



**FINANCE DEPARTMENT
GOVERNMENT OF SINDH**

CONSULTANCY SERVICES AGREEMENT

**DEVELOPMENT OF ENVIRONMENTAL IMPACT
ASSESSMENT (EIA) AND LAND ACQUISITION AND
RESETTLEMENT PLAN (LARP) STUDIES FOR:**

- 1) GHOTKI KANDHKOT BRIDGE PROJECT;**
- 2) MALIR EXPRESSWAY PROJECT; AND**
- 3) M9-N5 LINK ROAD PROJECT**

DRAFT CONSULTANCY SERVICES AGREEMENT

This Consultancy Services Agreement (hereinafter referred to as the “**Agreement**”) is entered into at Karachi on this the ____ day of _____, 2019 (hereinafter referred to as the “**Signing Date**”) by and between:

1. The **Governor of Sindh**, acting through the **Secretary, Finance Department**, being part of the Government of Sindh, having its office at Finance Building, A.K. Lodhi Complex, Sindh Secretariat No. 6, Shahrah-e-Kamal Atta Turk, Karachi (hereinafter referred to as “**GoS**”, which expression shall include its successors-in-interest and permitted assigns);

AND

2. _____, a company incorporated under the laws of Islamic Republic of Pakistan, and having its principal place of business at _____, Pakistan (hereinafter referred to as “**Lead Advisor**”, which expression shall include its successors-in-interest and permitted assigns);

(GoS and the Lead Advisor are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”).

WHEREAS:

- A. To address the significant infrastructure requirements in an efficient and cost-effective manner, and to further enhance the private sector participation in Public Private Partnership (“**PPP**”) projects in Sindh; the Government of Sindh, through the Government of Pakistan, entered into Project Agreements with Asian Development Bank (“**ADB**”) under the Enhancing Public Private Partnerships Investments in Sindh Project dated 12th September 2017. The loan became effective on March 31, 2018 subsequent to the fulfillment of certain conditions precedent.
- B. As part of the Project, a PPP Support Facility Company (“**PSF**”) has been incorporated under section 42 of The Companies Act, 2017. Its aim is to manage the new Viability Gap Fund (“**VGF**”), thereby enhancing and improving corporate governance, transparency, and risk management of the PPP projects utilizing the VGF.
- C. In view of the above, the following three (03) mega-projects under PPP mode:
 - i. Ghotki Kandhkot Bridge Project (Works & Services Dept.);
 - ii. M9-N5 Link Road Project (Works & Services Dept.); and
 - iii. Malir Expressway Project (Local Govt. Dept.);

are being considered by the PSF for potential funding from the new VGF. As per the Environmental and Social Management System (ESMS) of PSF, approved by the PSF Board, the above three (03) projects fall under risk rating of Category – A projects. For Category – A projects, the ESMS mandatorily require to develop Environmental Impact Assessment (“**EIA**”) and Land Acquisition and Resettlement Plan (“**LARP**”) studies.

- D. Therefore, the GoS is desirous of developing EIA and LARP Studies for the above-listed three (03) projects as per ADB standards / requirements (the “**Project**”).

- E. In order to proceed further, the GoS is desirous of engaging qualified consulting firms to develop EIA and LARP studies as per ADB standards / requirements in relation to the Project, as per the Terms of Reference (defined below) and Scope of Work (defined below) of this Agreement (“**Assignment**”).
- F. The Advisory Consortium, led by the Lead Advisor, participated in the competitive bidding process as per SPP Rules, and was selected for the Assignment;
- G. The Lead Advisor in collaboration with the Consortium Members, have confirmed to GoS that they have the requisite experience and resources to undertake the Assignment for such consideration and terms given herein below.
- H. The GoS has duly accepted the Advisory Consortium, as per the SPP Rules, for undertaking the Assignment.

NOW THEREFORE, the parties hereto agree as follows:

1. Definition

In this Agreement, unless the contrary intention appears:

“**Advisory Consortium**” means collectively the members of advisory team for the Project comprising of (i) _____, (ii) _____, and (iii) _____ for the Advisory Consortium, as listed in **Schedule C**, attached hereto;

“**Agreement**” means this Agreement executed between GoS, through Finance Department and the Lead Advisor;

“**Applicable Laws**” means all applicable laws, ordinances, regulations, judgments and orders of any competent court, central bank or governmental agency, authority in any relevant jurisdiction within the Islamic Republic of Pakistan, and such other laws as may be applicable;

“**Assignment**” shall have the meaning ascribed thereto in Recital E herein above;

“**Assignment Team**” shall have the meaning ascribed thereto at 10.1 herein below;

“**Confidential Information**” means any information: i) (a) determined by the GoS to be privileged or confidential; ii) discussed in closed session by the bid evaluation committee; iii) which if disclosed would violate a person’s right to privacy; and iv) declared to be privileged, confidential or secret in terms of any law including, but not limited to, information contemplated in the relevant laws of Pakistan;

“**Consortium Members**” means and includes members of the Advisory Consortium, appointed under specific terms and who jointly agreed to undertake the specific tasks according to their field of expertise and agree to perform any specific Terms of Reference and/or Scope of Work allocated or assigned by the **Lead Advisor** for the

purposes of this Agreement;

“**Deliverable(s)**” means the deliverable(s) of the Assignment in relation to the Project, as set out under **Schedule D**.

“**Effective Date**” shall have the meaning ascribed thereto at 3.3 herein below;

“**Force Majeure**” shall have the meaning ascribed thereto at 10.1 herein below;

“**Intimation Notice**” shall have the meaning ascribed thereto at 4.4 herein below;

“**Lead Advisor**” means _____, who shall also sign this Agreement on behalf of the Advisory Consortium;

“**Performance Security**” means an amount of PKR equivalent to two percent (2%) of Advisory Fee, payable by the Advisory Consortium through the Lead Advisor to the GoS in the form of a pay order or bank guarantee;

“**Project**” shall have the meaning ascribed thereto in Recital D herein above;

“**PPP**” means Public Private Partnership;

“**PPP Unit**” means Public Private Partnership Unit established in the Finance Department, Government of Sindh;

“**Scope of Work**” means the scope of work of the Assignment to be carried out by the Advisory Consortium in relation to the Project, as listed and detailed in **Schedule B** attached hereto.

“**SPP Rules**” mean the Sindh Public Procurement Rules, 2010 (as amended from time to time);

“**Technical Proposal**” means the technical proposal in connection with the Assignment, submitted by the Advisory Consortium as part of the bid on or before the bids submission deadline;

“**Termination Date**” shall have the meaning ascribed thereto at 3.4 herein below;

“**Terms of Reference**” means the terms of reference of the Assignment required to be carried out by the Advisory Consortium in relation to the Project, as listed and detailed in **Schedule A** attached hereto.

2. Terms of Reference

- 2.1 The GoS hereby appoints the Advisory Consortium for the purpose of carrying out of the Assignment stated in the Terms of Reference (detailed in **Schedule A**) and Scope of Work (detailed in **Schedule B**), and the Advisory Consortium agrees to such appointment for such consideration as set out under clause 4.1 herein below. GoS agrees that specified portions of the Terms of Reference and Scope of Work may be delegated by the Lead Advisor to the members of the Advisory Consortium. It is further

agreed between the Parties that unless the Terms of Reference and Scope of Work is amended in writing with the mutual agreement of the Parties, the work to be undertaken by the Advisory Consortium will be restricted to the Assignment as set out in this Agreement.

- 2.2 The approach and methodology outlined in the Technical Proposal submitted by the Advisory Consortium shall be applied for the purposes of any interpretation of the Terms of Reference and Scope of Work. If any issue arises regarding interpretation of approach and methodology outlined in the Technical proposal, the Parties shall discuss and resolve the same so as to fulfill the requirements of the Assignment.

3. Effective Date and Termination Date

- 3.1 This Agreement shall become effective upon the submission of Performance Security by the Lead Advisor;
- 3.2 The Performance Security shall be valid for at least ninety (90) days beyond the satisfactory completion of the Assignment;
- 3.3 The Lead Advisor shall submit the Performance Security as soon as reasonably possible and in any event within fifteen (15) days of the Signing Date (the “**Effective Date**”).
- 3.4 This Agreement shall terminate on the earlier of: (a) earlier termination of this Agreement in accordance with the terms of this Agreement; and (b) completion of the Assignment by the Advisory Consortium (the “**Termination Date**”).

4. Fee and Payment Terms

- 4.1 In consideration of the Assignment undertaken by the Advisory Consortium in terms of this Agreement, the GoS shall pay an “**Advisory Fee**” of PKR _____/- (Pak Rupees _____ only/-) to the Advisory Consortium.
- 4.2 Subject to the other terms and conditions of this Agreement, all payments due by the GoS to the Advisory Consortium shall be paid within thirty (30) days from the date of approval or deemed approval of the relevant reports by the GoS.
- 4.3 The GoS shall be obliged to approve or reject reports within twenty-eight (28) days from the date of submission by the Advisory Consortium. In the event that a report is rejected or approval is delayed, the GoS shall be obliged to give the reasons provided however, in the event the GoS fails to approve or reject reports within twenty-eight (28) days from the date of submission by the Advisory Consortium, the Lead Advisor shall send an intimation notice to the GoS (the “**Intimation Notice**”) with a copy to PPP Unit giving an additional fourteen (14) days to the GoS to approve or reject the relevant reports, which shall otherwise be deemed approved by the GoS;
- 4.4 In the event, the relevant reports are re-submitted by the Advisory Consortium in light of the changes proposed by the GoS in accordance with clause 4.3 herein above, the GoS shall be obliged to approve or reject reports within twenty-eight (28) days from the date of re-submission by the Advisory Consortium.
- 4.5 The Advisory Consortium shall be responsible for financing its activities until such

time as payment is effected by the GoS. Each Consortium Member shall submit its detailed invoice to the Lead Advisor, upon completion of respective Deliverable, as specified in **Schedule D**. The Lead Advisor shall then send all the invoices to the GoS along with a covering letter from the Lead Advisor with a break-up of payments to each member of the Advisory Consortium. In order to avoid duplication of withholding tax, the GoS shall make payment to each Consortium Member separately.

