GRANT AGREEMENT
(Special Operations)

(Transport Network Development Investment Program – Tranche 1)

between

ISLAMIC REPUBLIC OF AFGHANISTAN

and

ASIAN DEVELOPMENT BANK

DATED 19 OCTOBER 2011
GRANT AGREEMENT
(Special Operations)

GRANT AGREEMENT dated 19 October 2011 between ISLAMIC REPUBLIC OF AFGHANISTAN ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a Framework Financing Agreement dated 3 August 2011 between the Recipient and ADB ("FFA"), ADB has agreed to provide a multitranché financing facility ("Facility") to the Recipient for the purposes of financing projects under the investment program for development of the Recipient's transport network (the "Investment Program");

(B) ADB has established a multi-donor trust fund, the Afghanistan Infrastructure Trust Fund ("AITF"), to provide co-financing support to infrastructure projects in Afghanistan, to be administered by ADB;

(C) by a grant agreement dated 30 September 2009 (Grant No. 0161-AFG (SF): Hairatan to Mazar-e-Sharif Railway Project) (the "Initial Railway Grant Agreement"), ADB agreed to make a grant of one hundred sixty-five million Dollars ($165,000,000) for the purpose described in Schedule 1 to the Initial Railway Grant Agreement for the construction of the Hairatan to Mazar-e-Sharif railway (the "Hairatan to Mazar-e-Sharif Railway Project");

(D) by a periodic financing request dated 3 August 2011 (as amended, the "PFR"), the Recipient has applied to ADB for: (i) a grant from ADB's Special Funds resources to finance transport infrastructure development and transport network management capacity development activities as further described in Schedule 1 to this Grant Agreement (the "Project"); and (ii) a grant from the AITF to finance transport infrastructure development activities;

(E) by an agreement of even date herewith between the Recipient and ADB, ADB has agreed to make to the Recipient a grant of thirty-three million Dollars ($33,000,000) from the AITF; and

(F) ADB has agreed to make a grant to the Recipient from ADB's Special Funds resources for the purposes of the Project upon the terms and conditions set forth herein, part of which (as described herein) will provide additional financing for the Hairatan to Mazar-e-Sharif Railway Project;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All 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) “Advisory Committee” means the advisory committee described in Schedule 3 to the FFA established to provide advice to MPW in relation to Component (B) of the Investment Program;

(b) “ANDS” means the Afghanistan National Development Strategy (2008);

(c) “Component” means each of Components (A) and (B) of the Investment Program described in paragraph 2 of Schedule 1 to this Grant Agreement;

(d) “Consulting Guidelines” means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2010, as amended from time to time);

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

(f) “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;

(g) “Environmental Management Plan” or “EMP” means an environmental management plan for a Road Subproject, including any update thereto, incorporated in the IEE;

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

(i) “EMA” means the external monitoring agency engaged for the purposes described in paragraph 20(c) of Schedule 4 to this Grant Agreement, including verifying implementation of each LARP;

(j) “FAM” means the Facility Administration Manual for the Investment Program agreed between the Recipient and ADB, as updated from time to time in accordance with the respective administrative procedures of the Recipient and ADB;

(k) “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;
(l) “HIV/AIDS” means human immunodeficiency virus/acquired immune deficiency syndrome;

(m) “Initial Environmental Examination” or “IEE” means an initial environmental examination for a Road Subproject, including any update thereto, prepared by the Recipient pursuant to the requirements set forth in the EARF and agreed by ADB;

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

(o) “Land Acquisition and Resettlement Framework” or “LARF” means the land acquisition and resettlement framework for the Investment Program, including any update thereto, agreed between the Recipient and ADB and incorporated by reference in the FFA;

(p) “Land Acquisition and Resettlement Plan” or “LARP” means a land acquisition and resettlement plan for a Road Subproject, including any update thereto, prepared and submitted by the Recipient pursuant to the requirements set forth in the LARF and cleared by ADB;

(q) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2007, as amended from time to time);

(r) “MPW” means the Ministry of Public Works of the Recipient;

(s) “PMO” means the Project Management Office within MPW described in Schedule 3 to the FFA;

