

ADDENDUM NO. 2

REQUEST FOR PROPOSAL FOR CONSTRUCTION OF KHARIAN – RAWALPINDI MOTORWAY PROJECT UNDER PPP ON BOT BASIS

The following amendments have been made in the Request for Proposal (RFP) – Volume II (Draft PPP Agreement) under this Addendum No. 2, which shall be read and construed as an integral part of RFP and shall take precedence in case of any conflict(s)/ ambiguity(ies) in the RFP document except for Section A.4 (Basic Non-negotiable Parameters of the Concession), which shall continue to have over-riding effect.

1. Add the following at the end of Section 1.1.30 (Change in Control):

provided however, the Sponsor shall hold their shareholding share in their respective proportions of the 50% plus one (1) Class A Shares (majority control shares) of the Concessionaire at all times during the Concession Period subject to the terms of this Agreement.

provided further, the Sponsor obligations and liabilities under this Agreement shall not be changed or diluted.

2. Definition of Contractor under Section 1.1.59 is replaced as under:

the Concessionaire, and any Acceptable Contractor with whom the Concessionaire has, or may enter into, any agreement/contract for purposes of undertaking any or all of the Works, or performing any or all of the Services;

3. Add the following at the end of Section 1.1.63 (Deductible Amounts)

(c) accrued share of the NHA Revenue Share as determined by the Independent Auditor.

4. Replace the wording in Section 1.1.68 with following:

Not Used

5. Replace the wording in Section 1.1.82 "Equity Compensation" with the following:

(a) in case of termination of this Agreement due to a Concessionaire Event of Default, no equity compensation will be payable;

(b) in case of termination of this Agreement for any reason other than a Concessionaire Event of Default, the amount which, when taken together with all amounts already paid in respect of Equity of Class A Shares (by way of dividends) and taking into account the actual timing



of all such payments, provides the Shareholders (other than NHA) with the Termination Equity IRR;

6. Replace the wording in Section 1.1.168 (Permitted Event), sub-section c as follows:

(c) Variation proposed by NHA causing delay in the performance of the Concessionaire's obligation under this Agreement.

7. Replace the definition of Termination Date under Section 1.1.214 as follows:

means the date of issuance of the Termination Notice and this will be the date on which the actual Termination occurs following the Cure Period;

8. Replace the definition of Termination Equity IRR under Section 1.1.215 as follows:

the return on Equity (Class A Shares) that the Concessionaire shall be entitled to receive from NHA in the event of a Termination of this Agreement. The Termination Equity IRR, which shall vary depending on the cause of Termination shall be as follows:

- | | | |
|-----|---------------------------|----------|
| (a) | Non-Political Event: | 8%; |
| (b) | Indirect Political Event: | 9%; |
| (c) | Political Event: | 10%; and |
| (d) | NHA Event of Default: | 10.5% |

9. Section 3.2.2 is replaced as under:

The Compensation Amount shall be calculated for the Delay Duration, to provide full recovery of increase in the Estimated Project Cost, if any, caused by the delay of the entire Project Implementation Programme.

10. Section 3.5.1, sub-section e is replaced as under:

(e) subject to the terms of this Agreement, the Concessionaire shall enjoy the Vacant Possession of the Concession Area and the Additional Land, if required, and the Ancillary Rights, and in the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over, the Concession Area and the Additional Land or the Ancillary Rights or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or manager or liquidator being initiated by any Person claiming to have any interest in or charge on the Concession Area, the Additional Land or the Ancillary Rights or any part thereof, then provisions of Section 3.5.1 (f) & (g) shall apply;

11. Replace the Section 9.4.3 as follows:

The Compensation Amount shall be calculated for the Delay Duration, to provide full recovery of increase in the Estimated Project Cost if any caused by the delay of the entire Project Implementation Programme.



