
LOAN NUMBER 2231-PAK

LOAN AGREEMENT
(Ordinary Operations)

(National Highway Development Sector Investment Program – Project 1)

between

ISLAMIC REPUBLIC OF PAKISTAN

and

ASIAN DEVELOPMENT BANK

DATED 14 June 2006

LAL: PAK 37559

LOAN AGREEMENT (Ordinary Operations)

LOAN AGREEMENT dated 14 June 2006 between ISLAMIC REPUBLIC OF PAKISTAN (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

WHEREAS

(A) the Borrower has entered into Framework Financing Agreement (hereinafter called FFA) with ADB to seek ADB financing for an investment program for development for the national highways (hereinafter called the Investment Program);

(B) the Borrower has submitted a periodic financing request (hereinafter called PFR) to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(C) by an agreement of even date herewith between the Borrower and ADB (hereinafter called the Special Operations Loan Agreement), ADB has agreed to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to two million eighty thousand Special Drawing Rights (SDR 2,080,000) in connection with the Project;

(D) the Project shall be carried out by the National Highway Authority (hereinafter called NHA), and for this purpose the Borrower shall make available to NHA the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(E) ADB has, on the basis inter alia of the foregoing, agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and NHA;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001, are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, (said Ordinary Operations Loan Regulations being hereinafter called the Loan Regulations).

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

(a) "Component" means each of the Component A and Component B, as more fully described in Schedule 1 to this Loan Agreement;

(b) "EIA" means Environmental Impact Assessment;

(c) "Facility" means the multitranche financing facility provided by ADB to the Borrower in accordance with ADB's policy on *Pilot Financing Instruments and Modalities* (R194-05, 4 August 2005);

(d) "FFA" means the Framework Financing Agreement dated 29 October 2005 between ADB and the Borrower, for the Facility;

(e) "Investment Program" means the investment program for development for the national highways, which is a part of the National Highway Development Plan of the Borrower;

(c) "NGO" means non-government organization;

(d) "NHA" means National Highway Authority of the Borrower;

(e) "NTP" means National Transport Policy of the Borrower;

(f) "PIU" means the Project Implementation Unit;

(g) "Project Executing Agency" means NHA which is responsible for the carrying out of the Project; and

(h) "Project facilities" means the facilities constructed or to be constructed, and the equipment and materials provided or to be provided under the Project.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of \$180,000,000 (One Hundred Eighty Million Dollars), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a term of 25 years, including a grace period of 5 years, as provided in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations.

Section 2.03. (a) The Borrower shall pay a commitment charge at the rate of three-fourths of one percent (0.75%) per annum. Such charge shall accrue on amounts of the Loan (less amounts withdrawn from time to time), during successive periods commencing sixty (60) days after the date of this Loan Agreement, as follows:

during the first twelve-month period, on \$27,000,000;
 during the second twelve-month period, on \$81,000,000;
 during the third twelve-month period, on \$153,000,000; and
 thereafter, on the full amount of the Loan.

(b) If any amount of the Loan is cancelled, the amount of each portion of the Loan stated in paragraph (a) of this Section shall be reduced in the same proportion as the cancellation bears to the full amount of the Loan before such cancellation.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 June and 15 December in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by ADB shall be considered a "Conversion," as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall make the proceeds of the Loan available to NHA upon terms and conditions satisfactory to ADB.

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

Section 3.02. The goods and services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such goods and services and other items of expenditure shall be in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, all goods and services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 and Schedule 5 to this Loan Agreement. ADB may refuse to finance a contract where goods or services have 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 3.04. Except as ADB may otherwise agree, the Borrower shall cause all goods and services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 31 December 2010 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (a) The Borrower shall cause NHA to carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental, road development, and maintenance and operational practices.

(b) In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 6 to this Loan Agreement.

Section 4.02. The Borrower shall make available to NHA, promptly as needed, the funds, facilities, services, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 4.03. The Borrower shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.04. The Borrower shall take all action which shall be necessary on its part to enable NHA 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.

ARTICLE V

Suspension; Cancellation; Acceleration of Maturity

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 9.01(l) of the Loan Regulations: the Borrower shall have failed to perform any of its obligations under the Special Operations Loan Agreement.

