
LOAN NUMBER 2247-PRC

PROJECT AGREEMENT
(Heilongjiang Road Network Development Project)

between

ASIAN DEVELOPMENT BANK

and

HEILONGJIANG PROVINCIAL GOVERNMENT

DATED 19 JANUARY 2007

PAL: PRC 39038

PROJECT AGREEMENT

PROJECT AGREEMENT dated 19 January 2007 between ASIAN DEVELOPMENT BANK (hereinafter called ADB) on one side and the HEILONGJIANG PROVINCIAL GOVERNMENT (hereinafter called HPG) on the other.

WHEREAS

(A) by a Loan Agreement of even date herewith between People's Republic of China (hereinafter called the Borrower) and ADB, ADB has agreed to make to the Borrower a loan of two hundred million dollars (\$200,000,000) on the terms and conditions set forth in the Loan Agreement, but only on condition that all of the proceeds of the Loan be made available to HPG, for the purposes of financing the Project described in Schedule 1 to the Loan Agreement; and

(B) HPG, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations hereinafter set forth;

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) HPG shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental, highway and road construction, operation and maintenance practices.

(b) In the carrying out of the Project and operation of the Project facilities, HPG shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to HPG and Heilongjiang Provincial Communications Department (HPCD) and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. HPG shall make available, promptly as needed, or, to the extent applicable, ensure prompt availability of, the funds, facilities, services, land and other resources which are 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 and in respect of those contracts financed out of the proceeds of the Loan, HPG shall cause HPCD to 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, all goods and services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to the Loan Agreement. ADB may refuse to finance a contract where goods or services have 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. HPG shall cause HPCD to carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. HPG shall cause HPCD to 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) HPG shall or shall cause HPCD to take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of the 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, HPG undertakes to insure, or cause to be insured, the goods to be imported for the Project and to be financed out of the proceeds of the Loan 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. HPG shall maintain, or cause to be maintained, records and accounts adequate to identify the goods and services and other 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 HPG shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) HPG 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, the Subsidiary Loan Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and HPG 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.

Section 2.08. (a) HPG 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 goods and services and other items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of HPCD relevant to the Project; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, HPG shall cause HPCD to furnish to ADB semi-annual reports on the execution of the Project during the construction period and reports 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 quarter under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following quarter.

(c) Promptly after physical completion of the Project, but in any event not later than three (3) months thereafter or such later date as ADB may agree for this purpose, HPG shall cause HPCD to 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 HPG (and, to the extent relevant, by HPCD and PIU) of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) HPG shall (i) maintain separate accounts for the Project; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related statements) audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (iii) furnish to ADB, promptly after their preparation but in any event not later than six months after the close of the fiscal year to which they relate, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the covenants of the Loan Agreement as well as on the use of the procedures for statement of expenditures), all in the English language. HPG shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) HPG shall enable ADB, upon ADB's request, to discuss HPCD's financial statements and its financial affairs relevant to the Project from time to time with the auditors appointed by HPG, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of HPG, unless HPG shall otherwise agree.

Section 2.10. HPG shall cause HPCD to enable ADB's representatives to inspect the Project, the goods financed out of the proceeds of the Loan, the Project Road and all other sites, works, properties and equipment of HPCD to the extent applicable to the Project, and any relevant records and documents.

Section 2.11. (a) HPG shall ensure that HPCD shall at all times conduct its business in accordance with sound administrative, financial, environmental, highway, road construction, and under the supervision of competent and experienced management and personnel.

(b) HPG shall ensure that HPCD 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 administrative, financial, engineering, environmental, highway, road construction, maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, HPG 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, HPG 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 goods and services financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, HPG shall duly perform all its obligations under the Subsidiary Loan Agreement, 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 any such agreement.

Section 2.15. HPG shall promptly notify ADB of any proposal to amend, suspend or repeal any powers or authority of HPCD or any provision of the HPCD's mandate and shall afford ADB an adequate opportunity to comment on such proposal prior to taking any 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 shall come into force and effect. ADB shall promptly notify HPG of such date.

Section 3.02. 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 or by mail, telegram, cable, telex, facsimile or radiogram 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
P.O. Box 789
0980 Manila, Philippines

Facsimile Numbers:
(632) 636-2444
(632) 636-2302.

