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GRANT NUMBER 0377-AFG (SF)

GRANT AGREEMENT  
(Special Operations)

(Energy Sector Development Investment Program - Project 5)

between

ISLAMIC REPUBLIC OF AFGHANISTAN

and

ASIAN DEVELOPMENT BANK

DATED 14 DECEMBER 2013

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AFG 42094

**GRANT AGREEMENT  
(Special Operations)**

GRANT AGREEMENT dated 14 December 2013 between the ISLAMIC REPUBLIC OF AFGHANISTAN ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a Framework Financing Agreement dated 22 October 2008 between the Recipient and ADB, ADB has agreed to provide a multitranche financing facility to the Recipient for the purposes of financing projects under the Energy Sector Development Investment Program;

(B) by a periodic financing request dated 16 July 2013, the Recipient has applied to ADB for a grant for the purposes of the Project described in Schedule 1 to this Grant Agreement;

(C) the Project will be carried out by Da Afghanistan Breshna Sherkat ("DABS"), and for this purpose the Recipient will make available to DABS the proceeds of the grant provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a grant to the Recipient from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and DABS;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Grant Regulations; Definitions**

Section 1.01. All the provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 ("Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

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

(a) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(b) "Consulting Services" means the services to be financed out of the proceeds of the Grant as described in paragraph 3(b) of Schedule 1 to this Grant Agreement;

(c) "Environmental Assessment and Review Framework" or "EARF" means the environmental assessment and review framework for the Investment Program, including any update thereto, agreed between the Recipient and ADB and incorporated by reference in the FFA;

(d) "Environmental Management Plan" or "EMP" means the environmental management plan for the Project, including any update thereto, incorporated in the IEE;

(e) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

(f) "Facility" means the multitranche financing facility provided by ADB to the Recipient for purposes of financing projects under the Investment Program;

(g) "FAM" means the Facility administration manual dated 18 September 2013 and agreed between the Recipient, DABS and ADB, as updated from time to time in accordance with the respective administrative procedures of the Recipient, DABS and ADB;

(h) "FFA" means the Framework Financing Agreement dated 22 October 2008 between ADB and the Recipient with respect to the Facility;

(i) "Goods" means equipment and materials to be financed out of the proceeds of the Grant, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(j) "Initial Environmental Examination" or "IEE" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Recipient pursuant to the requirements set forth in the EARF and cleared by ADB;

(k) "Investment Program" means the Energy Sector Development Investment Program;

(l) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;

(m) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2012, as amended from time to time);

(n) "North-South Power Transmission Enhancement Project Grant Agreements" means the grant agreements for the North-South Power Transmission Enhancement Project (Grant No. 0374(SF)) (Grant No. 0375(EF));

(o) "Procurement Guidelines" means ADB's Procurement Guidelines (2013, as amended from time to time);

(p) "Procurement Plan" means the procurement plan for the Project dated 18 September 2013 and agreed between the Recipient and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB; and

(q) "Resettlement Framework" or "RF" means the resettlement framework for the Investment Program, including any update thereto, agreed between the Recipient and ADB and incorporated by reference in the FFA;

(r) "Resettlement Plan" or "RP" means the resettlement plan for the Project, including any update thereto, prepared and submitted by the Recipient pursuant to the requirements set forth in the RF and cleared by ADB;

(s) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);

(t) "Safeguards Monitoring Report" means each report prepared and submitted by the Recipient to ADB that describes progress with implementation of, and compliance with, the EMP and the RP (as applicable), including any corrective and preventative actions;

(u) "Subsidiary Loan Agreement" means the agreement between the Recipient and DABS referred to in Section 3.01(a) of this Grant Agreement; and

(v) "Works" means construction or civil works to be financed out of the proceeds of the Grant, 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 Grant**

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources an amount of forty nine million one hundred thousand Dollars (\$49,100,000).

## **ARTICLE III**

### **Use of Proceeds of the Grant**

Section 3.01. (a) The Recipient shall lend the proceeds of the Grant together with other funds required for the Project to DABS under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB. Except as ADB shall otherwise

agree, the terms for lending the proceeds of the Grant shall include a repayment period of 32 years, including a grace period of 8 years, and interest at the rate of 1% per annum during the grace period and 1.5% per annum thereafter. The foreign exchange risk shall be borne by DABS.

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

Section 3.02. The proceeds of the Grant shall be allocated and withdrawn in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, the Recipient shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Grant in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Except as ADB may otherwise agree, the Recipient shall cause all items of expenditure financed out of the proceeds of the Grant to be used exclusively in the carrying out of the Project.

Section 3.05. Withdrawals from the Grant Account in respect of Goods, Works and Consulting Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Works and Consulting Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and
- (b) Goods, Works and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2017 or such other date as may from time to time be agreed between the Recipient and ADB.

