
LOAN NUMBERS 3947-MON(COL)
3946-MON

PROJECT AGREEMENT

(Ulaanbaatar Urban Services and Ger Areas Development Investment Program – Tranche 3)

between

ASIAN DEVELOPMENT BANK

and

MUNICIPALITY OF ULAANBAATAR

DATED 30 December 2020

MON 45007

PROJECT AGREEMENT

PROJECT AGREEMENT dated 30 December 2020 between ASIAN DEVELOPMENT BANK ("ADB") and MUNICIPALITY OF ULAANBAATAR ("MUB").

WHEREAS

(A) by a Loan Agreement of even date herewith between Mongolia ("Borrower") and ADB ("OCR Loan Agreement"), ADB has agreed to make to the Borrower a loan of twenty-five million fifty thousand Dollars (\$25,050,000) from ADB's ordinary capital resources on the terms and conditions set forth in the OCR Loan Agreement ("OCR Loan"), but only on the condition that the proceeds of the loan be made available to MUB and that MUB agrees to undertake certain obligations towards ADB set forth herein;

(B) by a Loan Agreement of even date herewith between Mongolia ("Borrower") and ADB ("Concessional Loan Agreement", and together with the OCR Loan Agreement, "Loan Agreements"), ADB has agreed to make to the Borrower a concessional loan equivalent to thirteen million six hundred thirty-nine thousand Special Drawing Rights (SDR13,639,000) from ADB's ordinary capital resources on the terms and conditions set forth in the Concessional Loan Agreement ("COL Loan", together with OCR Loan, "Loans"), but only on the condition that the proceeds of the loan be made available to MUB and that MUB agrees to undertake certain obligations towards ADB set forth herein; and

(C) MUB, in consideration of ADB entering into the Loan Agreements with the Borrower, 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 Concessional Loan Agreement and in the Loan Regulations (as defined in each of the Loan Agreements) have the respective meanings therein set forth.

ARTICLE II

Particular Covenants

Section 2.01. (a) MUB 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, MUB shall perform all obligations set forth in the Loan Agreements to the extent that they are applicable to MUB, and all obligations set forth in the Schedule to this Project Agreement.

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

Section 2.03. (a) In the carrying out of the Project, MUB 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, MUB shall procure all items of expenditures to be financed out of the proceeds of the Loans in accordance with the provisions of Schedule 4 to the Concessional 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. MUB shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. MUB 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) MUB shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, MUB 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. MUB shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loans, 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 MUB shall cooperate fully to ensure that the purposes of the Loans will be accomplished.

(b) MUB 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 Subsidiary Loan Agreements, or the accomplishment of the purposes of the Loans.

(c) ADB and MUB 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, MUB and the Loans.

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

(b) Without limiting the generality of the foregoing, MUB 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, MUB 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 MUB of its obligations under this Project Agreement and the accomplishment of the purposes of the Loans.

Section 2.09. (a) MUB 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 proceeds of the Loans, 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) MUB 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 MUB 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 MUB, unless MUB shall otherwise agree.

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

Section 2.11. (a) MUB shall, promptly as required, take all action within its powers to maintain its corporate 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) MUB 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) MUB 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, MUB 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, MUB shall apply the proceeds of the Loans to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreements 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.

Section 2.14. Except as ADB may otherwise agree, MUB shall duly perform all its obligations under the Subsidiary Loan Agreements, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Subsidiary Loan Agreements.

ARTICLE III

Effective Date; Termination

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

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which both Loan Agreements shall terminate in accordance with their 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 Agreements.

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) 8636-2444
(632) 8636-2407

For MUB

Sukhbaatar square-11
Ulaanbaatar-46
Mongolia

Facsimile Number:

(976) 11 327-199.

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 Loan Agreements by or on behalf of MUB may be taken or executed by its Mayor or by such other person or persons as he or she shall so designate in writing notified to ADB.


(b) MUB 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


PAVIT RAMACHANDRAN
Country Director
Mongolia Resident Mission

MUNICIPALITY OF ULAANBAATAR

By


SANDAGSUREN JIGJIDSUREN
First Deputy Governor in charge of
Development Policies

SCHEDULE

Execution of Project; Environmental, Social, Financial and Other Matters

Implementation Arrangements

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

2. MUB shall ensure that the existing PMO for the Investment Program shall continue to be responsible for the Project implementation throughout the Project. If there are any changes to the key staff of the PMO, MUB shall ensure that such changes are acceptable to ADB and MOF.