12. Section 10.3.1 is replaced with the following:

Prior to Financial Close, the Concessionaire shall deliver to the NHA and the Independent Auditor a schedule or a copy of the term sheet reflecting the proposed material terms of the Financing Documents, and setting forth a principal repayment schedule that provides for financing repayment that is not greater than the aggregate of the financing component set out in the Financial Model using the assumptions of the Financial Model, together with the maximum principal amounts and interest (or markup) rate or rates and any schedules or formulae that will be included in the Financing Documents for the computation of principal and interest (or markup), fees and charges payable to the Financiers upon the winding up for early termination of the Financing under the Financing Documents, and shall also identify the equity commitments, individually and in total, of the Sponsor (the Specific Term Sheet Parameters). NHA and the Independent Auditor will evaluate the Specific Term Sheet Parameters to ensure that the principal financial terms are not greater than the aggregate of the financing component set out in the Financial Model using the assumptions of the Financial Model, and to evaluate the impact on NHA's obligations upon any Termination of this Agreement. If NHA and/or the Independent Auditor has any objections to the terms specified in such term sheet or schedule, it shall inform the Concessionaire thereof within thirty (30) days of its receipt thereof; otherwise, the Independent Auditor shall be deemed not to have objected to those terms (the Financing Term Sheet) and the Concessionaire shall be entitled thereafter to execute the Financing Documents, consistent with those terms and a principal repayment schedule of the specified term or a shorter term without further notice to or review by NHA and/or the Independent Auditor. The Concessionaire shall provide NHA, the Independent Engineer and the Independent Auditor with a copy of the Financing Documents no later than fifteen (15) business days of its execution (provided that, to the extent that the commercial terms of these executed Financing Documents do not materially deviate from the Financing Term Sheet, NHA and the Independent Auditor shall have no further right to raise any objection in respect of these Financing Documents). Any amendments to the financing term sheet shall only be made with the approval of Independent Auditor.

13. A new Section 12.12.14 is added as follows:

In the event that the Concessionaire does not comply with the Construction Performance Standards and Key Performance Indicators as provided in this Agreement and O&M Manual, the IE shall make determination of the penalty amount payable by the Concessionaire to the NHA. The amount shall be retrieved from the Escrow Account after determination by the IE.

14. Sub-section d under Section 17.1.2 is deleted.
15. Sub-section g under Section 21.1.1 is replaced as under:

Not Used;



16. Section 24 (Dispute Resolution Procedure) is replaced in its entirety with the version attached as **Annex-A**.
17. The last proviso under Section 26.1.1 is replaced as under:

provided, further that, during the Concession Period, Concessionaire shall create no Encumbrance whatsoever on, in or with respect to the Concession Area or any part thereof.
18. Schedule I: Form of Financial Close Bond is replaced with that attached as **Annex-B**.



24. DISPUTE RESOLUTION PROCEDURE

24.1 AMICABLE RESOLUTION

24.1.1 Any dispute, difference or controversy of whatever nature between (a) a Party and the Independent Engineer, the Independent Auditor and/or the Independent Consultant, or (b) the Parties, howsoever arising under, out of or in relation to this Agreement, including, any question regarding its existence, validity or Termination or disputes, if any, with regard to any acts, omissions, delays, advice, recommendations, opinions, decisions and determinations of the Independent Engineer, the Independent Auditor and/or the Independent Consultant and so notified in writing by either Party to the other (the "Dispute"), shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Section 24.1.2 below.

24.1.2 If the Dispute is not amicably settled within fifteen (15) Days, either Party may refer the Dispute to resolution through Fast-Track Dispute Resolution pursuant to Section 24.2 [*Fast-Track Dispute Resolution Procedure*].

24.2 FAST-TRACK DISPUTE RESOLUTION

24.2.1 For purposes of resolution of a Dispute under Section 24.1.1, NHA and the Concessionaire shall jointly establish a Panel of Experts within sixty (60) Days of the Effective Date. The Panel of Experts shall be appointed in the following manner:

- (a) all the Experts on the Panel of Experts shall be wholly independent of the Independent Engineer/Independent Auditor/Independent Consultant, NHA and the Concessionaire, and any of their major competitors;
- (b) the Panel of Experts shall comprise of three (3) Experts. The NHA Representative and the Concessionaire Representative shall each appoint one (1) Expert within thirty (30) Days of the Effective Date, and the two (2) appointed Experts shall then consult with each other and appoint the third Expert within fifteen (15) Days of the date of appointment of the second Expert, keeping the criteria at Section 24.2.1(a) in mind;
- (c) in the event the two (2) Experts duly appointed by the Concessionaire Representative and the NHA Representative are unable to appoint the third Expert within the prescribed period, the Independent Auditor shall appoint such Expert within fifteen (15) Days of any application for such appointment by either the NHA Representative or the Concessionaire Representative;
- (d) in the event either the NHA Representative or the Concessionaire Representative fails or refuses to appoint an Expert pursuant to Section 24.2.1(b), then the appointed Expert shall appoint the two (2) remaining Experts within thirty (30) Days of the appointment thereof, keeping the



criteria at Section 24.2.1(a) in mind, after consultation with the representative failing to appoint an Expert; and

- (e) if any Expert on the Panel of Experts resigns or is otherwise unable to continue as such during the Concession Period, a replacement Expert shall be appointed jointly by the NHA Representative and the Concessionaire Representative as soon as practicable, and in any event within thirty (30) Days of the Day on which the Expert discontinues his membership on the Panel of Experts. In the event the NHA Representative and the Concessionaire Representative are not able to agree and jointly appoint the replacement Expert, then the remaining Experts on the Panel of Experts shall consult with each other and promptly appoint the third Expert, keeping the criteria at Section 24.2.1(a) in mind; provided, that in the event the two (2) remaining Experts are not able to appoint the third Expert, the Independent Auditor shall appoint such Expert within thirty (30) Days of any application for such appointment by either the NHA Representative or the Concessionaire Representative.

24.2.2 Either Party may refer the resolution of the Dispute to the Panel of Experts by issuing a notice to that effect (the "**Expert Reference Notice**").

24.2.3 Within fifteen (15) Days of receipt of the Expert Reference Notice, each of the disputing Parties shall submit their respective arguments in respect of the Dispute to the Panel of Experts in writing. The Panel of Experts shall, in its absolute direction, consider whether a hearing is necessary in order to resolve the Dispute. The Panel of Experts shall in any event provide to both the disputing Parties with its written decision on the Dispute within thirty (30) Days of Expert Reference Notice (or such longer period as mutually agreed upon by the disputing Parties in writing). The Panel of Experts shall state the reasons for its decision, and the disputing Parties shall forthwith give effect to the decision.

24.2.4 Each disputing Party shall bear its own costs arising out of the reference, including, legal costs and the costs and expenses of any witnesses, while the Panel of Experts' costs shall be borne as the Panel of Experts shall specify.

24.2.5 If within thirty (30) Days of the Panel of Experts' decision, or where the Panel of Experts fails to give decision within the prescribed time period, within thirty (30) Days of the expiry of the prescribed time period, a disputing Party is not satisfied with the decision of the Panel of Experts or the failure of the Panel of Experts to give decision, that disputing Party may, after due consultation with the NHA Representative and the Concessionaire Representative, refer the Dispute to arbitration in accordance with Section 24.3 [*Arbitration*] below.

24.3 ARBITRATION

24.3.1 Subject to the terms of Section 24.1 [*Amicable Resolution*], any Dispute which is not resolved amicably or any Dispute upon which the Panel of Experts has given its decision in accordance with Section 24.2 [*Fast-Track Dispute Resolution*] with which a disputing Party is not satisfied, or any Dispute upon which the Panel of Experts fails to give decision within the prescribed time period, and is accordingly referred to arbitration, shall be finally settled by binding arbitration. The language of the arbitration shall be in English.



Arbitration as aforesaid shall be a condition precedent to any other action under law.

24.3.2 The arbitration shall be conducted by three (3) arbitrators. The Concessionaire and NHA shall appoint one (1) arbitrator each within three (3) Weeks of reference of the Dispute to arbitration, whilst the third (3rd) arbitrator shall be appointed by the two (2) appointed arbitrators within a period of a further three (3) Weeks, and in the event the two (2) arbitrators are unable to agree on the third (3rd) arbitrator, then the same will be appointed in accordance with the Arbitration Act. In the event either the Concessionaire or NHA fails to appoint an arbitrator within the prescribed period, the appointed arbitrator shall appoint the arbitrator not appointed by the Concessionaire or NHA, as the case may be. Appointment of the arbitrators in terms of this Section 24.3.2 shall be binding on both the Parties.