## ARTICLE IV

### Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement and the Project Agreement.

Section 4.02. The Recipient 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 30 days of the date of their receipt by posting them on ADB's website.

Section 4.04. The Recipient shall take all actions which shall be necessary on its part to enable DABS to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Recipient shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Recipient and ADB and to accomplish the purposes of the Grant.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

## **ARTICLE V**

### **Suspension**

Section 5.01. The following are specified as additional events for suspension of the right of the Recipient to make withdrawals from the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations:

(a) the Recipient or DABS shall have failed to perform any of its respective obligations under the Subsidiary Loan Agreement; and

(b) DABS's organizational structure shall have been significantly altered in such a manner that in the reasonable opinion of ADB will or may adversely affect the carrying out of the Project or the operation of the Project facilities.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following are specified as additional conditions to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations:

(a) the Subsidiary Loan Agreement has been duly authorized, executed and delivered on behalf of the Recipient and DABS and all conditions precedent to its

effectiveness (other than a condition requiring the effectiveness of this Grant Agreement) have been fulfilled; and

(b) the North-South Power Transmission Enhancement Project Grant Agreements have been duly authorized, executed and delivered on behalf of the Recipient and all conditions precedent to their effectiveness (other than a condition requiring the effectiveness of this Grant Agreement) have been fulfilled.

Section 6.02. The following are specified as additional matters, for the purposes of Section 9.02(c) of the Grant Regulations, to be included in the opinion or opinions to be furnished to ADB:

(a) that the Subsidiary Loan Agreement has been duly authorized, executed and delivered on behalf of the Recipient and DABS, and is legally binding on the parties in accordance with its terms; and

(b) that the North-South Power Transmission Enhancement Project Grant Agreements have been duly authorized, executed and delivered on behalf of the Recipient, and are legally binding on the Recipient in accordance with their respective terms.

Section 6.03. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of this Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

## ARTICLE VII

### Miscellaneous

Section 7.01. The Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

#### For the Recipient

Ministry of Finance  
Pashtonistan Watt  
Kabul, Afghanistan

Facsimile Number:

(9320) 210-2838.

For ADB

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

Facsimile Numbers:

(632) 636-2444  
(632) 636-2301.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant 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 AFGHANISTAN



By \_\_\_\_\_  
DR. HAZRAT OMAR ZAKHILWAL  
Minister of Finance

ASIAN DEVELOPMENT BANK



By \_\_\_\_\_  
JOJI TOKESHI  
Country Director  
Afghanistan Resident Mission



**SCHEDULE 1****Description of the Project**

1. The objective of the Investment Program is to provide better power supply in northern and eastern Afghanistan, Kabul and areas south of Kabul, and greater institutional capacity within DABS.
2. As a part of the Investment Program, the Project aims to provide sustainable power supply in northern, eastern and southern Afghanistan.
3. The Project shall comprise:
  - (a) the construction and commissioning of a 500 kilovolt substation at Dashte Alwan; and
  - (b) Project management and implementation support for DABS.
4. The Project is expected to be completed by 31 December 2016.

**SCHEDULE 2****Allocation and Withdrawal of Grant 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 Grant and the allocation of amounts of the Grant to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category of the Table.)

Basis for Withdrawal from the Grant Account

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

Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Grant 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 Grant allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Recipient, reallocate such excess amount to any other Category.

Disbursement Procedures

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

TABLE

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Energy Sector Development Investment Program - Project 5)</b>			
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (\$) Category</b>	<b>Basis for Withdrawal from the Grant Account</b>
1	Turnkey contract	39,000,000	100 percent of total expenditure claimed
2	Security and demining	2,500,000	100 percent of total expenditure claimed
3	Consulting Services	2,500,000	100 percent of total expenditure claimed
4	Unallocated	5,100,000	
	<b>Total</b>	<b>49,100,000</b>	

**SCHEDULE 3****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. All terms used in this Schedule and not otherwise defined in this Grant Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of International Competitive Bidding.
4. The method of procurement is subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the method of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Conditions for Award of Contract

5. The Recipient shall ensure that DABS shall not award any Works contract which involves environmental impacts until DABS has incorporated the relevant provisions from the EMP into the Works contract.
6. The Recipient shall ensure that DABS shall not award any Works contract involving involuntary resettlement impacts until the Recipient has prepared and submitted to ADB the final RP based on the Project's detailed design, and obtained ADB's clearance of such RP.
7. DABS may award a contract for Works involving involuntary resettlement impacts prior to the final RP having been submitted and cleared by ADB provided that the contract:
  - (a) is of a "design and build" or "turnkey" type under which the design must be completed for the Project before the RP is finalized; and
  - (b) expressly provides that the installation and construction phase (and commencement thereof) is strictly conditional upon: (i) the final RP based on the Project's detailed design having been submitted to, and cleared by, ADB; and (ii) DABS having notified the contractor and ADB in writing that due consultation, compensation payments and other entitlements have been provided to affected people fully in accordance with the RP.