- 4.6 In relation to all payments to be made to each or any of the Consortium Members in relation to this Agreement the same shall be made through a demand draft or crossed cheque in favour of the said party(ies), issued by a scheduled bank in Pakistani Rupees;
- 4.7 Any amendment to this Agreement, including Terms of Reference and/or Scope of Work, shall only become effective once the Parties have mutually agreed to such amendments/changes in writing, stating any revisions in the Advisory Fee and the completion timelines of the Deliverables (specified in **Schedule D**), in accordance with the SPP Rules. Any such changes/amendments may be recorded by way of an amendment(s) to this Agreement;
- 4.8 The Advisory Fee due and payable by the GoS to the Advisory Consortium shall be a fixed fee/amount, subject to any revisions/adjustments in the same as a result of any amendment(s) to this Agreement, including Terms of Reference and/or Scope of Work, in accordance with clause 4.7 herein above.

5. Representation and Warranties

- 5.1 The GoS hereby represents and warrant to the Lead Advisor that:
- 5.1.1 It has all the necessary authorization, mandate and capacity to execute this Agreement with the Lead Advisor;
- 5.1.2 It has all the necessary authorization, mandate and capacity to award the Terms of Reference and Scope of Work to the Advisory Consortium pursuant to this Agreement;
- 5.1.3 This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof; and
- 5.1.4 It is subject to the laws of Pakistan, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder.
- 5.2 The Lead Advisor, on behalf of the Advisory Consortium, represents and warrants to the GoS that:
- 5.2.1 It has, in collaboration with its Consortium Partners, all necessary knowledge base, human and material resources to undertake the Assignment according to the best international practices;

- 5.2.2 It has all necessary warranties from Consortium Partners confirming that they have the necessary professional, intellectual and material resources to undertake their respective parts of the Terms of Reference and Scope of Work in connection with the Assignment;
- 5.2.3 It has all necessary consent from Consortium Partners to accept the Assignment, abide by the terms of the Agreement and that they shall perform their respective parts of work professionally and according to the international best practices;
- 5.2.4 This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- 5.2.5 It is subject to the laws of Pakistan, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder; and
- 5.2.6 No representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any government department pursuant to this Agreement contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

5.3 Disclosure

- 5.3.1 In the event that any occurrence of circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

6. Obligations of the Parties

6.1 The GoS undertakes:

- 6.1.1 to remunerate the Advisory Consortium with the Advisory Fee for undertaking the Assignment, in the accordance with clause 4.1 herein above;
- 6.1.2 to use its reasonable endeavors to ensure that the Advisory Consortium has timely and adequate access to all information, personnel and documentation that will be required by the Advisory Consortium to undertake the Assignment;
- 6.1.3 to inform the Advisory Consortium of any information or developments which may come to their attention during the term of this Agreement, which may have a bearing on or be relevant to the Assignment; and

6.1.4 to comply with all the Applicable Laws.

6.2 The Lead Advisor, on behalf of the Advisory Consortium, undertakes:

- 6.2.1 to undertake the Assignment using reasonable skill and care in accordance with applicable professional standards;
- 6.2.2 to devote time and attention in providing the Deliverables and not engage in any business or activity that will prevent the Advisory Consortium from undertaking the Assignment;
- 6.2.3 to ensure that no conflict of interest materializes, and in the event of a conflict of interest arising, to immediately advise the GoS of the same, upon which advice the GoS shall, in its sole and absolute discretion, decide whether to proceed with this Agreement or to terminate it forthwith. Failure by the Advisory Consortium to advise the GoS of any conflict of interest shall amount to a material breach of this Agreement and shall entitle the GoS to terminate this Agreement forthwith;
- 6.2.4 to undertake the Assignment in accordance with the Terms of Reference, Scope of Work, and Deliverables and timeframes, as set out in this Agreement, annexed hereto, or as may be amended from time to time with the mutual written consent of the Parties;
- 6.2.5 that all actions and commitments agreed upon or pursuant to the project management committee meetings, bid evaluation committee meetings and/or agreed to with the project director/officer, shall be strictly adhered to;
- 6.2.6 to maintain the Assignment Team, as identified by the Advisory Consortium in its Technical Proposal, during the term of this Agreement, as detailed in **Schedule C**;
- 6.2.7 to observe neutrality and objectivity in its views and opinions; and
- 6.2.8 to comply with all the Applicable Laws.

7. Communication

- 7.1 Any and/or all communication between the Parties shall be in writing delivered through some established credible medium, which shall include email. Deliverables of the Assignment shall be shared with the GoS in both hard and soft copy form.
- 7.2 All communications between the Parties shall be sent to the respective key contact persons stated at clause 6.3 herein below. In addition, any other person(s) or official(s) of the Parties may notify each other or the person(s) or official(s) to whom it is necessary and obligatory to send that communication.
- 7.3 The respective key contact persons for communication shall be:

<i>For GoS</i>	<i>For Advisory Consortium</i>
Mr. Zain Fawzi	

<p>Director (Finance) PPP Unit, Finance Department. 7th Floor, A.K. Lodhi Complex, Sindh Secretariat No. 6, Shahrah-e-Kamal Atta Turk, Karachi.</p> <p>Phone: 021-99222186</p> <p>Email: zain.fawzi@pppunitsindh.gov.pk</p>	<p>Name: Designation: Address:</p> <p>Phone:</p> <p>Email:</p>
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7.4 Either Party may change its address to any physical address and fax number for this purpose, by an advance notice in writing to the other Party provided that such notice shall take effect 15 days following receipt of such notice by the other Party.

8. Reporting/Deliverables

8.1 The Advisory Consortium's reporting will be based on Deliverables, as described in **Schedule D** attached hereto;

8.2 The Advisory Consortium shall provide GoS with the Deliverables described in **Schedule D** during the course of the Assignment;

8.3 The outcome of the Project is to complete the Assignment as per the Terms of Reference and Scope of Work set out under **Schedule A** and **Schedule B** respectively;

8.4 While each submission of the Deliverables shall address different aspects of the Assignment that the Advisory Consortium shall perform, the final report shall take into consideration the outputs in accordance with the Terms of Reference and Scope of Work from earlier work products submitted by the Advisory Consortium to the GoS in accordance with this Agreement;

8.5 The GoS shall be obliged to approve or reject reports within twenty-eight (28) days from the date of submission by the Advisory Consortium. In the event that a report is rejected or approval is delayed, the GoS shall be obliged to give the reasons provided however, in the event the GoS fails to approve or reject reports within twenty-eight (28) days from the date of submission by the Advisory Consortium, the Lead Advisor shall send an intimation notice to the GoS (the "Intimation Notice") with a copy to PPP Unit giving an additional fourteen (14) days to the GoS to approve or reject the relevant reports, which shall otherwise be deemed approved by the GoS;

8.6 In the event, the relevant reports are re-submitted by the Advisory Consortium in light of the changes proposed by the GoS in accordance with clause 4.3 herein above, the GoS shall be obliged to approve or reject reports within twenty-eight (28) days from the date of re-submission by the Advisory Consortium;

8.7 The Advisory Consortium shall be under no obligation to update any report for events occurring after the report has been provided in its final form.

9. Access

- 9.1 For undertaking the Assignment, the Advisory Consortium will have access to the Project site(s) and, where applicable and available, the surveys and/or studies which would facilitate the Advisory Consortium in connection with this Agreement;
- 9.2 The GoS agrees that it shall notify the Lead Advisor as soon practicable of any change in any material information previously made available to the Lead Advisor or the Advisory Consortium, which comes to the attention of the GoS;
- 9.3 The GoS shall arrange access to and discussions with the relevant officers and officials of the GoS, on, as well as off the Project site(s), in addition to coordinating visits to the Project site(s);
- 9.4 The Lead Advisor shall not be under any obligation, to provide such information and/or the disclosure of which would breach any Applicable Laws, any regulation of any governmental supervisory or regulatory authority, the internal rules and/or regulations of the Advisory Consortium, the terms of any agreement to which the Advisory Consortium or any member thereof are/is a party, or any duty of confidentiality that the Advisory Consortium or any member thereof owes to a third party;
- 9.5 The GoS shall provide guidance and assistance, in the establishment of the liaison and obtaining relevant information/ studies from the concerned governmental agencies, consultants and other stakeholders. In case of absence or non-availability of any such information, however, the Advisory Consortium shall rely mainly on its own sources of information. In no event however, shall the Advisory Consortium be responsible for the completeness and accuracy of information collected from the GoS or other third parties. It is however, agreed by the Advisory Consortium that only authenticated information shall be relied upon, that is, if the information is either signed by the agency concerned or if it is issued/made public with the approval of the same. (The sources like Wikipedia.com shall not be considered authentic even if the reference for information therein is made to a government agency).

10. Assignment Team

- 10.1 The key professional staff engaged by the Advisory Consortium for the Assignment is listed under **Schedule C** of this Agreement (the “**Assignment Team**”);
- 10.2 Except as the GoS may otherwise agree, no changes shall be made in the Assignment Team. If, for any reason beyond the reasonable control of the Advisory Consortium, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any personnel of the Assignment Team, the Advisory Consortium shall provide as a replacement a person of equivalent or better qualifications with the approval of the GoS;
- 10.3 If the GoS finds that any of the personnel of the Assignment Team has (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the personnel of the Assignment Team, then the Advisory Consortium shall, at the GoS’

written request specifying the grounds thereof, provide as a replacement a person of equivalent or better qualifications with the approval of the GoS;

- 10.4 The Advisory Consortium shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of any personnel of the Assignment Team.