24.3.3 The arbitration shall be conducted in accordance with the Arbitration Act, as amended or substituted from time to time and the venue for arbitration shall be Islamabad, Pakistan.

24.3.4 The decision of the arbitrators shall be final and binding. Unless otherwise provided herein and except as awarded by the arbitrators, each Party shall be responsible for its own costs incurred by it in connection with an arbitral proceeding hereunder.

24.3.5 Pending the submission of and/or decision on a Dispute and until the arbitral award is published; the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

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**SCHEDULE I
FORM OF FINANCIAL CLOSE BOND**

[To be stamped in accordance with the Stamp Act, 1899]
IRREVOCABLE AND UNCONDITIONAL FINANCIAL CLOSE BOND

BANK GUARANTEE No:

DATE:

Dear Sir,

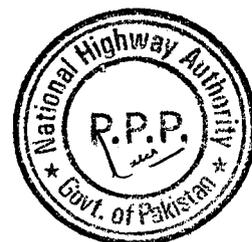
Ref: PPP Agreement for engineering, procurement, construction, finance, operations and maintenance of Kharian-Rawalpindi Motorway under Build, Operate and Transfer (BOT) Model

WHEREAS [name and legal status of the SPV] (hereinafter referred to as the "Concessionaire") has entered into PPP Agreement dated _____ for granting of a Concession for the engineering, procurement, construction, finance, operations and maintenance of the Kharian-Rawalpindi Motorway (hereinafter referred to as the "Agreement"), a requirement of which is that the Concessionaire submit a Financial Close Bond in the amount of Insert Amount.

AND WHEREAS to satisfy the afore stated requirement, this Deed of Financial Close Bond Guarantee (hereinafter referred to as the "Guarantee") is made on this ___ day of ____, 202- by [name of the bank] a banking company lawfully undertaking business in the Islamic Republic of Pakistan, having its registered office at _____ (hereinafter referred to as the "Bank" which expression shall, wherever the context so admit, include its executors, administrators and successors-in interest) in favor of the National Highway Authority (Authority).

NOW THEREFORE in consideration of Authority accepting the Bank's obligations contained in the following paragraphs for the due discharge of the Concessionaire's obligation to provide a Financial Close Bind, THE BANK, by THIS GUARANTEE AGREES TO THE FOLLOWING:

1. The Bank hereby undertakes and guarantees that it shall, on the first written demand of Authority, without any caveat, demur, protest or contest and without reference or recourse to the Concessionaire or any other person, organization or authority, pay Authority within three (3) working days, in clear funds, without any deduction or withholding on any account whatsoever, a sum of (Insert Amount).
2. The obligation of the Bank to Authority to pay the sum specified in paragraph 1 above within the time and in the manner specified therein shall be that of principal debtor in the first instance without Authority proceeding against the Concessionaire and notwithstanding any security or other guarantee Authority may have in relation to the Concessionaire's liabilities.
3. Any demand specified in paragraph 1 above, made by Authority on the Bank, will be conclusive and binding between Authority and the Bank notwithstanding any dispute or difference between Authority and the Concessionaire or any dispute pending before any court, tribunal, arbitrator or any other judicial, quasi-judicial or other authority. The Bank hereby affirms that it shall pay Authority the amount specified



in paragraph 1 above within the time and in the manner specified therein, without Authority needing to prove or show grounds or reasons for Authority's demand.

4. Any payments made to Authority shall be net and free of and without any present or future deductions such as for the payment of any taxes, executions, duties, expenses, fees, deductions or retentions regardless of the nature thereof or the authority levying the same.

5. The Bank hereby waives, to the fullest extent possible by law, any defense whether in law or equity, that may be raised to prevent or delay Authority from making a demand specified in paragraph 1 above or being paid the sum specified therein.