For HPG

Heilongjiang Provincial Finance Department
No. 146, Jianshe Street, Harbin, Heilongjiang
People's Republic of China

Facsimile Number:

+86 451 5363-1663.

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 by or on behalf of HPG may be taken or executed by its Governor or by such other person or persons as the Governor shall so designate in writing notified to ADB.

(b) HPG shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) of this Section, 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 and to be delivered at the principal office of ADB, as of the day and year first above written.

HEILONGJIANG PROVINCIAL GOVERNMENT



By

H.E. MR. LI JINJUN
Authorized Representative

ASIAN DEVELOPMENT BANK



By

HARUHIKO KURODA
President

SCHEDULE

Execution of Project

Project Implementation

1. HPG through HPCD shall be the Project Executing Agency responsible for overall execution and coordination of the Project. HPCD shall also implement the Rural roads component. HPG shall ensure that HPCD's institutional capacity is adequately supplemented with, among others, consultancy and training inputs under the Project.
2. The Project Implementation Unit within HPCD shall be responsible for managing, coordinating, and supervising implementation of all Project activities. It shall coordinate and monitor the Project highway's construction activities and operate the Project highway. Its general manager, the project director, will be responsible for overall Project management in relation to the Project highway, the approval of contracts, and payments. The PIU shall also facilitate land acquisition, resettlement, and environmental protection measures and shall ensure that local concerns are addressed adequately. The PIU will be headed by a project manager, who will oversee day-to-day physical implementation activities and prepare progress reports. In addition to its central office, the PIU will have nine toll stations and eight maintenance centers.
3. HPG shall take all necessary measures to ensure that (i) HPCD can successfully construct the Project Road, and (ii) the Rural roads construction and improvements are completed by the completion of the Project highway.

Counterpart Funding

4. HPG shall take all necessary measures to ensure that all financing including budgetary allocations and local bank's debt financing are provided on a timely basis to enable the full and timely completion of the Project. In the event of any shortfall or disruption in the financing of the Project due to, *inter alia*, the lack, delay or inadequacy of funding of the Project or Project cost overruns, HPG shall promptly inform the Borrower and ADB and request the Borrower to provide additional funds as may be necessary for successful implementation of the Project.

Construction Quality

5. HPG shall cause HPCD to ensure that (i) the Project Road is constructed in accordance with the Borrower's Ministry of Communication's technical standards of highway engineering; (ii) the Rural roads are upgraded and constructed in accordance with the national standards, and maintained in accordance with standards satisfactory to ADB; and (iii) the Project highway construction supervision, quality control, and contract management are conducted in accordance with national standards and internationally accepted practices.

Change in Ownership and Operation

6. In the event that (i) any change in ownership of the Project Road, (ii) any sale, transfer, or assignment of interest or control in the Project Road, or (iii) any lease or other contract or other modification of HPCD's functions and authority over operation and maintenance of the Project Road, is anticipated, HPG shall obtain ADB's consent at least six months prior to the

implementation of such a plan. HPG shall ensure that any such changes shall be carried out in a legal and transparent manner.

Road Safety

7. At least six months prior to the opening of the Project highway, HPG shall (i) develop and implement a plan, acceptable to ADB, for ensuring safe operation of road infrastructure facilities; (ii) ensure that traffic police patrols the Project Road and enforces the national laws and regulations, and (iii) create a 2.5 km pilot Rural road safety zone to enhance safety along the Project Road. HPG shall ensure monitoring of the accident rate and traffic volume after commencement of the operation of the Project highway to verify efficacy of the piloted safety zone.

Road Maintenance

8. HPG shall ensure that HPCD shall (i) develop a road maintenance manual during Project implementation; (ii) establish a system during the Project for an efficient prioritization of road maintenance works; and (iii) provide a training program under the Project to strengthen the capacity of local government maintenance units.

Operation and Maintenance Concession

9. Upon the completion of the Project highway, HPG shall cause HPCD to use its best efforts to enter into (a) an operation and maintenance concession with a private sector entity for the class I section of the Project highway (totaling 8 km), and (b) maintenance concession for the class II sections of the Project highway. HPG shall cause HPCD to submit the bidding documents and the concession framework to ADB by interim review in 2008.