11. Term, Termination and Survival

- 11.1 The appointment of the Advisory Consortium in terms of this Agreement shall automatically terminate upon Termination Date. During the stated period the Advisory Consortium shall endeavor to facilitate the GoS in the timely completion of the Assignment relating to the Project;

- 11.2 Either Party may terminate this Agreement upon written notice if the other Party is in breach of its obligations as contained in this Agreement and such breach is not cured within sixty (60) days following receipt of written notice thereof by the non-breaching Party;

- 11.3 The GoS may terminate this Agreement upon written notice if (i) any of the Consortium Members becomes insolvent or bankrupt during the term of the Agreement; ii) in the event of a conflict of interest in line with clause 6.2.3 herein above; and iii) any of the Consortium Members, in the judgment of the GoS, has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices while competing in the bidding process and/or in execution of the Agreement;

- 11.4 Termination of this Agreement (a) shall not relieve the Advisory Consortium or the GoS of any obligations hereunder which expressly or by implication survive Termination hereof; (b) shall not relieve the GoS for making payment of the Advisory Fee or any part thereof and any other amounts due and payable in terms of this Agreement; and (c) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations that have already arisen or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

12. Force Majeure

- 12.1 For the purposes of this Agreement, “Force Majeure” means an event which is beyond the reasonable control of Advisory Consortium, and which makes a performance of its obligations under this Agreement impossible or so impractical as to be considered impossible under the circumstances;

- 12.2 The failure of Advisory Consortium to fulfill any of its obligations under this Agreement shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Advisory Consortium affected by such an event:

12.2.1 has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Agreement; and

12.2.2 has informed the GoS as soon as possible about the occurrence of such an event;

12.3 Any period within which the Advisory Consortium shall, pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which the Advisory Consortium was unable to perform such action as a result of Force Majeure.

13. Dispute Resolution and Arbitration

13.1 In the event of any dispute or claim arising out of or relating to this Agreement or a breach hereof, the Parties shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to the parties. If the Parties fail to settle the dispute or claim at the expiration of thirty (30) days from the date of such dispute or claim, the matter will be referred to a sole arbitrator to be appointed with the mutual consent of the Parties within fifteen (15) days from the date of receipt of a notice of arbitration served by any Party hereto. In case the Parties fail to agree on sole arbitrator within the said period, the matter shall be referred to two arbitrators, within ten (10) days from the date of such failure, one to be appointed by each of the Parties to dispute and to an Umpire to be appointed by the arbitrators before entering upon the reference. The sole arbitrator or the arbitrators and Umpire shall proceed to arbitrate in accordance with and subject to the provisions of the Arbitration Act, 1940 or any statutory modification or reenactment thereof for the time being in force.

13.2 The Parties agree that:

13.2.1 all arbitration proceedings will take place in the jurisdiction of the Sindh province and the seat of arbitration shall be in Karachi, Sindh;

13.2.2 except as may be required by law, neither a party nor its representatives may disclose the existence, content or results of any arbitration hereunder without the prior written consent of all Parties;

13.2.3 the language of the arbitration shall be English;

13.2.4 it is the intent of the Parties that, barring extraordinary circumstances, arbitration proceedings will be concluded within a period of one hundred and twenty (120) days from the date of appointment of the arbitrator. The arbitral tribunal may extend this time limit in the interests of justice. Failure to adhere to this time limit shall not constitute a basis for challenging the award;

13.2.5 the decision of such arbitration to award or awards made by such arbitrator(s) and Umpire shall be final and binding upon the Parties hereto without appeal to any court or other Party(s);

13.2.6 pending the decision or award, the Parties shall continue to perform their obligations pursuant to this Agreement;

13.2.7 this article/clause shall continue in force notwithstanding the termination of this Agreement;

13.2.8 resorting to arbitration shall be a condition precedent to any legal proceedings through a Court of law; and

13.2.9 should arbitration occur relating to the provisions of this Agreement, each Party shall bear its own expenses, including witness and representation fees.

14. Miscellaneous

14.1 Assignment and Charges

14.1.1 Except with regards to services to be executed and reports to be submitted by other members of the Advisory Consortium, the Lead Advisor shall not assign this Agreement or any part hereof except with prior consent in writing of the GoS, which consent the GoS shall be entitled to decline without assigning any reason whatsoever. Notwithstanding the generality of this clause, nothing herein shall restrict the ability of the Lead Advisor to delegate any part of the services to members of the Advisory Consortium.

14.2 Confidentiality

14.2.1 Neither Party shall during the term of this Agreement (“Receiving Party”), without the prior written consent of the other Party (“Disclosing Party”), disclose any proprietary or Confidential Information relating to the Assignment, this Agreement or the business or operations of the Disclosing Party to anyone other than those persons who are connected to the Receiving Party and who are required or authorized to have access to such information. Notwithstanding anything contained in this Agreement, the Advisory Consortium shall be at liberty to disclose all information as may be required to the members of the Advisory Consortium;

14.2.2 The obligation to maintain the confidentiality of information shall survive the termination of this Agreement, but will not apply to Confidential Information which was in the public domain prior to being disclosed by the Advisory Consortium and has come into the public domain other than as a result of being divulged by the Receiving Party. The provisions of this clause 16 shall not apply to any information that is disclosed or that is required to be disclosed pursuant to the Applicable Laws.

14.3 Ownership of Material and Intellectual Property

14.3.1 Any and/or all studies, reports, documentation or other material including graphic, software or otherwise, produced by the Advisory Consortium in performance of the Assignment under the Agreement shall belong to and remain the sole property of the GoS. The Lead Advisor and/or the Consortium Members may retain copies of any such material with approval of the GoS.

14.4 Liability and Indemnity

- 14.4.1 The Advisory Consortium shall indemnify, defend and hold the GoS harmless against any and all proceedings, actions and third party claims arising out of a breach by the Advisory Consortium of any of its obligation under this Agreement except to the extent that any such claim has arisen due to the event of GoS default;
- 14.4.2 The GoS shall indemnify, defend and hold harmless the Advisory Consortium and its members against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of a breach by the GoS, its officers, servants and agents of any obligations of the GoS under this Agreement except to the extent that any such claim has arisen due to the event of Advisory Consortium's default or negligence;
- 14.4.3 Without limiting the generality of clause 14.4.1 herein above to this Agreement, the Advisory Consortium shall fully indemnify, save harmless and defend the GoS including its officers servants, agents and subsidiaries from and against any and all loss and damages arising out of or with respect to (i) a failure of the Advisory Consortium to comply with Applicable Laws (including intellectual property laws of Pakistan) and applicable permits or (ii) a failure on the part of the Advisory Consortium to make any payments of amounts due as a result of materials or services furnished to the Advisory Consortium or any of its sub-contractors which are payable by the Advisory Consortium or any of its sub-consultants except where such failure to pay occurs due to a non-payment by the GoS to the Advisory Consortium;
- 14.4.4 Without limiting the generality of clause 14.4.2 herein above, the GoS shall fully indemnify, save harmless and defend the Advisory Consortium including its officers servants, agents and subsidiaries from and against any and all loss and damages arising out of or with respect to (i) a failure of the GoS to comply with Applicable Laws and applicable permits or (ii) a failure on the part of the GoS to make any payments of amounts due to the Advisory Consortium except where such failure occurs due to the event of Advisory Consortium's default or negligence;
- 14.4.5 The GoS agrees that the Advisory Consortium, its partners, principals, and employees shall not be liable to the GoS for any actions, damages, claims, liabilities, costs expenses, or losses in any way arising out of or relating to the Assignment for an aggregate amount in excess of the fees paid by the GoS to the Advisory Consortium under this Agreement up to the date of the claim. In no event shall the Advisory Consortium, its partners, principals, or employees be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs) in connection with the Assignment. The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including, without limitation, negligence), or otherwise;
- 14.4.6 The GoS hereby indemnifies and agrees to hold the Advisory Consortium harmless from and against any and all liabilities suffered or incurred by, or

brought or threatened to be brought or entered or enforced against the Advisory Consortium which arise out of matters or transactions contemplated by, or consequent upon the Lead Advisor's and the members of the Advisory Consortium's engagement under the terms of, this Agreement. The liabilities to which this paragraph applies shall include costs of investigating, defending, preparing a defense and disputing any liability and costs incurred in establishing any claim against any other person or in mitigating any loss and shall be additional to any rights which the Advisory Consortium may have at law. This indemnity shall not be affected in any way by any enquiry or investigation which the Advisory Consortium may have conducted into any matter;

14.4.7 The GoS confirms that the indemnity provided by the Advisory Consortium is subject to the following; (a) each Consortium Member shall be severally liable and responsible for its own Deliverables as per the Terms of Reference and Scope of Work detailed in **Schedule A** and **Schedule B** respectively, (b) the Consortium Members shall not be deemed to be in partnership and their liability at all times shall be several and; (c) no Consortium Member shall be responsible nor liable for the Deliverables or the contents of the Deliverables of any other Consortium Member;

14.4.8 Notwithstanding anything to the contrary contained in this Agreement, the maximum aggregate liability of each member of the Advisory Consortium, under this Agreement shall be restricted to the total fee paid by the GoS to such member of the Advisory Consortium for the Deliverables as per the Terms of Reference and Scope of Work assigned to such member of the Advisory Consortium, as described in **Schedule A** and **Schedule B** respectively.

14.5 **Governing Law and Jurisdiction**

14.5.1 This Agreement shall be construed and interpreted in accordance with and governed by the laws of Islamic Republic of Pakistan and the Courts of appropriate jurisdiction in the Province of Sindh shall have the exclusive jurisdiction over all matters arising out of or relating to this Agreement.