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

ARTICLE VI

Effectiveness

Section 6.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 10.01(f) of the Loan Regulations:

(a) the approval of the Planning Commission Proforma 1 (PC – I) for the Project by the duly competent authority of the Borrower shall have been granted; and

(b) Special Operations Loan Agreement shall have been duly executed and delivered on behalf of the Borrower, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled;

Section 6.02. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

ARTICLE VII

Delegation of Authority

Section 7.01. The Borrower hereby designates NHA its agent for the purposes of taking any action or entering into any agreement required or permitted under

Sections 3.02, 3.03 and 3.05 of this Loan Agreement and under Sections 6.01, 6.02, 6.03 and 6.04 of the Loan Regulations.

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

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

ARTICLE VIII

Miscellaneous

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

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

For the Borrower

The Secretary
Economic Affairs Division
Government of the Islamic Republic of Pakistan
Islamabad, Pakistan

Facsimile Number:

(92 - 51) 920-5971
(92 - 51) 921-0734

For ADB

Asian Development Bank
P.O. Box 789
0980 Manila, Philippines

Cable Address:

ASIANBANK
MANILA

Telex Numbers:

29066 ADB PH (RCA)
42205 ADB PM (ITT)

63587 ADB PN (ETPI)

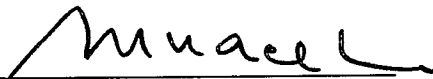
Facsimile Numbers:

(632) 636-2444

(632) 636-2340.

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

ISLAMIC REPUBLIC OF PAKISTAN

By 
MUHAMMAD NAEEM KHAN
Ambassador of the Islamic Republic
of Pakistan to the Philippines
Authorized Representative

ASIAN DEVELOPMENT BANK

By 
HARUHIKO KURODA
President

SCHEDULE 1

Description of the Project

1. The Project consists of the following two Components:

A. National Highway Network Investment

Component A includes four subprojects for upgrading the (i) Hub-Uthal section of N25 (84.5 Kms), (ii) Khanozai-Zhob section of N50 (255 Kms), (iii) Multan-Muzaffargarh section of N70 (36.5 Kms), and (iv) other sections of the national highway network, subject to compliance with Project criteria stipulated for ADB Project financing.

B. Institutional Strengthening of NHA

Component B includes (i) establishing National Transport Policy; (ii) enhancing NHA's role as an efficient and sustainable service provider; (iii) facilitating private sector participation opportunities; (iv) implementing road safety reforms; and (v) improving road maintenance technical expertise and maintenance techniques.

2. The Project is expected to be completed by 30 June 2010.

SCHEDULE 2

Amortization Schedule (National Highway Development Sector Investment Program – Project 1)

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

| <u>Payment Due</u> | | <u>Installment Share</u> (Expressed as a %) |
|--------------------|------|--|
| 15 June | 2011 | 0.83 |
| 15 December | 2011 | 0.87 |
| 15 June | 2012 | 0.91 |
| 15 December | 2012 | 0.96 |
| 15 June | 2013 | 1.01 |
| 15 December | 2013 | 1.06 |
| 15 June | 2014 | 1.11 |
| 15 December | 2014 | 1.16 |
| 15 June | 2015 | 1.22 |
| 15 December | 2015 | 1.28 |
| 015 June | 2016 | 1.35 |
| 015 December | 2016 | 1.42 |
| 015 June | 2017 | 1.49 |
| 015 December | 2017 | 1.56 |
| 015 June | 2018 | 1.64 |
| 015 December | 2018 | 1.72 |
| 015 June | 2019 | 1.81 |
| 015 December | 2019 | 1.90 |
| 015 June | 2020 | 1.99 |
| 015 December | 2020 | 2.09 |
| 01 June | 2021 | 2.20 |
| 15 December | 2021 | 2.31 |
| 15 June | 2022 | 2.42 |
| 15 December | 2022 | 2.54 |
| 15 June | 2023 | 2.67 |
| 15 December | 2023 | 2.80 |
| 15 June | 2024 | 2.94 |
| 15 December | 2024 | 3.09 |

Schedule 2

| <u>Payment Due</u> | | <u>Installment Share</u> (Expressed as a %) |
|--------------------|------|--|
| 15 June | 2025 | 3.25 |
| 15 December | 2025 | 3.41 |
| 15 June | 2026 | 3.58 |
| 15 December | 2026 | 3.76 |
| 15 June | 2027 | 3.94 |
| 15 December | 2027 | 4.14 |
| 15 June | 2028 | 4.35 |
| 15 December | 2028 | 4.57 |
| 15 June | 2029 | 4.79 |
| 15 December | 2029 | 5.03 |
| 15 June | 2030 | 5.29 |
| 15 December | 2030 | 5.54 |
| TOTAL | | 100.00 |