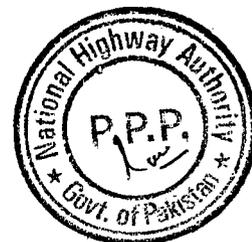
6. The Authority shall be at liberty, without affecting the Bank's obligations to the Authority contained in this Guarantee, to postpone for any time or from time to time, the enforcement of any rights accruing to the Authority against the Bank or the Concessionaire and to enforce the same at any time and in any manner and to enforce or forbear to enforce any remedies available to the Authority against the Bank or the Concessionaire. The Bank accepts that it shall not be released of its obligations to the Authority contained in this Guarantee by any exercise by the Authority of its liberty in relation to the aforesaid matters or any of them or by time or other indulgence including the granting of any waiver to either the Bank or the Concessionaire or by any variation in this Guarantee or by any other act or omission whatsoever which, under law or equity, but for this provision would have the effect of releasing the Bank of its obligations under this Guarantee notwithstanding that any such postponement, forbearance, extension of time or other indulgence, waiver, variation or any other thing was granted, made, given or happened without the consent or knowledge of the Bank.

7. The Bank hereby undertakes not to revoke this Guarantee during its currency without the prior written approval of the Authority and agrees that the obligations of the Bank under this Guarantee are continuous obligations and shall remain in full force and effect and be enforceable against the Bank notwithstanding any change in the constitution, legal status or organization of the Bank, the Concessionaire or the Authority until all dues of the Authority under or by virtue of this Guarantee have been paid by the Bank in full or until the Authority discharges this Guarantee in writing.

8. The Bank hereby affirms that it has the power and authority under its Memorandum and Articles of Association and all necessary consents and authorizations, including without limitation, those required from its board of directors, regulator or other relevant governmental body, to enter into, execute, deliver and perform the Bank's obligations under this Guarantee in favor of the Authority and that the signatory(ies) hereto has/have the capacity and power to sign and bind the Bank to the Bank's obligations contained herein under [Power of Attorney/Board Resolution] dated _____

9. The Bank hereby confirms that notwithstanding any dispute which may arise with regard to this Guarantee or otherwise upon receiving the demand in writing as specified herein it shall pay the demanded amount without any objection;

10. Notwithstanding anything contained in paragraphs 1 to 8 above, the Bank's liability to the Authority under this Guarantee is restricted to and shall remain in force up to and including ___ day of _____ 20 ___ and shall be extended for such period as may be desired by the Concessionaire.



11. The Bank's obligations as set out in this Guarantee shall be continuing obligations and shall not be modified or impaired upon the happening, from time to time, without the Bank's assent or otherwise, if any act or omission, or any circumstance or events which would otherwise discharge, impact or otherwise affect any of the Bank's obligations contained in this Guarantee.

12. No set off, counterclaim or reduction or diminution of any obligation that the Bank has or may have against the Authority shall be available to it against the Authority in connection with any of its obligations to the Authority under this Guarantee.

13. The Bank hereby declares and confirms that under its constitution and applicable laws and regulations, it has the necessary power and authority, and all necessary authorizations, approvals and consents there under to enter into, execute, deliver and perform the obligations it has undertaken under this Guarantee, which obligations are valid and legally binding on and enforceable against the Bank under the laws of Pakistan. Further that the signatories to this Guarantee are the Bank's duly authorized officers.

14. This Guarantee is limited to the sum of (Insert Amount) and shall be valid up till _____.

15. This Guarantee shall be governed by and construed in accordance with the laws of the Islamic Republic of Pakistan.

IN WITNESS WHEREOF the Bank, through duly and lawfully authorized representative(s), has executed this Guarantee on the date first written above in the presence of the witnesses mentioned below.

Signature of Authorized Signatory _____

Name and Title of Signatory: _____

Name of Firm: _____
Address: _____

WITNESSES:

1. Signature of witness - 1 _____

2. Name and Title of witness _____

3. Address: _____

4. CNIC _____

1. Signature of witness - 2 _____

2. Name and Title of witness _____

3. Address: _____

CNIC _____