Procurement

3. MUB shall ensure that (a) procurement responsibility shall stay with the existing PMO; (b) any procurement under the Project shall be completed by the Project completion date; and (c) any major changes to the procurement plan which may cause substantial delay to the Project implementation shall be avoided.

Environment

4. MUB shall ensure, that the preparation, design, construction, implementation, and operation of Subprojects financed under the Facility comply with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; (b) the Safeguard Policy Statement; (c) the EARF; and (d) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions set forth in the Safeguard Monitoring Reports.

5. MUB shall ensure that throughout the Project implementation, (a) any changes to the project design are reviewed that may potentially cause negative environmental impacts; (b) in consultation with ADB, environmental monitoring and mitigation measures are revised as necessary to assure full environmental compliance; and (c) provide ADB within 60 days justification for any proposed changes to the mitigation measures required during design, construction and operation.

6. MUB shall validate with data that the feasibility design stack emission specifications of the three heating facilities of the Project meet national and international emission standards, and report as such to ADB.

7. MUB shall cause the Works contractors to (a) get permission from environmental department of MUB on selecting sites for quarries, borrow pits and spoil disposals, (b) select quarries, borrow pits, and spoil disposal sites appropriate to the scale of the required borrow soil and the spoil generated before construction commences; (c) endorse such sites as being consistent with the selection criteria set out in the EMP; and (d) manage the sites in accordance with the provisions under the EMP.

8. MUB shall ensure that the heat facilities comply with the relevant standard (eg. MNS 6298:2011), and laws and regulations of the Borrower and regular ambient air quality and stack emission monitoring is conducted and reported to ADB.

9. MUB shall ensure that (a) the project implementation consultants are engaged in a timely manner, including the safeguards specialists; (b) as per EMP licensed Institutes are contracted to conduct periodic environmental impact monitoring in accordance with the approved monitoring plan; and (c) the capacity-building program described in the EMP and the resettlement plans is implemented as planned from the date of engagement of the consultants until project completion.

Land Acquisition and Involuntary Resettlement

10. MUB shall ensure that all land and all rights-of-way required for each Subproject and all Project facilities 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 Borrower relating to land acquisition and involuntary resettlement; (b) the involuntary resettlement safeguards defined under the Safeguard Policy Statement; (c) the RF; and (d) all measures and requirements set forth in the respective RPs, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

11. MUB shall ensure sufficient resources in a timely manner for implementation of all measures and requirements related to land acquisition and resettlement set forth in the respective RPs. In particular, MUB shall ensure that the necessary financing for resettlement and land acquisition is reflected in its annual budget for timely implementation of the Project.

12. Without limiting the application of the involuntary resettlement safeguards, the RF or the RP, MUB shall ensure that no physical or economic displacement takes place in connection with any Subproject until:

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

Indigenous Peoples

13. MUB shall ensure that the preparation, design, construction, implementation and operation of each Subproject and all Project facilities do not have any adverse impacts on the indigenous peoples, within the meaning of the Safeguard Policy Statement. In the event that the Project or any of its Subprojects have such impact, MUB shall take all steps required to ensure that the Project and the Facility, as applicable, comply (a) with the applicable laws and regulations of the Borrower relating to indigenous peoples and (b) with the Safeguard Policy Statement.

Human and Financial Resources to Implement Safeguards Requirements

14. MUB shall make available necessary budgetary and human resources to fully implement the EMP and the RPs.

15. MUB shall ensure that (a) the Project implementation consultants are engaged in a timely manner, including safeguards specialists; (b) a licensed environmental monitoring institute is contracted to conduct periodic environmental impact monitoring in accordance with the approved monitoring plan; and (c) the capacity-building program described in the EMP and the RPs is implemented as planned from the date of engagement of the consultants until Project completion.

Safeguards-Related Provisions in Bidding Documents and Works Contracts

16. MUB shall ensure that all bidding documents and contracts for the Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE, the EMP and the RPs (to the extent they concern impacts on affected persons during construction), and any corrective or preventative actions set forth in safeguards monitoring reports;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the MUB with a written notice of any unanticipated environmental, or resettlement risks or impacts that arise during construction, implementation or operation of the project that were not considered in the IEE, the EMP or the RPs; and
- (d) reinstate pathways and other local infrastructure to at least their pre-project condition as soon as possible and no later than the completion of construction.