(t) “Procurement Guidelines” means ADB’s Procurement Guidelines (2010, as amended from time to time);

(u) “Procurement Plan” means:

(i) in respect of the Road Subprojects, the procurement plan for tranche 1 of the Facility dated 3 August 2011 and agreed between the Recipient and ADB; and

(ii) in respect of the Railway Subproject, the procurement plan for the Hairatan to Mazar-e-Sharif Railway Project dated 10 September 2009 and agreed between the Recipient and ADB, in each case as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(v) “Project area” means the geographic area encompassing a Project Road and the Project facilities relating to the Project Road;

(w) “Project Executing Agency” for the purposes of, and within the meaning of, the Grant Regulations means MPW or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
(x) “Project facilities” means the equipment, materials, supplies and facilities provided, rehabilitated or reconstructed or to be provided, rehabilitated or reconstructed under the Project;

(y) “Project Road” means each of the road sections identified in paragraphs 3(A)(a), (b) and (c) of Schedule 1 to this Grant Agreement;

(z) “Railway Subproject” means the Subproject described in paragraph 3(A)(d) of Schedule 1 to this Grant Agreement;

(aa) “Road Subproject” means each of the Subprojects other than the Railway Subproject;

(bb) “Safeguards Monitoring Report” means each report prepared and submitted by the Recipient to ADB that describes progress with implementation of and compliance with EMP, the LARP and the indigenous peoples plan (as applicable), including any corrective and preventive actions;

(cc) “Safeguard Policy Statement” or “SPS” means ADB’s Safeguard Policy Statement (2009);

(dd) “Subproject” means the subprojects under the Project described in paragraphs 3(A)(a), (b), (c) and (d) of Schedule 1 to this Grant Agreement; and

(ee) “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 one hundred eighty-nine million Dollars ($189,000,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. 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.
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 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 31 December 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 Road Subprojects and those activities under the Project described in paragraph 3(B) of Schedule 1 to this Grant Agreement and in the operation of the Project facilities in relation to the Road Subprojects, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement.

Section 4.02. In the carrying out the Railway Subproject and operation of the Project facilities in relation to the Railway Subproject, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to the Initial Railway Grant Agreement.

Section 4.03. In addition to the obligations described in Section 4.02, the Recipient shall ensure that the Railway Subproject does not have any environmental, indigenous peoples or involuntary resettlement impacts, all within the meaning of the Safeguard Policy Statement. In the event that the Railway Subproject does have any such impact, the Recipient shall take all steps required to ensure that the Railway Subproject
complies with the applicable laws and regulations of the Recipient and with the Safeguard Policy Statement.

Section 4.04.  (a) The Recipient shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Grant proceeds and compliance with the financial covenants of this Grant Agreement as well as on the use of the procedures for imprest account and statement of expenditures), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Recipient shall enable ADB, upon ADB’s request, to discuss the Recipient's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Recipient pursuant to subsection (a) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Recipient unless the Recipient shall otherwise agree.

Section 4.05. The Recipient shall enable ADB’s representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

ARTICLE V

Effectiveness

Section 5.01. A date 30 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 VI

Miscellaneous

Section 6.01. 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 6.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:
For the Recipient

Ministry of Finance
Pashtoistan Watt
Kabul, Afghanistan

Facsimile Number:

93-20-210-2838

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2428.

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.

[Signature]

By

DR OMAR ZAKHILWAL
Minister of Finance

ASIAN DEVELOPMENT BANK

[Signature]

By

Authorized Representative
SCHEDULE 1

Description of the Project

1. The Investment Program aims to increase the effectiveness and efficiency of land transport and expand connectivity within the broader transport sector of the Recipient.

2. The Investment Program will finance projects with one or both of the following components: (A) transport infrastructure development; and (B) transport network management capacity development.