14.6 **Waiver**

14.6.1 No waiver by a Party of any right under this Agreement shall be effective unless reduced to writing and signed by or on behalf of all the Parties;

14.6.2 Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement shall not:

14.6.2.1 operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;

14.6.2.2 be effective unless it is in writing and executed by a duly authorized representative of such Party; and

14.6.2.3 affect the validity or enforceability of this Agreement in any manner.

14.6.3 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

14.7 Amendments

14.7.1 This Agreement and the Schedules (listed in Article 15 herein below) together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

14.8 Severability

14.8.1 If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

14.9 Exclusion of Implied Representations and Warranties

14.9.1 This Agreement expressly excludes any representation, promise, warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by any Party not contained in this Agreement executed by the Parties.

14.10 Counterparts

14.10.1 This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

15. Schedules to the Agreement

15.1 The following schedules shall form an integral part(s) of this Agreement:

- Schedule A – Terms of Reference
- Schedule B – Scope of Work
- Schedule C – Assignment Team
- Schedule D – Deliverables, Timelines and Payments

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement as of the date first above written.

[Signature Page Follows]

For and on behalf of **Finance Department, Government of Sindh** through its authorized signatory:



SIGNATURE

Name:
Designation:

.....

in the presence of:
signature of witnesses

SIGNATURE

1- Name:
Address:
NIC No:

.....

2- Name:
Address:
NIC No:

.....

For and on behalf of the **Advisory Consortium** through its authorized signatory:



SIGNATURE

Name:
Designation:

.....

in the presence of:
signature of witnesses

SIGNATURE

1- Name:
Address:
NIC No:

.....

2- Name:
Address:
NIC No:

.....

SCHEDULE A- TERMS OF REFERENCE

BACKGROUND AND RATIONALE FOR THE ASSIGNMENT:

The Government of Sindh (GoS) intends to develop a batch of infrastructural projects comprising the i) Ghotki Kandhkot Bridge with approach roads (approx. 31 Km); (ii) Malir Expressway Project (approx. 39 Km); and (iii) M-9-N5 Link Road Project (approx. 22 Km) through the Public Private Partnership ('PPP') modality, with possible financial support from Public Private Partnership Support Facility (PSF). The Project briefs for all three projects are presented in subsequent paragraphs.

The PSF is a Public Sector Company of the Government of Sindh, incorporated under Section 42 of the Companies Ordinance 2017. The PSF is expected to manage a Viability Gap Fund ('VGF') for the Sindh Government. The financing for the VGF is also augmented by USD 100 million support from the ADB, complemented by grant funds from the Department for International Development, Government of the United Kingdom (administered by the ADB).

The PSF has established its Environmental and Social Management System (ESMS) for the effective management of environmental and social risks pertaining to Involuntary Resettlement ('IR') and Indigenous Peoples ('IP') that are in line with the National Legal Framework and ADB's Safeguard Policy Statement 2009 (SPS). Thus, all candidate PPP projects requiring VGF support from the PSF require conducting Environmental Impact Assessment or Initial Environmental Examination or Environmental Checklist (as the case may be) with regards to Environmental Safeguards, and preparation of Land Acquisition and Resettlement Plans ('LARPs') with regards to social safeguards as enshrined in the approved ESMS.

During initial environmental and social safeguard screening of the aforementioned projects, the GoS observed the following:

1. All three projects fall under Schedule II of the Sindh Environmental Protection Agency (Review of Initial Environmental Examination and Environmental Impact Assessment) Regulations, 2014. Therefore, all three projects will require the preparation of an EIA study in order to obtain the No Objection Certificate (NOC) from SEPA.
2. The project roads for LRP and MEX are sited through outskirts of Karachi Metropolis, while project road for GKB will link major urban centers on two National Highways (N-5 and N-55), separated by Indus River. The GKB and MEX projects are green-field projects, requiring acquisition of land for ROW in accordance with preliminary / detailed design of the projects, while LRP project will partly follow existing ROW / alignment of N-5 and M-9 link road and partly will be through green fields as per preliminary design.
3. The acquisition of land for project roads ROW navigating through agricultural and commercial land parcels, built-up areas and rural settlement will result in Involuntary Resettlement (IR) related significant impact due to lost land, shelter and productive assets. Therefore, as per PSF's ESMS and ADB's SPS 2009 requirements, all three project roads are likely to be classified as IR Category A for which a LARP in line with ToR explained at Section 5.5.2 is required.
4. Furthermore, the risk for identification of Indigenous People ('IP') in the project road corridors for all three aforementioned projects is not perceptible, therefore the project roads are likely to be classified as Category C for IP category.

Objectives of the Assignment:

In view of the above, the GoS intends to engage the services of a qualified consulting firm or a consortium, as the case may be, for conducting (i) EIA studies for each of the aforementioned three projects that meet both the Sindh EPA requirements and the ADB SPS requirements for Environmental

Category 'A' projects, and (ii) LARP studies for each of the aforementioned three projects by conducting screening and detailed assessment of IR impacts (including the encroachers/squatters and other un-titled persons who may be displaced physically or economically) of the projects and preparation of LARPs that comply ADB requirement are required.

Keeping in mind the complexity of these projects, the selected firm will need to engage a complete team of experts with considerable experience in conducting EIA and LARP studies for projects of this scale.

INDIVIDUAL PROJECT BRIEFS:

Ghotki – Kandhkot Bridge Project ('GKB')

The proposed GKB is an important infrastructure project in the communication sector that is to be constructed over the river Indus. The distance between Kandhkot and Ghotki via Guddu Barrage, is 151 km and via Sukkur it is around 170 Kms. A bridge connecting Ghotki and Kandhkot will reduce this distance to 30 km approximately. This will greatly reduce travel time and significantly boost economic activity in this region.

The project comprises of:

- a) Approximately 30.2 Kms long 2-Lane highway including 4-lane bridge over River Indus (of length approximately 2.15Kms)
- b) Approximately 4.5 Kms long 2-Lane link highway starting from West of Kandhkot Town on existing Indus Highway (N-55) and ending on exiting Thull Road, Kandhkot District

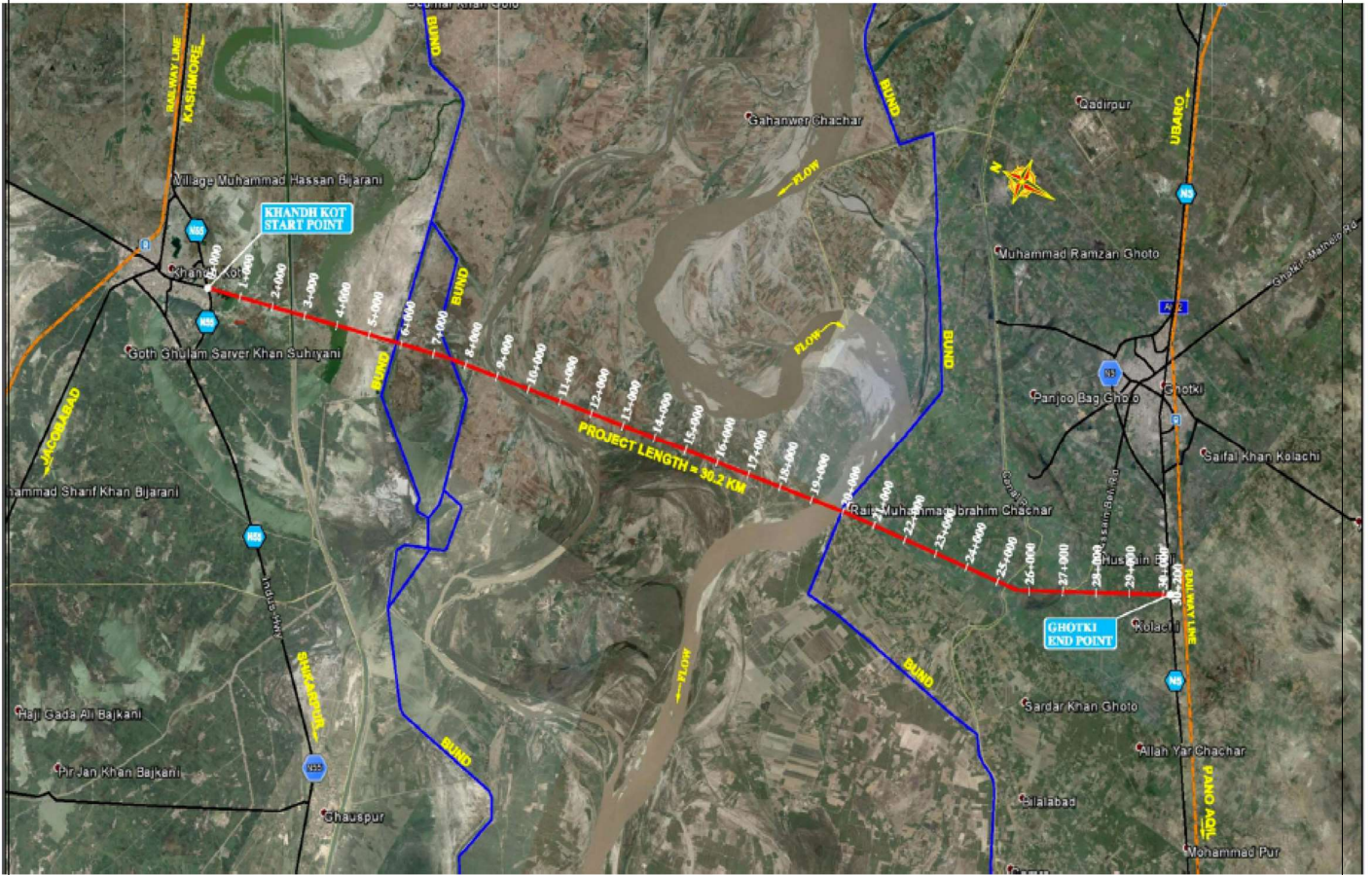
The proposed bridge shall cross over the Indus River, which is a legally protected area and holds the largest population of the Indus river dolphin, apart from being an important bird area and an internationally registered Ramsar site.

