



CONSILIUL MUNICIPAL CHIȘINĂU

nr. 7/3

DECIZIE

din 27 iulie 2021

Cu privire la aprobarea Acordului de prefinanțare între Banca Europeană pentru Reconstrucție și Dezvoltare și Primăria Municipiului Chișinău

Având în vedere necesitatea implementării Proiectului de reabilitare a râului Bîc și protecție împotriva inundațiilor, în temeiul art. 32 lit. e) din Legea nr. 397/2003 „Privind finanțele publice locale”, art. 14 alin. (2), art. 19 alin. (4) din Legea nr. 436/2006 „Privind administrația publică locală”, art. 6 alin. (2) din Legea nr. 136/2016 „Privind statutul municipiului Chișinău”, Consiliul Municipal Chișinău DECIDE:

1. Se aprobă acordul de prefinanțare între Banca Europeană pentru Reconstrucție și Dezvoltare și Primăria Municipiului Chișinău, în scopul implementării Proiectului de reabilitare a râului Bîc și protecție împotriva inundațiilor, inclusiv elaborarea studiului de fezabilitate, conform anexei la prezenta decizie.

2. Se împuternicește Primarul General al municipiului Chișinău, dl Ion Ceban, cu dreptul de a semna Acordul de prefinanțare cu Banca Europeană pentru Reconstrucție și Dezvoltare.

3. Direcția relații publice și buget civil a Primăriei Municipiului Chișinău va aduce la cunoștință populației municipiului Chișinău prevederile prezentei decizii, prin intermediul mass-media municipale.

4. Primarul General al municipiului Chișinău, dl Ion Ceban, va asigura controlul îndeplinirii prevederilor prezentei decizii.

PREȘEDINTE DE SEDINȚĂ

SECRETAR INTERIMAR
AL CONSILIULUI



Roman COJUHARI
Adrian TALMACI



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Adrian TALMACI



Anexă la
Decizia Consiliului Municipal Chisinau
Nr. 7/3 din 27 iulie 2021

PRE-FINANCING AGREEMENT

Re: MOLDOVA/ GrCF 2 W1: Chisinau River Bic Rehabilitation and Flood Protection

This Pre-financing Agreement (the “Agreement”) is made on [July], by and between:

- (1) The Municipality of Chisinau (the “City”), a municipality existing under the laws of the Republic of Moldova, having its offices at 83, Stefan cel Mare boulevard, Chisinau, Republic of Moldova, and
- (2) European Bank for Reconstruction and Development (the “Bank”), having its headquarters at One Exchange Square, London EC2A 2JN, United Kingdom.

(Collectively, the “Parties”).

WHEREAS:

A. The City is considering to implement GrCF 2 W1: Chisinau River Bic Rehabilitation and Flood Protection, to improve the climate resilience of Chisinau on the river Bic (the “Project”). The Project will finance a set of integrated measures for improvement and revitalization of the water system of the river Bic, including flood water management in Chisinau along the Bic River and its tributaries that mitigate the increased risk of severe flooding events from climate change, including river and storm flood water conveyance, control, attenuation, storage and its controlled release. The total estimated cost of the Project is EUR 21.1 million, comprising the Bank’s senior financing, an equal ranking senior co-financing loan from the European Investment Bank (“EIB”) and an envisaged investment grant and technical cooperation grant funds (“TC Funds”) support, as detailed further. The Project falls within the Bank’s Green Cities Framework 2 Window 1 (“GrCF2 W1”).

B. The Bank is considering participation in the Project through the provision of long-term financing to the City in the amount of up to EUR 8.0 million.

C. The Parties wish to set forth in this Agreement the basis on which they will work together in preparing the proposed financing for the Project.