3. As part of the Investment Program, the Project will comprise the following Subprojects and activities under each Component:

   (A) Transport Infrastructure Development Component

      (a) reconstruction and widening of the approximately 50 km Bagramy to Sapary Road (the first section of the Kabul to Jalalabad Road), including provision of related design and construction supervision services;

      (b) rehabilitation of the approximately 51 km Jabul Saraj to Nijrab Road, (which serves as a bypass around Kabul linking the Ring Road with the Kabul to Jalalabad Road), including provision of related design and construction supervision services;

      (c) reconstruction of the approximately 44 km Faizabad to Beharak Road in Badakhshan (the first section of the Faizabad to Eshkashim Road), including provision of related design and construction supervision services;

      (d) (i) construction of a marshalling yard including freight warehouse, rolling stock maintenance depot and ancillary facilities for the railway line from Hairatan to Mazar-e-Sharif ("Hairatan to Mazar-e-Sharif railway line"), including related design and construction supervision services; (ii) provision of operation and maintenance (O&M) Goods for the Hairatan to Mazar-e-Sharif railway line; and (iii) provision of support for other O&M activities for the Hairatan to Mazar-e-Sharif railway line, including railway inspections, in each case through the provision of additional financing for the Hairatan to Mazar-e-Sharif Railway Project;

   (B) Transport Network Management Capacity Development Component

      (e) provision of support for a transport sector governance needs assessment, development of a national transport plan (including a national railway sub-sector plan with feasibility studies for recommended rail routes), the establishment of a national road authority and a national rail authority;
(f) provision of support for feasibility and design studies for a new Mazar-Andkhoy rail link;

(g) capacity building for MPW including support for business planning, transport sector operation and maintenance, an organizational structure assessment of MPW and the establishment of an asset management system; and

(h) provision of support for Project and Investment Program implementation by MPW including procurement, construction and contract supervision, safeguard policy implementation and feasibility studies for, and preparation of subsequent tranches of, the Investment Program.

4. The Project is described in more detail in the PFR.

5. The Project is expected to be completed by 30 June 2017.
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 the Grant proceeds to each such Category ("Table"). (Reference to “Category” in this Schedule is to a Category or Subcategory of the Table.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, each item of expenditure shall be financed out of the proceeds of the Grant on the basis of the percentages 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.

Imprest Account and Statement of Expenditures

5. (a) Except as ADB may otherwise agree, the Recipient shall establish immediately after the Effective Date, an imprest account at a commercial bank acceptable to ADB. The imprest account shall be established, managed, replenished and liquidated in accordance with the Loan Disbursement Handbook, and detailed arrangements agreed upon between the Recipient and ADB. The imprest account shall only be used for the purposes of the Project. The currency of the imprest account shall be the Dollar. The ceiling for the imprest account shall not exceed the lower of (i) the estimated expenditure to be financed from the imprest account for the first 6 months of Project implementation, or (ii) the equivalent of 10% of the Grant amount.
(b) The statement of expenditures procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account, in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Recipient and ADB. Any individual payment to be reimbursed or liquidated under the statement of expenditures procedure shall not exceed the equivalent of $100,000.