The GKB starts on National Highway (N5) approximately 5.28 km south west of Ghotki and ends at Indus Highway (N55) in the area of Kandhkot. The proposed works will comprise of:

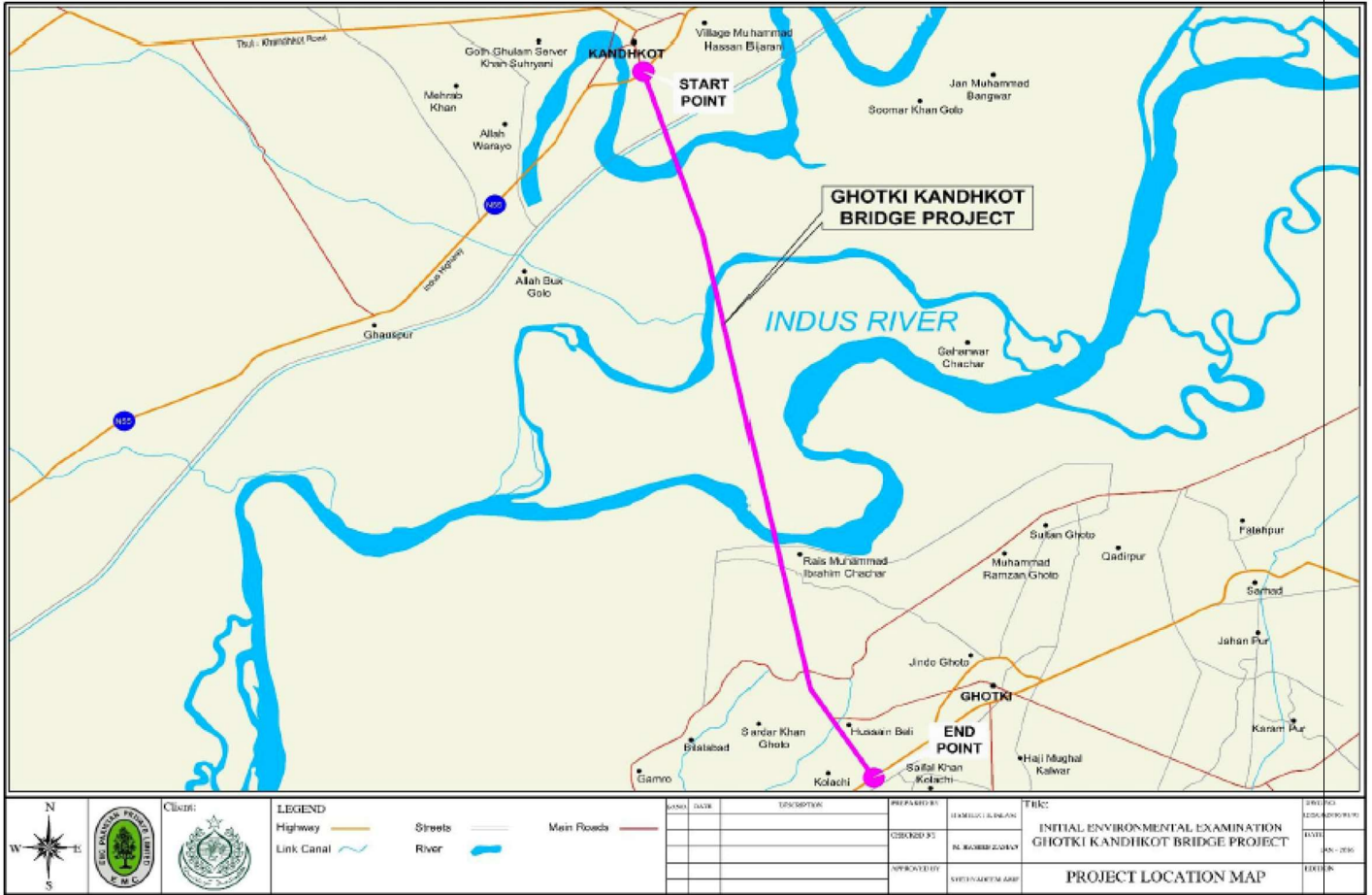
- Construction of Road 32.50km approx. (43.6 ft. wide)
- 4 lane Bridge over River Indus of length approximately 2.15 km (19.8 m wide approx.)

The location maps are provided as **Annexures I and II**.

Annexure I – Location of GKB



Annexure II – Microenvironment of GKB Project



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Scope of Work (Ghotki – Kandhkot Bridge Project)

Detailed Tasks and/or Expected Output

The consulting firm or consortium, as the case may be, shall conduct a comprehensive EIA study, consisting of the following tasks:

- i. **Project Categorization:** Undertake the project environmental categorization procedures as per national guidelines and ADB Safeguard Policy Statement (SPS) 2009 for the project to screen potential environmental impacts, temporary and permanent impacts to the environment (particularly aquatic and terrestrial ecology, flora, protected areas and areas with archaeological value), and potential risks such as release of toxic and hazardous chemicals etc. A rapid environmental assessment checklist will be applied and provided as an appendix to the Environmental Impact Assessment (EIA), which will take into account findings of Integrated Biodiversity Assessment Tool (IBAT) for biodiversity assessment;
- ii. **Project Scheduling:** Prepare a schedule for the completion of the environmental assessment of the project, taking into account the environmental categorization and the level of assessment required. The schedule should take into account ADB's public disclosure requirements;
- iii. **Scoping:** Prepare a scoping study identifying key issues associated with the project and providing information about (a) the general environmental settings of the project area, particularly considering the ecological sensitivities of the project setting and (b) potential impacts of the project and the characteristics of the impacts, magnitude, distribution, sensitive receptors and affected groups, and their duration. This study should (a) assess alternatives for the project considering costs and benefits in terms of financial, social, and environmental issues, and (b) review any available baseline data and identify significant gaps. The gap analysis should identify the new monitoring of environmental conditions that will be required.
- iv. **Baseline Monitoring:** Conduct detailed monitoring of following parameters by engaging a SEPA accredited laboratory:
 - **Water Quality**
Water sampling locations in the project area, both upstream and downstream of the proposed bridge site must be identified and approval of these locations must be obtained from PSF prior to mobilization of laboratory staff to the field.
 - **Underwater Noise Survey**
Baseline monitoring of the underwater noise levels in the project area during day and night times will need to be conducted to record the pre-construction underwater noise levels.
 - **Air Quality**
Monitoring on 24 hourly basis of air quality in the project area must be conducted. Approval of the proposed monitoring locations by PSF must be obtained prior to mobilization of laboratory staff to the field.
- v. **Modeling of Underwater Noise levels:** An internationally acceptable noise modeling software such as AcTUP must be used for conducting the underwater noise modeling for project construction and operation phases. Experts well versed with AcTUP or an equivalent model must be engaged to conduct this modeling exercise, which must be based on internationally accepted methodology.
- vi. **Ecological Surveys:** Conduct detailed ecological and terrestrial surveys in the project area and perform the following tasks:

Study Area

- Studies on aquatic communities, both upstream and downstream of the proposed sites, particularly Indus River dolphins and fish fauna specifically between Guddu and Sukkur.
- Studies on terrestrial communities, including avifauna of the adjacent areas of the project sites

Scope

Physical description of the study area(s), water quality, habitat classification and characterization along with the study of the following disciplines:

A: Aquatic fauna

- Report on overall aquatic mammals and Fish Fauna of the project area(s) with particular focus on Indus River dolphins and fish fauna between Guddu and Sukkur;
- Report on the Benthic Fauna of the river in up and downstream area of the project area(s);
- Categorization of the fish species of special importance in the project area(s);
- Categorization of Benthic Fauna of special importance in the project area(s);
- Possible impacts of the project on migration, breeding and feeding behavior of fish;
- Possible impacts of the project on the Benthic Fauna of the project area(s);
- Mitigation steps to avoid any possible impacts of the project on the aquatic mammals and fish fauna and the Benthic Fauna;
- Any potential 'Bio-acoustic' impacts on aquatic mammals and fish of the Indus river need to be clearly presented. (In case 'pile driving' will be used during construction works, it can have significant impacts on Indus dolphins).

B: Terrestrial Fauna (Mammals, Avifauna, Reptiles)

- Report on the Mammals (both, Small and Large Mammals), Avifauna and Reptiles of the project area(s);
- Determination of dependency of the Mammals, Avifauna and Reptiles on the project area(s);
- Mitigation steps to avoid any possible impacts of the project on the Terrestrial Fauna, including any fauna located in protected areas.

Tasks:

A: Literature Review

- Review of the available literature to provide an overview of the fish ecology, taxonomy and behavior
- Review of the available literature to provide an overview of the ecology, taxonomy and behavior of terrestrial fauna
- Utilization of past experience of the Consultant in the study area on various aspects of different animal groups for compilation of report on ecological baseline.

B: Preparation and submission of Study Methodology

- Type of surveys to be conducted;
- Data to be collected;
- Rationale and timing of surveys;
- Sampling procedures;
- Development of data forms;
- Type of analysis to be performed inclusive of calculation procedures;
- Limitations of surveys if any.