NOW, THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:

1. The Bank confirms its interest in considering participating in the Project (subject to Section 9 below) through the provision of long-term financing, preferably in the

form of a loan to the City in the overall amount of up to EUR 8.0 million. The terms and conditions of any financing to be provided by the Bank will be negotiated after appraisal. However, the following indicative terms and conditions for the loan are anticipated:

- (i) Currency: EUR.
 - (ii) Tranches: [The Loan may be tranching in two phases with amounts to be decided upon the Bank's assessment of the overall Project risks, the first tranche may be committed at signing and the remaining tranche may be committed at the Bank's sole discretion. The components of the Project to be financed from subsequent Loan tranches to be agreed by the Parties].
 - (iii) Maturity: up to 12 years (consisting of up to [3-5 years] grace and [9-7 years] for principal repayment, to be conditional on the findings of the Project appraisal).
 - (iv) Interest rate, commitment, front-end and other fees: Interest rate, commitment, front-end and other fees will be determined upon the Bank's assessment of the overall Project risks.
 - (v) Main financing agreements and Project agreements:
 - Loan Agreement;
 - Grant Agreement;
 - Any other agreements entered into between the City and the Bank and notices, certificates and applications issued by the City to the Bank.
 - (vi) Procurement rules: in accordance with EBRD *Procurement Policies and Rules*.
2. The Bank confirms its willingness to co-operate with the other Parties hereto to advance the preparation of the contemplated financing, including by mobilising staff and external consultants, as long as the Project shall be supported by the Bank's management.
 3. The Bank confirms its willingness, in co-operation with the other Parties to this Agreement, to liaise with the Ministry of Agriculture, Regional Development and Environment of the Republic of Moldova and other entities to discuss Project-related issues, as long as the Project shall be supported by the Bank's management.
 4. Upon the City's request, the Bank will seek to mobilise co-financing grant funds of up to EUR 4.0 million (the "Grant Funds"), subject to the approval of the Bank's management, and subject to approval from an international donor, for the purposes of co-financing the Project.
 5. The City has requested, that the Bank will seek to mobilise technical cooperation grant funds administered by the Bank ("TC Funds"), subject to the approval of the Bank's management, for the following purposes of Project preparation and implementation:
 - (a) **Project Due Diligence.** The study will include technical, environmental and social due diligence as well as the development of a flood protection strategy/plan for the City of Chisinau. The estimated cost of the assignment is up to EUR 280,000.

(b) **Project Implementation Support** to the City for (i) preparation of tender documents; (ii) assistance with tendering procedures including tenders evaluation and subsequent contracts signing; (iii) supervision of works and assistance with the supply contracts administration; (iv) support in disbursement, project management and reporting. The estimated cost of the assignment is up to **EUR 600,000**.

(c) **A study on the wider flood water management options** upstream of the catchment, before the Ghidighici Reservoir/Dam. The estimated cost of the assignment is up to **EUR 175,000**.

6. The City will be obliged to reimburse the Bank for all fees, costs and expenses of outside legal counsel retained by the EBRD incurred in connection with the preparation of EBRD's financing and the preparation, drafting, negotiation and review of the financing documentation for the Project (the "Expenses") for an amount of up to [EUR 65,000]. The Expenses shall be reimbursed within 14 days after the Bank provides an invoice to the City.

7. If the City at any time elects not to pursue further processing of the proposed financing with the Bank, the City will be obliged to pay the Bank, promptly upon receipt of an invoice by the Bank, a break-up fee in the amount of [EUR 30,000] (the "Break-Up Fee") plus any accrued Expenses which have not been already reimbursed, together with all TC Funds advanced to the City.

However, the Break-Up Fee will not be payable if the TC Funds described under Section 5 above could not be mobilised and the City have not been able to find any alternative source of financing to cover the costs of Project preparation and implementation.

8. The contribution of the City to the preparation of the Project shall include the following:

(a) The City shall pay for its own internal costs relating to the preparation and appraisal of the Project.

