

The objective of the Project is to reduce road transport costs and improve access, transit and road safety by upgrading and rehabilitating selected sections of the existing East-West (M4) and North-South (M3) corridors and the Hajigabul-Bahramtapa Highway (M6).

The Project consists of the Original Project and the following revised and additional parts:

Part A: Rehabilitation of M6 road between Hajigabul-Bahramtapa and of local roads connecting rural areas to the M6 road

Provision of works, goods, technical assistance for engineering design and the supervision of road rehabilitation works in the East-West (M4) and North-South (M3) corridors and Hajigabul-Bahramtapa Highway (M6).

Part B: Project Implementation and Management

Provision of technical assistance, Training and Incremental Operating Costs to PIU to assist in the Project implementation and management.

SCHEDULE 2**Project Execution****Section I. Implementation Arrangements****A. Institutional Arrangements**

The Recipient shall, through the Ministry of Transport and until the completion of the Project, cause the ARS to maintain the PIU and shall ensure that the PIU is adequately staffed by personnel with qualifications and under terms of reference and functions at all times in accordance with procedures necessary and appropriate for the carrying out of the Project, and satisfactory to the Association

B. Subsidiary Agreement

1. To facilitate the carrying out of the Project by the ARS, the Recipient shall make the proceeds of the Financing available to the ARS under a subsidiary agreement between the Ministries of Finance and Transport on behalf of the Recipient and the ARS, under terms and conditions approved by the Association (“Subsidiary Agreement”).
2. The Recipient shall exercise its rights under the Subsidiary Agreement in such manner as to protect the interests of the Recipient and the Association and to accomplish the purposes of the Credit. Except as the Association shall otherwise agree, the Recipient shall not assign, amend, abrogate or waive the Subsidiary Agreement or any of its provisions.

C. Anti-Corruption

The Recipient shall ensure that the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines.

D. Safeguards

1. Except as the Association shall otherwise agree, the Recipient shall: (a) apply the criteria, policies, procedures and arrangements set out in the Operational Manual and the EMF; and (b) not amend or waive, or permit to be amended or waived, the Operational Manual and EMF, or any provision thereof, in a manner which, in the opinion of the Association, may materially and adversely affect the implementation of the Project.
2. The Recipient shall:
 - (a) ensure that: (i) all activities undertaken for the purpose of carrying out of the Project comply with environmental standards and guidelines

satisfactory to the Association; (ii) no activity shall be undertaken under the Project involving the involuntary acquisition of land or involuntary resettlement of occupants or owners of such land; and (iii) any such land required for the purposes of the Project shall be acquired on a voluntary basis pursuant to a memorandum of understanding between the owner/occupant of such land and the Recipient and acceptable to the Association;

- (b) ensure that the selection of any road section under Part A of the Project is done in accordance with the provisions of the EMF;
- (c) ensure the complete implementation of the EMPs in a manner acceptable to the Association, including all necessary measures to minimize and to mitigate any adverse environmental impacts caused by the implementation of the Project; and
- (d) maintain the ARS's environmental management office and its Maintenance Department with competent staff in adequate numbers and with such responsibilities and functions acceptable to the Association as shall enable the ARS to manage, coordinate and monitor the implementation of the EMPs.

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

1. The Recipient shall cause the ARS to monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of the indicators agreed with the Association. Each Project Report shall cover the period of one calendar semester, and shall be furnished to the Association not later than forty five (45) days after the end of the period covered by such report.
2. For purposes of Section 4.08 (c) of the General Conditions, the report on the execution of the Project and related plan required pursuant to that Section shall be furnished to the Association not later than six (6) months after the Closing Date.

B. Financial Management, Financial Reports and Audits

1. The Recipient shall maintain or cause to be maintained a financial management system in accordance with the provisions of Section 4.09 of the General Conditions.

2. The Recipient shall cause the ARS to prepare and furnish to the Association not later than forty five (45) days after the end of each calendar quarter, interim unaudited financial reports for the Project covering the quarter, in form and substance satisfactory to the Association.
3. The Recipient shall cause the ARS to have the Financial Statements related to the Project audited in accordance with the provisions of Section 4.09 (b) of the General Conditions. Each audit of the Financial Statements shall cover the period of one fiscal year of the Recipient. The audited Financial Statements for each such period shall be furnished to the Association not later than six (6) months after the end of such period.