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in

Schedule 2

said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

SCHEDULE 3**Allocation and Withdrawal of Loan Proceeds**General

1. The table attached to this Schedule sets forth the Categories of goods, services and other items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table and reference to "Subcategory" or "Subcategories" in this Schedule is to a Subcategory or Subcategories of a Category.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories and Subcategories listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

Interest and Commitment Charge

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

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Imprest Account; Statement of Expenditures

5. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, an imprest account at the National Bank of the Borrower. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's "Loan Disbursement Handbook" dated January 2001, as amended from time to time, and detailed arrangements agreed upon between the Borrower and ADB. The initial amount to be deposited into the imprest account shall not exceed the estimated eligible Project expenditures for the next six months or 10% of the Loan amount, whichever is less.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures for the Project and to liquidate advances provided into the imprest account, in accordance with ADB's "Loan Disbursement Handbook" dated January 2001, as amended from time to time, and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed \$100,000.

Retroactive Financing

6. Withdrawals from the Loan Account may be made for reimbursement of reasonable eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months prior to the Effective Date, whichever is later, in connection with land acquisition, resettlement costs, consulting services, civil works and incremental administration costs, subject to a maximum of 20% of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS
National Highway Development Sector Investment Program - Project 1

| CATEGORY | | | | PERCENTAGE OF ADB FINANCING | |
|----------|---|----------------------------------|-------------|-----------------------------|---|
| Number | Item | Amount Allocated [\$ million] | | Percentage | Basis for Withdrawal from the Loan Account |
| | | Category | Subcategory | | |
| 1 | National Highway Improvement | 138.500 | | | |
| 1A | Civil Works | | 128.000 | 79 | Of total expenditure* |
| 1B | Consulting Services – construction Supervision | | 9.300 | 100 | Of total expenditure* |
| | | | | 100 | Of total expenditure* |
| 1C | Consulting Services – Project Management Office | | 1.200 | 100 | Of total expenditure* |
| | | | | 100 | Of total expenditure* |
| 2 | Incremental Administration Cost | 3.900 | | 100 | Of local expenditure* |
| 3 | Interest and Commitment Charge | 7.800 | | 100 | Of amount due |
| 4 | Unallocated | 29.800 | | | |
| | Total | 180.000 | | | |

*Exclusive of local taxes

SCHEDULE 4

Procurement

1. Except as ADB may otherwise agree, the procedures referred to in the following paragraphs of this Schedule shall apply in the procurement of goods and services to be financed out of the proceeds of the Loan. In this Schedule and the Attachment hereto, the term "goods" includes equipment and materials; the term "services" does not include consulting services.

2. Procurement of goods and services shall be subject to the provisions of the "Guidelines for Procurement under Asian Development Bank Loans" dated November 2004 (hereinafter called the Guidelines for Procurement), as amended from time to time, which have been furnished to the Borrower and the Project Executing Agency.

3. Procurement of goods and services shall be made without any restriction against, or preference for, any particular supplier or contractor or any particular class of suppliers or contractors. The Borrower has expressly opted out of the permitted preferences for goods manufactured in the territory of the Borrower as well as for civil works carried out by eligible domestic contractors as such term is defined by ADB.

4. (a) Each civil works contract estimated to cost the equivalent of more than \$5,000,000 (Five Million Dollars) and each supply contract for equipment or materials estimated to cost the equivalent of more than \$500,000 shall be awarded on the basis of international competitive bidding as described in Chapter II of the Guidelines for Procurement.

(b) For contracts to be awarded on the basis of international competitive bidding, there shall be submitted to ADB, as soon as possible, and in any event not later than 90 days before the issuance of either the first prequalification invitation or the first invitation to bid for the Project, a General Procurement Notice (which ADB will arrange to publish separately) in such form and detail and containing such information as ADB shall reasonably request.

(c) For contracts to be awarded on the basis of international competitive bidding, procurement actions shall be subject to review by ADB in accordance with the procedures set forth in Chapter IV of the Guidelines for Procurement. Each draft invitation to bid, to be submitted to ADB for approval under such procedures, shall reach ADB at least 21 days before it is issued and shall contain such information as ADB shall reasonably request to enable ADB to arrange for the separate publication of such invitation.