(b) The City shall provide, without charge, to any consultants engaged to assist in matters relating to the Project or the operations of the City all facilities and support necessary for the carrying out of their functions, including office space, photocopying equipment and supplies, secretarial services and transportation, as well as all documents, materials and other information that may be relevant to their work.

9. Sections 1, 2, 3 and 4 of this Agreement reflect only the expectations and current intentions of the Parties in relation to the Project and do not impose or constitute any legally binding obligations on the Parties to provide, or to accept, financing, as the case may be. Any financing will be agreed between the Parties. In particular, it will be conditional on the findings of the Project appraisal and shall be subject to negotiation of an overall financing plan and Project arrangements satisfactory to the Bank, approval by the Bank's management and Board of

Directors, negotiation and execution of appropriate financing documentation and fulfillment of applicable conditions precedent. Except as otherwise provided in this Section 9, this Agreement provides for legally binding obligations of the Parties which will become immediately effective upon execution of this Agreement.

10. Any amendment to, or waiver by the Bank of any terms or conditions of, or consent given by the Bank under, this Agreement (including under this Section 10) shall be in writing, signed by the Bank and, in the case of an amendment, by the City.
11. Any notice, application or other communication to be given or made under this Agreement to any Party to this Agreement shall be in writing. Except as otherwise provided in this Agreement, such notice, application or communication shall be deemed to have been duly given or made when its is delivered by hand, airmail, telex or facsimile transmission to the party to which it is required or permitted to be given or made at such party's address herein firstly mentioned or at such other address as such party designates by notice to the party giving or making such notice, application or other communication.
12. This Agreement shall be governed by the laws of England. The Loan Agreement to be executed between the Bank and the City will be governed by the laws of England. All the financing agreements to which the Bank will be a party will contain an international arbitration clause similar to that set out in Section 14 below consistent with the Bank's standards.
13. The City nor any of its affiliates, shall, from the date of this letter agreement until the date of the relevant participation agreement or parallel loan agreement, enter into any negotiations with any bank or financial institution for the purpose of raising any financing in the international debt market (excluding money-market lines) for the Project, without the Bank's prior written consent.
14. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof or the Bank's involvement with the Project (if any), shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. There shall be one arbitrator and the appointing authority shall be LCIA (London Court of International Arbitration). The seat and place of arbitration shall be London, England and the English language shall be used. The parties waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek determination of a preliminary point of law by, the courts of England. Notwithstanding the UNCITRAL Arbitration Rules, the arbitral tribunal shall not be authorised to grant, and the City agree that they shall not seek from any judicial authority, any interim measures or pre-award relief against the Bank. Notwithstanding the foregoing, this Agreement may, at the option of the Bank, be enforced by the Bank in any courts having jurisdiction.
15. Nothing in this letter agreement shall be construed as a waiver, renunciation or other modification of any immunities, privileges or exemptions of the Bank

accorded under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable law.

16. The City represent and warrant that this Agreement is a commercial rather than a public or governmental act and that the City is not entitled to claim immunity from legal proceedings with respect to itself or any of its assets on the grounds of sovereignty or otherwise under any law or under any jurisdiction where an action may be brought for the enforcement of any of the obligations arising under or relating to this Agreement.
17. The Bank is sometimes the recipient of communications, including complaints, from civil society on environmental, safety, social, and other aspects of projects, both before Board approval and during Project implementation. The Bank will share this external communication and its responses with the City and any potential and existing co-financers, insofar as any of this information is not covered by any confidentiality agreement, in order to ensure consistency in approach and messages to the public. The Bank encourages the City and any co-financers to likewise share external communication, including complaints, and their responses with the Bank.
18. This Agreement is drafted in 3 counterparts, in English, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names as of the date first above written.

For the City OF CHISINAU

Name: Ion Ceban
Title: Mayor

For EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

Name: [Anzhela Sax]
Title: [Head of EBRD Moldova]

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AL CONSILIULUI



Adrian TALMACI