Retroactive Financing

6. Withdrawals from the Grant Account may be made for reimbursement of eligible expenditures for Works, Goods and Consulting Services incurred under the Project before the Effective Date, but not earlier than 18 months before the date of this Grant Agreement in connection with items to be retroactively financed, subject to a maximum amount equivalent to 20% of the Grant amount.
<table>
<thead>
<tr>
<th>Number</th>
<th>Item</th>
<th>Total Amount Allocated for ADB Financing ($)</th>
<th>ADB Financing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Works</td>
<td>134,900,000</td>
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</tr>
<tr>
<td>1A</td>
<td>Bagramy to Sapary Road Subproject</td>
<td>32,700,000</td>
<td>63% of total expenditure claimed</td>
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<tr>
<td>1B</td>
<td>Jabul Saraj to Nijrab Road Subproject</td>
<td>26,650,000</td>
<td>100% of total expenditure claimed</td>
</tr>
<tr>
<td>1C</td>
<td>Faizabad to Beharak Road Subproject</td>
<td>65,550,000</td>
<td>100% of total expenditure claimed</td>
</tr>
<tr>
<td>1D</td>
<td>Railway Subproject</td>
<td>10,000,000</td>
<td>100% of total expenditure claimed*</td>
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<td>2</td>
<td>Resettlement</td>
<td>4,650,000</td>
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</tr>
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<td>2A</td>
<td>Bagramy to Sapary Road Subproject</td>
<td>1,550,000</td>
<td>100% of total expenditure claimed</td>
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<tr>
<td>2B</td>
<td>Jabul Saraj to Nijrab Road Subproject</td>
<td>1,550,000</td>
<td>100% of total expenditure claimed</td>
</tr>
<tr>
<td>2C</td>
<td>Faizabad to Beharak Road Subproject</td>
<td>1,550,000</td>
<td>100% of total expenditure claimed</td>
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<tr>
<td>3</td>
<td>Consulting Services</td>
<td>16,450,000</td>
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<td>3A</td>
<td>Bagramy to Sapary Road Subproject</td>
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<td>100% of total expenditure claimed</td>
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<td>Jabul Saraj to Nijrab Road Subproject</td>
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<td>Faizabad to Beharak Road Subproject</td>
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<td>100% of total expenditure claimed</td>
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<tr>
<td>3D</td>
<td>Railway Subproject</td>
<td>2,000,000</td>
<td>100% of total expenditure claimed*</td>
</tr>
<tr>
<td>3E</td>
<td>Institutional Development and Strengthening</td>
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<td>100% of total expenditure claimed</td>
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<td></td>
<td><strong>Goods – Railway Subproject</strong></td>
<td>5,000,000</td>
<td>100% of total expenditure claimed*</td>
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<tr>
<td>5</td>
<td><strong>Unallocated</strong></td>
<td>28,000,000</td>
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<td></td>
<td><strong>Total</strong></td>
<td>189,000,000</td>
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</table>

* Exclusive of taxes and duties including without limitation Business Receipt Tax, Sukook tax and other value-added tax (VAT) or Gross Sales Tax (GST) type taxes or duties imposed within the territory of the Recipient.
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 the methods of procurement set forth below:

(a) International Competitive Bidding;
(b) Direct Contracting;
(c) National Competitive Bidding; and
(d) Shopping.

4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

National Competitive Bidding

5. The Recipient and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Recipient’s national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Recipient 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 Recipient and ADB.

Conditions for Award of Contract

6. The Recipient shall not award any Works contract for a Road Subproject until the Project Executing Agency has:

(a) obtained the final approval of the IEE and a certificate of compliance (in each case, if required) from the National Environmental Protection Agency of the Recipient; and

(b) incorporated the relevant provisions from the EMP into the Works contract.

7. Subject to paragraph 8 of this Schedule 3 below, the Recipient shall not award any Works contract involving involuntary resettlement impacts for a Road Subproject until the
Recipient has prepared and submitted to ADB the final LARP for the Road Subproject based on the Road Subproject’s detailed design, and obtained ADB’s clearance of the LARP.

8. The Recipient may award a contract for Works involving involuntary resettlement impacts for a Road Subproject prior to a final LARP for the Road Subproject having been submitted and cleared by ADB if the contract:

   (a) is of a ‘design and build’ type under which the design must be completed for the Road Subproject before the LARP is finalized; and

   (b) expressly provides that the build or construction phase (and commencement thereof) is conditional upon a final LARP for the Road Subproject based on the Road Subproject’s detailed design having been submitted to, and cleared by ADB.

Consulting Services

9. Except as ADB may otherwise agree, and except as set forth in paragraph 10 below, the Recipient shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

10. If agreed by ADB, the Recipient may apply the following method for selecting and engaging the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan: Quality Based Selection for consulting services for activities described in paragraphs 3(B)(e), (f), (g) and (h) of Schedule 1 to this Grant Agreement.

11. The Recipient may recruit individual consultants in accordance with procedures acceptable to ADB for recruiting individual consultants for contract administration, technical review of designs, project preparation and development, assessment of environmental and social safeguard measures, implementation and coordination of reengineering activities and/or preparation of Project reports for submission to ADB.

Industrial or Intellectual Property Rights

12. (a) The Recipient shall 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 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 Recipient shall 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 Recipient and ADB and set forth in the Procurement Plan.

