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LOAN NUMBER 3543-PAK

PROJECT AGREEMENT  
(Peshawar Sustainable Bus Rapid Transit Corridor Project)

between

ASIAN DEVELOPMENT BANK

and

PROVINCE OF KHYBER PAKHTUNKHWA  
PESHAWAR DEVELOPMENT AUTHORITY  
TRANSPESHAWAR (THE URBAN MOBILITY COMPANY)

DATED 12-Sep-2017

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PAK 48289

## PROJECT AGREEMENT

PROJECT AGREEMENT dated 12-Sep-2017 between ASIAN DEVELOPMENT BANK ("ADB"), on the one hand, and PROVINCE OF KHYBER PAKHTUNKHWA ("KP"), acting through the Khyber Pakhtunkhwa Urban Mobility Authority ("PROJECT EXECUTING AGENCY"); PESHAWAR DEVELOPMENT AUTHORITY ("PDA"); and TRANSPESHAWAR (THE URBAN MOBILITY COMPANY) ("TRANSPESHAWAR", and together with PDA, "IMPLEMENTING AGENCIES"), on the other hand.

### WHEREAS

(A) by a Loan Agreement of even date herewith between Islamic Republic of Pakistan ("Borrower") and ADB, ADB has agreed to make to the Borrower a loan of three hundred thirty-five million Dollars (\$335,000,000) ("Loan") on the terms and conditions set forth in the Loan Agreement;

(B) 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) 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;

(C) 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) for the purposes of financing part of the expenditures of the Project; and

(D) ADB has agreed to make the Loan and administer the AFD Loan only on the condition that (a) the proceeds of the Loan be made available to KP and (b) the Project Executing Agency and Implementing Agencies agree to undertake certain obligations towards ADB set forth herein; and

(E) the Project Executing Agency and Implementing Agencies, in consideration of ADB entering into the Loan Agreement with the Borrower, have 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) The Project Executing Agency and Implementing Agencies 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, the Project Executing Agency and Implementing Agencies shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to the Project Executing Agency and Implementing Agencies, and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. The Project Executing Agency and Implementing Agencies shall make available, promptly as needed, 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, the Project Executing Agency and Implementing Agencies 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, the Project Executing Agency and Implementing Agencies 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. The Project Executing Agency and Implementing Agencies shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The Project Executing Agency and Implementing Agencies 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) The Project Executing Agency and Implementing Agencies shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, the Project Executing Agency and Implementing Agencies 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. The Project Executing Agency and Implementing Agencies 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, their operations and financial condition.

Section 2.07. (a) ADB and the Project Executing Agency and Implementing Agencies shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) The Project Executing Agency and Implementing Agencies shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of their obligations under this Project Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB, on the one hand, and the Project Executing Agency and Implementing Agencies, on the other hand, 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, the Project Executing Agency and Implementing Agencies, and the Loan.

Section 2.08. (a) The Project Executing Agency and Implementing Agencies 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 the Project Executing Agency and Implementing Agencies; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, the Project Executing Agency and Implementing Agencies 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, the Project Executing Agency and Implementing Agencies 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 the Project Executing Agency and Implementing Agencies of their respective obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) The Project Executing Agency and Implementing Agencies shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting

standards acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Loan proceeds, 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 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) In addition to annual audited financial statements referred to in subsection (a) hereinabove, starting with the financial year ending 30 June 2019, TransPeshawar shall (i) provide its annual financial statements prepared in accordance with 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 auditing standards acceptable to ADB; (iii) as part of each such audit, have the auditors prepare the auditors' opinion(s) on the financial statements; and (iv) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements and auditors' opinion(s), 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.

(d) The Project Executing Agency and Implementing Agencies shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and their respective financial affairs where they relate to the Project with the auditors appointed by the Project Executing Agency and Implementing Agencies pursuant to subsections (a)(iii) and (c)(ii) 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 authorized officers of the Project Executing Agency and Implementing Agencies, unless the Project Executing Agency and Implementing Agencies shall otherwise agree.

Section 2.10. The Project Executing Agency and Implementing Agencies shall enable ADB's representatives to inspect the Project, the Goods and Works and any relevant records and documents.

Section 2.11. (a) The Project Executing Agency and Implementing Agencies shall, promptly as required, take all action within their powers to maintain their legal existence, to carry on their 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 their operations.

