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LOAN NUMBER 3845-PAK (COL)

PROJECT AGREEMENT  
(Sindh Secondary Education Improvement Project)

between

ASIAN DEVELOPMENT BANK

and

PROVINCE OF SINDH

DATED 25<sup>th</sup> Day of June, 2020.

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PAK 51126



## PROJECT AGREEMENT

PROJECT AGREEMENT dated 25th Day of June 2020 between ASIAN DEVELOPMENT BANK ("ADB") and PROVINCE OF SINDH ("SINDH").

### WHEREAS

(A) by a Loan Agreement between the Islamic Republic of Pakistan ("Borrower") and ADB, ADB has agreed to make to the Borrower a concessional loan of seventy-five million Dollars (\$75,000,000) 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 the Project Executing Agency (as defined in the Loan Agreement) and that the Project Executing Agency agrees to undertake certain obligations towards ADB set forth herein; and

(B) the Project Executing Agency, 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 and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

## ARTICLE II

### Particular Covenants

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

Section 2.02. The Project Executing Agency 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, the Project Executing Agency 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, the Project Executing Agency 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. The Project Executing Agency shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The Project Executing Agency 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) The Project Executing Agency 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, the Project Executing Agency 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. The Project Executing Agency 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 the Project Executing Agency shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) The Project Executing Agency 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 the Project Executing Agency 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, the Project Executing Agency and the Loan.

Section 2.08. (a) The Project Executing Agency 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 the Project Executing Agency; and (v) any other matters relating to the purposes of the Loan.

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

Section 2.09. (a) The Project Executing Agency 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) The Project Executing Agency 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 the Project Executing Agency 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 the Project Executing Agency, unless the Project Executing Agency shall otherwise agree.

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

Section 2.11. (a) The Project Executing Agency shall at all times conduct its operations in accordance with sound applicable administrative, financial, technical, environmental, social, maintenance and operational, and secondary education development

practices, and under the supervision of competent and experienced management and personnel.

(b) The Project Executing Agency 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 administrative, financial, technical, environmental, social, maintenance and operational, and secondary education development practices.

Section 2.12. Except as ADB may otherwise agree, the Project Executing Agency 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, the Project Executing Agency 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 the Project Executing Agency 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) 636-2424

For Project Executing Agency

School Education and Literacy Department  
1<sup>st</sup> Floor, Tughlaq House  
Sindh Secretariat, Saddar  
Karachi, Pakistan

Facsimile Number:

(021)-34304440.

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 the Project Executing Agency may be taken or executed by Secretary, SELD, or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) The Project Executing Agency 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 SINDH

By 

RAFIA HALIM  
Special Secretary, School Education  
and Literacy Department  
Government of Sindh

## **SCHEDULE**

### **Execution of Project; Financial Matters**

#### 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. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM, the Loan Agreement and/or this Project Agreement, the provisions of the Loan Agreement shall prevail.

#### Procurement

2. The Project Executing Agency shall ensure that:

- (a) the procurement of Goods, Works and Services is carried out in accordance with the Procurement Policy and the Procurement Regulations;
- (b) Goods, Works and Services shall be procured based on the detailed arrangements set forth in the Procurement Plan, including the procurement and selection methods, the type of bidding documents, and ADB's review requirements. The detailed arrangements set forth in the Procurement Plan only with the prior agreement of ADB, and such modifications must be set out in updates to the Procurement Plan; and
- (c) (i) all Goods and Works procured and Services obtained (including all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party; and (ii) all contracts for the procurement of Goods, Works and Services contain appropriate representations, warranties and, if appropriate, indemnities from the contractor, supplier, consultant or service provider with respect to the matters referred to in this subparagraph.

3. The Project Executing Agency shall not award any Works contract for a Subproject which involves environmental impacts until the Project Executing Agency has:

- (a) obtained the final approval of the IEE from the appropriate authorities of the Borrower and Sindh; and
- (b) incorporated the relevant provisions from the EMP into the Works contract.