15. The Recipient shall seek ADB’s approval before it:

(a) grants any extension of the stipulated time for completion of a contract for Goods or Works; or

(b) agrees to any modification or waiver of the conditions of a contract for Goods or Works, including any change order that falls under (c) or (d) of this paragraph; or

(c) issues any change order under a contract for Goods or Works that will in aggregate increase the original contract price (for the avoidance of doubt, such aggregate shall take into account any previous or simultaneous change order or orders under such contract); or

(d) issues any change order under a contract for Goods or Works that will affect more than 15% of the original contract price (either through increases or decreases), even if the net effect of such change order will not in aggregate increase the original contract price. For the avoidance of doubt, such aggregate shall take into account any previous or simultaneous change order or orders under such contract.

16. ADB undertakes to respond to each request for approval under paragraph 15 above within 10 business days (in Manila and Kabul) of ADB’s receipt of such request. Such response will indicate that the request is (a) approved, (b) declined, or (c) pending receipt of additional information or documentation or (d) pending consideration by ADB’s Procurement Committee, in each case as determined by ADB. If ADB fails to respond within 10 business days (in Manila and Kabul) of ADB’s receipt of such request, the request (except if it relates to consideration by the Procurement Committee) shall be deemed to have been approved by ADB. In the case of (c), the Recipient shall promptly provide the requested information or documentation to ADB and ADB undertakes to respond to the relevant request within 10 business days (in Manila and Kabul) upon receipt of such requested information or documentation satisfactory to ADB. In the case of (d), ADB shall notify the Recipient of the decision by the Procurement Committee within 10 business days (in Manila and Kabul) of such decision by the Procurement Committee.

17. The Recipient shall, or shall ensure that the Project Executing Agency will:

(a) provide a copy of all time extensions, modifications or waivers to the contracts (including change orders) requiring ADB’s approval in accordance with paragraph 15 above to ADB for its record promptly after signing; and

(b) maintain an accurate record of all change orders under all contracts for Goods or Works which do not require ADB’s prior approval under paragraph 15 above and submit such record for ADB’s review every six months.
SCHEDULE 4
Execution of Project and Operation of Project Facilities; Financial Matters

Implementation Arrangements

1. The Recipient shall ensure that each Road Subproject and the activities described in paragraphs 3(B)(e), (f), (g) and (h) of Schedule 1 to this Grant Agreement are implemented in accordance with the detailed arrangements set forth in the FAM and Schedule 3 of the FFA. Any subsequent change to the FAM shall become effective only after approval of such change by the Recipient and ADB. In the event of any discrepancy between the FAM and this Grant Agreement, the provisions of this Grant Agreement shall prevail.

Construction Quality

2. The Recipient shall ensure that for the Road Subprojects: (a) the Project facilities comply with the technical specifications of the design; and (b) construction, supervision, quality control and project management are performed according to internationally accepted standards and practices.

Security

3. The Recipient, through its Ministry of Interior, police force and national army, shall ensure that adequate security (including demining measures where required) are provided for the smooth and uninterrupted implementation of the Road Subprojects.

4. The Recipient shall ensure that: (a) all Works contracts require an action plan for adequate security to allow smooth and uninterrupted implementation of the Road Subprojects; (b) the cost of implementing the action plan is included in the budget for such Works; and (c) the action plan is fully implemented.

Counterpart Support

5. The Recipient shall make available on a timely basis all necessary financial, technical and human resources necessary for implementation of the Road Subprojects, including each LARP and EMP and the activities described in paragraphs 3(B)(e), (f), (g) and (h) of Schedule 1 to this Grant Agreement.

Maintenance

6. The Recipient shall allocate from the budget and make promptly available sufficient funds for adequate maintenance of roads including the Project Roads and the Project facilities in relation to the Road Subprojects as may be necessary during implementation and in each fiscal year thereafter, and shall ensure that such facilities are operated and maintained in accordance with sound practices, including by way of awarding of performance-based maintenance contracts to competent contractors.
Sector Development

7. On or before 31 December 2012, the Recipient will establish a national road authority as contemplated by the ANDS. The responsibilities and obligations of the road authority will include: (a) prescription and enforcement of minimum quality standards; (b) data collection on road users and road use; (c) prescription and enforcement of safety rules and regulations; and (d) collection of user fees and charges.