5. (a) Each supply contract for equipment or materials estimated to cost the equivalent of \$500,000 or less (other than minor items) shall be awarded on the basis of international shopping as described in Chapter III of the Guidelines for Procurement.

(b) Each draft invitation to bid and related bid document shall be submitted to ADB for approval before they are issued.

(c) Notwithstanding paragraph 3.03(b) of the Guidelines for Procurement, any award of contract shall be subject to prior ADB approval.

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6. Civil works contracts estimated to cost less than the required \$5,000,000 may be awarded on the basis of local competitive bidding among contractors in accordance with the standard procurement procedures of the Borrower and acceptable to ADB.

(a) For the first three contracts to be awarded on the basis of local competitive bidding, selection and engagement of contractors shall be subject to the approval of ADB. As soon as the bids received have been evaluated, the proposal for award of contract shall be submitted to ADB for approval. For this purpose, ADB shall be furnished with three copies of (i) an account of the public opening of bids; (ii) a summary and evaluation of the bids; (iii) the proposal for award; and (iv) a draft contract or a draft letter of acceptance. Promptly after each contract is awarded, ADB shall be furnished with three copies of the contract as executed.

(b) For the subsequent contracts, bid evaluation and award of contracts shall be subject to post review by ADB.

Direct procurement

7. Supply contracts with an estimated value of the equivalent of less than \$100,000 may be procured directly from the manufacturers of the original equipment or their agents. Prior to such procurement, a list of individual items to be procured, an estimate of their costs, an indication of potential sources of supply and any related documents shall be submitted to ADB for approval. After award, three copies of each contract for such items shall be furnished to ADB.

Industrial or Intellectual Property Rights

8. The Borrower shall ensure that all ADB-financed goods and services 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.

9. The Borrower shall ensure that all ADB-financed contracts for the procurement of goods and services 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.

SCHEDULE 5

Consultants

1. The services of consultants shall be utilized in the carrying out of the Project, particularly with regard to:

- (a) Institutional Strengthening of NHA; and
- (b) Designing and implementation of upgrading of NHA road networks.

The terms of reference of the consultants shall be as determined by agreement between ADB and the Project Executing Agency.

2. The selection, engagement and services of the consultants shall be subject to the provisions of this Schedule and the provisions of the "Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers" dated January 2005 (hereinafter called the Guidelines on the Use of Consultants), as amended from time to time, which have been furnished to the Borrower and the Project Executing Agency.

3. The consultants shall be selected and engaged as a firm by the Project Executing Agency using the quality-and-cost-based selection (QCBS) method in accordance with the following procedures:

(a) Invitation for technical and financial proposals. The invitation to submit technical and financial proposals (hereinafter called the Request for Proposals or RFP) and all related documents shall be approved by ADB before they are issued. For this purpose, three copies of the draft RFP, the names of consultants to be short-listed, the proposed criteria for evaluation of both proposals, a draft consultancy contract, and other related documents shall be submitted to ADB. A period of at least 45 days shall be allowed for submission of both proposals. A copy of the final RFP as issued, together with all related documents, shall be furnished to ADB for information promptly after issuance. The validity period for the technical and financial proposals as provided in the RFP shall usually not exceed three months from the date specified for submission of the technical and financial proposals. The approval of ADB shall be obtained for any request to extend such validity period. Except as ADB may otherwise agree, the validity period, including any extensions, shall not exceed a maximum total period of six months. If the contract is not signed within the validity period in accordance with the Guidelines on the Use of Consultants, the selection shall be invalid and the selection and engagement process as provided in this paragraph shall be followed again.

(b) Evaluation and scoring of technical proposals. Immediately after the technical proposals have been evaluated and scored, approval of ADB shall be obtained to the evaluation and scoring of the technical proposals. For this purpose, ADB shall be furnished with three copies of the technical proposals.

(c) Public opening of financial proposals. The financial proposals of the firms whose technical proposals meet the minimum qualifying technical score shall be opened publicly after adequate notice is given to such firms or their representatives to attend the opening of the financial proposals.

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(d) Evaluation and scoring of financial proposals and ranking of technical and financial proposals. After the financial proposals have been evaluated and scored, the ranking of the technical and financial proposals shall be made. Before negotiations are started with the first-ranked consultants, approval of ADB shall be obtained to the evaluation and scoring of the financial proposals and the ranking of the technical and financial proposals. For this purpose, ADB shall be provided with three copies of (i) the evaluation and scoring of the financial proposals and (ii) the ranking of the technical and financial proposals.