Section III. Procurement

A. General

1. **Goods and Works.** All goods and works required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section.
2. **Consultants' Services.** All consultants' services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines, and with the provisions of this Section.
3. **Definitions.** The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Association of particular contracts, refer to the corresponding method described in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

B. Particular Methods of Procurement of Goods and Works

1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods **and works** shall be procured under contracts awarded on the basis of International Competitive Bidding.
2. **Other Methods of Procurement of Goods and Works.** The following table specifies the methods of procurement, other than International Competitive Bidding, which may be used for goods and works. The Procurement Plan shall specify the circumstances under which such methods may be used:

Procurement Method	
(a)	Limited International Bidding
(b)	<p>National Competitive Bidding, subject to the following additional provisions:</p> <ul style="list-style-type: none"> (i) there shall be no eligibility restrictions based on nationality of bidder; (ii) pre-qualification shall not be used for simple works procurement and shall be conducted only for large works contracts; (iii) entities in which the State or a State official owns a shareholding of whatever size shall not be invited to participate in tenders for the Government unless they are and can be shown to be legally and financially autonomous and operate under commercial law; (iv) no national preferences may be applied on the basis of the origin of products or labor; (v) joint venture partners shall be jointly and severally liable for their obligations; (vi) no “participation fee” shall be required of bidders for the purchase of bidding documents. The only charge shall be equivalent to the cost of producing (copying) the bidding documents; (vii) in the evaluation of bids, bids may not be rejected where they differ substantially from the estimated prices calculated by the procuring entity, except where the bid prices exceed the available budget; (viii) rebidding shall not be carried out without prior approval of the Association; (ix) works contracts of more than eighteen (18) months’ duration shall include appropriate price adjustment provisions; and (x) prior approval of the Association shall be required for any modification in the contract scope and conditions during implementation.
(c)	Shopping

C. Particular Methods of Procurement of Consultants’ Services

1. **Quality- and Cost-based Selection.** Except as otherwise provided in paragraph 2 below, consultants’ services shall be procured under contracts awarded on the basis of Quality and Cost-based Selection.

2. **Other Methods of Procurement of Consultants’ Services.** The following table specifies methods of procurement, other than Quality and Cost-based Selection, which may be used for consultants’ services. The Procurement Plan shall specify the circumstances under which such methods may be used.

Procurement Method	
(a)	Quality-based Selection
(b)	Least Cost Selection
(c)	Selection based on Consultants’ Qualifications
(d)	Single-source Selection
(e)	Procedures set forth in paragraphs 5.2 through 5.4 of the Consultant Guidelines for the Selection of Individual Consultants

D. Review by the Association of Procurement Decisions

The Procurement Plan shall set forth those contracts which shall be subject to the Association’s Prior Review. All other contracts shall be subject to Post Review by the Association.

Section IV. Withdrawal of the Proceeds of the Financing

A. General

1. The Recipient may withdraw the proceeds of the Financing in accordance with the provisions of Article II of the General Conditions, this Section, and such additional instructions as the Association shall specify by notice to the Recipient (including the “World Bank Disbursement Guidelines for Projects” dated May 2006, as revised from time to time by the Association and as made applicable to this Agreement pursuant to such instructions), to finance Eligible Expenditures as set forth in the table in paragraph 2 below.
2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Financing (“Category”), the allocations of the amounts of the Financing to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

Category	Amount of the Credit Allocated (Expressed in SDR)	Percentage of Expenditures to be Financed (Net of VAT)
(1) Goods, works, consultants’ services,	41,700,000	80%

including audit and Training and Incremental Operating Costs for the Project		
TOTAL AMOUNT	<u>41,700,000</u>	

B. Withdrawal Conditions; Withdrawal Period

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made for payments made prior to the date of this Agreement.
2. The Closing Date is February 28, 2014.

Section V. Other Undertakings

1. The Ministry of Transport shall, through ARS, ensure that any road works to be carried out under the Project with annual average daily traffic: (a) above 250 vehicles, have an economic rate of return of at least 12%; (b) between 150 and 250 vehicles, have an economic rate of return of at least 10%; and (c) below 150 vehicles, have an economic rate of return of at least 8%, all to be calculated in accordance with the methodology acceptable to the Association.
2. The Recipient shall permit the use of standards recommended by the European Committee for Standardization on design and construction of roads and highways or alternatively by the American Association of State Highway and Transportation Officials (in addition to the national standards) in the design and construction of road works under the Project.
3. For detailed designs and technical specifications, no further technical review is needed once ARS and the Association have agreed to the proposed detailed designs and the bidding documents.

SCHEDULE 3**Repayment Schedule**

Date Payment Due	Principal Amount of the Credit Repayable (Expressed as a Percentage)*
On each June 15 and December 15: commencing December 15, 2019 to and including June 15, 2029	5%

* The percentages represent the percentage of the principal amount of the Credit to be repaid, except as the Association may otherwise specify pursuant to Section 3.03 (b) of the General Conditions.