Tolling

10. At least six months prior to the opening of the Project highway, HPG shall propose the appropriate toll rates for the Project highway in accordance with the Borrower's highway laws. For the first three years of full operation, HPG shall review the toll structure and levels and report to ADB significant difficulties in meeting the principles established under the Borrower's highway laws.

Vehicle Emissions

11. At least six months prior to the opening of the Project highway, HPG shall provide to ADB the HEPB emission standards and the penalties for infringement of such standards. HPG shall ensure that through the relevant agencies, the HEPB vehicle emission standards, as well as the national vehicle emission standards, are enforced.

Financial Ratios

12. HPG shall ensure that the debt service coverage ratio of the Project is not less than 1.2 from the sixth year of full operation of the Project highway.

Financial Reporting

13. During the construction period and for the first five fiscal years of commercial operation, HPG shall cause HPCD to submit to ADB certified copies of its annual accounts and financial statements, audited by external and qualified auditors appointed by HPG, within six months after the end of each relevant fiscal year. HPG shall also establish and maintain during implementation and operation of the Project an internal audit unit, composed of full-time accountants, to undertake timely audits of project accounts in accordance with generally accepted accounting principles.

Capacity Development

14. Within six months from the Effective Date, HPG shall cause HPCD to prepare a human resource development plan which will include a training plan, a program of workshops and a list of training equipment, for ADB's approval.

Environment

15. HPG shall ensure that (i) the Project is constructed and operated in accordance with national and local laws, ADB's *Environment Policy*, and the EIA; (ii) any adverse environmental impacts are minimized by the mitigating measures and monitoring program in the EIA; (iii) the implementation of the EMP and any violation of environmental standards are regularly reported to ADB in accordance with the specifications set forth in the EIA; and (iv) EMP is incorporated in bidding documents and bills of quantities of the civil work contracts.

Land Acquisition and Resettlement

16. HPG, through HPCD and the relevant county-level governments, shall ensure that: (a) the RP is updated based on detailed measurement survey, disclosed to affected persons and submitted to ADB for approval prior to commencement of civil works; (b) all land and rights-of-way required by the Project are made available in a timely manner in accordance with domestic regulations, including land use approvals and agreements with affected persons; (c) the RP and the Social Development Action Plan referenced in RP, including specific actions and measures for ethnic minorities, are implemented promptly and efficiently in accordance with their respective terms, all applicable laws and regulations of the Borrower, and ADB's *Policy on Involuntary Resettlement* and *Indigenous Peoples Policy*; (d) all affected persons are given adequate opportunity to participate in resettlement planning and implementation; (e) sufficient and timely provision of counterpart funds will be paid for land acquisition and resettlement activities and disbursed to affected persons prior to dispossession of housing, land and assets; (f) any obligations in excess of the RP budget estimates are met; and (g) the affected persons shall be at least as well off as they would have been in the absence of the Project.

17. HPG, through HPCD and the relevant county-level governments, shall ensure that: (a) adequate staff and resources are committed to supervising and internal monitoring the implementation of the RP; (b) ADB is provided semi-annual reports on resettlement implementation, and a resettlement completion report; (c) an independent agency, acceptable to ADB, is engaged to monitor progress semi annually and evaluate results through annual survey updates for two years after completion of resettlement, including data disaggregated by gender where applicable, and these monitoring reports are submitted to ADB and the Borrower as stipulated in the RP; (d) ADB is promptly advised of any substantial changes in the resettlement impacts and, if necessary, a revised RP is prepared, disclosed to affected persons and submitted

to ADB for its approval; (e) a summary of the government audit of resettlement disbursements and expenditures be provided to ADB; (f) civil works contractors' specifications include requirements to comply with the RPs and entitlements for permanent and temporary impacts to affected persons; (g) the contractors are supervised to ensure compliance with requirements of the RPs, applicable law and ADB's *Policy on Involuntary Resettlement*; and (h) affected persons are given preferential treatment for Project-related employment opportunities.

