
LOAN NUMBER 3636-PAK
GRANT NUMBER 0562-PAK(EF)

PROJECT AGREEMENT

(Enhancing Public-Private Partnerships in Punjab Project)

between

ASIAN DEVELOPMENT BANK

and

PROVINCE OF PUNJAB

DATED 13th April 2018

PAK 49128

PROJECT AGREEMENT

PROJECT AGREEMENT dated 13th April 2018 between ASIAN DEVELOPMENT BANK ("ADB") and the PROVINCE OF PUNJAB ("Punjab").

WHEREAS

(A) by a Loan Agreement of even date herewith between the Islamic Republic of Pakistan ("Beneficiary") and ADB ("ADB Loan Agreement"), ADB has agreed to make to the Beneficiary a loan ("ADB Loan") of one hundred million Dollars (\$100,000,000) on the terms and conditions set forth in the ADB Loan Agreement, but only on the condition that the proceeds of the ADB Loan be made available to Punjab and that Punjab agrees to undertake certain obligations towards ADB set forth herein;

(B) further, by an externally financed grant agreement of even date herewith between the Beneficiary and ADB ("Externally Financed Grant Agreement"), ADB has agreed to make available and administer a grant of the United Kingdom of Great Britain and Northern Ireland ("UK") to the Beneficiary in the amount of fifteen million two hundred seventy-one thousand three hundred thirty-one British Pounds (£15,271,331) ("UK Grant") subject to the relevant cofinancing arrangement and on the condition that the proceeds of the UK Grant be made available to Punjab and that Punjab agree to undertake certain obligations towards ADB set forth herein; and

(C) Punjab, in consideration of ADB entering into the ADB Loan Agreement and the Externally Financed Grant Agreement with the Beneficiary, has agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the ADB Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein.

ARTICLE II**Particular Covenants**

Section 2.01. (a) Punjab shall carry out the Project with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project, Punjab shall perform all obligations set forth in the ADB Loan Agreement to the extent that they are applicable to Punjab, and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. Punjab shall make available, promptly as needed, and on terms and conditions acceptable to ADB, the funds, facilities, services, and other resources as required, in addition to the proceeds of the ADB Loan and the UK Grant, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, Punjab shall employ competent and qualified consultants, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, Punjab shall undertake procurement in accordance with the provisions of Schedule 4 to the ADB Loan Agreement. ADB may refuse to provide financing where any item has not been procured under procedures substantially in accordance with those agreed between the Beneficiary and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. Punjab shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the ADB Loan and the UK Grant, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.05. (a) ADB and Punjab shall cooperate fully to ensure that the purposes of the ADB Loan and the UK Grant will be accomplished.

(b) Punjab shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement, or the accomplishment of the purposes of the ADB Loan and the UK Grant.

(c) ADB and Punjab shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, Punjab and the ADB Loan and the UK Grant.

Section 2.06. (a) Punjab shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the ADB Loan and the UK Grant and the expenditure of the proceeds thereof; (ii) the items of expenditure financed out of

such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of Punjab; and (v) any other matters relating to the purposes of the ADB Loan and the UK Grant.

(b) Without limiting the generality of the foregoing, Punjab shall furnish to ADB periodic reports on the execution of the Project. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, Punjab shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by Punjab of its obligations under this Project Agreement and the accomplishment of the purposes of the ADB Loan and the UK Grant.

Section 2.07. (a) Punjab shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and use of the proceeds of the ADB Loan and the UK Grant, respectively, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the close of the fiscal year to which they relate, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) Punjab shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and its financial affairs where they relate to the Project with the auditors appointed by Punjab pursuant to subsection (a)(iii) hereinabove and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of authorized officers of Punjab, unless Punjab shall otherwise agree.

Section 2.8. Punjab shall enable ADB's representatives to inspect the Project and any relevant records and documents.

Section 2.9. (a) Punjab shall, promptly as required, take all action within its powers to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its operations.

(b) Punjab shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

Section 2.10. Except as ADB may otherwise agree, Punjab shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.11. Except as ADB may otherwise agree, Punjab shall apply the proceeds of the ADB Loan and the UK Grant to the financing of expenditures on the Project in accordance with the provisions of the ADB Loan Agreement, the Externally Financed Grant Agreement and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

ARTICLE III

Effective Date; Termination

Section 3.01. This Project Agreement shall come into force and effect on the date on which the ADB Loan Agreement comes into force and effect. ADB shall promptly notify Punjab of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the ADB Loan Agreement shall terminate in accordance with its terms.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the ADB Loan Agreement or the Externally Financed Grant Agreement.