(e) Execution of contract. After the conclusion of negotiations but before the signing of the contract, ADB shall be furnished with the contract as negotiated for approval. Promptly after the contract is signed, ADB shall be furnished with three copies of the signed contract. If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

4. In case of individual consultants to be engaged, the consultants shall be selected and engaged by the Project Executing Agency in accordance with the following procedures:

(a) A list of the candidates together with their qualifications and their ranking and a draft contract shall be furnished to ADB for approval before the selection of consultants.

(b) Promptly after the contract is signed, ADB shall be furnished with the evaluation of the candidates and a brief justification for the selection, together with three copies of the signed contract.

(c) If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

5. The Borrower 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.

SCHEDULE 6

Execution of Project and Operation of Project Facilities; Financial Matters

Project Executing Agency

1. NHA shall be the Project Executing Agency. An Investment Program Coordinating Committee (IPCC) chaired by the Chairman of NHA, shall be responsible for monitoring the use of the Loan proceeds and overall implementation performance. The IPCC shall meet at least once every quarter. The minutes of all IPCC meetings shall be promptly forwarded to ADB for review and records.
2. Two separate Investment Program Management Offices shall be set up by NHA – one for each Component. PIU shall be responsible for implementation of each subproject.
3. A Policy Formulation & Coordination Office shall be established under the chairmanship of Member (Planning) of NHA.

Implementation of Subprojects under Component A

4. Three sample subprojects have been identified and selected by NHA for implementation under Component A and each such subproject satisfies each of the criteria listed in Schedule 2 to FFA.

Subproject Selection Criteria

5. The Borrower and NHA shall ensure that the subprojects follow the selection criteria and are promptly processed for approval by ADB as described in detail in Schedule 2 to FFA.

Organizational Arrangements

6. The Borrower and NHA shall ensure that the subprojects are appraised in accordance with organizational arrangements described in detail in Schedule 2 to FFA.

Road Maintenance

7. The Borrower shall cause NHA to develop in consultation with ADB and have its Executive Board approve a road maintenance plan for the year Fiscal Year 2007-2011 by March 31, 2007, which shall, among other things, provide funding modalities to finance the maintenance of relevant roads acceptable to ADB.

Land Acquisition and Resettlement

8. The Borrower shall cause NHA to ensure that all land acquisition and resettlement proceed in accordance with applicable laws, and ADB's *Policy on Involuntary Resettlement*, as well as in accordance with the framework set out in the agreed upon resettlement plan.

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9. The Borrower shall cause NHA to (i) prepare and implement resettlement plans (RPs) for additional subprojects, in accordance with ADB's *Policy on Involuntary Resettlement*, and the principles and procedures laid out in the resettlement framework and agreed between the Borrower and ADB, (ii) disclose subproject RPs to affected persons (APs) in a form and language easily comprehensible to APs prior to submission to ADB for review and approval before award of the related civil works contracts or a similar milestone, (iii) monitor and submit the quarterly progress and completion reports on land acquisition and resettlement, (iv) appoint an independent monitoring expert prior to commencement of land acquisition and resettlement activities and ensure that reports are simultaneously submitted to NHA and ADB.

10. The Borrower acknowledges that resettlement budget shall be revised based on any new data collected, and any additional land acquisition and resettlement cost that may be required shall be borne by the Borrower. If there is any change in the scope of the Project, the Borrower shall cause NHA to revise the relevant resettlement plans and submit them to ADB for approval prior to award of civil work contracts.

11. The Borrower shall ensure that (i) NHA shall provide compensation for land and structures to APs at full at replacement value including financial assistance/grants, if any, prior to taking possession of their assets; (ii) essential public infrastructure affected by land acquisition and resettlement are replaced appropriately and expeditiously; (iii) NHA shall acquire or make available on a timely basis (i.e., strictly in accordance with the schedule as agreed under the related civil works contract) the land and rights in land, free from any encumbrances; and (iv) NHA clear the utilities, trees and any other obstruction from such land, on a timely basis (i.e., strictly in accordance with the schedule as agreed under the related civil works contracts), as required for construction activities relating to each section of the related civil works contract under the Project.

