
LOAN NUMBER 3543-PAK

LOAN AGREEMENT
(Ordinary Operations)

(Peshawar Sustainable Bus Rapid Transit Corridor Project)

between

ISLAMIC REPUBLIC OF PAKISTAN

and

ASIAN DEVELOPMENT BANK

DATED 12-sep-2017

PAK 48289

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 12-sep-2017 between ISLAMIC REPUBLIC OF PAKISTAN ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a loan agreement dated 24 November 2016 between the Borrower and ADB, ADB agreed to provide a project design advance ("PDA") loan to the Borrower from its ordinary capital resources in an amount of ten million Dollars (\$10,000,000) ("PDA Loan") for the purposes of financing the preparation of detailed engineering design and operational planning, and providing support for advance procurement of civil works and equipment, in each case in relation to the then proposed Project described in Schedule 1 to this Loan Agreement;

(B) in furtherance of the activities financed from the PDA Loan, the Borrower has now applied to ADB for a loan for the purposes of financing part of the expenditures of the Project, including refinancing the entire PDA Loan;

(C) it is expected that, by a loan agreement to be entered into between the Borrower and Agence Francaise de Developpement ("AFD"), AFD will provide a loan to the Borrower in the amount of seventy-five million Dollars (\$75,000,000) ("AFD Loan") for the purposes of financing part of the expenditures of the Project, such loan to be partially administered by ADB in accordance with the terms and conditions of a cofinancing agreement between AFD and ADB ("AFD Cofinancing Agreement");

(D) it is expected that, by a loan agreement to be entered into between the Borrower and the European Investment Bank ("EIB"), EIB will provide a loan to the Borrower in the amount of seventy-five million Dollars (\$75,000,000) ("EIB Loan") for the purposes of financing part of the expenditures of the Project;

(E) the Project will be carried out by (i) the Borrower's Province of Khyber Pakhtunkhwa ("KP"), acting through the Khyber Pakhtunkhwa Urban Mobility Authority ("KPUMA"), the government body responsible for developing policies and regulations for, and the planning, coordinating and funding of, urban transport in KP; (ii) the Peshawar Development Authority; and (iii) TransPeshawar (the Urban Mobility Company) ("TransPeshawar"), a not-for-profit (Section 42) public company that will own and operate the bus rapid transit ("BRT") system to be constructed under the Project, and for this purpose the Borrower will make available to KP the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(F) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB, on the one hand, and KP (acting through KPUMA), Peshawar Development Authority and TransPeshawar, on the other hand;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I**Loan Regulations; Definitions**

Section 1.01. All the provisions of ADB's Ordinary Operations Loan Regulations, dated 1 January 2017 ("Loan Regulations"), 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:

- (a) Section 2.01(uu) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement of even date herewith between ADB, on the one hand, and (i) the Borrower's Province of Khyber Pakhtunkhwa (acting through the Khyber Pakhtunkhwa Urban Mobility Authority), (ii) the Peshawar Development Authority and (iii) TransPeshawar (the Urban Mobility Company), on the other hand, as such agreement may be amended from time to time; and such project agreement includes all schedules to the Project Agreement.

- (b) The term "Project Executing Agency" appearing in Sections 7.01(a)(i), 9.01(d), 9.01(f), 9.01(k), 10.01(c) and 10.02(c) of the Loan Regulations shall be substituted by the term "(i) the Borrower's Province of Khyber Pakhtunkhwa (acting through the Khyber Pakhtunkhwa Urban Mobility Authority), (ii) the Peshawar Development Authority and (iii) TransPeshawar BRT Company".

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

- (a) "AFD" has the meaning set forth in Recital (C) above;
- (b) "AFD Loan" has the meaning set forth in Recital (C) above;
- (c) "BRT" has the meaning set forth in Recital (E) above;
- (d) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);
- (e) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in paragraph 2(b) of Schedule 1 to this Loan Agreement;
- (f) "EIB" has the meaning set forth in Recital (D) above;
- (g) "EIB Loan" has the meaning set forth in Recital (D) above;