ARTICLE IV

Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2424.

For Punjab

Planning and Development Department
Government of Punjab
Civil Secretariat
Lahore, Pakistan

Facsimile Number:

92 42 9921 0182.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or under Section 7.01 of the ADB Loan Agreement or under Section 7.01 of the Externally Financed Grant Agreement by or on behalf of Punjab may be taken or executed by its Secretary, Planning and Development Department or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) Punjab shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

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

ASIAN DEVELOPMENT BANK

By 

XIAOHONG YANG
Country Director
Pakistan Resident Mission

PROVINCE OF PUNJAB

By 

IFTIKHAR ALI SAHOO
Secretary
Planning & Development
Government of Punjab

SCHEDULE

Execution of Project; Financial Matters

Implementation Arrangements

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

2. (a) Punjab shall ensure that, towards smooth implementation of the Project, grievances if any from stakeholders, relating to any project implementation or use of funds are addressed effectively and efficiently.

(b) Punjab shall comply with all the requirements and obligations on its part as included in this Project Agreement to meet the objectives of the Project in a timely and efficient manner.

Coordination among Punjab's Agencies

3. Punjab confirms that it is fully committed to the Project and shall ensure that all ministries, agencies and divisions of Punjab involved in the implementation of the Project, including local government authorities, give their full cooperation to ensure smooth implementation of the Project.

Counterpart Funding

4. Punjab shall ensure that the PPP Agreements provide for sufficient funds required for timely and effective implementation of each PPP Project, including, without limitation, any funds required (a) to meet any shortfall between cost and revenues for the operation and maintenance of facilities constructed under a PPP Project; (b) to mitigate unforeseen environmental or social impacts; and (c) to meet any additional costs arising from design changes, price escalation in construction costs and/or unforeseen circumstances.

PPP Sector Matters

5. Punjab shall ensure that: (a) ADB is kept informed of the policies and programs of the Borrower and Punjab in respect of PPP and those that may have implications for implementation of the Project; and (b) ADB is given an opportunity to comment on any proposed new PPP policies or programs. Notwithstanding the foregoing, for the duration of the Project, Punjab shall ensure that it will provide ADB with an opportunity to comment on any proposed amendments, suspension or repeal in the PPP Policy, the PDF Guidelines or the VGF Guidelines and shall take into account ADB's views before finalizing and implementing such amendments, suspension or repeal.

Selection Criteria and Approval Process for PPP Projects

6. Punjab shall ensure that each PPP project proposed to be supported by any portion of the VGF financed by the Loan:
- (a) meets the eligibility criteria set forth in the PPP Policy, PPP Act and the VGF Guidelines; provided, however, that such PPP project shall only receive support from the VGF;
 - (b) is processed in accordance with the PPP Policy, PPP Act and the VGF Guidelines, and is otherwise technically, institutionally, financially and economically feasible based on due diligence conducted by Punjab;
 - (c) adheres to the safeguards requirements set forth in paragraphs 8 to 15 below; and
 - (d) does not involve any activity included in the list of prohibited investment activities provided in Appendix 5 of ADB's Safeguard Policy Statement (2009),

provided, that, for the avoidance of doubt, Punjab shall not be required to comply with the provisions of this Project Agreement, the Loan Agreement or the Externally Financed Grant Agreement in respect of any PPP project that receives VGF support using proceeds entirely apart from the Loan.

7. Punjab shall ensure that all documents forming the basis for screening and selection of PPP Projects proposed to be supported by the VGF are made available to ADB upon request and are kept available for such purposes for a minimum period of 5 years from the date of the project completion report for the Project.

Screening, Categorization, and Environmental and Social Assessment and Planning

8. Punjab shall ensure that before any PPP Project is approved to receive support from the VGF:
- (a) the ESMS is used to screen and categorize the significance of potential environmental, indigenous peoples or involuntary resettlement impacts associated with such PPP Project;
 - (b) an EIA or IEE (as applicable), an EMP, a RP and/or an IPP are prepared for such PPP Project as required pursuant to the ESMS; and
 - (c) the EIA or IEE (as applicable), the EMP, the RP and the IPP are cleared by ADB if such Qualified Subproject is Category A or Category B within the meaning of the SPS.

Condition for Disbursement for PPP Projects

9. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for the purpose of any PPP Project until Punjab has established the ESMS in a manner satisfactory to ADB.