8. On or before 21 March 2012, the Recipient will establish a national rail authority. The responsibilities and obligations of the national rail authority will include: (a) prescription and enforcement of minimum quality standards; (b) data collection on rail users and rail use; (c) prescription and enforcement of safety rules and regulations; and (d) collection of user fees and charges in accordance with applicable operation and maintenance (“O&M”) contracts.

9. The Recipient will ensure that on or before 21 March 2013, in consultation with the Advisory Committee, MPW prepares a draft National Transport Plan (NTP) covering future infrastructure project planning, construction, rehabilitation, and maintenance activities. The NTP will include a national railway sub-sector plan with feasibility studies for recommended rail routes. The plan will be a bottom-up participatory process from the local, provincial and national levels to operationalize priorities in the transport sector based on current demands and previous strategy and policy documents. The format of the NTP will allow it to be updated annually and to be linked with data and outputs of an asset management system, budgetary cycles and funds allocated for various purposes. The NTP should be drafted by MPW and presented for approval by Parliament on or before 21 March 2014.

10. The Recipient will ensure that: (a) ADB is kept informed of the policies and programs of the Recipient for the transport sector, including those under discussion with other multilateral and bilateral agencies and those that may materially affect the economic viability of the Road Subprojects as a whole or any Road Subproject; and (b) ADB is given an opportunity to comment on any proposed new transport sector policies or programs.

O&M Fund

11. Without limiting the undertakings at paragraphs 5 and 6 of this Schedule 4, the Recipient will ensure that on or before 21 March 2013 a fund is established by MPW or a new transport authority for the O&M of transport infrastructure.

Organizational Development of MPW

12. The Recipient will ensure that:

(a) on or before 21 March 2012, the PMO prepares a business plan for MPW and the PMO’s specific operations for the period until December 2017. The business plan will include an organizational review, needs assessment, time bound restructuring plan and specific capacity development plan taking into account ongoing sector assessments; and
(b) on or before 21 March 2013, the PMO establishes an asset management system (AMS) with the capability to track the location and depreciation of transport sector infrastructure in order to systematically plan for reconstruction, rehabilitation and maintenance activities as a means to achieve full potential of the economic value of constructed assets.

Change in Ownership or Operation

13. In the event that any: (a) change in ownership of any Project facility in relation to any Road Subproject; (b) sale, transfer, or assignment of interest in, or control of, any Project facility in relation to any Road Subproject, or (c) lease or other contract or other modification to MPW’s functions or authority over operation and maintenance of any Project facility in relation to any Road Subproject is anticipated, the Recipient shall obtain ADB’s consent at least 6 months prior to the implementation of such change and shall ensure that any such change will be carried out in a legal and transparent manner.

Environment

14. The Recipient shall ensure that the preparation, design, construction, implementation, operation and decommissioning of each Road Subproject and all Project facilities in relation to each Road Subproject 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 respective IEE and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Resettlement

15. The Recipient shall ensure that all land and all rights-of-way required for each Road Subproject and all Project facilities in relation to each Road Subproject 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 LARF; and (d) all measures and requirements set forth in the respective LARP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

16. Without limiting the application of the Involuntary Resettlement Safeguards, the LARF or the LARPs, the Recipient shall ensure that no physical or economic displacement takes place in connection with any Road Subproject until:

(a) compensation and other entitlements have been provided to affected people in accordance with the applicable LARP; and

(b) a comprehensive income and livelihood restoration program has been established in accordance with the applicable LARP, in each case as certified in a compliance report issued by the EMA.
17. In respect of the Road Subprojects, the Recipient shall ensure that no emergency legal provisions shall be invoked that allow the Recipient to take possession of land without making in advance any compensation payments and the fulfillment of all entitlements other than compensation payments in accordance with the applicable LARP. The Recipient shall meet unforeseen obligations in excess of budget estimates.

