
LOAN NUMBER 3470-PAK

PROJECT AGREEMENT
(Pehur High Level Canal Extension Project)

between

ASIAN DEVELOPMENT BANK

and

KHYBER PAKHTUNKHWA PROVINCE

DATED 09 JUNE 2017

PAK 47024

PROJECT AGREEMENT

PROJECT AGREEMENT dated 09 June 2017 between ASIAN DEVELOPMENT BANK ("ADB") and KHYBER PAKHTUNKHWA PROVINCE ("Khyber Pakhtunkhwa").

WHEREAS

(A) by a Loan Agreement of even date herewith between Islamic Republic of Pakistan ("Borrower") and ADB, ADB has agreed to make to the Borrower a loan of eighty-six million four hundred five thousand Dollars (\$86,405,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the loan be made available to Khyber Pakhtunkhwa and that Khyber Pakhtunkhwa agrees to undertake certain obligations towards ADB set forth herein; and

(B) Khyber Pakhtunkhwa, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to act, through the Khyber Pakhtunkhwa Irrigation Department, as the Project Executing Agency and 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 Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

ARTICLE II

Particular Covenants

Section 2.01. (a) Khyber Pakhtunkhwa through KPID 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 and operation of the Project facilities, Khyber Pakhtunkhwa through KPID shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to Khyber Pakhtunkhwa, and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. Khyber Pakhtunkhwa through KPID shall make available, promptly as needed, the funds, facilities, services, land and other resources as required, in addition to the proceeds of the Loan, for the carrying out of the Project.

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

(b) Except as ADB may otherwise agree, Khyber Pakhtunkhwa through KPID shall procure all items of expenditures to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to the Loan Agreement. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. Khyber Pakhtunkhwa through KPID shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. Khyber Pakhtunkhwa through KPID shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) Khyber Pakhtunkhwa through KPID shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, Khyber Pakhtunkhwa through KPID undertakes to insure, or cause to be insured, the Goods to be imported for the Project against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. Khyber Pakhtunkhwa through KPID shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loan, 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 2.07. (a) ADB and Khyber Pakhtunkhwa shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) Khyber Pakhtunkhwa through KPID 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 Loan.

(c) ADB and Khyber Pakhtunkhwa 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, Khyber Pakhtunkhwa, KPID and the Loan.

Section 2.08. (a) Khyber Pakhtunkhwa through KPID shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan 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 Khyber Pakhtunkhwa and KPID; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, Khyber Pakhtunkhwa through KPID shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of the Project facilities. 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 physical 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, Khyber Pakhtunkhwa through KPID 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 KPID of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) KPID 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 the use of the Loan proceeds, 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) Khyber Pakhtunkhwa through KPID 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 KPID 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 an authorized officer of KPID, unless KPID shall otherwise agree.

Section 2.10. Khyber Pakhtunkhwa through KPID shall enable ADB's representatives to inspect the Project, the Goods and Works and any relevant records and documents.

Section 2.11. (a) Khyber Pakhtunkhwa through KPID shall, promptly as required, take all action within its powers to maintain its legal existence, 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) Khyber Pakhtunkhwa through KPID 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.

(c) Khyber Pakhtunkhwa through KPID shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 2.12. Except as ADB may otherwise agree, Khyber Pakhtunkhwa 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 2.13. Except as ADB may otherwise agree, Khyber Pakhtunkhwa through KPID shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan 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 Loan Agreement comes into force and effect. ADB shall promptly notify Khyber Pakhtunkhwa of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the 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 Loan 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) 636-2017

For Khyber Pakhtunkhwa

Secretary
Irrigation Department
Government of Khyber Pakhtunkhwa
Civil Secretariat
Peshawar

Facsimile Number:

(92-91) 921-0874.

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 6.01 of the Loan Agreement by or on behalf of Khyber Pakhtunkhwa may be taken or executed through KPID by its Secretary or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) Khyber Pakhtunkhwa 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



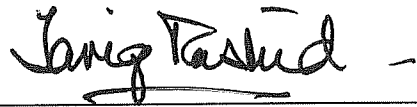
XIAOHONG YANG

Country Director

Pakistan Resident Mission

KHYBER PAKHTUNKHWA PROVINCE

By



TARIQ RASHID

Secretary

Irrigation Department

SCHEDULE

Implementation Arrangements

1. The Project Executing Agency shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. In the event of any discrepancy between the PAM, the Loan Agreement or this Project Agreement, the provisions of the Loan Agreement shall prevail.

Project Management

2. The Project Executing Agency shall ensure that, within 3 months from the Effective Date, the Project management office ("PMO") is adequately staffed with qualified personnel, including at least a project director, a deputy project director and technical director, a monitoring and evaluation staff, a unit director for social and environment safeguards, an accounting manager and two additional accounting staff.

3. The Project Executing Agency shall ensure that ADB is consulted on all significant matters relating to management and implementation of the Project, including selection, appointment, or change of project coordinator, project director or unit director for Project management office ("PMO") or project implementation office ("PIO") director, to ensure continuity, transparency and efficiency of Project management.