Poverty Reduction

18. HPG, through HPCD, shall cause the contractors involved in project implementation to maximize employment of local poor persons, including ethnic minorities, who meet the job and efficiency requirements for construction of the Project. Such workers will be provided with adequate on-the-job training. HPCD and the relevant county-level governments shall implement the Project in accordance with the Social Development Action Plan referenced in RP. HPG shall monitor the Project's impact on poverty and submit annual monitoring reports to ADB during project implementation in accordance with the guidelines set forth in the project performance monitoring system (PPMS) as defined in paragraph 23 of this Schedule.

Women and Child Labor

19. HPG shall cause HPCD to ensure that Project contractors: (a) are encouraged to use local labor and local materials in Project works; (b) provide equal pay to men and women for work of equal type; (c) provide timely payment of wages and safe working conditions for both male and female workers, (d) maximize employment for the affected persons with equal access to women, including disadvantaged women, (e) comply with applicable labor laws, and (f) abstain from child labor in construction, operation and maintenance activities on Project facilities.

Gender and Development

20. HPG shall follow ADB's *Policy on Gender and Development* during Project implementation and shall take necessary steps to encourage women living in the Project area to participate in the Project implementation, including causing the contractors to maximize employment of women in connection with the Project. HPG, in coordination with the appropriate agencies, shall ensure the effective implementation of measures aimed at increasing Project benefits and impacts on women in and around the Project Road, which are included in the Social Development Action Plan referenced in RP. HPG shall monitor the Project's effects on women during Project implementation.

Health Risks

21. HPG, in coordination with the appropriate agencies identified by the Borrower, shall cause the Project contractors to disseminate information on the risks of socially and sexually transmitted diseases, including HIV/AIDS, to their employees during Project implementation. HPG shall cause the appropriate agencies to disseminate similar information to transport operators and to local communities living in the Project area during Project implementation and operation of the Project facilities. Specific provisions to this effect shall be included in bidding documents and civil works contracts, and compliance shall be strictly monitored by HPG through HPCD.

Anticorruption measures

22. HPG shall: (i) undertake necessary measures to create and sustain a corruption-free environment, (ii) ensure that Borrower's anticorruption laws and regulations and ADB's *Anticorruption Policy*, are strictly enforced and are being complied with during Project implementation, and that relevant provisions of ADB's *Anticorruption Policy* are included in all bidding documents for the Project, (iii) facilitate ADB in the exercise of its right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project, (iv) conduct periodic inspections on the Project contractors' activities related to fund withdrawals and settlements, and (v) ensure that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of HPG, HPCD and PIU, and all contractors, suppliers, consultants and other service providers as they relate to the Project. In relation to the Project, HPG through HPCD shall (i) establish a supervisory body to prevent undue interference in business practices with adequate resources made available for its effective operation; (ii) involve a leading group of officials from HPCD's Supervision Division in project bidding, construction, and other operational activities; (iii) hold regular briefings between HPCD and the Prosecutor's Office to share information on or warnings about any corrupt practices detected; (iv) periodically inspect contractors' activities in relation to fund withdrawals and settlements ; and (v) introduce a dual signing system whereby the civil works contract winner also signs an anticorruption contract with the employer.

Monitoring and Evaluation

23. HPG shall ensure that HPCD, within six months of Project implementation, adopts a project performance management system (PPMS), acceptable to ADB, based upon the PPMS indicators agreed between HPCD and ADB. HPG shall monitor Project impacts, as specified in the PPMS, to ensure that the Project facilities are managed effectively and the benefits to the poor are maximized. By December 2007, HPG shall (i) hire a qualified domestic institute to carry out the monitoring activities; (ii) ensure that the local governments, including local statistics offices, collect the data to measure the indicators in the PPMS prior to implementation, at completion, and biennially for 6 years thereafter, with the frequency as specified in the PPMS; and (iii) submit to ADB the reports summarizing the key findings of monitoring.

Project Review

24. A joint midterm review of the Project shall be undertaken in 2008. Such review shall cover all institutional, administrative, organizational, technical, environmental, social, poverty reduction, resettlement, economic, financial, and other relevant aspects that may have an impact on the performance of the Project and its continuing viability. The review shall also examine progress in resettlement, environment, poverty impact, and compliance with assurances in this Project Agreement.