- (h) "Environmental Impact Assessment" or "EIA" means the environmental impact assessment for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (i) "Environmental Management Plan" or "EMP" means the environmental management plan for the Project, including any update thereto, incorporated in the EIA;
- (j) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (k) "GAP" means the gender action plan developed for the Project;
- (l) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;
- (m) "Implementing Agencies" means Peshawar Development Authority and TransPeshawar, or any successor to either of them acceptable to ADB;
- (n) "Indigenous Peoples Safeguards" means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;
- (o) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;
- (p) "KP" has the meaning set forth in Recital (E) above;
- (q) "KPUA" has the meaning set forth in Recital (E) above;
- (r) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);
- (s) "PAM" means the project administration manual for the Project dated 30 May 2017 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;
- (t) "PDA" has the meaning set forth in Recital (A) above;
- (u) "PDA Loan" has the meaning set forth in Recital (A) above;
- (v) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);
- (w) "Procurement Plan" means the procurement plan for the Project dated 30 May 2017 and agreed between the Borrower and ADB, as updated

from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB; and

- (x) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means KP, acting through KPUMA, or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
- (y) "Project facilities" means the structures, facilities and systems to be constructed, operationalized, developed or provided under the Project;
- (z) "Resettlement Plan" or "RP" means the resettlement plan for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (aa) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);
- (bb) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of and compliance with the EMP and the RP (as applicable), including any corrective and preventative actions;
- (cc) "TransPeshawar" has the meaning set forth in Recital (E) above; and
- (dd) "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 three hundred thirty-five million Dollars (\$335,000,000), 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 20 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (b) hereinabove 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:

- (a) LIBOR;
- (b) 0.60% as provided by Section 3.02 of the Loan Regulations less a credit of 0.10% as provided by Section 3.03 of the Loan Regulations; and
- (c) a maturity premium of 0.10% 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 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 February and 1 August 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 subsection (a) hereinabove that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(f) 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. (a) The Borrower shall make the proceeds of the Loan available to KP upon terms and conditions satisfactory to ADB and shall cause KP to apply such proceeds to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

(b) The Borrower shall cause the proceeds of the Loan to be applied exclusively to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn 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, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 31 December 2021 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. 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 and the Project Agreement.

Section 4.02. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.03. ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

Section 4.04. The Borrower shall take all actions which shall be necessary on its part to enable the Project Executing Agency and the Implementing Agencies to perform their respective obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

ARTICLE V**Suspension; Acceleration of Maturity**

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 9.01(m) of the Loan Regulations:

- (a) upon its effectiveness, the AFD Cofinancing Agreement shall have been suspended or cancelled; and
- (b) upon effectiveness of the respective loan agreements with AFD and EIB, either the AFD Loan or the EIB Loan shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 9.07(a)(iv) of the Loan Regulations: any of the events specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI**Effectiveness**

Section 6.01. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

ARTICLE VII**Delegation of Authority**

Section 7.01. The Borrower hereby designates the Project Executing Agency as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02, 3.03 and 3.04 of this Loan Agreement and under Sections 6.01, 6.02, 6.03 and 6.04 of the Loan Regulations.

Section 7.02. Any action taken or any agreement entered into by the Project Executing Agency pursuant to the authority conferred under Section 7.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 7.03. The authority conferred on the Project Executing Agency under Section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

ARTICLE VIII

Miscellaneous

Section 8.01. The Secretary, Economic Affairs Division, Ministry of Finance, Revenue, and Economic Affairs of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

The Secretary
Economic Affairs Division
Ministry of Finance, Revenue, and Economic Affairs
Government of Pakistan
Islamabad, Pakistan

Facsimile Number:

(9251) 910-4016.

For ADB

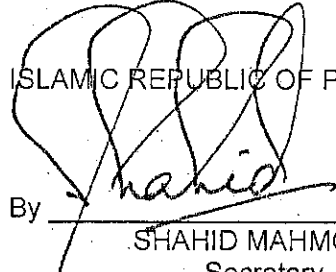
Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:


(632) 636-2444

(632) 636-2407.

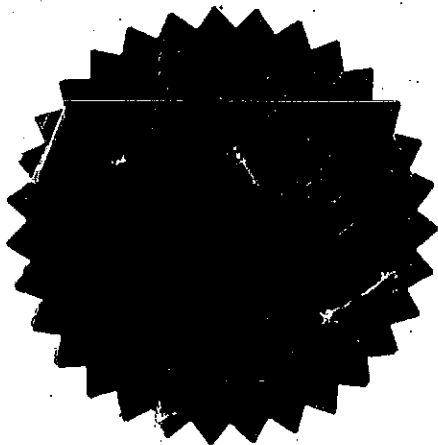
IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of ADB.