**Indigenous Peoples**

18. The Recipient shall ensure that each Road Subproject does not have any indigenous peoples impacts within the meaning of the Safeguard Policy Statement. In the event that a Road Subproject does have any such impact, the Recipient shall take all steps required to ensure that such Road Subproject complies with the applicable laws and regulations of the Recipient and the Safeguard Policy Statement.

**Safeguard–Related Provisions in Bidding Documents and Works Contracts**

19. The Recipient shall ensure that in respect of the Road Subprojects, 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 applicable IEE, EMP and LARP, 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 Road Subproject that were not considered in the IEE, the EMP or the LARP;

   (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.

**Safeguard Monitoring and Reporting**

20. In respect of the Road Subprojects, the Recipient shall do the following:

   (a) submit semi-annual Safeguards Monitoring Reports to ADB together with every second quarterly progress report 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 a Road Subproject that was not considered in the applicable IEE, EMP or LARP, promptly inform ADB of the occurrence of
Schedule 4

such risks or impacts, with detailed description of the event and proposed corrective action plan;

(c) no later than 31 March 2012, engage qualified, experienced and independent external experts or qualified NGOs under a selection process and terms of reference acceptable to ADB, to monitor implementation of each LARP, verify information relevant to the LARP produced through the Road Subprojects monitoring process (including facilitating the carrying out of any verification activities by such external experts) and carry out post implementation evaluation of each LARP in accordance with the LARF; and

(d) report any actual or potential breach of compliance with the measures and requirements set forth in an EMP or LARP promptly after becoming aware of the breach.

Prohibited List of Investments

21. The Recipient shall 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.

Health and Labor Standards

22. In respect of the Road Subprojects, the Recipient shall ensure that all contractors: (a) comply with all laws and mandated provisions on labor, health, safety, sanitation and working conditions; (b) use their best efforts to employ women and local people negatively affected by, or living in the vicinity of, the Road Subprojects; (c) disseminate information at worksites and campsites on the risks of sexually transmitted diseases and HIV/AIDS for those employed during construction; (d) are required not to differentiate between men and women’s wages or benefits for work of equal value; (e) provide accommodation to construction workers at campsites during the construction period and ensure that all work sites and campsites are safe for all employees, service providers, the public and road users; (f) eliminate all forms of forced or compulsory labor; (g) allow freedom of association and the right of assembly; and (h) abstain from engaging persons below the legally employable age in Afghanistan.

23. The Recipient shall undertake concrete measures including border controls and road patrols to prevent trafficking of humans, wildlife, endangered species and illegal substances on the Project facilities in relation to the Road Subprojects.

Gender and Development

24. The Recipient shall ensure that the principles of ADB’s Policy on Gender and Development (1998) are followed during implementation of the Road Subprojects, including: (a) equal pay to men and women for the same type of work; (b) enabling working conditions for female workers; and (c) taking all necessary actions to encourage women living in the Project area for the Road Subprojects to participate in planning and implementing Road Subprojects activities. The Recipient, in coordination with the appropriate agencies, shall ensure the effective implementation of measures aimed at increasing Road Subproject benefits and impacts on women in and around the Project area for the Road Subproject.
Governance and Anticorruption

25. The Recipient shall: (a) comply with ADB’s Anticorruption Policy (1998, as amended to date) and acknowledges 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.

26. The Recipient shall ensure that: (a) relevant provisions of ADB’s Anticorruption Policy are included in all bidding documents; (b) all contracts financed by ADB in connection with the Project include 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; and (c) an independent audit of procurement activities is carried out at least twice during the implementation of the Project.

27. The Recipient shall allow and facilitate ADB’s representatives to carry out spot and random checks on: (a) the flow of funds and their use for the Project; and (b) Project work-in-progress.

28. The Recipient shall appoint dedicated staff from the agency that deals with anticorruption efforts to monitor implementation of the Project in accordance with the mandate of the agency.

Local Duties

29. The Recipient shall ensure that no duties shall be imposed on any equipment or material required for the Road Subprojects, and if such duties are imposed in contravention of this paragraph, the Recipient shall pay such duties promptly to ensure timely Road Subprojects implementation.