Consulting Services

8. Except as ADB may otherwise agree, the Recipient shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

Industrial or Intellectual Property Rights

9. (a) The Recipient shall cause DABS 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 Recipient shall cause DABS 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.

10. The Recipient shall cause DABS 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

11. 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 Recipient and ADB and set forth in the Procurement Plan.

12. In the case of a contract for Goods or Works, which is subject to ADB's prior review, the Recipient shall 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 Grant 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).

13. 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 Recipient as soon as practicable, but not later than 1 month after the receipt of the required document.

14. The Recipient shall provide to ADB copies of all time extensions, modifications or waivers to the contracts (including charge orders) within 1 month following amendment of the contract.

**SCHEDULE 4****Execution of Project; Financial Matters**Implementation Arrangements

1. The Recipient and DABS shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the FAM. Any subsequent change to the FAM shall become effective only after approval of such change by the Recipient, DABS and ADB. In the event of any discrepancy between the FAM and this Grant Agreement, the provisions of this Grant Agreement shall prevail.

Environment

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

Land Acquisition and Involuntary Resettlement

3. The Recipient shall ensure and cause DABS 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 Recipient relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; (c) the RF; and (d) all measures and requirements set forth in the RP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

4. Without limiting the application of the Involuntary Resettlement Safeguards, the RF or the RP, the Recipient shall ensure and cause DABS to ensure that no physical or economic displacement takes place in connection with the Project until:

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

Indigenous Peoples

5. The Recipient shall ensure and cause DABS to ensure that the Project does not have any indigenous peoples impact, within the meaning of SPS. In the event that the Project does have any such impact, the Recipient shall take and cause DABS to take all steps required to ensure that the Project complies with the applicable laws and regulations of the Recipient and with SPS.

Human and Financial Resources to Implement Safeguards Requirements

6. The Recipient shall make available or cause DABS 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

7. The Recipient shall ensure and cause DABS to ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures and requirements relevant to the contractor set forth in the IEE, the EMP and the RP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set out in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the Recipient 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 IEE, the EMP or the RP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

8. The Recipient shall cause DABS to do the following:

- (a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP or the RP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP or the RP promptly after becoming aware of the breach.

Prohibited List of Investments

9. The Recipient shall ensure and cause DABS to ensure that no proceeds of the Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Security Plan

10. The Recipient shall cause DABS to ensure that (a) Works contracts under the Project include a security plan to ensure safety of Project contractors' personnel and consultants to facilitate smooth and uninterrupted implementation of the relevant Project activities; (b) such security plan measures allocate sufficient budget under the relevant Works contracts or through Recipient's counterpart funding; and (c) all relevant permits are issued, and access and other requirements needed are provided, so that each of the aforesaid security plans will be successfully implemented.

Change of Control

11. The Recipient shall ensure that ADB's consent is obtained at least 6 months prior to the implementation of any of the following: (a) any change in ownership of any asset, facility or structure financed under the Project; (b) any sale, transfer, or assignment of interest or control in any asset, facility or structure financed under the Project; or (c) any lease or other contract or modification of the functions and authority of DABS over operation and maintenance of any such asset, facility or structure financed under the Project. The Recipient shall ensure that any such changes are carried out in a legal and transparent manner.

Health and Labor Standards

12. The Recipient shall cause DABS to ensure that contractors engaged under the Project (a) comply with all applicable labor laws; (b) use their best efforts to employ women and local people, including disadvantaged people, living in the vicinity of the Project; (c) provide equal pay to men and women for work of equal type; (d) provide and adequately equip first-aid, health and sanitation, and personal hygiene facilities for male and female workers at the Project site; (e) maximize female training and employment; (f) conduct an information and education campaign on sexually transmitted diseases and HIV/AIDS for construction workers as part of the health and safety program at campsites and adjacent communities during Project implementation; and (g) abstain from child labor. Relevant contracts financed under the Project must include specific clauses on these undertakings.

Gender and Development

13. The Recipient shall ensure that DABS conforms to the principles of ADB's Policy on Gender and Development (1998) during implementation of the Project, including (a) provision of enabling working conditions for female workers; and (b) taking all necessary actions to encourage women living in the Project area to participate in planning and implementing Project activities. The Recipient shall ensure that DABS, in coordination with the appropriate agencies, ensures effective implementation of measures aimed at increasing Project benefits and impacts on women in and around the Project area.



Governance and Anticorruption

14. The Recipient and DABS 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.

15. The Recipient and DABS 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.