ISLAMIC REPUBLIC OF PAKISTAN
By 

SHAHID MAHMOOD
Secretary
Economic Affairs Division

ASIAN DEVELOPMENT BANK
By 

XIAOHONG YANG
Country Director
Pakistan Resident Mission



SCHEDULE 1**Description of the Project**

1. The objective of the Project is improved quality of public transport in Peshawar.
2. The Project shall comprise:
 - (a) construction of (i) a 26-km BRT corridor in Peshawar and related infrastructure, including 31 BRT stations and dedicated lanes in the median, improved mixed traffic lanes, bicycle lanes, parking, sidewalks, green areas, streetlights and proper drainage to climate-proof the corridor and (ii) other BRT-related infrastructure, including two depots, one staging facility, offices for KPUMA and TransPeshawar, a control center, park-and-ride facilities and one parking plaza; and
 - (b) provision of support for (i) institutional development and capacity building of KPUMA and TransPeshawar, (ii) design of the BRT operational plan and business model, (iii) bus industry transition through negotiations with existing bus operators, (iv) effective project management, supervision and communication and stakeholder engagement and (v) procurement of the BRT fleet, fare collection system, and intelligent transport systems.
3. The Project is expected to be completed by 30 June 2021.

SCHEDULE 2

Amortization Schedule

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.

Date Payment Due	Installment Share ¹ (Expressed as a %)
1 August 2022	1.750000
1 February 2023	1.750000
1 August 2023	2.000000
1 February 2024	2.000000
1 August 2024	2.000000
1 February 2025	2.000000
1 August 2025	2.000000
1 February 2026	2.000000
1 August 2026	2.500000
1 February 2027	2.500000
1 August 2027	2.500000
1 February 2028	2.500000
1 August 2028	2.500000
1 February 2029	2.500000
1 August 2029	2.500000
1 February 2030	2.500000
1 August 2030	2.500000
1 February 2031	2.500000
1 August 2031	2.500000
1 February 2032	2.500000
1 August 2032	2.500000
1 February 2033	2.500000
1 August 2033	2.500000
1 February 2034	2.500000
1 August 2034	2.500000
1 February 2035	2.500000
1 August 2035	2.500000
1 February 2036	2.500000
1 August 2036	2.500000

Date Payment Due	Installment Share 1 (Expressed as a %)
1 February 2037	2.500000
1 August 2037	2.500000
1 February 2038	3.000000
1 August 2038	3.000000
1 February 2039	3.000000
1 August 2039	3.000000
1 February 2040	3.000000
1 August 2040	3.000000
1 February 2041	3.000000
1 August 2041	3.000000
1 February 2042	3.000000
Total	100.000000

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 items of expenditure to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category of the Table).

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be allocated to items of expenditure, and disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Interest and Commitment Charges

3. The amount allocated to Category "Interest and Commitment Charges" is for financing interest and commitment charges on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charges.

Reallocation

4. 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 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

5. Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Retroactive Financing

6. Withdrawals from the Loan Account may be made to finance eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with Works (including Utility Relocation), Goods and TransPeshawar Operating Costs, subject to a maximum amount equivalent to 20% of the Loan amount.

Condition for Withdrawals from Loan Account

7. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for TransPeshawar Operating Costs and for Goods until TransPeshawar has appointed a Chief Financial Officer with qualifications and experience acceptable to ADB.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS				
Number	Item	Total Amount Allocated for ADB Financing (\$)		Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Works	181,440,000		100% of total expenditure claimed*
2	Goods	51,440,000		
2A	Rolling Stock**		42,970,000	100% of total expenditure claimed*
2B	Other Goods**		8,470,000	100% of total expenditure claimed*
3	Utility Relocation	18,000,000		100% of total expenditure claimed*
4	Consultants	5,000,000		100% of total expenditure claimed*
5	Environmental and Social Mitigation	10,650,000		100% of total expenditure claimed*
6	TransPeshawar Operating Costs**	8,500,000		100% of total expenditure claimed*
7	PDA	10,500,000		
7A	PDA Principal		10,000,000	100% of amounts due
7B	PDA Interest		500,000	100% of amounts due
8	Interest and Commitment Charges	9,780,000		100% of amounts due
9	Unallocated	39,690,000		
	TOTAL	335,000,000		