Environment

12. The Borrower shall cause NHA to implement mitigation measures and Environmental Management Plan (EMP) for the sample subprojects as described in the Initial Environmental Examination (IEE), Environmental Impact Assessment (EIA) and Summary EIA (SEIA) reports in accordance with the Borrower's and ADB's environmental policies. The Borrower shall further cause NHA to implement the Environmental Assessment and Review Framework for the follow up subprojects.

13. The Borrower shall cause NHA to obtain all necessary environmental statutory clearances such as environmental clearance, forest clearance, and non-objection certificates both at the Provincial and Central levels prior to commencing any civil work. NHA shall ensure that all conditions attached to these clearances shall be implemented and monitored.

14. The Borrower shall cause NHA to undertake environmental monitoring plan and submit semiannual report to ADB and relevant agencies on the implementation of EMP and conditions of clearance for "A" category subprojects and annual report for "B" category subprojects as part of the progress report on Project implementation.

15. The Borrower shall cause NHA to report to ADB any change of road alignment or any change in Project component that occurs after the environmental impact assessment report has been approved by the ADB. ADB's prior approval shall be required before putting into effect

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any such changes and where in the opinion of the ADB, additional environmental assessment is required, such assessment shall be promptly undertaken.

16. The Borrower shall cause NHA to prepare a semi-annual report on implementation of the EMP as part of the progress report on Project implementation.

17. The Borrower shall cause NHA to provide the contractors with the environmental assessment study reports, including the EMP, and ensure that the contractors implement the prescribed mitigation measures.

18. The Borrower shall ensure that NHA shall update the EMP for Muzaffargarh Bypass as part of the detail engineering work and submit it to ADB for review prior to commencing civil works.

HIV/AIDS and Human Trafficking

19. The Borrower shall cause NHA to ensure that all civil works contracts under every subproject incorporates provisions requiring contractors to (i) carry out HIV/AIDS and women/children trafficking awareness and prevention programs for labor; (ii) not employ or use children as labor; and (iii) follow and implement legally mandated provisions on labor (including equal pay for equal work), health, safety, sanitation, and working conditions.

20. The Borrower shall cause NHA to engage qualified locally based consultants under construction supervision to carry out the HIV/AIDS prevention and anti-trafficking component as agreed on with ADB. PIUs shall supervise the consultants and work closely with the Pakistan's National AIDS Control Program (NACP) and other networks dedicated to preventing sexually transmitted infections, HIV/AIDS, women/children trafficking, and to the empowerment of women and children.

Policy Development

21. The Borrower shall ensure that by June 30, 2007, a National Transport Policy, as endorsed by ADB, shall have been promulgated by the Federal government.

22. The Borrower shall ensure that by June 30, 2007, NHA shall have established a fully functional road safety cell within it with a mandate, among other things, (i) to analyze road safety risks and their consequences; (ii) develop recommendations for reduction of risks in existing and to be constructed roads; and (iii) develop a program for awareness raising of the risk factors. For avoidance of doubt, the phrase "fully functional" in the preceding sentence shall mean that all core staff for the road safety cell shall have been appointed and activities shall have been launched. The road safety cell shall also have the capacity to undertake safety audits of road designs as well as prepare work zone safety plans.

23. The Borrower shall cause NHA to establish a Policy Formulation and Coordination Office as soon as possible but no later than 90 days after the Effective Date to provide guidance and monitor the overall implementation of the agreed upon policy reforms.

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24. The Borrower shall ensure that by June 30, 2007, the Borrower's government shall have approved or endorsed, as required, to give effect to the NHA Investment Plan for Fiscal Year 2007-2011 to be prepared in consultation with ADB.

Project Management

25. The Borrower, in order to ensure continuity, transparency, efficiency and good management in the conduct of the Project, shall cause NHA to consult with ADB on all significant matters relating to management and implementation of the Project. All matters relating to selection or appointment, or any changes to such selection or appointment, of any Project Director or Deputy Project Director, shall be duly notified to ADB along with the qualifications of the incumbents and the departing officers and reasoning for such changes.

26. The appointment of any Project Director or Deputy Project Director shall not be terminated or terms of such appointment shall not be altered in any material way within three years of such appointment unless a determination of gross dereliction of duty or such other serious misconduct is made through due process.