C: Conducting Field Surveys and Compilation of Data

- Sampling and collection of data in the field according to approved methodology;
- Analysis of data and correlate it with the project activities.

vii. Other Critical Issues

- The possibility of floods and their impact on the project will need to be assessed and presented in detail.
- Effect of project works on any wetlands that are lying on the approaches to the Indus river will need to be assessed in detail.

viii. EIA report preparation:

- A comprehensive EIA report must be prepared that should strictly follow environmental assessment requirements and outline format and content, as laid out in ADB's Safeguards Policy Statement (SPS), 2009.
 - The EIA report must clearly present the following aspects related to ecological aspects:
 - i. Introduction of the ecological study area with background knowledge;
 - ii. Ecological study methodology;
 - iii. Results including the species occurrence, distributional patterns, relative abundance, endemism, species of special concern, conservation status of different species, taxonomic checklist of species with local, English and scientific names, identification of possible impacts along with their mitigation measures, photographs of the selected species along with other relevant information;
 - iv. Submission of report on ecological baseline on a standard format with references, contents, tables, figures, graphs etc.;
 - v. Determine costs of the proposed environmental mitigation measures, and appraise the level of cost against expected environmental benefits;
 - Assess and present the alternatives considered relating to site selection, project design, construction methodology etc.;
 - Undertake public consultations to meet SEPA and ADB public disclosure requirements. The results of these consultations should be documented in the EIA study. Mainly four groups of stakeholders are expected to be consulted: (a) local communities including all affected households, (b) livelihoods to be affected (such as fishermen), (c) civil society, (d) government and local government bodies, and (e) private sector bodies, if relevant;
 - Identify risks and incorporate appropriate mitigating measures into the project design;
 - Prepare contractor specifications for environmental management and monitoring;
 - The EIA study requires an Environmental Management Plan (EMP) with detailed monitoring plans, covering all stages of project design and implementation. The EIA report must also include institutional arrangements needed to implement the EMP.
- ix. Acquiring NOC from SEPA:** Submission of EIA report (based on Detailed Design) to SEPA as per their procedures, including but not limited to, payment(s) of any applicable fees, public hearing(s), to obtain NOC from SEPA.

Malir Expressway Project ('MEX')

Located along the shores of Arabian Sea, Karachi is Pakistan's gateway and the largest metropolitan city. It is the capital of Sindh province and also the country's main seaport, economic and financial center sprawling over an area of about 3500 square kilometer. Like other major port cities and commercial centers in the World, Karachi also attracts people from all over the country and beyond in search of better economic prospects. Therefore, due to this high rate of in-migration, the population of this fast-expanding megacity has been growing annually by 4.2% since 1998. According to JICA Study 2012, Karachi Transport Improvement Plan - Final Report, it is projected to grow from 18.9 million in 2010 to around 31.6 million in 2030 and would thereby make it the fastest growing city in the World.

This rapid increase in population has put a lot of pressure on the city's infrastructure especially the urban transport system (UTS) which is not yet organized in a modern manner, and therefore barely caters to the mobility needs of the mega city. With limited infrastructure and low level of public services coupled with other factors such as weak traffic management, lack of modern mass transit network, a rapid level of motorization of roads has been observed during the last two decades resulting in severe traffic congestion and unnecessary delays, noise and air pollution along the main corridors of travel in the city and impeding the economic efficiency and growth.

Government of Sindh has envisaged the construction of the Project Expressway on Malir River, which will facilitate thousands of commuters and heavy traffic of Karachi port, Korangi industrial area, Landhi industrial area, steel mills, Port Qasim and other such areas towards upcountry through the national and super highways. It is also expected that the improved facility would help open these areas for creation of infrastructure such as better services for schools and health sectors, as these areas would become more accessible. The Malir Expressway Project will be one of the most strategic economic corridors of the city which on one hand provides a strategic link to the M-9 and on the second it is the main passageway to DHA Phase-9, Bahria Town, Education City, and several real estate schemes in the vicinity of M-9.

Upon its completion, the travelling time from the Karachi-Hyderabad Motorway, M-9 to KPT interchange on the main Korangi Road (Formerly known as the Hino Chowk) will be reduced to only 30 minutes. Therefore, the daily commutation between Karachi Port, Industrial areas of Landhi and Korangi, and also between the CBD area, Clifton and DHA (Phase 1 to 8) and the proposed DHA City & the Education City would be more convenient, uninterrupted and economical. The traffic conditions on the urban road network in Karachi would also improve substantially as the external traffic would shift to Malir Expressway.

The Project Expressway is a six (6) lane dualized highway (having a total length of 39.4km) designed for high speed traffic starting before Jam Sadiq River Bridge on Korangi Road ending near Kathore at the junction of existing Link Road and M-9, including seven (7) interchanges having controlled access. Location plan showing the proposed alignment of Malir Expressway is presented as Fig. 1.

Figure 1 – Proposed Alignment



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Scope of Work (Malir Expressway Project)

Detailed Tasks and/or Expected Output

The consulting firm or consortium, as the case may be shall perform a comprehensive EIA study, consisting of the following tasks:

- i. **Project Categorization:** Undertake the project environmental categorization procedures as per national guidelines and ADB SPS 2009 for the project to review potential environmental impacts, temporary and permanent damage to the environment (particularly air quality, noise, and vibration impacts), and potential risks such as release of toxic and hazardous chemicals etc. A rapid environmental assessment checklist will be applied and provided as an appendix to the Environmental Impact Assessment (EIA);
- ii. **Project Scheduling:** Prepare a schedule for the completion of the environmental assessment of the project, taking into account the environmental categorization and the level of assessment required. The schedule should take into account ADB's public disclosure requirements¹;
- iii. **Scoping:** Prepare a scoping study identifying key issues associated with the project and providing information about (a) the general environmental settings of the project area, particularly considering the sensitivities of the project setting and (b) potential impacts of the project and the characteristics of the impacts, magnitude, distribution, sensitive receptors and affected groups, and their duration. This study should (a) assess alternatives for the project considering costs and benefits in terms of financial, social, and environmental issues, and (b) review any available historical environmental baseline data and identify significant gaps. The gap analysis should identify the new monitoring of environmental conditions that will be required.
- iv. **Environmental Baseline Monitoring:** Conduct environmental monitoring of the following parameters by engaging a SEPA accredited laboratory:
 - **Noise Levels**
Monitoring on 24 hourly basis of ambient noise levels in the project area must be conducted to assess the daytime and nighttime noise levels. Approval of the proposed monitoring locations from PSF must be obtained prior to mobilization of laboratory staff to the field.
 - **Air Quality**
Monitoring on 24 hourly basis of air quality in the project area must be conducted. Approval of the proposed monitoring locations from PSF must be obtained prior to mobilization of laboratory staff to the field.
 - **Vibration**
Monitoring of vibration levels at all sensitive receptor locations along MEX alignment wherever the settlements are in close proximity. Approval of the proposed monitoring locations from PSF must be obtained prior to mobilization of laboratory staff to the field.
 - **Water Quality**
Representative water sampling locations in the project area, both upstream and downstream of the proposed MEX alignment must be identified and approval of these locations from PSF must be obtained beforehand prior to mobilization of laboratory staff to the field.

¹ The operations department ensures that the draft EIA report is disclosed on the ADB website for least 120 days

v. **Modeling:** Conduct modeling for:

- a. **Noise levels:** An internationally acceptable noise modeling software such as CadnaA or Sound PLAN must be used for conducting the noise modeling for project construction and operation phase of the MEX project;
- b. **Air Quality:** An internationally acceptable air quality modeling software such as BREEZE AERMOD or BREEZE ROADS or similar must be used to simulate the project construction and operation phases of the MEX project.
- c. **Vibration Assessment:** The expected vibration levels along the project alignment and at the sensitive receptor locations in close proximity to the MEX alignment must be calculated and presented with a clear indication of any potentially sensitive locations with possibility of structural damage due to high vibration levels. In all such cases, required mitigation measures to control high vibration levels must also be presented.

vi. **Ecological Survey:** Since the MEX alignment will pass along and through a number of water bodies and terrain with wildlife, it will be necessary to conduct detailed ecological and terrestrial surveys in the project area.

Study Area

- Studies on aquatic communities, both upstream and downstream of the proposed sites
- Studies on terrestrial communities, including avifauna of the adjacent areas of the project sites

Scope

Physical description of the study area(s), water quality, habitat classification and characterization along with the study of the following disciplines:

A: Aquatic fauna

- Report on overall Fish Fauna of the project area(s)
- Categorization of the fish species of special importance in the project area(s)
- Possible impacts of the project on migration, breeding and feeding behavior of fish
- Mitigation steps to avoid any possible impacts of the project on the fish fauna

B: Terrestrial Fauna (Mammals, Avifauna, Reptiles)

- Report on the Mammals (both, Small and Large Mammals), Avifauna and Reptiles of the project area(s)
- Determination of dependency of the Mammals, Avifauna and Reptiles on the project area(s)
- Mitigation steps to avoid any possible impacts of the project on the Terrestrial Fauna

vii. **EIA report preparation:**

- A comprehensive EIA report must be prepared that should strictly follow environmental assessment requirements and outline format and content, as laid out ADB's Safeguards Policy Statement (SPS), 2009.
- The EIA report must clearly present the following aspects related to ecological aspects:
 - i. Introduction of the ecological study area with background knowledge
 - ii. Ecological study methodology
 - iii. Results including the species occurrence, distributional patterns, relative abundance, endemism, species of special concern, conservation status of different

species, taxonomic checklist of species with local, English and scientific names, identification of possible impacts along with their mitigation measures, photographs of the selected species along with other relevant information.