Counterpart Funding

4. Throughout Project implementation, Khyber Pakhtunkhwa shall (a) annually review estimates of the funding requirements for the Project and incorporate the updated funding requirement into the Project; and (b) ensure that KPID has sufficient funds to satisfy its liabilities arising from any Works, Goods and/or Consulting Services contract, including by providing timely certification and release of payment to the contractor and consultants as per the provisions of the respective contracts.

Policy Dialogue

5. Throughout Project implementation, the Project Executing Agency shall (a) keep ADB informed of, and exchange views on, sector issues, policy reform discussions with other multilateral or bilateral agencies that may have implications for implementation of the Project; (b) provide ADB with an opportunity to comment on any resulting policy proposal; and (c) submit to ADB its annually updated irrigation sector development program.

Operation and Management

6. Khyber Pakhtunkhwa shall ensure that for each Fiscal Year after the construction of Project facilities, adequate budget satisfactory to ADB is allocated exclusively used for their operation and maintenance, which includes routine and emergency maintenance, but excludes rehabilitation and construction.

Environment

7. The Project Executing Agency shall ensure that the preparation, design, construction, implementation, and operation of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower and Khyber Pakhtunkhwa relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the EIA, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

8. The Project Executing Agency shall ensure, that all land and all rights-of-way required for the Project are made available to the Works contractor in a manner and within a timeframe compliant with the RP and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower and Khyber Pakhtunkhwa relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; and (c) all measures and requirements set forth in the RP, and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

9. Without limiting the application of the Involuntary Resettlement Safeguards or the RP, the Project Executing Agency shall ensure that (a) no land shall be acquired for the purposes of the Project under the emergency acquisition provisions of the Borrower's Land Acquisition Act (1984), as amended; and (b) no physical or economic displacement takes place in connection with the Project until:

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

Indigenous Peoples

10. The Project Executing Agency shall ensure that the Project does not have any impact on indigenous peoples within the meaning of the Indigenous Peoples Safeguards. In the event such an impact would arise during Project implementation, the Project Executing Agency shall take all steps required to ensure that the Project complies with all applicable laws and regulations of the Borrower and Khyber Pakhtunkhwa and with the SPS.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

11. The Project Executing Agency shall ensure, that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) prepare a Site Specific Environmental Management Plan which shall be finalized by the Project Executing Agency and submitted for approval by ADB, such plan to be based on the respective EMP;

- (b) comply with the measures relevant to the contractor set forth in the EIA, EMP and the RP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (c) make available a budget for all such environmental and social measures;
- (d) provide the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the EIA, the EMP and the RP;
- (e) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (f) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Human and Financial Resources to Implement Safeguards Requirements

12. The Project Executing Agency shall make available necessary budgetary and human resources to fully implement the EMP and the LARP.

Safeguards Monitoring and Reporting

13. The Project Executing Agency shall:

- (a) submit semiannual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the EIA and the EMP or the RP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;
- (c) no later than 6 months after award of a Works contract, engage qualified and experienced external experts under a selection process and terms of reference acceptable to ADB, to verify information produced through the Project monitoring process, and facilitate the carrying out of any verification activities by such external monitoring experts; and
- (d) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP or the RP promptly after becoming aware of the breach.

Prohibited List of Investments

14. The Project Executing Agency shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor and Health

15. The Project Executing Agency shall ensure that the core labor standards and the Borrower's applicable labor laws and regulations are complied with during Project implementation. The Borrower shall cause the Project Executing Agency to ensure that each Works contract includes specific clauses that require a contractor to: (a) comply with the Borrower's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) comply with all legally mandated provisions on health, sanitation, and appropriate working conditions, including accommodation where appropriate for construction workers at construction campsites; (c) use their best efforts to employ women and local people; (d) provide equal pay to men and women for work of equal type; (e) provide adequately equipped first-aid, health and sanitation, and personal hygiene facilities for male and female workers at the Works sites; (f) maximize female training and employment; (g) conduct an information and education campaign on communicable diseases, women/children trafficking prevention for construction workers as part of the health and safety program at campsites and adjacent communities during Works implementation; and (h) allow freedom of association and effectively recognize the right to collective bargaining; and (i) abstain from forced or child labor.

16. The Project Executing Agency shall ensure that public awareness campaigns are conducted on human trafficking, particularly of women and children, carried out to reduce the risk of trafficking around construction camps and bus and other transport facilities.

17. The Project Executing Agency shall ensure that compliance with the labor standards is monitored throughout Project implementation period by KPID jointly with the Labor Department of Khyber Pakhtunkhwa and the Pakistan Workers' Federation and ADB is provided with regular reports.

Gender and Development

18. The Project Executing Agency shall ensure that (a) the 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; (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 and Corruption

19. The Project Executing Agency shall, and shall ensure that KPID as implementing agency 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.

20. The Project Executing Agency shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of KPID and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

21. The Project Executing Agency shall use its existing website to present financial statements and track procurement contract awards in a timely manner, and include information on, among other things, the list of participating bidders, name of winning bidders, basic details on bidding procedures adopted, amounts of the contracts awarded, the list of goods and/or services purchased, their intended and actual utilization, and results of the safeguards monitoring.