(b) The Project Executing Agency and Implementing Agencies shall at all times conduct their 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) The Project Executing Agency and Implementing Agencies shall at all times operate and maintain their 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, the Project Executing Agency and Implementing Agencies shall not sell, lease or otherwise dispose of any of their assets which shall be required for the efficient carrying on of their operations or the disposal of which may prejudice their ability to perform satisfactorily any of their obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, the Project Executing Agency and Implementing Agencies 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.

### **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 the Project Execution Agency and Implementing Agencies 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) 636-2407.

For KP

Managing Director  
Khyber Pakhtunkhwa Urban Mobility Authority  
Mian Rashid Hussain Shaheed Memorial Block  
Civil Secretariat Khyber Pakhtunkhwa  
(near Police Lines)  
Peshawar

Facsimile Number:

091-9212556.

For PDA

Director General  
Peshawar Development Authority  
PDA House  
Commercial Complex  
Block 2, Phase V  
Hayatabad

Facsimile Number:

091-9217030.

For TransPeshawar

Chairman  
TransPeshawar (the Urban Mobility Company)  
Mian Rashid Hussain Shaheed Memorial Block  
Civil Secretariat Khyber Pakhtunkhwa  
(near Police Lines)  
Peshawar

Facsimile Number:

091-9212556.

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 or under Section 6.01 of the Loan Agreement by or on behalf of the Project Executing Agency and Implementing Agencies may be taken or executed by the Secretary of the Project Executing Agency or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) The Project Executing Agency 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 \_\_\_\_\_

XIAOHONG YANG

Country Director

Pakistan Resident Mission

PROVINCE OF KHYBER  
PAKHTUNKHWA

By \_\_\_\_\_

DAWOOD KHAN

Secretary

Transport and Mass Transit Department

PESHAWAR DEVELOPMENT  
AUTHORITY

By \_\_\_\_\_

AMIN-UD-DIN

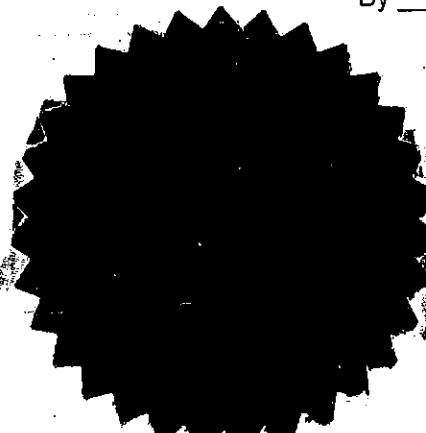
Senior Director

TRANSPESHAWAR (THE  
URBANMOBILITY COMPANY)

By \_\_\_\_\_

ALTAF AKBAR DURRANI

Chief Executive Officer



## SCHEDULE

### Execution of Project; Financial Matters

#### Implementation Arrangements

1. The Project Executing Agency and 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 Project Executing Agency shall (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 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 Project Executing Agency and Implementing Agencies shall (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 Project Executing Agency and the Implementing Agencies shall ensure that the Project facilities are maintained 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 Project Executing Agency and the Implementing Agencies shall 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 Project Executing Agency and Implementing Agencies shall 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 Project Executing

Agency and Implementing Agencies shall 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 Project Executing Agency and Implementing Agencies 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 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 Project Executing Agency and Implementing Agencies shall 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 Project Executing Agency and Implementing Agencies shall 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 Project Executing Agency and Implementing Agencies shall 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 Project Executing Agency and Implementing Agencies shall 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 Project Executing Agency and Implementing Agencies shall 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 Project Executing Agency and Implementing Agencies shall 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 Project Executing Agency and Implementing Agencies shall 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 Project Executing Agency and Implementing Agencies 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, Health and Safety

14. The Project Executing Agency and Implementing Agencies shall ensure that the core labor standards and the applicable laws and regulations of the Borrower and KP are complied with during Project implementation. The Project Executing Agency and Implementing Agencies shall 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 Project Executing Agency and Implementing Agencies shall strictly monitor compliance with the requirements set forth in the paragraph immediately above and provide ADB with regular reports.

#### Gender and Development

16. The Project Executing Agency and Implementing Agencies shall 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 KPUMA 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 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 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 Project Executing Agency shall 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.