- iv. Submission of report on ecological baseline on a standard format with references, contents, tables, figures, graphs etc.
 - v. Determine costs of the proposed environmental mitigation measures, and appraise the level of cost against expected environmental benefits;
 - Assess and present the alternatives considered relating to site selection, project design, construction methodology etc.
 - Undertake public consultations to meet SEPA and ADB public disclosure requirements. The results of these consultations should be documented in the EIA study. Mainly four groups of stakeholders are expected to be consulted: (a) local communities including all affected households, (b) livelihoods to be affected, (c) civil society, (d) government and local government bodies, and (e) private sector bodies, if relevant;
 - Identify risks and incorporate appropriate mitigating measures into the project design;
 - Prepare contractor specifications for environmental management and monitoring.
 - The findings of the EIA study will be used to prepare the Environmental Management Plan (EMP) with detailed monitoring plans, covering all stages of project design and implementation.
- viii. **Acquiring NOC from SEPA:** Submission of EIA report (based on Detailed Design) to SEPA as per their procedures, including but not limited to, payment(s) of any applicable fees, public hearing(s), to obtain NOC from SEPA.

Link Road Project ('LRP')

The Objective of the Proposed Link Road Project is to improve the traffic flow in this stretch and to provide a 4 lane all weather road of international highway standards of geometrics, strength and durability of road and cross drainage structures like bridges and culverts. This Link Road connecting M9 and N5 will attain this purpose.

The proposed alignment of Link Road starts from N5 near Gulshan-e-Hadeed, Port Qasim Stretch and ends near Kathore-Gadap-Feista Water Park Stretch.

It was observed that Selected Alignment is about 21.4 km and additional 6 loops connecting National Highway (N-5) and interchange on Motorway (M-9) are 4km. Main Alignment passes through barren, undulated and hilly area in the east direction of existing link road and at M-9 end. The project would save the time and fuel of heavy traffic by avoiding the Education City and Medical Cities. At the same time, it would improve the economy of the country and reduce the cost of transportation and serve the future development and ease to a significant extent the traffic flow from N5 Steel Town End.

Scope of Work (Link Road Project)

Detailed Tasks and/or Expected Output

The consulting firm or consortium, as the case may be, shall perform a comprehensive EIA study, consisting of the following tasks:

- i. **Project Categorization:** Undertake the project environmental categorization procedures as per national guidelines and ADB SPS 2009 for the project to review potential environmental impacts, temporary and permanent damage to the environment (particularly air quality, noise, and vibration impacts), and potential risks such as release of toxic and hazardous chemicals etc. A rapid environmental assessment checklist will be applied and provided as an appendix to the Environmental Impact Assessment (EIA);

- ii. **Project Scheduling:** Prepare a schedule for the completion of the environmental assessment of the project, taking into account the environmental categorization and the level of assessment required. The schedule should take into account ADB's public disclosure requirements²;
- iii. **Scoping:** Prepare a scoping study identifying key issues associated with the project and providing information about (a) the general environmental settings of the project area, particularly considering the sensitivities of the project setting and (b) potential impacts of the project and the characteristics of the impacts, magnitude, distribution, sensitive receptors and affected groups, and their duration. This study should (a) assess alternatives for the project considering costs and benefits in terms of financial, social, and environmental issues, and (b) review any available historical environmental baseline data and identify significant gaps. The gap analysis should identify the new monitoring of environmental conditions that will be required.
- iv. **Environmental Baseline Monitoring:** Conduct environmental monitoring of the following parameters by engaging a SEPA accredited laboratory:
 - a. **Noise Levels:** Monitoring on 24 hourly basis of ambient noise levels in the project area must be conducted to assess the daytime and nighttime noise levels. Approval of the proposed monitoring locations from PSF must be obtained prior to mobilization of laboratory staff to the field.
 - b. **Air Quality:** Monitoring on 24 hourly basis of air quality in the project area must be conducted. Approval of the proposed monitoring locations from PSF must be obtained prior to mobilization of laboratory staff to the field.
 - c. **Water Quality of Surface Water Bodies (if applicable):** Representative water sampling locations in the project area, both upstream and downstream of the proposed LRP alignment must be identified and approval of these locations from PSF must be obtained beforehand prior to mobilization of laboratory staff to the field.
- v. **Modeling:** Conduct modeling for:
 - a. **Noise levels:** An internationally acceptable noise modeling software such as CadnaA or Sound PLAN must be used for conducting the noise modeling for project construction and operation phase of the LRP project;
 - b. **Air Quality:** An internationally acceptable air quality modeling software such as BREEZE AERMOD or BREEZE ROADS or similar must be used to simulate the project construction and operation phases of the LRP project.
- vi. **Ecological Survey:** Since the LRP alignment might pass along and through a number of water bodies and terrain with wildlife, it will be necessary to conduct detailed ecological and terrestrial surveys in the project area.

Study Area

- Studies on aquatic communities, both upstream and downstream of the proposed sites (if applicable);
- Studies on terrestrial communities, including avifauna of the adjacent areas of the project sites.

Scope

² The operations department ensures that the draft EIA report is disclosed on the ADB website for least 120 days

Physical description of the study area(s), water quality, habitat classification and characterization along with the study of the following disciplines:

A: Aquatic fauna (if applicable)

- Report on overall Fish Fauna of the project area(s);
- Categorization of the fish species of special importance in the project area(s);
- Possible impacts of the project on migration, breeding and feeding behavior of fish;
- Mitigation steps to avoid any possible impacts of the project on the fish fauna.

B: Terrestrial Fauna (Mammals, Avifauna, Reptiles)

- Report on the mammals (both small and large mammals), Avifauna and Reptiles of the project area(s);
- Determination of dependency of the Mammals, Avifauna and Reptiles on the project area(s);
- Mitigation steps to avoid any possible impacts of the project on the Terrestrial Fauna.

vii. EIA report preparation:

- A comprehensive EIA report must be prepared that should strictly follow environmental assessment requirements and outline format and content, as laid out ADB's Safeguards Policy Statement (SPS), 2009.
- The EIA report must clearly present the following aspects related to ecological aspects:
 - i. Introduction of the ecological study area with background knowledge
 - ii. Ecological study methodology
 - iii. Results including the species occurrence, distributional patterns, relative abundance, endemism, species of special concern, conservation status of different species, taxonomic checklist of species with local, English and scientific names, identification of possible impacts along with their mitigation measures, photographs of the selected species along with other relevant information.
 - iv. Submission of report on ecological baseline on a standard format with references, contents, tables, figures, graphs etc.
 - v. Determine costs of the proposed environmental mitigation measures, and appraise the level of cost against expected environmental benefits;
- Assess and present the alternatives considered relating to site selection, project design, construction methodology etc.
- Undertake public consultations to meet SEPA and ADB public disclosure requirements. The results of these consultations should be documented in the EIA study. Mainly four groups of stakeholders are expected to be consulted: (a) local communities including all affected households, (b) livelihoods to be affected, (c) civil society, (d) government and local government bodies, and (e) private sector bodies, if relevant;
- Identify risks and incorporate appropriate mitigating measures into the project design;
- Prepare contractor specifications for environmental management and monitoring.
- The findings of the EIA study will be used to prepare the Environmental Management Plan (EMP) with detailed monitoring plans, covering all stages of project design and implementation.

viii. Acquiring NOC from SEPA: Submission of EIA report (based on Detailed Design) to SEPA as per their procedures, including but not limited to, payment(s) of any applicable fees, public hearing(s), to obtain NOC from SEPA.

SCHEDULE B – SCOPE OF WORK

Scope of Work

Assignment No.1: EIA Studies

The consulting firm will conduct a detailed and comprehensive EIA study for the proposed GKB, MEX and LRP in order to comply with the regulatory safeguard requirements of both the Sindh EPA (SEPA) and Asian Development Bank's (ADB's) Safeguard Policy Statement, 2009 (SPS) for Category 'A' projects.

The respective scope of Work for each of the three projects is provided in Section 5.3 above.

Assignment No. 2: LARP Preparation

The consulting firm will work closely with the line department / project manager and shall seek guidance from the safeguards staff at the PPP Unit and PSF for screening and assessment of impacts and deliver the assigned tasks.

The consulting firm is required to:

- i. assist line department / project manager in marking of ROW limits and collecting relevant land record/land title related information from the district land revenue authorities;
- ii. conduct detailed assessment of land and assets to be acquired, census survey and socio-economic assessment of affected households;
- iii. identify affected households/individuals with significant impacts and determine physically/economically displaced households/persons; establish and formalize the project's cut-of-date for impacts;
- iv. define compensation eligibility and entitlement provisions;
- v. evaluate affected assets on replacement cost and determine applicable Relocation and Rehabilitation (R&R) costs as per entitlement provisions;
- vi. conduct meaningful consultations with all stakeholders including vulnerable groups and communities;
- vii. review applicable legal and policy framework, institutional capacity of the line department / project manager and suggest institutional set-up for handling of grievances, updating, implementation and monitoring of LARPs; and
- viii. prepare a LARP including inventory of losses linked to compensation entitled households/individuals, itemized budget and institutional set-up with implementation and monitoring timelines as per outline provided in the ESMS as Annex XVI.

Detailed Tasks Pertaining To Scope Of Work

Assignment No.1: EIA Studies

The detailed Scope of Work for each of the three projects is provided in Section 5.3 above.

