
LOAN NUMBER 4120-BAN(COL)

PROJECT AGREEMENT

(Irrigation Management Improvement Project – Additional Financing)

between

ASIAN DEVELOPMENT BANK

and

BANGLADESH WATER DEVELOPMENT BOARD

DATED 23 DECEMBER 2021

BAN 45207

PROJECT AGREEMENT

PROJECT AGREEMENT dated 23 December 2021 between ASIAN DEVELOPMENT BANK ("ADB") and Bangladesh Water Development Board ("BWDB").

WHEREAS

(A) by a loan agreement dated 14 August 2014 between People's Republic of Bangladesh ("Borrower") and ADB ("Initial Loan Agreement"), ADB agreed to provide a concessional loan to the Borrower from ADB's ordinary capital resources in various currencies equivalent to twenty-nine million five hundred and fifty-one thousand Special Drawing Rights (SDR 29,551,000) for the purposes of the project described in Schedule 1 to the Initial Loan Agreement ("Project");

(B) by a Loan Agreement of even date herewith between the Borrower and ADB, ADB has agreed to make a concessional loan to the Borrower from ADB's ordinary capital resources in the amount of thirteen million five hundred thousand Dollars (\$13,500,000) 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 BWDB and that BWDB agrees to undertake certain obligations towards ADB set forth herein; and

(C) BWDB, in consideration of ADB entering into the Loan Agreement 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 Loan Agreement, the Initial 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) BWDB 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, BWDB shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to BWDB, and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. BWDB 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 Loan, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, BWDB 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, BWDB 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 Initial 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. BWDB shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. BWDB 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) BWDB 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, BWDB 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. BWDB 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 BWDB shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) BWDB 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 BWDB 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, BWDB and the Loan.

Section 2.08. (a) BWDB 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 BWDB; and (v) any other matters relating to the purposes of the Loan.

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

Section 2.09. (a) BWDB 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) BWDB 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 BWDB 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 BWDB, unless BWDB shall otherwise agree.

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

Section 2.11. (a) BWDB 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) BWDB 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) BWDB 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, BWDB 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, BWDB 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.

Section 2.14. BWDB shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of the Bangladesh Water Development Board Act, 2000, Act No. XXVI of 2000, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. BWDB shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

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 BWDB 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) 8636-2444
(632) 8636-2391.

For BWDB

Bangladesh Water Development Board
Pani Bhaban 72, Green Road Dhaka, Bangladesh

Facsimile Numbers:

(880) 2-222230010
(880) 2-222230011.

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 Agreement by or on behalf of BWDB may be taken or executed by its Director General or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) BWDB 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 
EDIMON GINTING
Country Director
Bangladesh Resident Mission

BANGLADESH WATER DEVELOPMENT
BOARD

By 
MD. RAFIUS SAZZAD
Superintending Engineer/Project Director

SCHEDULE

Execution of Project

1. BWDB shall review a short-list of candidates on a non-objection basis for an independent panel of experts to be recruited and engaged by ADB, to (a) review the performance of the Construction-phase IMO thus far and assess whether the Project is ready to have its long-term MOM transferred to the Management-phase IMO in accordance with paragraph 2 of this Schedule; and – if not – (b) advise on measures to remedy the deficiencies in the proposed plan or propose alternative approaches to ensure that the sustainable development objectives envisaged under the Project are achieved. BWDB shall assist the panel of experts by providing any data and support that the panel may reasonably require. BWDB shall endorse the conclusions and recommendations issued by the panel and commit to their effective implementation.
2. If the independent panel of experts recommends that the long-term MOM of all or part of the project facilities be transferred to a Management-phase IMO upon expiry of the management contract of the Construction-phase IMO, BWDB shall transfer the responsibility for such MOM activities to the Management-phase IMO pursuant to a long-term lease, concession or other PPP modality in a manner that (a) allocates risks and responsibilities among the stakeholders in accordance with sound international practice; (b) includes a transparent, objective and comprehensive water service tariff regulation mechanism that is aimed at cost recovery and provides for a reasonable return on equity for the Management-phase IMO; and (c) provides the Management-phase IMO with the operational autonomy to effectively manage its operations, to meet the requirements for operation and maintenance cost recovery and preserve its business interests, through collection of water service charges or other cost recovery/income generating activities.