Safeguard Monitoring and Reporting

17. MUB shall do the following:

- (a) submit Safeguards Monitoring Reports to ADB
 - (i) in respect of implementation of and compliance with Environmental Safeguards and the EMP, annually during construction and the implementation of the Project and the EMP until the issuance of ADB's Project completion report unless a longer period is agreed in the EMP; and
 - (ii) in respect of implementation of and compliance with Involuntary Resettlement Safeguards, and of the RPs, semiannually during the implementation of the Project until the issuance of ADB's

Project completion report unless a longer period is agreed in the RPs and EMP,

and disclose relevant information from such reports to the respective affected people under the Environmental Safeguards and the Involuntary Resettlement Safeguards 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 IEE, the EMP and the RPs, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;
- (c) engage qualified and experienced external social safeguards experts under a selection process and terms of reference acceptable to ADB, to verify information produced through the social safeguards monitoring process, and facilitate the carrying out of any verification activities by such external 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

18. MUB shall ensure, that no Loan proceeds are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the Safeguard Policy Statement.

Grievance Redress Mechanism

19. MUB shall ensure that separate safeguards grievance redress mechanisms acceptable to ADB are established in accordance with the provisions of the EMP and RPs at the PMO, within the timeframes specified in the relevant EMP and RPs, to consider safeguards complaints.

Labor Standards, Health, and Safety

20. MUB shall ensure that the core labor standards and the applicable laws and regulations of the Borrower are complied with during Project implementation. MUB shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things (a) comply with the applicable labor law and regulations of the Borrower and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) do not restrict the workers from developing a legally permissible means of expressing their grievances and protecting their rights regarding working conditions and terms of employment; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the project and to members of the local communities surrounding the project area, particularly women. MUB shall strictly monitor

compliance with the requirements set forth in this paragraph and provide ADB with semiannual reports.

Gender and Development

21. MUB shall ensure that the gender action plan and the social development action plan, both agreed with ADB, are implemented in a timely manner over the Project period, and that adequate resources are allocated for this purpose. Specific social and gender-related activities undertaken during Project implementation shall be reported to ADB in semiannual Project progress reports.

Institutional and Operational Framework for Subcenter Redevelopment

22. MUB shall develop the institutional and operational framework for transparent, green and inclusive subcenter redevelopment, in a substance acceptable to ADB, by 31 December 2020, and to approve it by 30 June 2021. MUB shall reflect necessary budget to implement the framework into its annual budget.

Counterpart Support

23. MUB shall ensure that the counterpart funding required for successful Project implementation is timely allocated and provided, and to adequately staff and equip the PMO. In particular, MUB shall include into its annual budget necessary items, including (a) its share of Works contracts, and (b) land acquisition and resettlement cost for the Project.

24. In addition to the foregoing, MUB shall ensure that it has sufficient funds to satisfy its liabilities arising from any Works, Goods and/or Consulting Services contract.

Operational Covenants

25. MUB shall ensure that the Works contractors take necessary actions to avoid interruptions to water supply, heating, and other utility services during the construction under the Project.

Maintenance of the Project facilities

26. MUB shall ensure that the Project facilities have enough resources and human capacity to be properly operated and maintain by relevant departments and agencies, and that MUB allocated sufficient financial resources for operation and maintenance of the Project facilities.

Finance and Tariff

27. MUB shall continue implementing the financial management action plan, developed under the Program, throughout the Project implementation period.

28. MUB shall ensure, that: (a) USUG tariffs are reviewed at least once a year and set and periodically adjusted as appropriate by at least 5% every 5 years; and (b) commencing no later than 2022 fiscal year, USUG achieves and aggregate tariff collection rate from all customers of 90%. Furthermore, MUB shall ensure that appropriate public awareness

programs are conducted to educate the public on the need for a rational water supply and sewerage tariffs scheme and the importance of water conservation.

29. In order to facilitate and improve its operational and financial sustainability, MUB shall ensure that USUG implements annual business plans.

30. MUB shall ensure, that (a) heating tariffs are reviewed at least once a year and set and periodically adjusted as appropriate by at least 10% every 5 years to ensure the financial viability of the project investments; and (b) commencing no later than 2022, an aggregate tariff collection rate for heating from all customers of 95% is achieved. MUB shall also ensure that appropriate public awareness programs are conducted to educate the public on the need for a rational tariffs scheme on heating services and heating conservation.

Governance and Corruption

31. MUB 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.

32. MUB 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 the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.