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

** Subject to the condition for withdrawal described in paragraph 7 of Schedule 3.

SCHEDULE 4**Procurement of Goods, Works and Consulting Services**General

1. The procurement of Goods, Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. Except as ADB may otherwise agree, Goods and Works shall be procured and Consulting Services shall be selected and engaged only on the basis of the procurement methods and the selection methods set forth below. These methods are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower shall ensure that KP only modifies the procurement methods and the selection methods or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.
3. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Eligible Source of Procurement of Goods, Works and Consulting Services

4. Goods, Works and Consulting Services may also be procured under the Project from non-member countries of ADB.

Goods and Works

5. Goods and Works shall be procured on the basis of the procurement methods of procurement set forth below:
 - (a) International Competitive Bidding;
 - (b) National Competitive Bidding; and
 - (c) Shopping.

National Competitive Bidding

6. The Borrower shall cause KP to ensure, 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 approval of such change by the Borrower and ADB.

Conditions for Award of Contract and Commencement of Works

7. The Borrower shall cause KP not to award any Works contract which involves environmental impacts until:

- (a) the Environmental Protection Agency of KP has granted the final approval of the EIA; and
- (b) the Borrower has caused KP to incorporate the relevant provisions from the EMP into the Works contract.

8. The Borrower shall cause KP not award any Works contract which involves involuntary resettlement impacts, until the Borrower has prepared and submitted to ADB the final RP based on the Project's detailed design, and obtained ADB's clearance of such RP.

9. The Borrower shall cause KP to ensure that the build or construction phase for each Works contract is only commenced after design changes based on the final demand estimate and detailed engineering design have been incorporated into such Works contract through a contract variation to be agreed with the contractor, such contract variation to be subject to ADB's prior approval.

Consulting Services

10. Except as set forth in the paragraph below, the Borrower shall cause KP to apply Quality- and Cost-Based Selection for Consulting Services.

11. The Borrower shall cause KP to apply the following selection method for the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan: Single Source Selection for the construction supervision consultant.

Industrial or Intellectual Property Rights

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

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

13. The Borrower shall cause KP 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.

ADB's Review of Procurement Decisions

14. 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.

15. In the case of a contract for Goods or Works, which is subject to ADB's prior

review, the Borrower shall cause KP to seek ADB's prior approval of any modification or waiver of the terms and conditions of the contract, including:

- (a) granting an extension of the stipulated time for completion of a contract for a period of 1 month or more, or which is likely to require an extension of the Loan Closing Date, and
- (b) increases in aggregate of the original price by more than 5% (for the avoidance of doubt, such increase shall take into account any previous change under such contract).

16. In the case of a contract for Goods or Works, which is subject to ADB's post review, ADB shall review the required contract modification or waiver and respond to the Borrower as soon as practicable, but not later than 1 month after the receipt of the required document.

17. The Borrower shall cause KP to provide to ADB copies of all time extensions, modifications or waivers to the contracts (including change orders) within 1 month following amendment of the contract.

SCHEDULE 5

Execution of Project; Financial Matters

Implementation Arrangements

1. The Borrower, the Project Executing Agency and the Implementing Agencies shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

Counterpart Funding

2. Throughout Project implementation, the Borrower shall, and shall cause the Project Executing Agency to, (a) annually review estimates of the funding requirements for the Project and incorporate the updated funding requirement into the Project; and (b) ensure that the Project Executing Agency and Implementing Agencies have sufficient funds to satisfy their liabilities arising from any Works, Goods and/or Consulting Services contract, including by providing timely certification and release of payment to the contractor and consultants as per the provisions of the respective contracts.

Policy Dialogue

3. Throughout Project implementation, the Borrower shall cause the Project Executing Agency and Implementing Agencies to (a) keep ADB informed of, and exchange views on, sector issues, policy reform discussions with other multilateral or bilateral agencies that may have implications for implementation of the Project; (b) provide ADB with an opportunity to comment on any resulting policy proposal; and (c) submit to ADB the annually updated transportation sector development program for KP.

Operation & Maintenance (O&M)

4. The Borrower shall ensure that the Project Executing Agency and the Implementing Agencies maintain the Project facilities in accordance with international best practices and that proper technical supervision and adequate routine funds for this purpose are provided. The funds for the O&M shall be allocated annually and released on a timely basis. Furthermore, the Borrower shall cause the Project Executing Agency and the Implementing Agencies to ensure that all equipment and spare parts financed under the Project shall exclusively be used for the maintenance and operation of the Project.