Assignment No. 2: LARP Preparation

The Consulting firm will work closely with the line department / project manager, Transaction Advisory Consultants and local land revenue department to achieve overall objective and deliver quality draft LARPs based on preliminary design and final LARP based on detailed design with LAR database including inventory of losses, applicable compensation costs and other entitlements linked to the affected households/person and socio-economic baseline data. The Consultant shall do following specific tasks:

A. Marking of ROW limits, assistance to EA for commencing land acquisition process:

The safeguards assessment and survey team of consulting firm shall:

- i. collect and review preliminary design alignment, land and utility folders and other available information/data about land and asset types (agricultural, commercial, communal and/or public land/assets), ownership status (legal and/or legalizable land/assets title, formal and informal land users etc) and prevalent uses of land/asset falling in the ROW required for proposed/fixed design alignment;
- ii. arrange and conduct a joint survey through assistance and support of TA consultants' design team and local land revenue authorities for identification and marking of center line and ROW limits as of fixed alignment and ROW based on preliminary design; and support line department / project manager of EAs for installing ROW markers accordingly;
- iii. facilitate line department / project manager and land revenue staff and officers in respective sub-districts (Talukas) to compile details and particulars of land parcels and assets for timely commencement of land acquisition and publication of notifications issued under section 4, 5 and 6 and other successive sections before announcement of land award under LAA 1894;

B. IR/IP screening/assessment, census & socio-economic assessment and meaningful consultations:

The consultant's team with guidance from Safeguards Staff in PPP Unit's and PSF's shall:

- i. design data collection tools for screening and categorization of IR impacts, detailed measurement survey (DMS) checklists, census and socioeconomic assessment survey forms and questionnaires of conducting meaningful consultations with all stakeholders;
- ii. conduct enumeration and detailed measurement of acquired land parcels (segregated based on land use types i.e. residential, commercial agricultural and/or barren land etc.) and assets i.e. structures (residential, commercial, community and public structure) crops, trees and utility lines including irrigation infrastructure being affected due to acquiring ROW land or clearance of assets located in public ROWs and/or on state land falling in the alignment of project roads;
- iii. identify land titles and ownership status (legally recognized and/or recognizable title holders and informal users of acquired land and assets including established land use rights (formal or informal) and finalize inventory of losses accordingly;
- iv. conduct 100% census of affected/displaced households, compile a gender segregated household profile for all affected households and determine: i) the household members/individuals entitled for compensation of acquired/affected land and other assets with quantum and degree of loss faced by each individual, ii) households / individuals facing

significant impacts and those likely to be displaced physically and economically, and iii) households likely to be affected disproportionately due to their vulnerable status;

- v. conduct a sample based (25%-30%) socio-economic assessment of affected households, define different categories of affected households, and assess the likely impacts from acquisition of land and execution of project on each social groups particularly focusing on women, poor, indigenous and /or ethnic minorities, and other vulnerable groups due to acquired assets and/or restricted land use rights and/or impaired access to their livelihood sources;
- vi. identify different stakeholders including affected asset owners and users (with and without legal title and formal / informal users etc.), physically and economically displaced households and marginalized social groups facing project impacts and: i) conduct meaningful consultations to understand their issues and design entitlement provisions accordingly, ii) assess and document their participation level and roles at different stages in project design and implementation, iii) inform them on LARP provisions and entitlements, and iv) design a consultation, participation and information disclosure strategy to be followed and implemented during LARP updating, implementation and monitoring phases and through project execution period.
- vii. prepare and maintain the consultation record including dates, venue, list of participants and brief on issues raised and responded during consultation with each group of stakeholders including women and vulnerable; and
- viii. design and develop a database including inventory of lost assets linked to the compensation entitled households / individuals and socio-economic base line data to be used as a reference to review and assess compensation payment progress and evaluate the adequacy of entitlement provisions provided and level of achievement of LARP objectives.

C. Legal and Policy Framework:

The consultant is required to:

- i. review national legal framework and safeguards policy systems of PSF and ADB's safeguards policy requirements applicable for acquiring land / assets and other relevant documents and based on agreed commitments, outline principles and methodologies used for valuation of assets on replacement cost and entitled allowances for relocation, resettlement and restoration of livelihood; and set-out compensation and eligibility criteria with mechanism to deliver compensation;
- ii. conduct market surveys to gather and analyze information on prevailing market rates for different land types and other affected assets and assist line department / project manager to coordinate with respective government authorities responsible for assessment of land cost and other affected assets (structures, trees and crops) to ensure that the proposed unit rates and compensation costs assessed for acquired land and assets is on replacement cost; and
- iii. facilitate the EA in notifying and publication of cut-of date as compensation eligibility and entitlement criteria.

D. Institutional Set-up for Safeguards Management and Handling of Grievances:

The consultant shall:

- i. review/assess safeguards management institutional capacity of the line department / project manager and suggest institutional set-up and capacity enhancement measures for effective

safeguards management and LARP implementation, monitoring and evaluation with costs to be incurred for engaging requisite human resources for LARP implementation and monitoring both internally and through external monitoring Agent;

- ii. review the grievance redress systems available under national law and local customs and design a multi-tiered (local level, PMU level and EA level) project based grievance redress mechanism with representation of all stakeholders including local/affected communities, project executors (line department and concessionaire) and land acquiring entities; and shall outline procedures with time lines for grievance recording, tracking and resolution at different levels of the GRM.

E: Compensation, Relocation and Income Restoration:

The consultant shall:

- i. define entitlements provisions including compensation costs for acquired assets and applicable resettlement, relocation and costs and income restoration measures for significantly affected households and design measures and mechanisms for identified vulnerable groups including women to mitigate adverse impacts, restore access to their livelihood source, provide entitlements for lost livelihood sources and improving their living standard;
- ii. if project-based relocation is envisaged, describe alternative relocation sites and provide justification for selected sites covering details about location accessible amenities and environmental conditions and site development needs etc. and define the legal arrangements for regularizing the tenure and title for relocation sites;
- iii. assess relocation needs with identified concerns of women and vulnerable groups and suggest options and entitlements available and applicable for relocating the housing and other structures, including compensation on cash, replacement housing and/or self-relocation;
- iv. identify income restoration requirements for significantly affected and vulnerable groups facing loss of access to their livelihood sources and suggest an income restoration program with multiple choices including project-based employment, financial assistance and/or imparting training to adopt alternative income sources; and
- v. design an Entitlement Matrix highlighting applicable impacts types, households/individual eligible for compensation and entitlement provision for lost assets, resettlement, relocation and rehabilitation and income restoration costs including vulnerable;

F: LARP budgeting, implementation and monitoring schedule and requirements:

The Consultant shall:

- i. prepare itemized budget including compensation costs for acquired assets on replacement cost and applicable resettlement, relocation & rehabilitation costs including costs required for compensating affected income and livelihood with implement income restoration plan as well as administrative costs required to engage resources for LARP implementation and Monitoring.
- ii. suggest LARP financing sources and mechanism for flow of funds to deliver compensation for acquired land and assets under LAA provisions and payment of resettlement, relocation and rehabilitation costs including costs levied for implementing income restoration measures that are not covered under the LAA 1894;

- iii. devise a tentative LARP implementation and monitoring scheduled with timelines for different activities and actions including institutional readiness, completion of land acquisition process, updating, implementation and monitoring of LARP; and shall outline monitorable indicators and monitoring frequency for preparation and submission of internal and External Monitoring Reports.

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SCHEDULE C - ASSIGNMENT TEAM

NAME	DESIGNATION	ORGANIZATION
Technical Team (as applicable)		
Financial Team (as applicable)		
Legal Team (as applicable)		

The above listed professionals may enlist/engage other professionals and staff from within the Consortium or outside. The name and credentials of such persons shall be made available to the GoS as soon as possible so that appropriate access authorization of such personnel is arranged timely. Any expatriate employee/professionals name must be notified to the GoS well in advance.

The engagement will be carried out under the overall supervision of Mr. [**], employee of the Lead Advisor, who will be the Engagement Partner for the Project. He will be responsible for the day-to-day administration and overall coordination relating to the Assignment.

The principal GoS contact for this engagement will be Mr. Zain Fawzi, Director PPP Unit, Finance Department, Government of Sindh, who will be coordinating with the Assignment Team in the performance of the Assignment.

SCHEDULE D – DELIVERABLES, TIMELINES AND PAYMENTS

Assignment No. 1: EIA Studies		Timeline*	Payment**
1	Inception Report / Scoping Study	2 weeks	10%
2	Submission of draft EIA Report (based on Preliminary Design)	4 months	15%
3	Submission of Final EIA Report (based on Preliminary Design)	4.5 months	15%
4	Submission of Final EIA Report (based on Detailed Design)	-	5%
5	Acquiring NOC from SEPA	-	5%
TOTAL			50%

Assignment No. 2: LARP Preparation		Timeline*	Payment**
1	Inception Report	2 Weeks	10%
2	Submission of Draft LARP (based on Preliminary Design)	4 Months	15%
3	Submission of Final LARP and LARP databases (based on Preliminary Design)	4.5 Months	15%
4	Submission of Final LARP and LARP databases (based on Detailed Design)	-	10%
TOTAL			50%

* The timeline is from the Signing Date for each deliverable for all three (03) projects.

** The payments to be made against each deliverable shall be in the proportions of 30%, 40% and 30% for each project, GKB, MEX and LRP respectively.

APPENDIX - A

INTEGRITY PACT

**DECLARATION OF FEES, COMMISSION AND BROKERAGE ETC. PAYABLE BY
THE SUPPLIERS OF GOODS, SERVICES & WORKS IN CONTRACTS WORTH RS
10.00 MILLION OR MORE**

Agreement No. _____ Dated _____
Agreement Value: _____
Agreement Title: _____

..... [name of Supplier] hereby declares that it has not obtained or induced the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Sindh (GoS) or any administrative subdivision or agency thereof or any other entity owned or controlled by GoS through any corrupt business practice.

Without limiting the generality of the foregoing, [name of Supplier] represents and warrants that it has fully declared the brokerage, commission, fees etc. paid or payable to anyone and not given or agreed to give and shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of a contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoS, except that which has been expressly declared pursuant hereto.

[name of Supplier] certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to the transaction with GoS and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty.

[name of Supplier] accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration, representation and warranty. It agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other rights and remedies available to GoS under any law, Agreement or other instrument, be voidable at the option of GoS.

Notwithstanding any rights and remedies exercised by GoS in this regard, [name of Supplier] agrees to indemnify GoS for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to GoS in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by [name of Supplier] as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoS.

Name of Buyer:
Signature:
[Seal]

Name of Seller/Supplier:
Signature:
[Seal]