4. The Project Executing Agency shall not award any Works contract involving involuntary resettlement impacts for a Subproject until the Project Executing Agency has prepared and submitted to ADB the final RP for such Subproject based on the Subproject's detailed design, and obtained ADB's clearance of such RP.



### Subproject Selection Criteria

5. The Project Executing Agency shall ensure that (a) the Subprojects emphasize schools that enroll girls and (b) each Subproject is agreed in advance by ADB and is selected in accordance with the following criteria:

- (a) is (A) from the list of SELD priority schools, (B) operated by a private manager under the SELD's EMO program; and (C) is located in an area where there is sufficient demand for secondary education;
- (b) is in a Target School District and located on an existing school campus or compound;
- (c) is technically viable considering the least cost and technically sound options, and economically and financially feasible;
- (d) complies with the requirements set out in paragraphs 6 to 13 of this Schedule and has no significant adverse environmental and social impacts (i.e., would not be classified as a category A Subproject in accordance with the Safeguard Policy Statement); and
- (e) can be completed within the Project implementation period.

### Environment

6. The Project Executing Agency shall ensure that the preparation, design, construction, implementation, operation and decommissioning of each Subproject and all Project facilities comply with (a) all applicable laws and regulations of the Borrower and Sindh relating to environment, health, and safety; (b) the Environmental Safeguards; (c) the EARF; and (d) all measures and requirements set forth in the respective IEE and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

### Land Acquisition and Involuntary Resettlement

7. The Project Executing Agency 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 and Sindh relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; (c) the RF; 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.

8. Without limiting the application of the Involuntary Resettlement Safeguards, the RF 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 Subprojects 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 have been established in accordance with the RP.

#### Indigenous Peoples

9. The Project Executing Agency shall ensure that the Project does not have any indigenous peoples impacts within the meaning of the Safeguard Policy Statement. In the event that the Project does have any such impact, the Project Executing Agency shall ensure that the Project complies with the applicable laws and regulations of the Borrower and Sindh and the Safeguards Policy Statement.

#### Human and Financial Resources to Implement Safeguards Requirements

10. The Project Executing Agency shall make available necessary budgetary and human resources to fully implement each EMP and RP.

#### 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) comply with the measures and requirements relevant to the contractor set forth in the IEE, the EMP and the RP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set out in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the Borrower, through the Project Executing Agency, 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 IEE, the EMP and the RP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

#### Safeguards Monitoring and Reporting

12. The Project Executing Agency shall do the following:

- (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 IEE, 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; and
- (c) 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

13. 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 Standards, Health and Safety

14. The Project Executing Agency shall ensure that the core labor standards and the applicable laws and regulations of the Borrower and Sindh are complied with during Project implementation. The Project Executing Agency shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) have written terms of employment with all hired workers, pay equal wages for work of equal value, and pay wages to women and men directly with distribution of pay slips; (b) comply with the applicable labor law and regulations of the Borrower and Sindh and incorporate applicable workplace occupational safety norms; (c) do not use child labor; (d) do not discriminate workers in respect of employment and occupation; (e) do not use forced labor; (f) allow freedom of association and effectively recognize the right to collective bargaining; and (g) 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.

15. The Project Executing Agency shall strictly monitor compliance with the requirements set forth in paragraph 14 above and provide ADB with regular reports.

#### Gender and Development

16. 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.

#### Counterpart Support

17. Sindh shall ensure that all in-kind counterpart support required during the Project implementation period is provided on time during each year of Project implementation.

### Operation and Maintenance

18. Sindh shall ensure that adequate funds are allocated in its annual budget and made available for the operation and maintenance of the Project facilities following completion of the Project.

### Sector Covenants

19. The Project Executing Agency shall ensure that ADB is kept informed of the policies and programs in respect of secondary education in Sindh, including those under discussion with other multilateral and bilateral agencies where they may have implications for implementation of the Project.

### Governance and Anticorruption

20. The Project Executing 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.

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