Compensation Mechanism and Fleet Scrapping Program

5. The Borrower shall cause the Project Executing Agency and Implementing Agencies to prepare a compensation mechanism and fleet scrapping program for bus operators that will be affected by the Project. The compensation mechanism and fleet scrapping program shall, among others, cover (a) the level of compensation for bus operators excluded from the BRT operation that will be out of business; (b) the level of compensation for bus operators excluded from the BRT operation, but will continue its operation on other routes; (c) the level of compensation for bus operators that will participate in the BRT operations, but

will have to replace their buses; and (d) the compensation payment mechanism. The Borrower shall further cause the Project Executing Agency and Implementing Agencies to ensure that no disbursement shall be made under the compensation mechanism and fleet scrapping program until the compensation mechanism and fleet scrapping program has been submitted and approved by the Borrower and ADB.

Environment

6. The Borrower shall cause the Project Executing Agency and Implementing Agencies to 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 and KP relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the EIA, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

7. The Borrower shall cause the Project Executing Agency and Implementing Agencies to ensure that all land and all rights-of-way required for the Project 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 and KP relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; and (c) all measures and requirements set forth in the RP, and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

8. Without limiting the application of the Involuntary Resettlement Safeguards or the RP, the Borrower shall cause the Project Executing Agency and Implementing Agencies to ensure that (a) no land shall be acquired for the purposes of the Project under the emergency acquisition provisions of the Borrower's Land Acquisition Act (1984), as amended; and (b) no physical or economic displacement takes place in connection with the Project until:

- (i) compensation and other entitlements have been provided to affected people in accordance with the RP; and
- (ii) a comprehensive income and livelihood restoration program has been established in accordance with the RP.

Indigenous Peoples

9. The Borrower shall cause the Project Executing Agency and Implementing Agencies to ensure that the Project does not have any impact on indigenous peoples within the meaning of the Indigenous Peoples Safeguards. In the event such an impact would arise during Project implementation, the Borrower shall cause the Project Executing Agency and Implementing Agencies to take all steps required to ensure that the Project complies with all applicable laws and regulations of the Borrower and KP and with the SPS.

Human and Financial Resources to Implement Safeguards Requirements

10. The Borrower shall make available, or cause the Project Executing Agency and Implementing Agencies to make available, necessary budgetary and human resources to fully implement the EMP and the RP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

11. The Borrower shall cause the Project Executing Agency and Implementing Agencies to ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the EIA, the EMP and the RP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth 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, 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 and the RP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

12. The Borrower shall cause the Project Executing Agency and Implementing Agencies to do the following:

- (a) submit semiannual 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 and the RP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;
- (c) no later than 6 months after award of a Works contract, engage qualified and experienced external experts 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 RP promptly after becoming aware of the breach.

Prohibited List of Investments

13. The Borrower shall cause the Project Executing Agency and Implementing Agencies to 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, Health and Safety

14. The Borrower shall cause the Project Executing Agency and Implementing Agencies to ensure that the core labor standards and the applicable laws and regulations of the Borrower and KP are complied with during Project implementation. The Borrower shall cause the Project Executing Agency and Implementing Agencies to include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the applicable labor laws and regulations of the Borrower and KP and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (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.

15. The Borrower shall cause the Project Executing Agency and Implementing Agencies to strictly monitor compliance with the requirements set forth in the paragraph immediately above and provide ADB with regular reports.

Gender and Development

16. The Borrower shall cause the Project Executing Agency and Implementing Agencies to ensure that (a) the GAP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for implementation of the GAP; (d) progress on implementation of the GAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB; and (e) key gender outcome and output targets include, but not limited to ensuring that (i) at least 10% of the staff of each of KPUA and TransPeshawar are female, (ii) 100% of BRT stations achieve universal accessibility for women, children and persons with disabilities, and (iii) at least 10% of BRT operational and maintenance staff are female.

Governance and Anticorruption

17. The Borrower, the Project Executing Agency and Implementing Agencies 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. The Borrower, the Project Executing Agency and Implementing Agencies 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. The Borrower shall cause the Project Executing Agency to create a Project website to present financial statements and track procurement contract awards in a timely manner, and include information on, among other things, the list of participating bidders, name of winning bidders, basic details on bidding procedures adopted, amounts of the contracts awarded, the list of goods and/or services purchased, their intended and actual utilization, and results of the safeguards monitoring.