Environment

10. Punjab shall, or shall cause each private entity carrying out a PPP Project to, ensure that the preparation, design, construction, implementation, operation and decommissioning of each PPP Project comply with (a) all applicable laws and regulations of the Beneficiary and Punjab relating to environment, health, and safety; (b) the Environmental Safeguards; (c) the ESMS; and (d) all measures and requirements set forth in the respective IEE or EIA (as applicable) and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

11. Punjab shall, or shall cause each private entity carrying out a PPP Project to, ensure that all land and all rights-of-way required for each PPP Project are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Beneficiary and Punjab relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; (c) the ESMS; and (d) all measures and requirements set forth in the respective RP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

12. Without limiting the application of the Involuntary Resettlement Safeguards, the ESMS or the RP, Punjab shall, or shall cause each private entity carrying out a PPP Project to, ensure that no physical or economic displacement takes place in connection with any PPP Project until:

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

Indigenous Peoples

13. Punjab shall, or shall cause each private entity carrying out a PPP Project to, ensure that the preparation, design, construction, implementation and operation of each PPP Project comply with (a) all applicable laws and regulations of the Beneficiary and Punjab relating to indigenous peoples; (b) the Indigenous Peoples Safeguards; (c) the ESMS; and (d) all measures and requirements set forth in the respective IPP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Human and Financial Resources to Implement Safeguards Requirements

14. Punjab shall, or shall cause each private entity carrying out a PPP Project to, ensure that necessary budgetary and human resources are made available to fully implement the ESMS.

Safeguards Monitoring and Reporting

15. Punjab shall, or shall cause each private entity carrying out a PPP Project to, do the following:

- (a) submit semiannual Safeguards Monitoring Reports to ADB;
- (b) if any unanticipated environmental and/or social risks and impacts arise during implementation of a PPP Project, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;
- (c) ensure that, by no later than the time a PPP Agreement is entered into for a PPP Project involving Category A impacts within the meaning of the SPS, qualified and experienced external experts or qualified NGOs are engaged under a selection process and terms of reference acceptable to ADB, to verify information produced through the monitoring process of such PPP project, and facilitate the carrying out of any verification activities by such external experts;
- (d) ensure that, by no later than the time a PPP Agreement is entered into for a PPP Project involving Category A impacts that are deemed by ADB to be highly complex and sensitive within the meaning of the SPS, an independent advisory panel is engaged to monitor and report upon implementation of such PPP project, and facilitate the carrying out of any monitoring activities by such panel; and
- (e) report any actual or potential breach of compliance with the measures and requirements set forth in the ESMS and any EMP, RP or IPP promptly after becoming aware of the breach.

Social

16. Punjab shall, or shall cause each private entity carrying out a PPP Project to, ensure that the PPP Agreements and other Works contracts under the Project follow all applicable labor laws of the Beneficiary and Punjab and that these further include provisions to the effect that the contractors (a) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction; and (b) follow and implement all statutory provisions on labor (including not employment or using children as labor, equal pay for equal work), health, safety, welfare, sanitation, and working conditions. Such contracts shall also include clauses for termination in case of any breach of the stated provisions by the contractors.

Gender and Development

17. Punjab shall ensure that (a) the Gender Action Plan developed for the Project (GAP) is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP (if applicable); (c) adequate resources are allocated for implementation of the GAP; and (d) progress on implementation of the GAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

Governance, Corruption and Transparency

18. Punjab shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

19. Punjab shall include anticorruption provisions acceptable to ADB in all bidding documents and contracts, including provisions specifying the right of Punjab to audit and examine the records and accounts of all contractors, suppliers, consultants and other service providers as they relate to the Project. At the request of ADB, the Borrower shall cause Punjab to promptly (i) exercise the right to audit and examine the records and accounts of such contractors, supplier, consultants and other service providers as provided in the foregoing sentence, and (ii) provide to ADB all documents and information obtained through such audit and examination as ADB shall request (and it shall be ensured that Punjab has the right to provide such documents and information to ADB).

20. Punjab shall establish and maintain a website that makes continuously available to the public, among other things, (a) the VGF Guidelines; (b) any other set(s) of guidelines, rules, or similar documents that govern operation of the VGF; (c) a list of all outstanding commitments with respect to the VGF; (d) a list of all disbursements made from the VGF; and (e) the quarterly and annual risk monitoring reports prepared in respect of the VGF.