APPENDIX**Section I. Definitions**

1. “Anti-Corruption Guidelines” means the “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006.
2. “ARS” means the “Azerroadservice” Open Joint-stock Company, or Azerbaijan Road Service, which is also the Project Implementing Entity, established as an Open Joint-stock Company under the subordination of the Ministry of Transport by virtue of the Presidential Decree on the Measures to Improve Management of Transport and Road Complex (Decree No. 1992), dated February 22, 2007, and Decree of the Cabinet of Ministers dated November 15, 2007, whose responsibilities were transferred from the Road Transport Service Department LLC (RTSD) within the Recipient’s Ministry of Transport, which was established by the Order of the Ministry of Transport of the Recipient (Order No. 03) dated June 23, 2003.
3. “Category” means a category set forth in the table in Section IV of Schedule 2 to this Agreement.
4. “Consultant Guidelines” means the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” published by the Bank in May 2004 and revised in October 2006.
5. “EMF” means the Environmental Management Framework, dated November 16, 2005, outlining the procedures for the environmental screening, management, consultation and disclosure related to the selection of the road sections under the Project.
6. “EMP/s” means the Environmental Management Plan, dated February 24, 2009, or any other site specific environmental management plan to be prepared by the Recipient during the Project implementation in accordance with the EMF and approved by the Association, describing environmental mitigation, monitoring and institutional measures for selected road sections under the Project.
7. “Fiscal Year” means the fiscal year of the Recipient starting from January 1 of each year.
8. “General Conditions” means the “International Development Association General Conditions for Credits and Grants”, dated July 1, 2005 (as amended through October 15, 2006), with the modifications set forth in Section II of this Appendix.

9. “Incremental Operating Costs” means the incremental expenses incurred by the PIU on account of reasonable and necessary activities directly related to the Project implementation, management and monitoring, including office supplies, travel and salaries, but excluding the salaries of the civil servants, and any other expenditures that may be agreed upon by the Association.
10. “Manat” means the currency of the Recipient.
11. “Ministry of Finance” means the Ministry of Finance of the Recipient or any successor or successors thereto.
12. “Ministry of Transport” means the Ministry of Transport of the Recipient or any successor or successors thereto.
13. “Operational Manual” means the manual, outlining, *inter alia*, the institutional, disbursement, procurement, and environmental and social management arrangements for the implementation of the Project, dated March 6, 2009, as the same may be amended from time to time with approval of the Association, and such term includes any schedules to the Operational Manual.
14. “Original Loan Agreement” means the loan agreement for a Second Highway Project between the Recipient and the International Bank for Reconstruction and Development, dated May 16, 2006, as amended to the date of this Agreement (Loan No. 7356-AZ).
15. “Original Project” means the Project described in the Original Loan Agreement.
16. “PIU” means the Project Implementation Unit as established by the Recipient’s internal order (Order No. 59k) dated August 14, 2003 within the ARS.
17. “Procurement Guidelines” means the “Guidelines: Procurement under IBRD Loans and IDA Credits” published by the Bank in May 2004 and revised in October 2006.
18. “Procurement Plan” means the Recipient’s procurement plan for the Project, dated May 19, 2009 and referred to in paragraph 1.16 of the Procurement Guidelines and paragraph 1.24 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.
19. “Project Account” means the project account used for the Recipient’s counterpart financing for the Project, referred to in Section 3.03 of this Agreement.
20. “Subsidiary Agreement” means the agreement referred to in Section I.B of Schedule 2 to this Agreement pursuant to which the Recipient shall make the proceeds of the Financing available to the ARS.

21. “Training” means expenses incurred by the Recipient and the PIU in connection with carrying out training activities under the Project including travel costs and per diem for local trainees and trainers, study tours and workshops, rental of facilities and equipment and training materials and related supplies.
22. “VAT” means the value-added tax, levied in the territory of the Recipient.

Section II. Modifications to the General Conditions

The modifications to the General Conditions for Credits and Grants of the Association, dated July 1, 2005 (as amended through October 15, 2006) are as follows:

1. Section 2.07 is modified to read as follows:

“Section 2.07. Refinancing Preparation Advance

If the Financing Agreement provides for the repayment out of the proceeds of the Financing of an advance made by the Association or the Bank (“Preparation Advance”), the Association shall, on behalf of the Recipient, withdraw from the Financing Account on or after the Effective Date the amount required to repay the withdrawn and outstanding balance of the advance as at the date of such withdrawal from the Financing Account and to pay all accrued and unpaid charges, if any, on the advance as at such date. The Association shall pay the amount so withdrawn to itself or the Bank, as the case may be, and shall cancel the remaining unwithdrawn amount of the advance.”

2. Paragraph (i) of Section 6.02 is modified to read as follows:

“Section 6.02. Suspension by the Association

... (1) *Ineligibility.* The Association or the Bank has declared the Project Implementing Entity ineligible to receive proceeds of any financing made by the Association or the Bank or otherwise to participate in the preparation or implementation of any project financed in whole or in part by the Association or the Bank, as a result of a determination by the Association or the Bank that the Project Implementing Entity has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of any financing made by the Association or the Bank.”

3. The following terms and definitions set forth in the Appendix are modified or deleted as follows, and the following new terms and definitions are added in

alphabetical order to the Appendix as follows, with the terms being renumbered accordingly:

- (a) The term “Project Preparation Advance” is modified to read “Preparation Advance” and its definition is modified to read as follows:

“‘Preparation Advance’ means the advance referred to in the Financing Agreement and repayable in accordance with Section 2.07.”