27. To provide an open channel for registering grievances of any type regarding NHA's management of the Project, a dedicated website shall be established by June 30, 2006. Such a dedicated website shall be available in English and in Urdu. The website shall post information on all subprojects approved. It shall detail the Borrower's and ADB's policies on anti-corruption. The website shall be designed to provide an easy method for seeking redress of grievances. The website shall be hosted and managed by the Vigilance Committee. The Vigilance Committee shall keep an accurate record of all grievances filed and responses and other actions taken. The establishment of the website shall be widely publicized through all English and Urdu media. Each office of NHA and all offices of the NHA contractors shall be required to prominently display information on the website and ways to use it. The Vigilance Committee shall report to the NHA Executive Board and to ADB every quarter on progress towards resolution of grievances filed through the website and any other means. The website shall be maintained properly and in the event of any failure to keep it functional for more than seven consecutive days, ADB shall be promptly informed.

Anticorruption

28. The Borrower and NHA acknowledge that consistent with its commitment to good governance, accountability and transparency, ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project. To support these efforts, the Borrower shall cause NHA to ensure that the bidding documents for the Project, and all contracts financed by ADB in connection with the Project, shall include provisions specifying the right of ADB to audit and examine the records and accounts of NHA and all contractors, suppliers, consultants and other service providers as they relate to the Project.

Capacity Development

29. The Borrower shall cause NHA to accelerate recruitment of professional staff and reduce vacancies of approved posts as they stand on the Effective Date to no more than 10% of such approved posts for each department within two months of the Effective Date.

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For the avoidance of doubt, all posts of grade 16 and above shall be considered professional posts for the purpose of this provision.

30. The Borrower shall cause NHA to design, develop and adopt a comprehensive training program, including management training, for enhancement of skills of all newly recruited and other staff so that they meet at least the minimum levels of competencies required for their positions. The Human Resources Department of NHA shall be entrusted to undertake the requisite training needs analysis and based on such analysis a two-year-long training calendar shall be prepared by June 30, 2006 by the department showing the scope, length and location of each training to be offered. An annual external evaluation of the training program will be carried out within 45 days of the training program of the calendar year.

Institutional Reform and Development

31. The Borrower shall cause NHA to complete an institutional reform program in consultation with ADB and begin execution of key steps of the plan by June 30, 2007. ADB shall be periodically consulted on progress and direction of all reforms initiated under the aegis of this program.

32. The Borrower shall cause NHA to prepare and install in consultation with ADB a financial management system by June 30, 2007. Such financial management system shall include key performance indicators and monitoring and reporting mechanisms. Within nine months of the implementation of such financial management system, an external evaluation of its robustness shall be carried out. The report and recommendations of the external evaluation shall be shared with ADB and the recommendation shall be duly adopted as promptly and possible but no later than 90 days following the submission of the final report of the evaluators.

Labor Laws

33. The Borrower shall cause NHA to ensure that contractors comply with all applicable labor laws and regulations of the Borrower's government. The Borrower shall further cause NHA to ensure that the civil works do not employ child labor in the construction activities. The Borrower shall cause NHA to encourage civil works contractors to hire women and minorities, including "gypsies," wherever possible. The Borrower shall ensure that NHA provides equal opportunity for women for road construction activities, as well as require contractors not to differentiate wages between men and women for work of equal value. The Borrower, through NHA, shall ensure that a specific clause to this effect is included in all relevant bidding documents, and compliance is strictly monitored and documented during Project implementation. Recognizing the challenges in recruitment of women for such employment, a reputable private organization shall be appointed within 90 days of the Effective Date to independently monitor, develop suggestions and guidelines for improvement of performance in each of these areas and prepare quarterly report on all such matters to ADB through the NHA throughout the duration of civil works construction under the Project.

Mid-Term Review

34. The Borrower acknowledges that in two years following the Effective Date, a comprehensive midterm review shall be undertaken jointly by ADB and NHA to review all aspects of the Project implementation, including procurement financing and scheduling matters.

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All reviews, including the mid-term review, shall be conducted as described in Schedule 1 to FFA.

Performance Audit

35. The Borrower shall cause an annual performance audit for each of the components of the Project to be completed pursuant to the terms of reference to be developed by ADB. All costs incurred in connection with such performance audits shall be paid out of the Project funds.

Performance Monitoring and Progress Reports

36. The Borrower shall cause NHA to establish a capability for systematic Project performance monitoring as described in detail in Schedule 1 to FFA.

Accounts

37. The Borrower shall cause NHA and PIUs to maintain records and accounts as described in detail in Schedule 1 to FFA.